



The Abdorrahman Boroumand Foundation

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# Neither Free nor Fair

## Elections in the Islamic Republic of Iran

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در دفاع از حقوق بشر و دموکراسی در ایران

## **I. Introduction**

The Islamic Republic of Iran has frequently responded to criticisms of its international behavior or human rights record by trumpeting the democratic aspects of the regime, especially its parliamentary and presidential elections. On the surface, and in comparison to most states in the Middle East, the claim appears credible. Elections for the *Majlis* (Parliament) and the presidency are held regularly and attract numerous candidates. There are even campaign rallies and other symbols of electoral politics. A closer look, however, reveals that Iran's elections violate numerous principles of international law and democratic governance. By constraining political parties, restricting permissible candidates, and coercing citizens to vote when they would otherwise refrain, Iran's elections are in many ways an improved version of the sham elections held by the Soviet Union and other self-styled People's Republics during the Cold War. With a combination of restrictive election laws and an unaccountable body that vets all political candidates, the Islamic Republic of Iran has effectively curtailed its citizens' right to participate in the political process and forfeited any right to be classified as a democracy. This is especially apparent when Iran's electoral system is contrasted to those in Malaysia and Pakistan, two Muslim-majority nations with regular elections. Regardless of their application, an assessment of the relevant election statutes makes clear that Iran's laws and limitations on candidates and political parties is much more exclusionary than those of either Malaysia and Pakistan.

## **II. Democracy, Elections & International Law**

Elections in international law are an element of the law of democracy. Until relatively recently, international law did not have much to say with regard to democracy. In fact, as late as 1987 it could be written that "international law does not generally

address domestic constitutional issues, such as how a national government is formed,” hardly surprising, given the centrality of state sovereignty in that corpus of law.<sup>1</sup> Nonetheless, underneath this bedrock tenet, the seeds of change planted by the international tribunals in Nuremberg and Tokyo that followed World War II had begun to bloom. As the individual – especially his treatment by government – and not just the state, was afforded a more prominent role in international law, it was only a matter of time before the individual’s function in the internal governance of the state would be of consequence. Though the law of democracy is not yet a fully self-contained component of international law, there has been an undeniable process, based in parts on custom and the collective interpretation of treaties, towards a right to “democratic governance.”<sup>2</sup> The transformation of democracy from an ideal to a growing requirement of international law was aided by the end of communism in the Soviet Union and Eastern Europe and can be traced to three separate, yet interrelated legal developments: self-determination, freedom of expression, and, free and open elections. It is within this framework that the proper standards and conditions for elections have been formed.

## A. Historical Development

The first and most important concept was that of self-determination, which after World War II “became the most dynamic concept of international relations.”<sup>3</sup> The right of self-determination empowers a “people organized in an established territory to determine its collective political destiny in a democratic fashion.”<sup>4</sup> This right was prominently enshrined in the Charter of the United Nations (UN), where the “self-determination of peoples” ranks behind only international peace in importance of objectives.<sup>5</sup> From a mostly theoretical shell, self-determination quickly developed a

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<sup>1</sup> American Law Institute, *Restatement (Third) of the Foreign Relations Law of the United States*, § 203, comment (e) (1987).

<sup>2</sup> Thomas Franck, “The Emerging Right to Democratic Governance,” *American Journal of International Law* 86, (1992), 47.

<sup>3</sup> *Ibid*, 54.

<sup>4</sup> Thomas Franck, “The Emerging Right to Democratic Governance,” *American Journal of International Law* 86, (1992), 52.

<sup>5</sup> United Nations Charter, Art. 1(2).

substantive form with the decolonization of former imperial territories in Africa and Asia. The UN, in particular, played a very active role in this process by administering territories in trust and monitoring elections leading to independence. Self-determination further developed with the ratification of the International Covenant on Civil and Political Rights (ICCPR) in 1967. The ICCPR is regarded as the most important and authoritative instrument on international law and democracy. The covenant was an important milestone in the evolution of an ‘internal’ right to self-determination and contains the most detailed requirements of democracy. Related to self-determination is the notion of popular sovereignty, the “most fundamental principle of democracy.”<sup>6</sup> At its core, popular sovereignty requires “citizen consent to the exercise of coercive power within a state.”<sup>7</sup> The conception of popular sovereignty – once strictly off-limits – has gained importance as the internal character of regimes, and has emerged as an appropriate focus of scrutiny under international law. The fiction that whichever regime was in power spoke for the interests of the populations has been laid largely to rest.<sup>8</sup> Instead, some form of representative procedure is regarded as being essential to divining the will of the people.

The second component of the democratic governance in international law was the burgeoning commitment to free political expression. Partly in response to the totalitarian nightmare of the 1930s and 1940s, the right to political expression became an important component of human rights law. First mentioned in the Universal Declaration of Human Rights,<sup>9</sup> it acquired fuller expression in the ICCPR, which, in addition to furthering notions of self-determination and popular sovereignty, also set forth the rights and freedoms essential to a well-working democracy: freedom of assembly, association, movement, and speech. The drafters emphasized the essential role of those political freedoms in Articles 19 (right of conscience), 21 (right of peaceful assembly), and 22

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<sup>6</sup> Steven Wheatly, “Democracy in International Law,” *International Comparative Law Quarterly* 51, (April 2002), 227.

<sup>7</sup> Gregory H. Fox and Brad R. Roth (eds), *Democratic Governance and International Law*, (Cambridge: Cambridge University Press, 2000), 49.

<sup>8</sup> Fox and Roth, *Democratic Governance and International Law*, 507.

<sup>9</sup> Universal Declaration of Human Rights, Art. 19 (“Everyone has the right to freedom of opinion and expression;”).

(freedom of association) for the full enjoyment of rights in Article 25.<sup>10</sup> Although each is important in its own right, together they create the open, pluralistic environment critical to a functioning representative democracy

The final prong in the evolving right to democratic governance is the “emerging normative requirement of a participatory *electoral* process.”<sup>11</sup> Unsurprisingly, this was first alluded to in the Universal Declaration of Human Rights, which recognized the right of every individual to participate in the political life of the nation through “periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”<sup>12</sup> The ICCPR went on to recognize the importance of elections, which lie at the “core of the democratic government based on the consent of the people.”<sup>13</sup> The ideological conflicts of the Cold War, however, severely curtailed the application of this requirement. With contested elections a reality only in North America, Western Europe, and isolated pockets in Asia and Africa, democratic governance was more of an aspiration than a requirement under international law. This changed with the implosion of the Soviet Empire in 1989-1991 and the “Third Wave” of democratization that was taking place. The number of countries with democratic political systems increased from 44 in 1972, to 107 by 1993.<sup>14</sup> Elections were becoming an obligation. In Nicaragua in 1990, for the first time, the United Nations helped and monitor elections in a sovereign state not emerging from decolonization.<sup>15</sup> This was followed a short time later by a UN monitoring presence in Haiti during October of 1990. Monitoring national elections is now an accepted activity of the UN, which, through its organs, regularly expresses support for notions of democratic legitimacy.<sup>16</sup> This was affirmed by the UN General Assembly, which stressed “its conviction that periodic and genuine elections are a necessary and indispensable element

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<sup>10</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2<sup>nd</sup> ed. (Kehl: N.P. Engel, 2005), 566.

<sup>11</sup> Franck, *Emerging Right*, 63. (Emphasis in the original)

<sup>12</sup> Universal Declaration of Human Rights Art. 21, paragraph 3.

<sup>13</sup> Nowak, *ICCPR Commentary*, 565. (internal citations omitted)

<sup>14</sup> Doh Chull Shin, “On the Third Wave of Democratization: A Synthesis and Evaluation of Recent Theory and Research,” *World Politics*, Vol. 47, No. 1 (1994), 136.

