Appendix 6

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IRAN: TRIAL PROCEDURES FOR POLITICAL PRISONERS

First Published AUGUST 1972

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INTRODUCTION

The purposes of this report are: first to attempt an analysis of the procedures specified by Iranian law for the detention, trial and imprisonment of persons accused and convicted of political crimes and exposition of how these procedures are applied or ignored in practice; second, to indicate the implications in international law precipitated by the consistent denial of basic human rights to the accused in such proceedings.

Source materials are somewhat limited on this topic; the following has been based on Iranian legal documentation and on reports from lawyers who have attended trials.

BRIEF SUMMARY

The State Organisation for Security and Information (SAVAK), which is directly responsible to the Prime Minister, has complete control over the investigatory stages of criminal proceedings involving political crimes and builds the case for the prosecutor from the very decision to arrest to the point where the case is ripe for hearing by military tribunal. All charges of political crime are tried before military tribunals, with attendant military counsel for the prosecution and the defence. Upon conviction, a verdict may be reviewed on appeal before a military appellate court which may change verdict or sentence as it sees fit. As the Supreme Court cannot rule on the constitutionality of legistation, objections to the SAVAK law and trial before the military tribunal on constitutional grounds are useless. Clemency resides ultimately in the Shah.

Internationally, Iran has been a keen promoter of the Universal Declaration of Human Rights and is signatory to the International Covenant on Civil and Political Rights. Iran often acknowledges that it has duties under these documents, but commonly breaches both in numerous ways in domestic practice as is evidenced by the application of the SAVAK law and the use of military tribunals to try civilians accused of political crimes.

I. POLITICAL PRISONERS: ARREST TO PUNISHMENT

Arrest and Detention

The State Organisation for Security and Information (SAVAK) is charged with the responsibility for internal state security. In conformity with this duty, SAVAK is empowered by law to gather any information it deems necessary to discharge its function. It is obligated to end activities of illegal organisations, to prevent plotting against the government and to insure against the formation of new groups which entertain policies contrary to the Constitution of 1906. Officials of SAVAK are considered under this law to be military investigators and interrogators. As all political crimes against the State fall within the jurisdiction of the permanent military courts, SAVAK is empowered to be the sole investigator of all alleged political crimes as well as being the authority which initiates the bringing of the charge against the involved persons. SAVAK can directly order the arrest of any person on a charge of political crime and no recourse to any court for approval is necessary.

It must be noted that the Military Justice and Penal Law of 1938 does provide that where the investigator orders an arrest, the agreement of the Office of the Military prosecutor (an entity independent of SAVAK) must be secured within 24 hours. In the event of the Prosecutor's disagreement with the decision to arrest, the conflict is resolved by the military court. The accused also has the right to appeal to this court against his detention within 24 hours of his arrest. The defendant additionally has the right, under Article 10 of the Supplementary Constitutional Law of 8 October 1907 to be informed of the charges against him within the same 24 hour period.

Little is known outside Iran as to the effectiveness in practice of disagreements with a SAVAK decision to arrest. What is certain is that many persons, whether or not they or the Prosecutor opposed SAVAK's initial decision to instutute proceedings remained and/ or still remain in SAVAK's custody awaiting trial. SAVAK alone has the right under the 1938 Act to allow an accused release on bond pending trial.

SAVAK conducts the entire investigation into each charge and prepares the file which forms the entirety of the prosecutor's case at trial. As SAVAK controls the investigatory process, the accused will not stand trial until the case file is satisfactorily complete. This sometimes results in many months of pre-trial detention for the accused, awaiting the successful production of evidence. It has been alleged that in the absence of evidence, SAVAK often resorts to the extortion of confessions by torture. The examination of witnesses, the interrogation of the accused, the searches of various premises and the seizures of property as evidence are all carried out with no provision in law for any form of judicial, much less independent, control. There exists no time limit on SAVAK to exhaust its sources of information, and habeas corpus is not available to the accused to demand a speedy trial. Defendants are not uncommonly held incommunicado for many months.

