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Balancing independence and access to justice:

a background report on the justice system in Iran

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An International Bar Association
Human Rights Institute Report

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1. INTRODUCTION

1.1 This report is the result of a high-level visit to the Islamic Republic of Iran (Iran) carried out by the International Bar Association's Human Rights Institute (IBAHRI) from 6 to 12 July 2007.

1.2 The IBA is the world's largest lawyers' representative organisation comprising 30,000 individual lawyers and over 195 bar associations and law societies. In 1995, the IBA established the IBAHRI under the Honorary Presidency of Nelson Mandela. The IBAHRI is non-political and works across the IBA, helping to promote, protect and enforce human rights under a just rule of law and to preserve the independence of the judiciary and the profession worldwide.

1.3 During the visit, the delegation received numerous reports about problems with the independence of the legal profession and access to justice. In particular, the following concerns were identified:

- The establishment of a separate stream of legal advisors, managed by the judiciary, which is not independent and may lack adequate training, is a threat to the independence of the legal profession. The IBAHRI considers that the various Iranian bar associations should be given statutory recognition as the sole bodies entrusted with the regulation of the legal profession, training and admission of lawyers and the issuance of practising certificates. The IBAHRI is particularly concerned about proposals to bring the independent bar associations under the judiciary's management. The IBAHRI strongly encourages the Iranian Government to phase out the judicially-managed legal advisors stream.
- Access to justice in Iran is inadequate due to insufficient coverage of legal aid programmes and an apparent shortage of lawyers. The IBAHRI strongly encourages the Iranian Government and the various Iranian bar associations to expand legal aid programmes and to increase the numbers of independent and qualified bar association lawyers.
- The IBAHRI is also concerned by reports that the Iranian courts are over-congested, resulting in long delays. The IBAHRI strongly recommends that alternative dispute resolution and case management systems are introduced.

1.4 The IBAHRI is grateful to the delegation members who accepted the invitation to take part in this visit. The appointed delegation members were:

- Fernando Pombo, President of the IBA and Founder and Senior Partner of Gomez Acebo & Pombo, Spain;
- Haji Sulaiman Bin Abdullah, Advocate and Solicitor and member of the IBAHRI Council, Malaysia;
- Felicia Johnston, IBAHRI Programme Lawyer, United Kingdom;
- Michelle Butler, Delegation Rapporteur, Defence Legal Consultant, United Nations International Criminal Tribunal for the Former Yugoslavia,[1] United Kingdom.

1 Ms Butler took part in this visit in her individual capacity and was not representing the International Criminal Tribunal for the Former Yugoslavia.

1.5 The delegation met with a wide range of persons and organisations involved in the justice system, including: Grand Ayatollah Saanei; Grand Ayatollah Moosavi Ardebili; Mr Saeed Mortazari, the Tehran General and Revolutionary Prosecutor; senior members of the Qom judiciary; Dr Eftakhar Gahromi, President of the Iran Central Bar Association; Mr Bahman Keshavarz, former President of the Iran Central Bar Association; the Board of Directors and other members of the Iran Central, Qom and Esfahan Bar Associations; representatives of Tehran University Law School and Azad Law Faculty, the Centre for Human Rights at Mofid University, the UNESCO Chair for Human Rights, Peace and Democracy at Shahid Beheshti University; staff of the Ministry of Foreign Affairs; and representatives of the United Nations Development Program in Tehran. The IBAHRI wishes to express its sincere gratitude for the hospitality and assistance given by all those it met.

2. The independence of the legal profession

Background

2.1 Dr Gahromi, the President of the Iran Central Bar Association, explained to the delegation that the bar associations were given full independence in the 1954 Law concerning the independence of the Iranian Bar Association. This law also provided all provinces in Iran with over 60 lawyers the right to have their own bar associations. Before the 1979 revolution, there were only three bar associations in the country, the Iran Central Bar Association in Tehran, the Tabriz Bar Association and the Shiraz Bar Association. Since the revolution, there has been an increase in the number of lawyers and, as a result, other bar associations have been established. At present there are 15 bar associations in Iran. The Iran Central Bar Association has responsibility for the central province and six other provinces and is governed by an 18-member Board of Directors. Every two years the Iran Central Bar Association has elections to determine the Board of Directors for the next two years. At this time, the disciplinary committee of the Iran Central Bar Association, as well as the disciplinary courts (see further discussion below), are mandated to approve the qualifications of the nominees.