<sup>15</sup> Jon. M. Ebersole, “The United Nations’ Response to Requests for Assistance in Electoral Matters,” *Virginia Journal of International Law* 33, (2002), 95.

<sup>16</sup> Gregory H. Fox & Georg Nolte, “Intolerant Democracies,” *Harvard International Law Journal*, Vol. 36 No. 1, (Winter 1995), 36.

of sustained efforts to protect the rights and interests of the governed” and that “determining the will of the people required an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views.”<sup>17</sup>

## **B. Justifications**

There are four principal justifications for incorporating democratic governance in international law.<sup>18</sup> These justifications address both international law’s traditional focus on inter-state relations and the more recent concern with individual human rights. The most obvious justification is the “perceived connection between competitive multiparty elections and the range of other international protected human rights.”<sup>19</sup> What appears intuitively correct has been empirically born out. A second, yet arguably more valid, justification is the link between democratization and armed conflict. Simply put, democracies rarely, if ever, go to war against one another, and because the prevention of inter-state conflict is the sine qua non of the post-war legal order, it logically follows that any process which significantly affects the prospects of inter-state conflict will be an appropriate object of international law.<sup>20</sup> The third justification – the prevention of internal armed conflict – is closely related to the second. As the 1990s progressed, civil wars and intra-state strife accounted for most of the casualties due to armed conflict and occupied an increasing amount of the UN’s attention. “[I]n the absence of genuinely democratic institutions, contending interests are likely to seek to settle their differences through conflict rather than through accommodation.”<sup>21</sup> The final justification is that the democratic process has become essential to the effective implementation of a number of emerging international norms unrelated to democracy itself.<sup>22</sup> International efforts to protect the environment, for example, are heavily reliant on a legal regime that provides

<sup>17</sup> “Enhancing the effectiveness of the principle of periodic and genuine elections.” A/RES/46/137.

<sup>18</sup> Gregory H. Fox and Brad R. Roth, “Democracy and International Law”, *Review of International Studies* 27, (2001), 333.

<sup>19</sup> Ibid.

<sup>20</sup> Literature on the Democratic Peace Theory is voluminous. See Russett, Bruce, and William Antholis. “Do Democracies Fight Each Other? Evidence From The Peloponnesian War.” *Journal Of Peace Research* 29 (4, 1992), 415-434. Jack Levy, “The Democratic Peace Hypothesis: From Description To Explanation,” *Mershon International Studies Review* 38 (October 1994) 352-354.

<sup>21</sup> Report of the Secretary-General: *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa* (1998), paragraph 77.

<sup>22</sup> Fox and Roth, “Democracy and International Law”, 334.

for a high degree of popular participation in ensuring states' effective compliance with their obligations. Combined together, "it is clear that international law and international organizations are no longer indifferent to the internal character of regimes exercising effective control within sovereign states."<sup>23</sup>

### C. Present Standards

Though there is no single international treaty, or a universally agreed-upon set of procedures and requirements governing elections, a number of international instruments have identified the essential principles.<sup>24</sup> These principles can be classified into two categories. The first category is political rights *strictu sensu*.<sup>25</sup> These are addressed in Article 25 of the ICCPR and include the right to "take part in the conduct of public affairs" and "vote and be elected at genuine periodic elections."<sup>26</sup> Suffrage is to be "universal and equal" and elections secret.<sup>27</sup> The second category consists of the rights (freedom of expression and freedom of assembly) necessary for effective political discourse. Together, these associated political rights are crucial to the formation and participation of political parties, which are "indispensable for the existence and functioning of a democracy."<sup>28</sup> State parties are obligated not only to refrain from harassing and interfering with existing parties but to also "make it legally and factually possible" for individuals to set up and create new parties if they so choose.<sup>29</sup>

Combining these principles, one can deduce the fundamental notion that elections must be "free and fair."<sup>30</sup> An election is free when "the legal barriers to entry into the political arena are low, when there is substantial freedom for candidates and supporters of different political parties to campaign and solicit votes, and when voters experience little

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<sup>23</sup> Ibid, 328.

<sup>24</sup> Aside from the UDHR and the ICCPR, there is the Draft Convention on Election Standards, Electoral Rights and Freedoms (hereafter Draft Convention) and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (hereafter Copenhagen Document).

<sup>25</sup> Nowak, *ICCPR Commentary*, 565.

<sup>26</sup> ICCPR Art. 25.

<sup>27</sup> Ibid.

<sup>28</sup> Nowak, *ICCPR Commentary*, 496.

<sup>29</sup> Ibid, 500.

<sup>30</sup> Draft Convention (election standards must comprise "free, periodic and mandatory, fair, genuine, open, and public elections") and Copenhagen Document ("freely and fairly expressed through periodic and genuine elections").

or no coercion in exercising their electoral choices.”<sup>31</sup> The presence of universal suffrage and peaceful voting is not sufficient. Freedom in this context is primarily a matter of “the rules of the game.”<sup>32</sup> An election is fair when “they are administered by a neutral authority; when the electoral administration is sufficiently competent and resourceful to take specific precautions against voting and the vote counting.”<sup>33</sup> In fair elections, the police and judiciary treat all parties impartially throughout the process, and independent monitoring of the voting and vote-counting is allowed. In a fair election, “the rules of the game” are applied consistently to all sides. The standards for fair elections revolve around allowing voters safe and unfettered access to poles. For an election to be fair, adequate notice must be given for the election and the election must be public and timely. Polls must be situated in a manner that facilitates voting and does not hamper those who live in either rural or urban areas. A free election can also be characterized by one that is “genuine.”<sup>34</sup> In a genuine election, the populace has the ability to translate its political preferences into concrete choices. The converse of a genuine election is a “made election.” Unlike elections marred by outright violence or vote-rigging, made elections are much more subtle, and therefore, pernicious. As one commentator has noted,

“The manufacture of elections is not technically a difficult operation; at practically every point ... officials can intervene to bias the system in favour of one set of candidates and against others. Elections made skillfully are made by minor interventions at a large number of points, not by brutal interposition at a few. The officials do not block all opposition by sabotaging the nomination of all candidates; they merely twist matters a little in delimiting constituencies, dealing with nominations, giving facilities for the campaign, conducting the poll, enquiring into disputed cases. The sum of these things should be

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<sup>31</sup> Larry Diamond, “Thinking About Hybrid Regimes,” *Journal of Democracy* 13, no. 2 (April 2002), 28.

<sup>32</sup> Jorgen Elklit and Palle Svensson, “What Makes Elections Free and Fair?” *Journal of Democracy* 8, no. 2 (July 1997), 35.

<sup>33</sup> Diamond, “Thinking About Hybrid Regimes,” 29.

<sup>34</sup> Draft Convention, Art. 4 paragraph 2.



enough to keep the government in power, unless it has involved the nation in disaster, and they do not incur the odium of dictatorship.”<sup>35</sup>

Made elections may be the result of infringements on both the freedom and fairness of elections. The former can arise from undue government interference in the formation of political parties and selection of candidates. The latter can occur when elections are not overseen by neutral administrators. It can also occur when opposition candidates are deprived of access to state-controlled media. Made elections are not identical across all countries. Low-level harassment of political parties in one state can exist as crude violence or outright prohibition in another. Therefore, it is critical to carefully examine the laws and practices as they exist in a state in order to pass credible judgment on its election process.

### **III. Elections in Iran**

Iranian elections are neither free nor fair. Because the Islamic Republic has never allowed independent election monitoring, it is impossible to ascertain whether elections have been held without fraud. There are reasons, however, to question the veracity of the Iranian government’s election figures, which do not always add up.<sup>36</sup> Recently, in fact, the Revolutionary Guards has become more involved in the political process, raising fears of undue influence.<sup>37</sup> More troubling are the explicit and wide-ranging structural restrictions embedded in the Islamic Republic’s electoral system. Under Iran’s constitution, the qualification of candidates is subject to statute, with the two most relevant statutes being the Election Law and the Political Parties Law. These laws

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<sup>35</sup> Giovanni Sartori, “Representational Systems” in *International Encyclopedia of the Social Sciences*, (Free Press, 1968).