All these activities of SAVAK are accomplished under the legal aegis of the Office of the Military Prosecutor alone. Article 10 of the Military Penal and Procedural Code grants this Office the right to draw up rules of conduct for the handling of political prisoners, which rules may bind SAVAK. No evidence exists however, that this power has been used to dampen the enthusiams of SAVAK for using extreme methods to elicit "the truth". Political prisoners are physically kept in SAVAK's own buildings or, curiously, in civilian prisons under the administration of the civil police. It is, though, clear to many lawyers, inside of and outside of Iran, that SAVAK is bound in law by Article 131 of the Penal Code which forbids any government employee to apply or order the infliction of bodily harm to any accused person for the purpose of procuring a "confession". Conviction of such an offense merits a 3 to 6 year prison term and, if the victim should die, the tormentor is tried for murder. No charges are known to have ever been brought against SAVAK personnel in this regard, and indeed Article 131 does not specifically refer to SAVAK.

In spite of these procedural safeguards in law, minimal as they appear, repeated reports of SAVAK torture have come to world attention, in the form of rumour, allegation and sworn testimonial. Prison authorities the world over are often accused of torturing those in their custody, of course; familiar, too, is the near-impossibility of legally proving such allegations. What emerges from the situation in Iran, however, is that clearly SAVAK, whether or not it actullly does employ techniques of torture, cannot prove its innocence of such charges any more that its accusers can prove theirs. And the burden is on SAVAK: no judicial authority has competence to inquire into the treatment of SAVAK's prisoners; outside of the military establishment only the chief of the police district in which the detainees are jailed may inquire into their condition during pre-trial incarceration, and this of course only if the prisoners are not kept in SAVAK's own holding quarters. SAVAK has taken no steps to refute allegations of torture other than to make ritual statments of denial, usually issued through a government spokesman. The same is true of the Office of the Military Prosecutor. No steps have been taken to allow those accused of political crimes the right to have visitors during pre-trial detention, and they may not even see Counsel, appointed by the courts, until a few days before their trial. In such circumstances, the conclusion that SAVAK indulges in the use of torture during the pre-trial stage when it reigns unfettered over the fate of the accused is one which is not discouraged by the statements of the alleged victims nor by the attitude of SAVAK itself. The undesirability of this situation cannot be over-stressed in view of the high number of death sentences passed and carried out, on the basis of confessions alleged to have been extorted under torture and subsequently repudiated by the defendants.

Trial Procedure

As noted above, during the investigative stage of proceedings, the accused has no right to consult with counsel or anyone else. Upon completion of the SAVAK investigation, the accused is allowed access to counsel 10 days before trial. Defendants are represented by persons who may be serving but usually are retired military officers, who need not be learned in the law. Counsel are selected by defendants from a short list of persons supplied them by the tribunal. If the accused refuse to make a choice, the court directly appoints counsel for the defence. Counsel can expect to be paid by defendants for their services. Indeed, in 1964, four defence counsellors were arrested by SAVAK and held for nearly a year awaiting trial. Apparently these retired officers themselves became suspect by presenting too earnestly arguments on behalf of their clients and the fact that one of the counsellors defended his client without charge was used as evidence that he was himself involved in the conspiracy. All were convicted.

The court itself is composed of four serving officers, sitting without a jury in apparent contravention of Article 79 of the Supplementary Constitutional Law of 8 October 1907, which provides "In political and press offences, a jury must be present in the courts". Timely objections taken to trial without jury during political trials before tribunals have consistently met with failure, the Military Courts successfully rebutting on the ground that Article 87 of the same Supplementary Constitutional Law permits the organisation of military courts with special regulations of their own, one of which of course provides for trial without a jury.

Proceedings before the military tribunals are often held in camera, wholly or in part. Proceedings in the "Marble Palace" trial were closed for some days and many other trials have been wholly held in private. Foreigners often experience difficulty in gaining admission to these trials, even when ostensibly "open". Persons admitted to "open" political trials gain entrance only upon production of an officially issued individual pass. It has been announced this year that foreign journalists and observers will henceforth be banned from all political trials. The new determination of the government in this respect is exemplified by the official announcement on 12 March of this year that nine political prisoners had been executed by firing squad. The trial of those executed was not revealed in the press at any time and provides concrete evidence of the government's continuing distaste for the open trial of persons accused of political offences. More executions have taken place; the most recent were reported to have occurred at the end of July 1972.

