IAEA
Atoms for Peace

Information Circular

INFCIRC/805
Date: 15 September 2010

General Distribution
Original: English

Communication dated 14 September 2010 received from the Permanent Mission of the Islamic Republic of Iran to the Agency regarding the Report of the Director General on the Implementation of Safeguards in Iran

The Secretariat has received a communication dated 14 September 2010 from the Permanent Mission of the Islamic Republic of Iran to the Agency enclosing an explanatory note on the report of the Director General on implementation of safeguards in Iran contained in GOV/2010/46.

As requested by the Permanent Mission, the explanatory note is herewith circulated for the information of all Member States.

Explanatory Note
by the
Permanent Mission of the Islamic Republic of Iran to the IAEA
on the report of the Director General
on Implementation of Safeguards in the Islamic Republic of Iran
(GOV/2010/46 dated 6 September 2010)

14 September 2010

The following are comments on some parts of the report (GOV/2010/46):

General observations:

1) According to paragraph 27 of the Resolution on the Safeguards adopted by the General Conference (GC(53)/RES/14), the Agency should provide objective technically and factually based reports with appropriate reference to relevant provisions of the Safeguards Agreement. This rule requires the Agency not to step beyond its statutory and legal mandate in preparing its reports. Regrettably, this rule was not respected by the Director General neither in this report nor in the previous reports.
2) The main mandate of the Agency in the course of inspections is to verify non-diversion of declared nuclear materials. The Agency should restrictedly reflect in its reports to the Board of Governors the results of its verification work. Unfortunately in this report, again, the Safeguards Department has acted in contradiction to the IAEA Statute and the Comprehensive Safeguards Agreement by providing detailed information such as status of activities, number and function of the centrifuges, quantity of production and consumption of the nuclear materials etc., that are coming to the inspectors' knowledge through carrying out the verification work.
3) While this report once again reconfirmed that "*while the Agency continues to verify the non-diversion of declared nuclear material in Iran*", it seems that the report has been prepared under pressure from outside to use the "*unusual*" language with regard to the safeguards obligations, since the Agency has to simply confirm that it has already verified non-diversion of the declared nuclear material and that all declared nuclear material are accounted for and remained in peaceful purposes, as already reported by the Agency's inspectors.
4) The report is expected to reflect the results of the Agency's verification for the period of June to September 2010. It has to report simply whether the inspectors have been able to

conduct verification or not. If so, whether their findings are consistent with the declarations or not. The Secretariat is not mandated to use qualifiers expressing regret or happiness, but just to report on the basis of the facts and, also, there is NO reference that the Secretariat is expected to make any prediction, guess and assumption or make judgment on possibilities especially hypothetical ones.

5) The report consists of unnecessarily extensive details on the ongoing ordinary technical activities of the peaceful nuclear activities in the Islamic Republic of Iran, which contravenes the protection of the sensitive proprietary information of the Member States.
6) Reporting so much technical details proves that the Agency has full access to all nuclear material and facilities in the Islamic Republic of Iran, including the frequent inspections with using the Agency's containment and surveillances. Therefore, claiming that "*Iran has not provided the necessary cooperation*" is incorrect and misleading. It has to be noted that additional requests are beyond the provisions of the NPT Comprehensive Safeguards, and they have been made under the pretext of the illegal UNSC resolutions.
7) Since the Agency contrary to its duties and legal and statutory obligations has not been and is not able to protect sensitive information of Member States' nuclear activities, it is not authorized to reflect detailed information on Iran's nuclear activities in its reports or even reveal them in its so-called technical briefing sessions. It should be emphasized that the current incorrect reporting approach taken by the Agency must not turn into a precedent or normal practice; and such a wrong attitude must be stopped. This erroneous approach has to be corrected in the future reports and has to be seriously avoided.
8) Notwithstanding that the Non-Aligned Movement has stated in its statements to the Board of Governors that "*NAM emphasizes the fundamental distinction between the legal obligations of states in accordance with their respective safeguards agreements, as opposed to any confidence building measures undertaken voluntarily and that do not constitute a legal safeguards obligation.*" and also "*NAM takes note that the latest report of the Director General includes many references to events that transpired prior to the previous report contained in document GOV/2009/74 dated 16 November 2009, and contrary to the expectation of NAM, does not mention the responses provided by Iran to the Agency on several issues.*", not only no attention has been paid to these statements when preparing the DG report but also it acted in contradiction.
9) The Islamic Republic of Iran has already made it clear, based on legal provisions such as those of the Statute and the Safeguards Agreement, the reasons why the UNSC resolutions against Iran are illegal and unjustified. The issue of Iran's peaceful nuclear program has unlawfully been conveyed to the UNSC and the Council has taken a wrong approach by adopting the politically-motivated, illegal and unjust UNSC resolutions against Iran. Therefore, any request by the Agency originated from those resolutions is not legitimate and not acceptable.
10) The report (GOV/2010/46), without any justification, has in an unprecedented manner copied some parts of the illegal UNSC resolution 1929. This is not the right way of