2.2 The relationships between the bar associations are coordinated by the Iranian Bar Associations Union, which was established in 2000 and is made up of representatives of all of the regional bar associations. Lawyers within the regional bar associations try to follow the decisions made by the Union and all major decisions about lawyers are made by the Union. Although each regional bar association is completely independent and has its own Board of Directors, they are obliged to implement the decisions of the Union.

Training of Iranian bar association lawyers

2.3 Dr Gahromi explained the qualification process for persons wishing to practise as independent lawyers in Iran. Any graduate of a Bachelor of Laws programme or, since the revolution when the laws became Sharia based, any qualified student of religious law is eligible to apply for admission as an independent lawyer in Iran. The applicant must nominate which particular bar association he or she plans to apply to in advance. The applicant is then able to sit for the annual national exam for eligibility to undertake an 18-month legal traineeship.[2]

2.4 There is a commission of three individuals in each bar association, made up of the head of the bar association and two members of the judiciary, which determines the number of trainees permitted annually. In effect, even if more than this number of candidates passes the exam, only the top candidates up to the maximum number of lawyers set by the commission will be entitled to commence a traineeship. The number of trainees is determined annually for each regional bar association and is appellable to the disciplinary courts.

2 If the applicant is a lecturer in law at the university and they are over 50 years of age the period of the traineeship will be nine months instead of the usual 18-month traineeship.

The number of accepted trainees has increased dramatically in recent years in response to the introduction of Article 187 legal advisors (see discussion below). According to an Iran Central Bar Association lawyer, in 1992 there were 30 trainees permitted, whereas in 2006 there were 600 trainees, and in 2007, 1000 trainees.

2.5 Further research by the delegation has indicated that a candidate's ability to undertake a traineeship is also contingent upon their beliefs and associations. This is because Article 2 of the Law on the Requirements for obtaining a lawyer's licence (1997) sets out sweeping exclusions upon who can be granted permission to work as a trainee lawyer. The candidate must illustrate:

a. Belief in and practical devotion to Islam and its precepts.

b. Belief in the Islamic Republic, leadership by a religious jurisprudent and loyalty to the Constitution.

c. Not having had membership or activity in atheist groups, misleading denominations and groups opposed to Islam as well as groups whose manifesto is based on negating divine religions.

d. Not having the record of being an associate of the defunct Pahlavi regime or strengthening the foundations of the former regime.

e. Not having membership in or supporting outlawed groups opposed to the Islamic Republic of Iran.'

2.6 These limitations on persons who can undertake the traineeship appear to constitute a breach of Iran's commitments to freedom of expression and association. They potentially violate of Article 23 of the Constitution,[3] Articles 19 and 22 of the ICCPR and Principle 10 of the United Nations Basic Principles on the Role of Lawyers.[4]

2.7 Upon successful completion of the traineeship period, during which time the candidate is supervised by a lawyer with ten years' experience, the candidates must sit for another exam, which is set by the Iranian Bar Associations Union. This second exam is supervised by the Higher Education Ministry and contains two or three legal questions and one religious question. Applicants must pass all sections of the exam in order to be accepted for admission to any of the Iranian bar associations and to be sworn in as a lawyer. If a person's application to become a lawyer is rejected at this stage, that person has the right to appeal to the disciplinary courts. If the disciplinary court grants the appeal and orders that a permit to practise be issued then the bar association in question is bound to comply with the order.

2.8 There are certain other permits to practise as lawyers for persons who did not qualify through the traineeship route, such as retired judges.

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3 Iranian Constitution: '23. The investigation of individuals' beliefs is forbidden and no one may be molested or taken to task simply for holding a certain belief.'

4 United Nations Basic Principles on the Role of Lawyers: '10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practise within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.'

Disciplining bar association lawyers

2.9 According to Dr Gahromi, there is a disciplinary committee at each bar association which is made up of senior lawyers who are responsible for evaluating any alleged improper actions of a bar association's member lawyer.

2.10 Dr Gahromi explained that there are also disciplinary courts for lawyers acting improperly. These courts have the option of nullifying a lawyer's permit to practise. A decision to nullify a practising permit can be appealed by the lawyer to the Ministry of Justice. The judiciary also scrutinises the affairs of judges who act improperly.