<sup>36</sup> “According to official figures, Ahmedinejad got 5.7 million votes in the first round and 17.2 million in the runoff. How did he gather an additional 11.5 million votes in one week? Even if turnout remained the same across rounds, and if Ahmedinejad received all the votes that went to the other hard-line candidates in the first round (Ali Larijani and Mohammad Baqer Qalibaf) that would only give him an additional 5.8 million votes. If in fact, as the regime admits, second-round turnout was actually lower than first-round turnout, how could Ahmedinejad have almost tripled his total number of votes?” Bill Sami’i, “Iran: Do The Presidential Vote Numbers Really Add Up?” *Radio Liberty*, 30 June 2005.

<sup>37</sup> <http://www.cnn.com/2005/WORLD/meast/06/25/iran.claim/index.html> (Reporting that the Revolution Guards interfered with voting stations during the 2005 presidential election.)

contain numerous restrictions that stymie the formation of an authentically open political system. Also playing an important role is the Guardian Council, a quasi-judicial body of twelve unelected religious and legal officials, which vets all political candidates and monitors all elections. Consequently, “rather than being based on written laws, actual rights of access to the electoral process come down to a question of power politics.”<sup>38</sup>

### **A. Iran’s System of Government**

The Islamic Republic of Iran is the world’s only theocratic state. Political power, de jure and de facto, rests with a small group of clerics and their supporters. Central to Iran’s system is the doctrine of *Velayat-e Faqih*, or Guardianship of the Jurisprudent. According to this concept, until the return of the *Mahdi*, political and religious power in society should be exercised by the Shi’ite cleric with the “right political and social perspicacity, prudence, courage, administrative facilities, and adequate capability for leadership.”<sup>39</sup> Therefore, though Iran has an elected parliament, the *Majlis*, and an elected president, ultimate power rests with the Supreme Leader, an unelected cleric who wields ultimate power in matters of state. Ayatollah Ali Khamenei, who became Supreme Leader after the death of Ayatollah Khomeini, is tasked with: “delineating the general policies of the Islamic Republic;” “supervising the proper execution of the general policies of the system”; being commander-in-chief of the armed forces; appointing the head of the Judiciary, the head of the national radio and television networks, the six religious members of the Guardian Council, the chief of the joint staff, the commander of the Revolutionary Guards, and; “resolving problems which cannot be solved by conventional methods.”<sup>40</sup> The Supreme Leader is appointed by, and theoretically, responsible to the Assembly of Experts. Under Iran’s constitution, voters select the members of the Assembly of Experts through a national election. However, the constitution provides no directions for how candidates for this election are chosen. The Assembly of Experts has effectively placed this process in the hands of the Guardian Council by stating that candidates’ religious credentials must be thoroughly vetted by the

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<sup>38</sup> Iran Election Law.

<sup>39</sup> Iran Constitution, Art. 109(1)c. (In Shi’ite theology, the *Mahdi* is the twelfth Imam, who will one day return from hiding and usher paradise on Earth.)

<sup>40</sup> *Ibid*, Art. 110(1).

clerics of Guardian Council. The result is a circular system in which the public, through use of the ballot box, has almost no substantive input.

### **A. Elections and the Role of the Guardian Council**

In contrast to most states, Iran's election regulations are not codified in a statute. Rather, the Election Law sets forth a number of general guidelines regarding the proper administration of elections. After the election, the Interior Ministry is to furnish a report to the *Majlis*.<sup>41</sup> Under Iran's Constitution and Election Law, there is no independent election commission to manage or monitor elections. Rather, the Guardian Council is responsible for supervising elections.<sup>42</sup> In many ways, the Guardian Council is a microcosm of the defects imbedded in Iran's system. Charged by Iran's Constitution with ensuring that all laws and regulations adhere to Islamic criteria, the Council is comprised of six jurists and six religious experts. The six jurists are confirmed by the *Majlis* from a list provided by the Head of the Judiciary Power.<sup>43</sup> The six clerics are appointed solely at the discretion of the Supreme Leader. Members serve six year staggered terms and may be dismissed only by the Supreme Leader. This quasi-judicial body has emerged as one of the most influential bodies in the Islamic Republic and exercises an enormous amount of power in Iran's political process. In 1992, the Council offered a new interpretation of Article 99 and transformed what originally was only a general supervisory power into approbatory supervision (*nezarat-e esteswabi*).<sup>44</sup> Viewed as blatant power grab by even supporters of the regime, the Council has become the final arbiter of who can be allowed to become a candidate for nearly every office.

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<sup>41</sup> Iran Election Law.

<sup>42</sup> Iran Constitution, Art. 99.

<sup>43</sup> The Head of the Judiciary occupies a unique role in the Iranian political and legal system. Separate from the Minister of Justice (a cabinet member, nominated by the President and approved by the *Majlis*, limited to presenting judicial bills to the *Majlis* and other administrative duties), the Head of the Judiciary is in charge of the entire court system of the Islamic Republic, including the Supreme Court, staffing lower courts, and monitoring Iran's public prosecutors. Unaccountable to anyone except the Supreme Leader, the Head of the Judiciary Power is a prime example of the lack of separation between the executive and judicial branches.

<sup>44</sup> Reza Afshari, *Human Rights in Iran: The Abuse of Cultural Relativism*, (Philadelphia: University of Pennsylvania Press, 2000), 236-38.

## B. Restrictions on Political Candidates

Under the Islamic Republic, active participation in politics is severely limited, with most citizens excluded from the opportunity to stand for election for the *Majlis* or presidency. Iran is still, in many respects, an oligarchy, ruled by an insular network of Shi'ite clerics who comprise “a professional fraternity bound together by ties forged in the seminaries and by intermarriage.”<sup>45</sup> According to Iran's Elections Law, the first requirement for a political candidate is that he or she must have “full belief and commitment to Islam and the sacred system of the Islamic Republic of Iran.”<sup>46</sup> This clause is problematic for a number of reasons. First, it entails a religious test for candidates. This is in violation of internationally recognized prohibitions on religious discrimination.<sup>47</sup> It is also in direct contradiction of ICCPR Article 25, which gives every citizen the right to run for office “without any of the distinctions mentioned in Article 2.” Secondly, the clause requires an ideological commitment to the Islamic Republic. This is qualitatively different from requirements found in democratic nations that candidates uphold a constitution or a pledge loyalty to the state.<sup>48</sup> Candidates in Iran are required to prove allegiance to the Islamic Republic as it is presently constituted. No distinction is made between commitment to the concept of the nation and allegiance to a specific political system. Candidates are also required to show “practical allegiance to ... the progressive principle of the absolute rule of the *Velayat-e Faqih*.”<sup>49</sup> This not only violates the right of conscience, it also creates a positive obligation to take actions in support of a particular political agenda. For example, some candidates have been known to be rejected due to insufficient attendance at Friday prayers.<sup>50</sup> Even more troubling, and

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<sup>45</sup> Stephen C. Fairbanks, “Theocracy Versus Democracy: Iran Considers Political Parties,” *Middle East Journal* 52, no. 1 (Winter 1998), 28.

<sup>46</sup> Iran Election Law.

<sup>47</sup> ICCPR Article 2 (general prohibition on state discrimination based on religion), Article 18 (freedom of religion)

<sup>48</sup> US Constitution Art. 2 § 1 “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.” oath of office of president). See also, *Ibid.* at Art. 6 Clause 3 (requiring an oath to support the Constitution by all state and federal members of legislatures and executive and judicial officers but prohibiting the administering of any religious tests), Promissory Oaths Act 1868 (UK) (requiring all members of Parliament to swear or affirm an allegiance to the Monarch.)