reporting by an autonomous specialized Agency, entering into the political game of certain countries. The Agency with such a wrong approach would definitely deviate from the Statute of the Agency and jeopardizes its credibility and puts into question its independence.

Confidentiality:

11) Article VII,F of the Agency's Statute stipulates that: *"In the performance of their duties, the Director General and the staff ... shall not disclose any industrial secret or other confidential information coming to their knowledge by reason of their official duties for the Agency. ..."*

12) Also, Article 5 of the Safeguards Agreement between the Islamic Republic of Iran and the IAEA reads: *"(a) The Agency shall take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of this Agreement.(b) (i) The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of this Agreement, except that specific information relating to the implementation thereof may be given to the Board of Governors of the Agency (hereinafter referred to as "the Board") and to such Agency staff members as require such knowledge by reason of their official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfil its responsibilities in implementing this Agreement. (ii) Summarized information on nuclear material subject to safeguards under this Agreement may be published upon decision of the Board if the States directly concerned agree thereto."*

13) However, despite these clear instructive articles, the DG report (GOV/2010/28) in contradiction to the Agency's statutory mandate and the Safeguards Agreement (INFCIRC/214) contains tremendous confidential technical details which not necessarily need to be published, creating ambiguity to the public at large.

14) Unfortunately, the Agency, so far, has not been able to protect the confidential information resulting from the conduction of inspections at the safeguarded facilities in the Islamic Republic of Iran, which occasionally have leaked by staff members of the Agency (working, retired, separated, ..) and been revealed to the media. Such events are profoundly in violation of above mentioned articles and also the IAEA Statute.

Suspension:

15) The Islamic Republic of Iran did not suspend its uranium enrichment and heavy water research reactor activities, aiming at producing radioisotopes for medical purposes, since there is no logical and legal justification to suspend such peaceful activities which is its inalienable right according to the Statute and NPT and under surveillance of the Agency.

It should be recalled that Iran implemented suspension for more than 2.5 years voluntarily, as a non-legally binding and confidence building measure.

16) The Agency's request in paragraphs 20 and 44 of the report (GOV/2010/46): "... *that Iran make the necessary arrangements to provide the Agency, at the earliest possible date, with access to: the Heavy Water Production Plant (HWPP); the heavy water stored at the Uranium Conversion Facility (UCF) for the taking of samples*" is not justified and there is no legal basis since they do not fall within Iran's Safeguards Agreement (INFCIRC/214) and are even beyond the Additional Protocol.

17) Requesting such information under the pretext of the illegal UNSC resolutions is technically and legally unjustified and shall establish illegal precedence. Please note that heavy water plants are not covered by the Comprehensive Safeguards Agreement (CSA). They are also beyond the illegal relevant UNSC resolutions that request only verification of suspension. Therefore, when Iran clearly and loudly states in accordance with its inalienable rights under the IAEA statute and NPT, that work on heavy water related projects has not been suspended, there is no need of such baseless requests by the Agency. Thus, such a request to check whether Iran has suspended or not, is ridiculous!

Additional Protocol:

18) The Additional Protocol is not a legally binding instrument and is voluntary in nature. Hence, many Member States including Iran are not implementing this voluntary protocol. However, it should be reminded that Iran implemented the AP for more than 2.5 years voluntarily as a confidence building measure.