2.11 It is also likely, but cannot be confirmed by the Iranian bar associations, that Article 187 legal advisors have their own disciplinary committee within the legal advisors' institute to examine complaints of impropriety against legal advisors.[5] Presumably, the disciplinary courts are also able to supervise and rule upon the activities of Article 187 legal advisors.

Threats to the independence of the legal profession

The creation of a new breed of lawyers: Article 187 – the legal advisors of the judiciary

2.12 The delegation heard numerous reports of concerns about encroachment by judicial authorities on the professionalism and independence of the legal profession in general and the various Iranian bar associations in particular. They explained that in 2001, by virtue of Article 187 of the Law of Third Economic, Social and Cultural Development Plan (adopted in May 2000), the Iranian government created a new body of lawyers known as legal advisors.

2.13 Article 187 provides that the judiciary 'shall be authorised to confirm the competence of the graduates of law who shall be granted licences for the establishment of legal advisory institutes'. The effect of this provision is that, like Iranian bar association lawyers, legal advisors are authorised to present cases in court. The legal advisors' institute operates in parallel with the Iranian bar associations, but unlike lawyers, legal advisors work directly under the supervision of the judiciary. The legal advisors' institute has its own examination and traineeship process and has the ability to issue permits to practise to legal advisors. In contrast to the independent process for the renewal of practising permits for Iranian bar association lawyers, permits to practise for legal advisors are renewable annually with the approval of the judiciary. This represents a significant inroad into the independence of the legal profession as a whole and of individual lawyers in Iran.

2.14 Due to varied estimates received by the delegation, it appears that since 2001, approximately 10,000 to 20,000 legal advisors have been admitted to practise as legal advisors under Article 187.

2.15 There are two types of Article 187 legal advisors. The first type, grade B, does not have the right to attend the Supreme Court. The second type, grade A, who have practised as legal

5 UK Foreign and Commonwealth Office and Bar Human Rights Committee of England and Wales, 2004, 'Report of the UK Legal Delegation's visit to the Islamic Republic of Iran: 24 April–1 May 2004' (www.barhumanrights.org.uk/pdfs/IranReport1204.pdf) last accessed 15 August 2007, p 9: 'there is also a disciplinary committee in the centre which examines complaints that legal advisers have violated their job description'.

advisors for two years, have jurisdiction which covers all types of cases and courts, in the same manner as lawyers from the Iranian bar associations.

2.16 The delegation heard reports that the Iranian Government's purported rationale for the introduction of Article 187 legal advisors was due to concerns that the Iranian bar associations were trying to monopolise permits to practise as a lawyer. While in most countries, bar associations hold responsibility for issuing permits to practise, it appears that there is also disquiet that, due to restrictions set by the Iranian bar associations, at the time the very low number of lawyers in Iran was decreasing further. As the delegation was not able to meet with the judiciary and the Article 187 legal advisors, the delegation was unable to confirm its assumption that Article 187 was introduced to overcome the Iranian bar associations' unwillingness to allow more lawyers to practise in the country. The various Iranian bar associations remain extremely concerned about Article 187 legal advisors and believe they constitute a serious threat to their own independence.

2.17 It should also be noted that Article 187 of the Third Program of Economic, Social and Cultural Development expired in March 2004 as it had only been enacted for a four-year period. At this time, the Iranian Parliament objected to renewing the law in order to make the continuation of the Article 187 legal advisors' institute legally valid. The issue of Article 187 legal advisors was not included in the Fourth Program of Economic, Social and Cultural Development. Despite this legal flaw, there appears to have been no challenge to the legality of the legal advisors' institute on this basis.

Concerns about Article 187 legal advisors

2.18 While it was not possible to fully investigate the practical ramifications of the Article 187 legal advisors' relationship with the judiciary, it is assumed that the power of the judiciary to grant and repeal licences is likely to result in Article 187 legal advisors being strongly influenced by the judiciary. The relationship may also affect judicial independence and impartiality, although this was not possible to verify.

2.19 The IBAHRI is concerned that the training requirements for legal advisors are much less stringent than those required for independent lawyers. An applicant wishing to qualify as a legal advisor only has to sit for one exam and to complete a traineeship of six months. This is to be contrasted with Iranian bar association lawyers who sit for several exams as well as undertaking an 18-month traineeship. It is likely that the Article 187 scheme is producing lawyers who are under-qualified in comparison with Iranian bar association lawyers.