<sup>49</sup> Iran Election Law.

<sup>50</sup> Ladan Boroumand and Roya Boroumand, “Reform at an Impasse,” *Journal of Democracy* 11, no. 4 (October 2000), 118.

emblematic of the core problem with the Islamic Republic's political system, is that the role of the *Velayat-e Faqih* is constitutionally entrenched.<sup>51</sup> Article 177 forbids altering, *inter alia*, any changes to provisions concerning the Islamic character of the political system, the Islamic foundation of all laws and regulations, and the rule of the *Velayat-e Faqih*. By effectively blocking off any avenues for substantial political or legal change, the Iranian Constitution has frozen in place a vision of state and society that can not adapt to changed circumstances and popular preferences. The result is an arrangement in which political power and the resources of the states are monopolized by a relatively small group of insiders who are immune to public pressure and accountability. This violates the fundamental principle that all governments must derive their legitimacy from the citizens. While it is certainly arguable that many Iranian in 1979 were bona fide supporters of the political events then taking place, the same is certainly not true today, if only for the fact that the people have no opportunity to make known their preferences.

The Islamic Republic also discriminates against religious minorities. Under the Constitution, sectarian communities are allotted five seats. Zoroastrians and Jews get one seat each while the Christian communities gets three, one jointly for the Assyrians and Chaldeans, and one each for Armenians in southern and northern Iran.<sup>52</sup> Those running for office as representatives of minority communities are exempt from provisions regarding Islam but must be "firm in their commitment to their own religion."<sup>53</sup> Though touted by the regime as an example of the Islamic Republic's tolerance and fairness towards religious minorities, the seclusion of minority candidates into reserved seats is harmful for two reasons. First, by setting religious minorities apart from the regular political process, the government is making clear that religious minorities, while tolerated, are not full and equal members of Iranian society. Having been relegated to the equivalent of a political ghetto, members of minority communities do not have the opportunity to vie for leadership positions and, therefore, are shut out of the decision-making process relating to matters of national security, foreign policy, economic affairs, and the like. Second, the interests of religious communities will not be sufficiently protected because the other 265 members of *Majlis* have no need to worry about an

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<sup>51</sup> Iran Constitution Art. 177.

<sup>52</sup> Iran Constitution, Art. 64(2).

<sup>53</sup> Iran Election Law.

electoral backlash. In other nations, politicians have to take minority voters in consideration because a small, yet united, community can make a difference in close races. That mechanism against roughshod majority rule is conspicuously lacking in Iran. Another seriously troublesome requirement, due to being overly vague and undefined, is that candidates must be “free from ill reputation in the election district.”<sup>54</sup> By its very definition, reputation is not amenable to objective analysis. What one regards as tenaciousness, one may deem aggressiveness or hostility. One man’s tolerance may be another impiety. In the hands of a political body, the prospect for mischief is all too obvious. As such it allows authorities to bar candidates based on nothing more than allegations, rumors, innuendos, and personal feuds. Iran election law also requires candidates to have at least an associate’s degree (a 2-year degree) or its equivalent. Though there is no explicit prohibition in international law against educational requirements for elective office, given Iran’s socio-economic development, the requirement of higher education works to keep out a large segment of the population from running for office.<sup>55</sup>

Iran’s Election Law also bans certain classes of individuals from standing for election. For example, “big land owners who have uncultivated land registered in their own name” nor those reputed to be corrupt or having “displayed indecent acts.”<sup>56</sup> Similar to the requirement that candidates be free from ill reputation, these classes are so vaguely defined as to be useful only for arbitrary and capricious. Also disconcerting is the ban on those “convicted of apostasy in competent courts of law.”<sup>57</sup> Aside from the obvious conflict with religious liberty, the charge of apostasy was often used by Khomeini and his followers to discredit political opponents.<sup>58</sup>

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<sup>54</sup> Ibid.

<sup>55</sup> Other developing states have been able to incorporate competency standards without barring non-college graduates. Cameroon requires all candidates to read and write English or French (Cameroon Electoral Code, Section 17). Indonesia requires all candidates to have a high school diploma (Law on Political Parties, Art. 43(1)(d)).

<sup>56</sup> Iran Election Law.

<sup>57</sup> Ibid.

<sup>58</sup> “From today the National Front are convicted of apostasy, unless they take to the radio this afternoon and admit that this declaration... was not their doing.” Ayatollah Ruhollah Khomeini, *Sahifeh Imam: Compilation of the Writings of Imam Khomeini*, vol. 14 (Tehran: Institute for the Compilation and Publication of Imam Khomeini’s Work, 1999), 462. The declaration in question was the National Front’s call for a demonstration against the proposed adoption of Qisas (Quranic law of retribution).

Another category of prohibited persons, defined with more specificity but running afoul of Article 25 of the ICCPR, is those “connected with the past regime” such as members of the city and town councils, freemasons, and members of the Senate and *Majlis*. This blanket ban contravenes Article 25’s constraint on “unreasonable restrictions.” Simply being connected to the previous regime or having had a position of political responsibility may not be grounds to be excluded as a candidate. For example, would a Ministry of Foreign Affairs office clerk who handled sensitive information be treated the same as a deputy minister? Whatever political differences the current regime may have had with the previous Shah’s rule, it may not preclude members of previous government from serving unless the individual is found to have committed specific crimes that would render him or her ineligible. A connection, without any other evidence of wrongdoing, to the Shah’s regime has often been used by the Islamic Republic to slander and persecute individuals who were opponents of the regime. Amir Abbas Hoveyda, a long-time Prime Minister, was charged and executed for a litany of generic and vague crimes.<sup>59</sup> As the prosecutor in Hoveyda’s trial acknowledged, “the court is not trying you. It is trying the system, of which you were the representative and executive.”<sup>60</sup> Another clause that serves to shut out a large segment of potential candidates is the ban against “organizational supporters and affiliates of political parties, organizations and groups whose illegitimacy has been declared and established by the concerned authorities.”<sup>61</sup>

Given the government’s blanket ban on all political parties in 1981 (see below), many political actors who were active before and during the Revolution are essentially excluded from the opportunity to run for office. Moreover, no woman has ever been approved to run for the presidency. Though there is an academic dispute as to whether the term used in the Constitution in describing the president, *rejal*, connotes a man or person,

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<sup>59</sup> Abbas Milani, *The Persian Sphinx: Amir Abbas Hoveyda and the Riddle of the Iranian Revolution*, (Washington, DC: Mage Publishers, 2000), 314-15. Among other charges, Hoveyda was accused of “spreading corruption on earth,” “fighting God,” “turning over underground resources: oil copper, and uranium, to foreigners,” expansion of the influence of American Imperialism,” “ruining agriculture and destroying forests,” membership in Freemasonry, and “spreading cultural and ethical corruption.” (It is telling that, given popular perceptions of Hoveyda as an enabler of the decadent and venal Pahlavi regime, not one count involved personal financial impropriety.)

<sup>60</sup> *Kayhan*, April 8, 1979.

<sup>61</sup> Iran Election Law.

the Guardian Council has interpreted the term to exclude women for running. Finally, Iran's Election Law requires that candidates "be blessed with vision, hearing, and speech capabilities."<sup>62</sup> This requirement seems particularly anachronistic in a technologically advanced age endowed with numerous devices and instruments to help physically disabled persons lead normal lives.