19) Iran has not let the voluntary undertakings be turned into legal safeguards obligations; it should be recalled that Iran and other like-minded State Parties successfully prevented the Additional Protocol, being a voluntary document, to be turned into a legally binding instrument and to be annexed to the Comprehensive Safeguards Agreement of the NPT in the 2010 Review Conference.

20) Therefore, Iran has not any obligation on implementation of the protocol and such a request as reflected in paragraph 46 of the report (GOV/2010/46) "*The Director General requests Iran to take steps towards ... its other obligations, including implementation of its Additional Protocol*" has no legal basis and is beyond the DG's statutory mandate.

21) Moreover, the Agency's request stipulated in para 18 of the report (GOV/2010/46) fully seats in the provisions of the Additional Protocol which Iran is not obliged to implement and therefore such a request has no legal basis.

Modified code 3.1 of Subsidiary Arrangement:

22) Iran was implementing voluntarily the modified code 3.1 of the Subsidiary Arrangement since 2003, but it suspended its implementation pursuant to the illegal UNSC resolutions against Iran's peaceful nuclear activities. However, Iran currently is implementing code 3.1 of the Subsidiary Arrangement.

23) Since Iran is not obliged to implement modified code 3.1, thus all statements in paragraphs 30 to 33 on design information of the report (GOV/2010/46) have no legal base, and Iran has adhered to its obligations to provide design information in proper timing.

24) In respect of Fordow site, Iran voluntarily informed the Agency 18 months prior to introduction of materials to the plant. In addition, Iran provided its DIQ, granted unlimited access to the facility, held meetings and provided detailed information, permitted taking swipe samples, conducting on average one design information verification (DIV) per month (para 17 of GOV/2010/46) and reference photos which even under the provision of code 3.1 of 1976 Iran is not obliged to do so.

25) In respect of IR-40 reactor at Arak, Iran voluntarily provided access to the Agency for carrying out design information verification (DIV) (para 21 of GOV/2010/46).

26) In respect of any new enrichment facility (para 43 of GOV/2010/46), Iran will act in accordance to its Safeguards Agreement and will inform and provide the relevant design information questionnaire (DIQ) under the provision foreseen in its code 3.1.

Fordow Fuel Enrichment Plant (paragraph 14-17 of the report):

27) According to Article 43 of the Safeguards Agreement (INFCIRC/153), the information which a Member State should submit to the Agency is as it reads: *"The design information to be provided to the Agency shall include, in respect of each facility, when applicable:*

a. The identification of the facility, stating its general character, purpose, nominal capacity and geographic location, and the name and address to be used for routine business purposes;

b. A description of the general arrangement of the facility with reference, to the extent feasible, to the form, location and flow of nuclear material and to the general layout of important items of equipment which use, produce or process nuclear material;

c. A description of features of the facility relating to material accountancy, containment and surveillance; and

d. A description of the existing and proposed procedures at the facility for nuclear material accountancy and control, with special reference to material balance

areas established by the operator, measurements of flow and procedures for physical inventory taking"

28) Based on the above Article, the Agency made a standard format of DIQ for Enrichment Facilities; the Islamic Republic of Iran provided the design information by submitting the DIQ of Fordow Fuel Enrichment Plant (FFEP) on 20 & 28 October 2009.

29) According to Articles 8, 42, 43 and 44 of the Safeguards Agreement (INFCIRC/214), the Islamic Republic of Iran fulfilled its obligation in providing the DIQ of FFEP.

30) It is clear that the Agency's requests for providing additional information regarding the chronology of the design, construction and original purpose of FFEP are beyond of our safeguards obligation. In addition, requesting access to the companies involved in the design and construction is neither foreseen in the Safeguards Agreement nor in its Subsidiary Arrangement. Therefore, the Agency's requests stipulated in paragraph 15 of the report (GOV/2010/46) are beyond the Safeguards Agreement and there are no legal bases for such requests, and the Agency is not mandated to raise any question beyond the Safeguards Agreement.

31) According to the progress of completion of the site and present status of FFEP, necessary information was incorporated in the provided DIQ on 28 October 2009 and DIV's have been conducted accordingly by the Agency inspectors.