2.20 Although the functioning of Article 187 legal advisors is now reportedly technically illegal, it is nevertheless continuing to attract candidates in large numbers. This is a matter of great concern as the Article 187 legal advisors are under qualified, are not independent and are entirely dominated by the judiciary. Furthermore, members of the public who are seeking the assistance of a lawyer do not know of the distinction between lawyers and legal advisors, and as a result they may unknowingly be receiving inadequate representation and advice.

The future of the two legal professions in Iran

2.21 The delegation understood from commentators that there are currently two very different proposals before the Parliament in relation to this issue. The first is a proposal to bring the legal advisors under the supervision of the Iranian bar associations. This would be possible if the legal advisors were to sit for further exams and/or complete additional traineeship periods to ensure that the quality of their qualifications equals those of independent lawyers. The second proposal is to bring the Iranian bar associations and their independent lawyers under the control of the judiciary, in the same way as the legal advisors are supervised by the judiciary. This proposal was apparently defeated by the Parliament in December 2006 but there are concerns that it could be re-enlivened in the future. If the proposal had been enacted or is enacted in the future it would result in the undermining of the Iranian bar associations and the loss of independence for all lawyers practising in Iran.

2.22 In response to this issue, Grand Ayatollah Saanei encouraged the delegation by stating:

> 'There is a major shortcoming in the law regarding lawyers and Article 187 puts all the lawyers under the surveillance and the supervision of the judiciary. Your responsibility at the IBA is to help gain independence of the lawyers here and to … find wise people in the world and to establish meetings and correspondence with them in relation to this issue.'

2.23 The Iranian bar associations and the IBAHRI remain deeply concerned at the prospect of the possible future loss of independence for lawyers practising under their auspices.

Conclusions and recommendations for the future of the legal profession

2.24 The rule of law presumes an active, independent legal profession and an independent judiciary. A strong and independent legal profession can speak out for the protection of justice and human rights. This will protect the public, as well as the members of the legal profession and will restore public confidence in the law and in the work of lawyers.

2.25 It is a matter of concern that Article 187 legal advisors are not independent and instead operate under the direct scrutiny of the judiciary. Furthermore, it is not conducive to proper judicial outcomes or public confidence in the legal profession for Article 187 legal advisors to receive divergent and, it appears, less comprehensive legal training prior to their appointment as practising lawyers. The current situation has the potential to lead to inconsistency in the advice and representation given to clients and a failure to abide by uniform professional standards.

2.26 In order to preserve the independence of the legal profession, the various Iranian bar associations should be given statutory recognition as the solitary bodies entrusted with the regulation of the legal profession, the admission of lawyers and the issuance of practising certificates and disciplinary responsibility. Membership of one of the Iranian bar associations should be made compulsory for all practising lawyers.

2.27 Procedures mandating additional training and examinations for the transfer of Article 187 legal advisors to lawyers should be prescribed by the government. The additional training

required to facilitate the transfer of Article 187 legal advisors to lawyers must be sufficiently comprehensive in order to achieve an appropriate degree of uniformity of qualifications and knowledge within the legal profession. This training should promote knowledge and understanding of the legal and ethical duties of a lawyer, human rights and the role of lawyers in protecting judicial independence and the rule of law.

2.28 The IBAHRI is concerned about the limits on freedom of expression and association on candidates applying to undertake traineeships, contained within Article 2 of the Law on the Requirements for Obtaining a Lawyer's Licence. The IBAHRI strongly urges the Iranian Government to remove these restrictions.

2.29 The IBAHRI also recommends the establishment of a comprehensive code of ethics for lawyers, which is devised by a consultative body made up of legislators, judges, academics and legal practitioners.

3. Access to justice – the inadequacy of the current Iranian system

The low number of lawyers in Iran[6]

3.1 The delegation heard a wide range of estimates as to the numbers of lawyers in Iran. Further research has not brought additional clarity to this issue. The IBAHRI therefore cannot be certain how many lawyers are presently practising in Iran. However, by any examination it appears that there is a manifest shortage of legal practitioners for a nation of 70 million people. The differing accounts which the delegation received as to the number of lawyers are as follows.