### C. Restrictions on Political Parties

Iran's Parties Law, passed in 1981, compounds the problems of the Election Law by severely curtailing political parties. Political parties play an indispensable role in democratic societies. Besides offering a platform for isolated groups or individuals who would otherwise be sidelined from the political process, political parties help determine the manner in which elections are conducted, establish linkages between political elites and the public, and perform a pivotal task in democratic consolidation.<sup>63</sup> "It is political parties that in the end must bargain, coalesce, and produce the votes for reform in parliament."<sup>64</sup> Moreover, political parties can help alleviate tensions in ethnically heterogeneous societies.<sup>65</sup> The Parties Law regulates the activities of all political parties, trade associations, religious parties, and any other groups "established by real persons believing in certain essential policies and ideals and whose objectives... are related to the administration of the state and general policies of the Islamic Republic of Iran."<sup>66</sup> Under international law, states are free to promulgate regulations and provisions for registration of political and civil associations. However, any restrictions must be "necessary in a democratic society," proportional and in furtherance pluralism, tolerance, and people's sovereignty.<sup>67</sup> The only permissible restrictions are those national security, public health and order, advocacy of hatred or war, and interference in the rights of others. Great Britain, for example, criminalizes membership in any association "organized and trained

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<sup>62</sup> Ibid.

<sup>63</sup> Doug Perkins, "Political Parties and Democracy: A Comparative Analysis," manuscript presented at 1998 Annual Meeting of the American Political Science Association.

<sup>64</sup> Larry Diamond, "Is Pakistan the (Reverse) Wave of the Future?" *Journal of Democracy* 11, no. 3 (July 2000), 104.

<sup>65</sup> Peter M. Leslie, "The Role of Political Parties in Promoting the Interests of Ethnic Minorities," *Canadian Journal of Political Science*, Vol. 2, No. 4 (Dec. 1969).

<sup>66</sup> Iran Political Parties Law and Relevant Executive Regulations, Art. 1. (known hereafter as Iran Parties Law.)

<sup>67</sup> Nowak, *ICCPR Commentary*, 505. (internal citations omitted)



or organized and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object.”<sup>68</sup> French law allows the President to dissolve groups that: (1) provoke armed demonstrations, (2) are of a paramilitary nature, or (3) have as their goal the dismemberment of the territorial state, the forceful overthrow of the republican form of government, the instigation of racial or other group discrimination, or the dissemination of propaganda promoting such discrimination.<sup>69</sup> The Parties Law runs afoul of these limitations with Article 16, which proscribes certain activities by associations.

Under Article 16, political parties may not have contacts and exchanges with foreign embassies or groups that “may be harmful and injurious to freedom, independence and national unity.”<sup>70</sup> Although this restriction may seem to fall under the exception for national security, on closer examination it does not. The national security exception, because of the overweening power it provides governments, is necessarily defined narrowly. To qualify, there must be a “political or military threat to the entire nation.”<sup>71</sup> Political threat in this context requires activity outside of the normal political process, not a desire to change particular laws or policies, or even to amend the constitution.<sup>72</sup> Iran’s prohibition on contacts that are harmful to freedom or national unity is too broad. Freedom and national unity in this context may carry many meanings and are not sufficiently objective to prevent misuse by governmental officials eager to squelch purely political opposition. In one publicized case, a group of five women campaigning for greater legal rights were arrested and charged with “endangering national security.”<sup>73</sup> On April 25, 2009 Maryam Malek was arrested and charged with “propaganda against the system” in connection with her activities with the Campaign for equality.<sup>74</sup> The Islamic Republic also forbids political parties and association from “resorting to accusations, slander, and rumor mongering.” Valid restrictions on political parties and associations that interfere with the rights and freedoms of others are often

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<sup>68</sup> Public Order Act of 1936, Ch. 6, § 2(1)(b).

<sup>69</sup> Law of Jan. 10, 1936, Art. 1.

<sup>70</sup> Iran Parties Law.

<sup>71</sup> Nowak, *ICCPR Commentary*, 506.

<sup>72</sup> Iran Parties Law, Art. 16.

<sup>73</sup> “Iranian women rights activists arrested,” *Agence France-Presse*, March 4, 2007.

Available at <http://www.iranpressnews.com/english/source/021558.html>

<sup>74</sup> <http://www.amnesty.org/en/library/info/MDE13/039/2009/en>

reflected in laws that protect privacy and prohibit defamation. However, these laws must provide the leeway necessary to accommodate the vigorous give-and-take of political discourse. This is especially true when the subject matter involves public figures and public issues. In this context, accusations and rumors, even if based on disputed facts, are an expected and ordinary byproduct of electoral politics, particularly when the populace is disaffected by present policies and conditions.

Perhaps the most egregious condition of Iran's Parties Law is the restriction on "violating Islamic standards and the basis of the Islamic Republic." Aside from impinging on the freedom of religion, this clause severely restricts the activities of political parties without falling under any of the exceptions provided for in the ICCPR.<sup>75</sup> Lacking any credible justification, this clause serves primarily to inhibit any potential challenges to clerical rule in Iran. It accomplished this by inhibiting the formation of any political party that does not adhere to the regime's ideological values. This includes opposition to the concept of *Velayat-e Faqih*, support for greater separation of church and state, and fundamental reform of the constitution. Dissident clerics who reject an overtly political role for the clergy are also harassed, with their followers excluded from the political system. As the Draft Convention on Electoral Standards, Rights and Freedom notes, in "genuine elections there is real political pluralism, ideological diversity, and a multi-party system."<sup>76</sup> Without a diverse array of viewpoints, elections are little more than facades that mask the inability of an electorate to have a meaningful voice in the political arena. Additionally, political parties and associations may not disseminate "anti-Islamic propaganda" or publish "seditious books and literature."<sup>77</sup> The former is particularly troubling because in an arrangement where state and church are so closely intertwined, criticisms of the form of government are ipso facto attacks on religion.

After the fall of the Shah, numerous political parties and organizations were active in trying to shape the outcome of the Revolution. As Khomeini and his coterie solidified their hold on power, opposition groups were brought to heel through a campaign of harassment, violence, and exile. Eventually, all political parties, save one,

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<sup>75</sup> The only possible justifications would be for the maintenance of public morals or defense of national security. However both of those fall short. The national security exception is

<sup>76</sup> Draft Convention, Art. 4 paragraph 2.

<sup>77</sup> Iran Parties Law, Art. 16.

were banned.<sup>78</sup> Banned political parties reflect the entire political spectrum, from left to the right. Many had been active during much of the modern Iranian political era. These parties had numerous supporters and included many of Iran's most well-known political figures. Among them were the National Front (*Jebhe Melli*), led by Shapour Bakhtiar, the Iranian Nationalist Party (*Hezb-e Melli-e Iran*), led by Darioush Forouhar, and the communist *Tudeh* Party. The only political party left standing was the Islamic Republican Party (IRI). Distinguished by its "strong clerical component, its loyalty to Khomeini, its strong animosity to the liberal political movements, and its tendency to support the revolutionary organizations," the IRI, dominated the *Majlis* in the 1980s.<sup>79</sup> Under the Political Parties Law, a commission (Article 10 Commission), composed of a representative from the State Prosecutor's Office, a representative from the Judiciary, a representative from the Interior Ministry, and two members of (or approved representatives from) the *Majlis*, is responsible for approving applications and supervising all approved groups.<sup>80</sup> The Article 10 Commission was to hold its first session no later than forty days after the passage of the Political Parties law, but by 1988 had yet to convene. The Interior Minister blamed the delay on the "dire and difficult circumstances" of the Iraq-Iran War, a peculiar excuse given that the situation was stable enough to have held nation-wide elections for the *Majlis*, which presumably required somewhat greater resources than five-member commission meetings.<sup>81</sup>

The end of the war did not bring about any change. The IRI voluntarily disbanded in 1987, but of the 30 organizations that submitted applications to the Article 10 Commission by February 1989, none were approved.<sup>82</sup> Though politicians continue to organize themselves into various informal factions, formal party activity (party gatherings, creation of political platforms, public interaction with the electorate) is rarely present. Almost all of the 223 registered political associations are small, little-known religious groups that support the regime. A partial glance at the official registry illustrates the regime's narrow limits of official tolerance: Association of Islamic Engineers of

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<sup>78</sup> Anoushiravan Ehteshami, *After Khomeini*, (Taylor & Francis, 2007), 43.