32) Regarding paragraph 16 and 43 of the report (GOV/2010/46), it should be mentioned that: In response to the Agency's request for providing related information on FFEP, the Islamic Republic of Iran submitted the requested information to the Agency in letters dated 17 February 2010 as well as 4 June 2010. Therefore, it is expected that the Agency's report is based on the facts on the ground, and it is very surprising and unfortunate that these paragraphs of the report contain baseless views.

Para 38-40 & 42 of the report:

33) It has to be recalled that pursuant to the negotiations between the former Director General and the then Secretary of Supreme National Security Council of Iran in 2007, the Islamic Republic of Iran took an important initiative in July 2007 to resolve all outstanding issues and remove any ambiguity concerning the nature of its peaceful nuclear activities in the past and present. It should be emphasized that the main objective of the subsequent Work Plan that was agreed between Iran and the Agency on 21 August 2007 (INFCIRC/711), was to resolve, in a step by step manner, all outstanding issues once and for all and to prevent the endless process from being dragged any further.

34) On the basis of the Work Plan, the Agency provided the Islamic Republic of Iran with a list of six outstanding issues as reflected in part II of INFCIRC/711. The six outstanding issues were: 1) Plutonium Experiments, 2) Pl-P2 Centrifuges 3) Source of

Contamination in an equipment of a technical university, 4) Uranium Metal Document, 5) Polonium 210 and 6) Gachine Mine.

35) It was never the understanding of Iran and the IAEA to categorize the so-called "Alleged Studies", summarily referred to in part III of INFCIRC/711, as an outstanding issue, otherwise the parties should have addressed it in part II of INFCIRC/711. One has to bear in mind the fact that the issues such as high explosives and re-entry missile are outside the domain of the statutory mandate.

36) Moreover, if the so-called Alleged Studies were an outstanding issue, Iran and the IAEA should have developed and agreed on a detailed modality for dealing with it as they did with respect to the six outstanding issues addressed in part II of INFCIRC/711. As a result, Iran and the IAEA decided to make a short reference to the Alleged Studies in part III of INFCIRC/711 and to agree on a different approach for addressing it as follows: *"Iran reiterated that it considers the following Alleged Studies as politically motivated and baseless allegations. The Agency will however provide Iran with access to the documentation it has in its possession ... As a sign of good will and cooperation with the Agency, upon receiving all related documents, Iran will review and inform the Agency of its assessment"* (Emphasis supplied).

37) In the DG reports of November 2007 and February 2008, the Director General explicitly stated that all six outstanding issues had been resolved and the Islamic Republic of Iran had responded to all questions about the outstanding issues in accordance with the Work Plan. Following the successful implementation of the Work Plan which led to the resolution of all six outstanding issues, the Government of the United States, being dissatisfied about the results, began a political campaign on a part of the Work Plan entitled the Alleged Studies. Therefore, by interfering in the work of the IAEA and exerting various political pressures, the Government of the United States attempted to spoil the cooperative spirit between the Islamic Republic of Iran and the IAEA.

38) In spite of the fact that the so-called Alleged Studies documents had not been delivered to Iran, the Islamic Republic of Iran carefully examined all the materials which had been prepared by the US Government for power point presentations by the Agency, and informed the Agency of its assessment. In this context the following important points should be recalled:

a. The Agency has not delivered to Iran any official and authenticated document which contained documentary evidence related to Iran with regard to the Alleged Studies.

b. The Government of the United States has not handed over original documents to the Agency since it does not in fact have any authenticated document and all it has are forged documents. The Agency did not deliver any original documents to Iran and none of the documents and materials shown to Iran had authenticity and all proved to be fabricated, baseless allegations and false attributions to Iran.

c. How can one make allegations against a country without provision of original documents with authenticity and ask the country concerned to prove its innocence or ask it to provide substantial explanations?

d. The Agency has explicitly expressed in a written document dated 13 May 2008 that: "... *no document establishing the administrative interconnections between 'Green Salt' and the other remaining subjects on Alleged Studies, namely 'Highly Explosive Testing' and 'Re-entry Vehicle', have been delivered or presented to Iran by the Agency*".

e. This written document proves that in fact the documents related to the Alleged Studies lack any internal consistency and coherence in this regard. It is regrettable that this explicit fact expressed by the Agency has never been reflected in the DG reports.