- The Tehran General and Revolutionary Prosecutor, Mr Saeed Mortazari, believes that there are 12,000 lawyers and 12,000 Article 187 legal advisors.
- The President of the Iran Central Bar Association, Dr Eftakhar Gahromi, thinks that there are approximately 20,000 independent lawyers in Iran. He believes that there are a 'few thousand' Article 187 legal advisors.
- A Board Member of the Iran Central Bar Association, Dr Behshid Arfania, is of the view that there are over 26,000 independent lawyers in Iran (admitted over the past 15 years), and 20,000 Article 187 legal advisors (admitted over the past six years). She believes that in 2007, 1,200 lawyers were registered with the various Iranian bar associations. She also thinks that the number of independent lawyers allowed to register as trainees by the three-member panel has been increased in response to the introduction of Article 187 legal advisors.
- Mr Hossein Saeedi, the President of the Qom Bar Association, informed the delegation that his association has 518 lawyers.
- Mr Mostafa Anvarizadeh, the President of the Esfahan Bar Association noted that the number of lawyers in the Esfahan Bar has increased from 60 in 1997 to 1,029 in 2007. Of these practitioners, 196 are female and 833 are male. He further informed the delegation that there are 604 trainees in the Esfahan Bar Association at present.

3.2 It is clear that at least some members of the bar associations in Iran believe that there is not a shortage of lawyers in Iran. According to one lawyer:

> 'There are a lot of law schools around the country so there are a lot of law graduates and society does not need this amount of law graduates in the country. It is for this reason that the bar associations around the country have limitations on the number of law graduates they will accept to commence a traineeship. For example, in Esfahan in 2006, 1,600 law graduates sat the Esfahan Bar entrance exam. Many of these candidates passed but we only accepted 150 candidates to undertake the traineeship.'

6 Supra note 5. According to this report there were approximately 4,000 independent lawyers and 3,000 legal advisors in Iran in 2004.

3.3 Another commentator made the following remarks in relation to the alleged shortage of lawyers in Iran:

> 'There was a time when the bar associations were not really welcoming the graduates and the young lawyers, but things have changed now and I would like them to keep up with international standards. But I would like to say that we do not have an excessive number of lawyers in the country. What the bar association did [in restricting the numbers of lawyers in the past] caused the judiciary to take action and open up a parallel lawyers' association [the Article 187 legal advisors' institute].'

3.4 The IBAHRI is concerned that there are inadequate numbers of lawyers in Iran, and the various Iranian bar associations should take immediate action to remedy this situation. Sufficient numbers of lawyers are key to ensuring access to justice for all citizens and in ensuring the establishment of effective and comprehensive legal aid systems. The lack of lawyers also appears to be the primary reason behind the establishment of the Article 187 legal advisors.

Conclusions and recommendations concerning the number of lawyers in Iran

3.5 The number of lawyers admitted to undertake traineeships in the various Iranian bar associations is presently determined by a panel of two judicial representatives and one representative of the legal profession. Over the years, this procedure has led to a substantial shortage in the number of qualified lawyers in Iran and, arguably, the creation of the Article 187 legal advisors by the government.

3.6 The IBAHRI recommends that a new panel be devised to set the number of future lawyers in Iran. This panel ought to comprise representatives of the government, the judiciary, the legal profession and academia. It should determine the number of persons eligible to undertake traineeships based on the projected future requirements of the judicial system and wider Iranian society, leading to an increase in the overall number of lawyers.

Public knowledge of Islamic law

3.7 In answer to a question as to the efforts made to educate the public on Islamic law, the Head of the Qom Appeal Courts, Mr Mojtaba Qoreishi, stated:

> 'After the revolution in this country we have constantly had programmes by the media and by the legal system officials themselves to enlighten the public about the items of the Islamic law. We are still making great efforts to make it something tangible and something easy to understand. There is a constant dispute and explanation and elaboration on these items in academic gatherings and any kind of public delegation.'

3.8 Ms Fakhri Malek Muhammd, a Senior Judicial Advisor in Qom, also believes that the judiciary has made significant efforts to ensure that the public understand Islamic law. In her view:

> 'The judiciary has also had some attempts to modify the educational content of books at all stages to make it understandable to everyone that the law is something difficult to understand and that to have access to the law you need a good lawyer to act for you. The judiciary at Qom is making a great effort to have public access to the law.'