<sup>79</sup> Shaul Bakhash, *The Reign of the Ayatollahs*, (Basic Books, 1986), 67.

<sup>80</sup> Iran Parties Law, Art. 10.

<sup>81</sup> Stephen C. Fairbanks, "Theocracy Versus Democracy: Iran Considers Political Parties," *Middle East Journal* 52, no. 1 (Winter 1998), 21.

<sup>82</sup> Ehteshami, *After Khomeini*, 43.

Khorasan, Association of Islamic Teachers of Iran, Society of Militant Clergy of Tabriz, and the Islamic Organization of Women Who Follow the Pathway of Zahra.<sup>83</sup> Almost every group is explicitly Islamic in character and none are socialist, secular, or liberal.

The Islamic Republic has reacted harshly even to the possible establishment of parties that do not toe the official line. Dariush Forouhar, leader of the Iranian Nationalist Party and Minister of Labor in the first post-revolution cabinet, was gruesomely stabbed to death along with his wife in their home in 1998.<sup>84</sup> Abbas Khorsandi was sentenced to eight years imprisonment before his party had the chance to seek approval.<sup>85</sup> His party, the Democratic Party of Iran, based its platform on Iranian compliance with the Universal Declaration of Human Rights. The platform called for freedom of association, equal civil rights, separation of religion and ideology from the state, a ban on torture, and freedom for political prisoners.<sup>86</sup> Even individuals who support the Islamic Republic, or at one time held high-level positions, are not immune from being blacklisted. Mehdi Bazargan, the first prime minister appointed by Ayatollah Khomeini after the Islamic Revolution, attempted to register a political party (*Nehzat Azadi*) in 1983. The application languished for over a decade without any action.<sup>87</sup> When confronted by a UN representative, the Iranian Interior Minister claimed, “in the past 12 years no organization had asked to be registered as a political party.”<sup>88</sup>

#### **D. Compulsory Voting**

The absence of free elections in the Islamic Republic of Iran is aggravated by the coercive methods used by authorities to force citizens into the voting booth. Given the regime’s sensitivity to international skepticism of its democratic character, maintaining high voter turnout has always been a high priority. From the outset of the Islamic Revolution Ayatollah Khomeini warned the public that voting was a religious duty.<sup>89</sup> The

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<sup>83</sup> “Characteristics of Political Organizations,” published by the Bureau of Political Affairs, Ministry of the Interior.

<sup>84</sup> *New York Times*, November 23, 1998.

<sup>85</sup> <http://www.iranhumanrights.org/tag/abbas-khorsandi>

<sup>86</sup> Charter of the Democratic Party of Iran. Available at <http://www.irandp.org/1.html>.

<sup>87</sup> UN Doc. E/CN.4/1995/55, paragraph 59.

<sup>88</sup> *Ibid.*

<sup>89</sup> John O’Kane and Asghar Schirazi, *The Constitution of Iran: Politics and the State in the Islamic Republic*, trans. John O’Kane (I.B. Tauris, 1997), note 5, p. 32.

ineffectual presidency of Mohammad Khatami and the disqualification of 8200 candidates (including 80 serving deputies) by the Guardian Council prior to the 2004 *Majlis* elections only added to this urgency as voter turnout decreased significantly.<sup>90</sup> Although there is no law or publicized official policy requiring eligible Iranians to vote, the regime can easily keep track of individual turnout because all citizens must have their national identification cards stamped when voting. One blogger has claimed that each ballot now has a bar code that identifies each voter's identity. Voters who in previous years would leave the ballot blank and only have their ID stamped now fear doing so.<sup>91</sup> Individuals who must frequently use their ID cards can be singled out for harassment. This includes university students and members of the security forces

More troubling, there have been reports that soldiers from a base in northeast Iran were trucked to a polling station and given a list containing specified candidates.<sup>92</sup> Others have reported that ethnic minorities such as the Turkmen are especially susceptible to pressure, as they are often discriminated in attempting to gain government employments and services.<sup>93</sup> Additionally, applications for certain commercial permits now require all pages of the ID, including those pages that display voting stamps, instead of just those with the necessary biographical data.<sup>94</sup> Applicants for passports also have to show proof of voting.<sup>95</sup> Similar practices also extend to many government jobs. For example, an advertisement for a position with the Ministry of Housing and Urban Development informs applicants that they must provide a copy of the first and last pages of their identification documents (the last page being where proof of voting is stamped).<sup>96</sup>

Authorities in the Islamic Republic do not limit themselves to pressuring people into voting booths. There is also a serious crackdown on those who have advocated boycotts of elections. In early 2004, authorities in Tabriz went so far as to arrest four

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<sup>90</sup> Nazila Fathi, "Hard-Line Iranian Council Bars Thousands From Vote," *New York Times*, January 12, 2004.

<sup>91</sup> *Shad-eh Shirin Blog*. Available at

<http://74.125.47.132/search?q=cache:A5Q0gatmrcgJ:www.shekkar.com>

<sup>92</sup> [http://web.peykeiran.com/net\\_iran/irnewsbody.aspx?ID=19360](http://web.peykeiran.com/net_iran/irnewsbody.aspx?ID=19360)

<sup>93</sup> <http://www.azatlyk.net/31F.htm>

<sup>94</sup> Qom Commerce Organization, criteria 10. Available at

[http://74.125.113.132/search?q=cache:7lIV7w\\_Qii0J:www.bazarganiqom.ir/main](http://74.125.113.132/search?q=cache:7lIV7w_Qii0J:www.bazarganiqom.ir/main)

<sup>95</sup> Dieter Nohlen, Florian Grotz, and Christof Hartmann, *Elections in Asia and the Pacific: The Middle East and Central Asia* (Oxford University Press, 2001), 64.

<sup>96</sup> [www.sbainfo.ir/newsdetail\\_21384\\_fa\\_html](http://www.sbainfo.ir/newsdetail_21384_fa_html)

students who were caught distributing material urging people not to vote.<sup>97</sup> In May of that year, 16 university students in Yazd were charged with “propaganda against the state” for calling for a boycott against the *Majlis* elections.<sup>98</sup> The Intelligence Ministry also forbade students who had called for a boycott from speaking publicly at universities.<sup>99</sup> The More ominously, police have begun checking ID cards of businessmen after elections. “If you did not vote, they decide you are in the group that disagrees, and they write down your address and everything. They can close your shop. What can you do?”<sup>100</sup>

### **E. Restrictions on the Media**

Media in the Islamic Republic of Iran is tightly controlled. This is not simply a function of the personalities in office or the prevailing political climate. According to the Constitution, “radio and television must serve the diffusion of Islamic culture in pursuit of the evolutionary course of the Islamic Revolution.”<sup>101</sup> As such, media “must strictly refrain from diffusion and propagation of destructive and anti-Islamic practices.”<sup>102</sup> The early years of the Khatami administration did witness an easing of controls, with a proliferation of newspapers and increased leeway in the scope of acceptable political debate. This more tolerant environment began to wane in the last years of Khatami’s term and was largely snuffed out by his successor, Mahmoud Ahmadinejad. The latter was aided by the zealous efforts of Said Mortazavi, Iran’s Prosecutor General, whose actions in closing newspapers earned him the moniker of the butcher of Tehran.<sup>103</sup> Under Mortazavi’s reign, numerous newspapers have been shuttered or intimidated into closing, with courts frequently denying licenses to publish. Individual journalists are not immune either, as reporters are regularly jailed. The Islamic Republic’s suppression of political and social debate also extends to non-traditional forms of media. Iran restrictions of internet content are among the most restrictive and far-reaching. Utilizing sophisticated filtering software from some American companies, Iran has clamped down on many

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<sup>97</sup> Emruz, March 14, 2008. Available at <http://emruz.biz/ShowItem.aspx?ID=13728&p=1>

<sup>98</sup> [http://www.jdi-khorasan.blogspot.com/2004\\_02\\_01\\_jdi-khorasan\\_archive.htm](http://www.jdi-khorasan.blogspot.com/2004_02_01_jdi-khorasan_archive.htm)

<sup>99</sup> [http://www.60000000.com/news/archives/2005/05/oeoeoe\\_uoou\\_uo.php](http://www.60000000.com/news/archives/2005/05/oeoeoe_uoou_uo.php)

<sup>100</sup> Laura Secor, “The Rationalist,” *New Yorker*, February 2, 2009, p. 37.