39) Taking into account the above-mentioned facts, and that no original document exists on the Alleged Studies, and there is no valid and documentary evidence purporting to show any linkage between such fabricated allegations and Iran, and that the DG reported in paragraph 28 of GOV/2008/15 no use of any nuclear material in connection with the Alleged Studies (because they do not exist in reality), also bearing in mind the fact that Iran has fulfilled its obligation to provide information to the Agency, and its assessment, and the fact that the former DG has already indicated in his reports in June, September and November 2008 that the Agency has no information on the actual design or manufacture by Iran of nuclear material components of a nuclear weapon or of certain other key components, such as initiators, or on related nuclear physics studies, therefore this subject must be closed.

40) If it was intended to raise other issues in addition to the Alleged Studies (Green Salt, Re-entry Missile, High Explosive Test) such as possible military dimension, since all outstanding issues have been incorporated in the exhausted list prepared by the IAEA during the negotiations, then it should have been raised by the Agency in the course of the negotiations on the Work Plan. One can clearly notice that no issue and item entitled "*possible military dimension*" exists in the modalities.

41) According to the DG report in GOV/2009/55, the Agency expressed that the authenticity of the documentation that forms the basis of the Alleged Studies cannot be confirmed. This proved the assessment of the Islamic Republic of Iran that the Alleged Studies are politically motivated and baseless allegations.

42) The first paragraph of chapter IV of the Work Plan reads: "*These modalities cover all remaining issues and the Agency confirmed that there are no other remaining issues and ambiguities regarding Iran's past nuclear program and activities.*"

43) In accordance to the first paragraph of chapter IV of the Work Plan which reads that "*These modalities cover all remaining issues and the Agency confirmed that there are no other remaining issues and ambiguities regarding Iran's past nuclear program and*

activities", introducing a new wording in paragraph 42 of the report (GOV/2010/46) reading that "*clarifying outstanding issues*" is contrary to the Work Plan.

44) Paragraph 5 of Chapter IV of the Work Plan reads: "*The Agency and Iran agreed that after the implementation of the above Work Plan and the agreed modalities for resolving the outstanding issues, the implementation of safeguards in Iran will be conducted in a routine manner.*"

45) In Paragraph 3, chapter IV of the Work Plan, the Agency has acknowledged that "*the Agency's delegation is of the view that the agreement on the above issues shall further promote the efficiency of the implementation of safeguards in Iran and its ability to conclude the exclusive peaceful nature of Iran's nuclear activities"*. On this basis, while the Work Plan has been implemented, the Agency is obliged to confirm the exclusive peaceful nature of Iran's nuclear activities.

46) The Islamic Republic of Iran and the Agency have fully implemented the tasks agreed upon in the Work Plan; in doing so, Iran has taken voluntary steps beyond its legal obligation under the Comprehensive Safeguards Agreement.

47) Considering the above and the former DG report in GOV/2009/55, that confirmed that Iran has completed its obligation on the Alleged Studies by informing the Agency of its assessment, and the very positive developments and the joint constructive cooperation between Iran and the Agency, the Agency is hereby highly expected to announce that the safeguards implementation in Iran shall be conducted in a routine manner in accordance with the last paragraph of the Work Plan (INFCIRC/711).

48) The facts that the material of the Alleged Studies lack authenticity, that no nuclear material was used and no components were made as declared by the former Director General, are also missing in this report.

49) According to the Work Plan, the Alleged Studies have been fully dealt with by Iran, thus this item in the Work Plan is also being concluded. Any request for another round of substantive discussion, provision of information and access is absolutely in contravention with the spirit and the letter of such an agreement negotiated, which both parties have agreed upon and are committed to. It should be recalled that the agreed Work Plan is the outcome of fruitful and intensive negotiations by three top officials in charge of Safeguards, Legal and Policy Making Organs of the Agency with Iran and eventually acknowledged by the Board of Governors. Therefore, it is highly expected that the Agency respects its agreement with Member States, otherwise the mutual trust and confidence which is essential for the sustainable cooperation shall be put in jeopardy.