3.9 In contrast to these judicial sentiments, more than one independent lawyer believes that there is still a lack of public knowledge of the Islamic laws within the wider Iranian community. Many respondents stated that more extensive and targeted public awareness campaigns of rights and responsibilities under the law are required to ensure the efficacy of the legal system.

3.10 There are several human rights committees and centres affiliated with the various Iranian law schools and bar associations which already provide legal information to the public in the form of outreach services. The IBAHRI applauds these efforts and encourages the expansion of such programmes.

The current legal aid system in theory and practice

3.11 After the 1979 revolution, a number of new laws with respect to legal aid were adopted, which have not been adequately implemented. These include the following provisions:

- Article 34 of the Constitution declares that anybody has the right to sue anybody else in Iran.
- Article 35 declares that in all of the courts, both parties have the right to have a lawyer and anybody who cannot afford a lawyer will be provided with one.
- Article 31 discusses procedural rules and declares that both the plaintiff and the defendant have the right to a maximum of two lawyers.
- Article 185 mandates that in all criminal cases, each party has the right to a lawyer.
- Article 186 provides that anybody accused of a crime can request a lawyer from the court and that the government must provide the lawyer's fees.
- In 1995 a by-law of the 1976 Article 10 of the Law of the Establishment of the Financial Security of Attorneys was enacted which gave lawyers approximately US$8.12 per legal aid case.[7]
- Early in 2005 another by-law was passed amending the laws of the judiciary and emphasising the fact that Articles 31 and 32 should be applicable all throughout the country for any lawsuit filed.
- A further amendment to the by-law was then made a few months after the 2005 by-law amendment enumerating several exceptions to the Law of the Obligatory Interference of Attorneys in Lawsuits.[8]

3.12 As laws were passed requiring lawyers to provide legal aid, but no funding was provided for the services, difficulties soon arose. In essence, the legal aid system in Iran does not operate in the manner envisaged in the Law of the Obligatory Interference of Attorneys in Lawsuits. When the law making it mandatory for all parties in court to have a lawyer was passed, no appropriate measures were taken to enforce it. The funds necessary for legal aid were not established and the amount of remuneration stipulated in the legislation (US$8.12 per case) was unrealistically low and was only provided for one year.

7 Handout, Iranian Central Bar Association, 'The obligatory interference of lawyers in lawsuits and the right of the people to legal aid', Ali Kaka Afshar, Attorney-at-law and Director of Legal Aid Department, 2007, pp 3-6.

8 *Ibid.*

3.13 Despite all this, several Iranian bar associations have established pro bono legal aid services.[9] These include the Iran Central Bar Association, the Esfahan Bar Association, the Qom Bar Association (in association with the Mofid University Legal Clinic whose students assist lawyers with family law cases) and the UNESCO Chair for Human Rights, Peace and Democracy at the Shahid Beheshti University.

3.14 According to Prosecutor Mortazari,

> 'The statistics show an ever increasing number [of legal aid centres] in the past few years across the country. Also we are passing certain regulations to oblige certain lawyers to settle their offices in small towns and underdeveloped villages – this would prevent them from moving to the big cities after qualifying. We also have policies giving legal aid to the underprivileged members of society. As you know, the Iran Central Bar Association provides free of charge legal services to the underprivileged and those who cannot afford to have a lawyer.'

3.15 The Iran Central Bar Association has a legal aid department run by a Director and assisted by seven deputies. Some 170 lawyers, supported by full-time secretarial staff, contribute to the department. Until 2006, each lawyer was expected to assume three pro bono legal aid cases each year. In 2007, this number was increased to 12 pro bono cases per year by a by-law issued by the head of the judiciary, Ayatollah Shahrudi. Legal advice is given each weekday by up to 13 lawyers at the legal aid department. Additional legal aid surgeries are provided within each court complex and a group of lawyers who are controlled by the legal aid department provides the required legal advice.[10]

3.16 From 21 March 2006 to 20 March 2007, 19,699 individuals applied to the Iran Central Bar Association for legal advice and representation. Out of these applicants, there were 15 per cent more males than females. Representation was granted in 2,929 cases (1,073 of these cases were divorce proceedings). Pro bono assistance was given in these cases by 2,919 lawyers. None of the legal aid that was granted related to criminal proceedings.[11]

3.17 One of the five principles for the provision of legal aid under the Law on the Establishment of the Financial Security of Lawyers is that 'there should be little or no difference between the quality of service provided as legal aid and the quality of service provided as legal assistance to a paying client'.[12] Some Iran Central Bar Association lawyers admitted that this principle is not implemented in practice and that the quality of legal aid representation is inferior to privately paid representation.