<sup>101</sup> Iran Constitution, Preamble.

<sup>102</sup> *Ibid.*

<sup>103</sup> Hadi Ghaemi, “For Iran, the Man is the Message,” *New York Times*, June 29, 2006.

foreign websites while also jailing popular Iranian bloggers who encroach on sensitive matters.<sup>104</sup> In aggressively inhibiting the free flow of information and political arguments, the Islamic Republic has made genuinely fair elections impossible.

#### **IV. Elections in Comparable States**

Iran experts often single out Iran as the only country in the Middle East where elections are held regularly. They also stress that comparing Iran to the advanced democracies of the West is unreasonable. Given Iran's history and level of socio-economic development, one would not expect elections in Iran to fully measure up to elections in Norway or Canada. Without justifying that argument, one can better gauge just how inadequate Iranian elections are by comparing them to those in comparable nations. Malaysia and Pakistan are both large, developing Muslim-majority countries. Though not fully mature democracies, neither are they wholly despotic in the mold of Saudi Arabia or Burma. Rather, they are what can be termed "competitive authoritarian" regimes. "Although elections are regularly held...incumbents routinely abuse state resources, deny the opposition adequate media coverage... and in some cases manipulate electoral results."<sup>105</sup> Though similar in some ways, a closer examination reveals that both Malaysia and Pakistan have electoral systems markedly superior to that of the Islamic Republic. By evaluating Malaysia's and Pakistan's election systems, laws on candidacy and political parties, and press freedoms, and then comparing them to Iran's, one can gain a finer sense of the problems plaguing Iran's electoral process.

##### **A. Backgrounds of Malaysia and Pakistan**

Since gaining independence from Great Britain in 1963, Malaysia has been governed as a federal constitutional elective monarchy. Closely modeled on the Westminster parliamentary system, Malaysia has a bicameral Parliament, with an upper house (House of Senate) and a lower house (House of the People). The Prime Minister must be a member of the lower house who can command a majority in both houses. Ever

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<sup>104</sup> Robert Tait, "Iran Bans Fast Internet to Cut West's Influence," *Guardian* (London), October 18, 2006.

<sup>105</sup> Steven Levitsky and Lucan A. Way, "The Rise of Electoral Authoritarianism," *Journal of Democracy* 13, no. 2 (April 2002), 53.

since its partition and independence from British India in 1947, Pakistan has had tenuous periods of democratic governance wedged in between stages of military rule. While recent attention has been focused on the growing threat of a Taliban-aided insurgency and the rocky transition to post-Musharraf civilian rule, Pakistan's democratic pedigree is still such that it makes for an interesting case study. Pakistan has a bi-cameral parliamentary system consisting of an upper house (Senate) and lower house (National Assembly). The president is selected by an electoral college consisting of the Senate, National Assembly and four Provincial Assemblies while the prime minister is usually the leader of the largest party in the National Assembly.

## **B. Election Supervision**

Though referenced in the Constitution, elections in Malaysia are entirely creatures of statute, with election law being the prerogative of Parliament.<sup>106</sup> The organization and supervision of elections are entrusted to an ostensibly independent Election Commission. Members of the Commission are appointed by the *Yang di-Pertuan Agong*<sup>107</sup> and hold office until the age of sixty five.<sup>108</sup> Appointments must be made with "regard to the importance of securing an Election Commission which enjoys public confidence."<sup>109</sup> Aside from a fixed term of office, members of the Election Commission also have the benefit of salary protection and may be removed only through the same procedures used to remove Supreme Court judges. The electoral process in Pakistan is governed by a mixture of Constitutional law and ordinary statutes. Overseeing elections in Pakistan is the Election Commission, which consists of a Chief Commissioner appointed by the President and four Provincial High Court judges.<sup>110</sup> Pakistan's Election Commission must "ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against."<sup>111</sup> The Chief Election Commissioner

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<sup>106</sup> S. Sothi Rachagan, *Law and the Electoral Process in Malaysia* (Kuala Lumpur: University of Malaysia Press, 1993), 218.

<sup>107</sup> Malaysia Constitution, Art. 114(1). (The Yang di-Pertuan Agong is Malaysia's elected monarch and head of state. The position rotates among the nine rulers of the Malay states that constitute Malaysia.)

<sup>108</sup> *Ibid.* at Art. 114(3).

<sup>109</sup> *Ibid.* at Art. 114(2).

<sup>110</sup> Pakistan Cons. Art. 213, 218.

<sup>111</sup> *Ibid.* at Art. 218(3).



may only be removed by the same procedures used to remove judges but not receive any salary protection.<sup>112</sup>

The presence of independent election commissions in both Malaysia and Pakistan contrasts with the Islamic Republic's lack of any mechanism to ensure the fair and neutral administration of elections. The Guardian Council's untrammelled power to disqualify candidates makes a mockery of the notion of genuinely competitive elections. Rejected candidates are entitled to a written explanation listing the reasons and evidence for their disqualification but almost never receive one.<sup>113</sup>

### C. Requirements for Candidates and Political Parties

The requirements for political candidates in Malaysia are reasonable. Aside from age restrictions, candidates for Parliament must be citizens of Malaysia and be 21 years of age for the lower house and 30 for the upper house. A potential candidate can be disqualified only for: (a) having "been found or declared to be of unsound mind"; (b) bankruptcy; (c) failing to have reported campaign expenses within the required time; or, (d) having been convicted of an offense in Malaysia and sentenced to a prison term of at least 12 months or a fine of at least 2000 Ringgit without receiving a pardon. Pakistan's requirements for the National Assembly are more problematic. Aside from standard citizenship and age requirements and a prohibition on those convicted of crimes involving moral turpitude or the furnishing false testimony, there are a number of other questionable obstacles a candidate must hurdle.<sup>114</sup> First, a candidate must be of "good character" and "not commonly known as one who violates Islamic Injunction."<sup>115</sup> Additionally, a candidate must also not have "worked against the integrity of the country or opposed the Ideology of Pakistan."<sup>116</sup>

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<sup>112</sup> *Ibid.* at Art. 215(2).

<sup>113</sup> Iran Election Law.

<sup>114</sup> Iran Election Law., Art. 62(a), (b), (c), & (g).

<sup>115</sup> *Ibid.*, Art. 62(d), (e) & (f.)

<sup>116</sup> Iran Election Law., Art. (h). The "Ideology of Pakistan" was first formulated by Muhammad Ali Jinnah, the founder of Pakistan. Hoping to construct a national identity, Jinnah fashioned a creed that combined, *inter alia*, Islam, distinctiveness from Hindu India, democracy, and federalism. Under Zia-ul Haq, military ruler of Pakistan from 1977 to 1988, the Ideology of Pakistan was Islamicized, with religious orthodoxy playing a more prominent role. Stephen P. Cohen, *The Idea of Pakistan*, Brookings Institution Press, 2004, p. 170-71.