50) Paragraph 54 of the former DG report in GOV/2008/4 regarding the Possible Military Dimension reads: "*However, it should be noted that the Agency has not detected the use of nuclear material in connection with the alleged studies, nor does it have credible information in this regard*". Therefore, the first sentence of para 40 of GOV/2010/10 obviously contradicts the above assessment of the Agency. Section E of this report is in

full contravention with paragraph 24 of the former DG report GOV/2008/15 which said: "*It should be noted that the Agency currently has no information - apart from the uranium metal document - on the actual design or manufacture by Iran of nuclear material components of a nuclear weapon or of certain other key components, such as initiators, or on related nuclear physics studies*". It is recalled that according to the Work Plan the issue of uranium metal was resolved and a certificate was received from the Agency to the effect that it is no more an issue.

51) According to the Work Plan the Agency was required to submit all documentation to Iran and then Iran was only expected to "inform the Agency of its assessment". No visit, meeting, personal interview, swipe sampling were foreseen for addressing this matter. Notwithstanding the above and based on good faith and in a spirit of cooperation, Iran went beyond the above understanding by agreeing to hold discussions with the IAEA, to provide necessary supporting documents, and informed the Agency of its assessment in a 117-page document proving that the allegations have been all fabricated and forged. The Government of the United States has not handed over original documents to the Agency, since it does not in fact have any authenticated document, as the former DG declared. Meanwhile, by refusing to submit all documentation to Iran concerning the so-called Alleged Studies, the IAEA did not fulfill its obligation under part III of INFCIRC/711. It is recalled that the first paragraph of chapter IV of the Work Plan says: "*These modalities cover all remaining issues and the Agency confirmed that there are no other remaining issues and ambiguities regarding Iran's past nuclear program and activities*", therefore, introducing a new issue under the title of "*possible military dimension*" contradicts the Work Plan.

Para 41 of the report:

52) The fact that all declared nuclear material is accounted for and has remained under the Agency's full scope surveillance for peaceful purposes, contrary to the main object of Safeguards stipulated in article 28 the Agreement, is not reflected and is a missed element in this report while it is a real fact as it has been reported in the SIR2009.

53) The Islamic Republic of Iran has fully cooperated with the Agency in safeguards application on nuclear material and facilities. Therefore, a statement such as "*...Iran has not provided the necessary cooperation to permit the Agency to confirm that all nuclear material in Iran is in peaceful activities*" is absolutely wrong and has no legal basis and is a sided statement.

54) Mixing the notions of "declared nuclear material" and "all nuclear material" in the context of Comprehensive Safeguards Agreement (CSA) and Additional Protocol, respectively, in a non-professional manner, has undermined the full cooperation of Iran in accordance with its CSA obligation and has also misled the public.

55) It is regrettable that in spite of thorough explanation provided by Iran to the Agency, prior to the distribution, the report (GOV/2010/46) completely missed the facts, already

reported by the former DG, based on the reports of the inspectors, and is not a balanced one.

56) Finally, as the Work Plan has fully been implemented, thus the implementation of safeguards in Iran has to be conducted in a routine manner.

Para 35-37 and 45 of the report:

57) With respect to the designation of the inspectors, as the report correctly confessed "*Iran's safeguards agreement does permit it to object to the designation of Agency inspectors*", it is a sovereign right of any Member State to exercise such right. By having more than 150 Agency inspectors designated by the Islamic Republic of Iran, the Agency's claim of hampering "*the inspection process*" as the result of exercising such right is totally unjustified.

58) Moreover, the phrase "... *inspectors with experience in Iran's nuclear fuel cycle and facilities*" as reflected in para 37 of the report, could not be technically digested and it is undermining the other inspectors' skills and their professionalism.

59) In respect of designation withdrawal of 38 Agency inspectors from France, UK, Germany and USA in 2006, it should be recalled that it was the EU3 and the USA who illegally, unjustified and partially conveyed Iran to the UNSC. However, this withdrawal has never hampered the Agency's verification in Iran so far. It is very surprising that after almost five years, this matter is emerging in the DG's report!!!