3.18 The UN Working Group on Arbitrary Detention, reporting on its visit to Iran in February 2003 noted:

> '… the absence of a culture of counsel, which seriously undermines due process. The Group notes that many ordinary law prisoners have no understanding of the role of counsel and do not request the assistance of State appointed counsel. The latter are in any event few in number and largely unmotivated owing to the low pay. As for the choice of counsel by political prisoners, this is increasingly difficult owing to the serious risk of harassment'.[13]

9 *Ibid.*
10 *Ibid.*
11 *Ibid.*
12 *Ibid.*
13 Amnesty International report, 'Iran: the last executioner of children', MDE 13/059/2007, June 2007 (http://web.amnesty.org/library/index/engmde130592007) last accessed 15 August 2007, p 11.

3.19 According to a 2004 report, the Article 187 legal advisors' institute operates a walk-in clinic which provides pro bono legal advice for people in need of assistance.[14] Likewise, the Iran Central Bar Association also states that the legal advisors' organisation provides legal aid.[15] The IBAHRI was unable to confirm this information as the delegation was not able to meet with any Article 187 legal advisors during the trip.

3.20 The establishment of a properly functioning legal aid system is vital if the human rights of defendants are to be protected, but this cannot function in the absence of an effective, robust and independent legal profession. While the efforts towards establishing legal aid services and providing pro bono legal assistance are laudable, it was apparent to the delegation that these efforts require significant expansion and development. In addition, there needs to be enough lawyers to provide a full and proper service to the Iranian people and it is essential that these lawyers are independent and properly qualified. At this stage, the numbers of clients being represented only cover a very small percentage of the Iranian public needing legal assistance.

Conclusions and recommendations on legal aid and access to justice

3.21 Adequate protection of the human rights and fundamental freedoms to which all Iranians are entitled requires effective access to legal services provided by an independent legal profession.

3.22 There is no publicly funded legal aid system in Iran and the high fees of lawyers in private practice remain beyond the reach of the majority of the population. As a result, access to justice is presently limited to the more affluent sectors of society. Deficiencies in the legal aid system mean that a significant part of the Iranian population is unprotected, affecting especially vulnerable sections of the population, such as women and minority groups.

3.23 The IBAHRI congratulates the Government on its constitutional and legislative promotion of equal access to justice for all. However, the IBAHRI urges the Government to recognise that without public funding and adequate measures of implementation, the right to a lawyer for all Iranian citizens is meaningless.

3.24 Publicly funded legal aid schemes need to be implemented based on successful models in other jurisdictions. The IBAHRI encourages the government to review the current legal aid structure with a view to making it available in a wider range of cases and improving access to justice generally. Measures must particularly be taken with the aim of ensuring better access to justice for the more vulnerable members of the population, such as children and women.

3.25 The IBAHRI also urges the authorities to draw up and carry out public campaigns to increase awareness of the rights of all citizens, and of the importance of a strengthened and independent judicial system. Within the judicial system, it is necessary to create a system of training for officials working in the administration of justice, which should be extended to include their employees and subordinates.

14 *Supra* note 5, p 9.
15 *Supra* note 8.

4. The need for better court case management

4.1 The delegation heard that a key problem with the Iranian legal system is that every type of dispute has to be resolved in court and as a result, the courts are over-run with cases. At present, the courts are obliged to adjudicate on many different types of subject matter of cases, such as demonstrations at universities, violence towards women, journalists criticising the government and so on. One lawyer told the delegation that three out of every ten people in the Iranian population currently have a proceeding in court. This is an astounding figure and gives some context to why the government may have perceived a critical shortage of lawyers.

4.2 Another stakeholder reported that one of the primary difficulties faced by the Iranian legal system is that the courts are clogged with cases which preferably should not be adjudicated in court. This stakeholder commented that more time should be invested into reforming the system to include further arbitration and mediation facilities in order to relieve some of the pressure on the courts.[16]

4.3 The delegation was also informed that the lack of a proper case management system and the absence of compulsory settlement conferences in the courts, coupled with the out-of-date nature of the criminal procedure rules, cause further delays in the resolution of court cases.