Malaysia's requirements for elective office fall squarely under international law and compare very favorably to those in Iran. Pakistan's are more troublesome, particularly those clauses pertaining to Islamic piety and the Ideology of Pakistan. However, even these are significantly less restrictive than Iran's restrictions. First, Pakistan's Election Commission has seldom enforced the clauses regarding Islamic standards to exclude candidates. Second, Pakistan waives the stipulations regarding Islamic behavior if the candidate is not Muslim, while Iran only allows Muslims to run (aside from the five seats reserved for religious minorities).<sup>117</sup> Finally, the Ideology of Pakistan, though ominous sounding, is only a restatement of national principles that are implicitly observed by many advanced democracies: territorial integrity, federalism, democracy, and national distinctiveness. It is in no way equal to Iran's requirements that all candidates show allegiance to clerical rule and its attendant socio-economic model of society.

#### **D. Political Parties**

Political parties in Malaysia have long been a crucial component of the political process. There are no constitutional or statutory restrictions on political parties. The Malaysian government "has generally permitted opposition parties, occupational associations, and cause-oriented groups to form and canvass reasonable levels of membership or support."<sup>118</sup> Though the ruling UMNO party has held power since independence, "political rights were at some level respected... [enabling] them to express dissent through party meetings and publications...and sometime even win control of state assemblies."<sup>119</sup> The weakness of opposition parties has been mostly due to ineffective cooperation by opposition groups and informal abuses of power by the ruling coalition rather than any formal limitations.<sup>120</sup>

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<sup>117</sup> Pakistan Constitution, Art. 62.

<sup>118</sup> William Case, "Semi-Democracy in Malaysia: Withstanding the Pressures for Regime Change," *Pacific Affairs* 66, no. 2 (Summer 1993), 186.

<sup>119</sup> *Ibid.*, 188.

<sup>120</sup> Andrea Ufen, "The Transformation of Political Party Opposition in Malaysia and its implications for the Electoral Authoritarian Regime," *Democratization* 16, no. 3 (June 2009), 605-06.

Though political parties have sometimes functioned in constrained settings (the Communist Party of Pakistan was outlawed in 1952 and the military regime of Ayub Kahn banned all political parties from 1958-1962), they have played an important role in Pakistani politics.<sup>121</sup> While corruption in Pakistan has been endemic, “the country did witness repeated alternation in power between two political parties that had each mobilized substantial (albeit declining) popular support.”<sup>122</sup> Political parties today operate under the 2002 Political Parties Order, which sets forward the conditions necessary for all political parties. Political parties may not propagate any opinion or act prejudicial to the “fundamental principles enshrined in the Constitution” of the Islamic Republic of Pakistan.<sup>123</sup> Additionally, political parties may not “promote sectarianism, regional, or provincial hatred.”<sup>124</sup> Most importantly, however, all citizens of Pakistan, however, have the right to form or be members of a political party.<sup>125</sup>

Comparison to the Malaysian and Pakistani arrangements shows just how oppressive the climate for political parties in the Islamic Republic really is. The contrast with Pakistan is particularly illuminating. Unlike Iran’s, Pakistan’s statute explicitly confers to all citizens the right to form a party. Moreover, unlike for candidates, there is no religious test whatsoever for political parties.

### **E. Controls on the Media**

The press in Malaysia is not completely free. The government has used licensing requirements to limit and shut down press connected with the opposition, disrupting their ability to campaign freely.<sup>126</sup> The government, however, does not completely control the media. One important reason is that all newspapers and many radio stations are in private hands, usually under the control of the ruling coalition’s component parties.<sup>127</sup> More importantly, the rise of alternative media through the internet, including social

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<sup>121</sup> Christ Candland, *Labor, Democratization and Development in India and Pakistan*, (Routledge, 2008), 78.

<sup>122</sup> Diamond, “Is Pakistan the (Reverse) Wave of the Future?” 92.

<sup>123</sup> Political Parties Order (2002) Art. 3(4)(a).

<sup>124</sup> *Ibid.*, Art. 3(4)(c).

<sup>125</sup> *Ibid.*, Art. 5.

<sup>126</sup> Asian Network for Free Elections: *Malaysia. Report of the 1999 Election Observation Mission 25 November- 1 December*, Bangkok 2000, 20.

<sup>127</sup> Rainer Heufers, “The Politics of Democracy in Malaysia,” *ASIEN* 85 (October 2002), 57.

networking sites, has allowed the political opposition to circumvent restrictions on the traditional press. Significantly, the government has mostly abstained from trying to regulate the internet, leaving substantial room for maneuver for dissident political parties.<sup>128</sup> Though, Pakistan's press was frequently targeted during President Pervez Musharaff's regime, most of those restrictions have been lifted.<sup>129</sup>

Compared to both Malaysia and Pakistan, the Islamic Republic has restricted the press to an extent incompatible with the requirements of a free and fair election. Unlike the former, the government in Iran owns and controls all radio and television stations. By not only shuttering newspapers, but also using increasingly intrusive controls on the internet, Iranian authorities have inhibited the ability of political actors and the public to gain information and debate back and forth. This led to Iran being ranked 167<sup>th</sup> in the world for press freedoms in 2007 by Reporters Without Borders, a press watchdog group. Only North Korea, Burma, Eritria fared worse.

#### **IV. Conclusion**

Elections in the Islamic Republic do not adhere to the most minimal international standards of legitimacy. Though outright fraud and violence are rare, the Iranian public does not have the opportunity to genuinely participate in the political affairs of their nation. Ideological and religious restrictions have led to a system that is closed and allows only those in the inner circle of the ruling elite to have a voice in the governance of Iran. More fundamentally, the problem is not confined to the individuals currently occupying key positions, or an unduly restrictive interpretation of current laws and regulations. Rather, it is those law and regulations that must be significantly altered. Even compared to the flawed systems of Malaysia and Pakistan, elections in Iran are gravely lacking

For reality to match rhetoric, the Islamic Republic of Iran must immediately implement numerous reforms. First, and most importantly, the Guardian Council must be stripped of its blanket power to disqualify candidates for the *Majlis* and presidency. A mandate to supervise elections cannot be transformed into a plenary power to shape the

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<sup>128</sup> Ulfen, "Transformation of Political Party Opposition in Malaysia", 616.

<sup>129</sup> Griff Witte, "Pakistan Suspends Media Restrictions; Crackdown was Widely Criticized," *Washington Post*, June 8, 2007.

slate of acceptable candidates. Additionally, requirements that candidates have full belief and commitment to the current system must be removed. However daunting, this would have to entail a change to the Constitution allowing candidates and other individuals to put forth different proposals about how Iranian society and politics should be structured. Without this fundamental alteration elections in the Islamic Republic will be nothing more than ratifications of the status quo. Additionally, religious requirements and vague standards for “ill reputation” and corruption must be eliminated. Just as importantly, limitations on political parties have to be substantially relaxed. Preferably, registration requirements would be removed. At the very least, the process for registration should be streamlined and transparent; applications should be acted on promptly and denials should be accompanied with a report detailing the reasons and providing an opportunity for appeal. Finally, governmental curbs on the media must be loosened. Without the effective opportunity to be seen and heard by the populace, no political candidate or party can have the hope of building the following crucial to competing effectively in elections. Whether through television and radio, traditional print media, or cyberspace, genuine elections depend on full-throttled debate and the dissemination of ideas and information. Without serious reforms, elections in Iran will remain a firmly beneath international standards.



The Abdorrahman Boroumand Foundation

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**“To we who administer the presidential elections, it makes absolutely no difference who wins. We consider anyone whose qualifications have been certified by the esteemed Council of Guardians an insider.”**

Kamran Daneshju, Political deputy to the Minister of Interior and Head of the Ministry of Interior’s elections headquarters. Speech delivered at meeting of election officials. Tabriz, Iran, 20 April 2009. (*Abrar* newspaper)

F. Peykan