Conclusions and recommendations on court case management

4.4 Appropriate case management can play an integral role in the creation of a judicial culture of efficiency and effectiveness, without the accompanying loss of due process caused by unduly expediting proceedings on an ad hoc basis. Time savings arising from case management procedures also lead to cost savings within the court system, allowing for the redistribution of public funds for additional capacity building programmes for the judiciary.

4.5 Clear and uniform case management guidelines also promote greater clarity within the judicial process as a whole, streamlining the involvement of legally represented parties throughout the proceedings and ensuring greater guidance, and therefore enhanced access to justice, for self-represented litigants.

4.6 The IBAHRI encourages the judiciary to develop and disseminate public case management guidelines and to implement more transparent but effective case management techniques.

4.7 The IBAHRI recommends that the Iranian judiciary should particularly take additional steps at the pre-trial stage to identify cases where a court-based resolution might not be the most appropriate one. Compulsory settlement conferences should be undertaken between the parties in such cases before allowing the dispute to proceed to a final hearing. Alternative dispute resolution options should be introduced and implemented to allow many cases to be resolved before reaching the court.

4.8 The IBAHRI urges the government to mandate that court administration and case management skills should form a part of the core training of judges which takes place prior to their appointment to the bench.

16 The IBAHRI notes that Ayatollah Shahrudi has re-established the Arbitration Councils during his tenure as head of the judiciary.

5. Constitutional and international standards

5.1 The issues discussed above raise a number of concerns about compliance with national and international standards in Iran. Some of these provisions are listed below.

5.2 A self-governing legal profession is essential for maintaining the rule of law in a democratic society and ensuring the effective protection of human rights. As stated in the UN Basic Principles on the Role of Lawyers:

> 'Adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession.'[17]

5.3 In order to discharge their professional duties effectively, lawyers must be granted all the guarantees afforded by domestic and international law, which allow them to represent the interests of their clients in an independent and effective manner in civil and criminal proceedings, as well as the other fundamental rights and freedoms, which allow them to work without fear of harassment or other kinds of intimidation.

5.4 Article 35 of the Iranian Constitution enshrines the right to counsel and the right to legal aid. It provides:

> 'Both parties to a lawsuit have the right in all courts of law to select a lawyer, and if they are unable to do so, arrangements must be made to provide them with legal counsel.'

5.5 Chapter III of the Constitution also articulates the other rights of the Iranian people that allow lawyers to operate freely, such as: equality before the law; freedom of the press; freedom of association; freedom of assembly; freedom from arbitrary detention; recourse to the courts; the prevention of torture; and the presumption of innocence.

5.6 Article 14(3) of the ICCPR provides the following minimum guarantees in criminal cases:

'(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; …

(d) … to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.'

5.7 The UN Basic Principles on the Role of Lawyers set out detailed Principles to promote and ensure the proper functioning of the legal profession. They provide inter alia that:

- all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings (Principle 1);
- governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons … (Principle 3);

17 9th preambular paragraph.

- governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms … (Principle 4);
- all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay … (Principle 8);
- governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognised by national and international law (Principle 9);
- governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status … (Principle 10);
- lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice (Principle 12);
- in protecting the rights of their clients and in promoting the cause of justice lawyers shall seek to uphold human rights and fundamental freedoms recognised by national and international law and shall at all times act freely and diligently in accordance with the law and recognised standards and ethics of the legal profession (Principle 14);
- governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16);
- where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (Principle 17);
- lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions (Principle 18);
- lawyers, like other citizens, are entitled to freedom of expression, belief, association and assembly … (Principle 23);
- lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference (Principle 24);
- professional associations of lawyers shall cooperate with governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognised professional standards and ethics (Principle 25).

6. Conclusion

6.1 The IBAHRI is concerned by the issues considered in this report, and strongly urges the Iranian Government and the various Iranian bar associations to take steps to address them as a matter of priority.

6.2 The IBAHRI is greatly encouraged by the expressions of willingness to collaborate with the IBA given by many respondents to the delegation. The IBAHRI believes that it has a specific ability to operate and assist in Iran where other non-governmental organisations or nation states cannot, due to its status as a global, apolitical and professional association.