Again, this arbitrary ban on press and observers appears to fly in the face of the Supplementary Constitutional Law, as Article 77 provides "In political and press offences, where it is advisable that the proceedings should be private, this must be decided on with the unanimous vote of all the members of the tribunal". The military courts have never been overruled in denying objections founded on this provision, as they rely agian on Article 87 which allowes for the institution of military courts with sui generis rules. Article 192 of the Military Criminal Code provides that sittings of the courts martial shall be open to the public except in cases where it might be considered against law and order, state security and morals. In the latter cases, the Military Prosecutor shall request a secret hearing and the court shall issue an order to that effect. This, of course, leaves the matter entirely in the hands of the prosecutor, the tribunal abdicating its Consitutional duty. This result has emerged in practice notwithstanding Article 7 of the Supplementary Constitutional Law which specifically proclaims "The principles of the Constitution may not be suspended either wholly or in part".

The accused has no right to demand that witnesses against him be called and no right of cross examination. In fact, the only witnesses heard by the tribunal are the defendants themselves, as the prosecutor proceeds by reading into evidence the findings of the SAVAK investigation, including confessions if any. Defence demands for the production of incriminating evidence referred to in the SAVAK files such as seized books and the like are usually refused. Yet references to the same articles are entertained as evidence by the tribunal since they are referred to in the SAVAK report. The "trial"

is thus effectively reduced to a mere exercise in advocacy relating to the SAVAK file on the accused. The burden is on the defence to explain away or disprove the allegations in the SAVAK file. This burden can be met by oral argument, but not by the introduction of evidence other than the testimony of the defendants and so the tribunal's judgment does not benefit from probative attack on the prosecution's case. In practice, then, the defendant is presupposed guilty and his only possible real defence is that the SAVAK file fails to establish a prima facie case, an unlikely outcome of an investigative process unhindered by judicial control or other limits in time or in law. Yet it must be stressed that even this defence is available to the defendant only after the burden of proof has shifted to him by the very introduction of the prosecution file into evidence. It is not for the prosecution to prove it has made out its case but rather for the defence to show it has not.

During the hearing, the defence is permitted to raise objection to the jurisdiction of the court and/or the methods used in building the investigatory file (e.g. torture). Also permitted is apparent freedom of communication between the defence counsel and those they defend. The actual charges against the accused are often comprised of imprecisely drawn allegations of plotting against the government, or being engaged in a conspiracy to do so. Military tribunals are not impressed with defence arguments stressing the often tenuous links between "conspirators", and guilt by association is a favorite basis for SAVAK allegations. Nor will the defence win acquittal by arguing that the charges are so vague in law as to be meaningless. Weakness of the prosecution case in this regard would lead in practice not to a discharge of the defendant but rather to later mitigation of his sentence. Legal defence argument before the military tribunals does not often dispel suspicion, the usual basis for a verdict of guilty.

At the close of the proceedings before the Tribunal, the President of the Military Court announces the verdict of the Court and the sentence agreed upon.

To summarise; defendants in political trials in Iran have been denied rights which are normally regarded as fundamental to the rule of law.

Although civilians, they have been tried in military courts.

They are defended by military lawyers appointed by the courts.

Perhaps most important of all, the military tribunals accept as evidence confessions of guilt which the defendants themselves have already repudiated in court as having been made after torture.

Post-Conviction Remedies

Where the accused are found guilty by the Military Court, they are permitted to lodge timely appeals with the Military Court of Appeal. This body, the second tier of the military tribunals system, has the power of judicial review and the concommitant authority to confirm, reduce or increase sentences imposed by the tribunal of first instance. This broad mandate extends to the imposition of the death penalty even where the trial court thought it unwarranted. Hearings before the Court of Appeal may be held in camera, and recently all non-Iranians were barred from admission to its proceedings, even when "open". On appeal, the defence may raise the issues of jurisdiction and competence of the court, but to date the Military Court of Appeal has never

entertained the argument, noted above, that political trials should be held before a jury or in civilian courts. The defence can also raise the question of torture and extorted confession on appeal. No constitutional or legal guidelines exist in Iran for the protection of the defendant's interests against self-incrimination however, and such argument is invariably doomed as a result. The most effective tactic on appeal is for the defendant to recant before the Court and this often wins clemency.

After the Military Court of Appeal has reached its decision, usually within a few weeks of the lower court sentence, defendant's legal remedies are effectively exhausted. The Supreme Court of Iran may apparently accept an appeal from the judgement of the appellate military court; but its jurisdiction is extremely narrow in such cases, being composed of the merest right of examination of the legal procedures carried out during the case to see if these were accomplished in conformity with the law. But only a very basic denial of rights would suffice to make appeal to the Supreme Court worthwhile, as where a defendant was tried in absentia. It is important to observe that the Supreme Court has no authority or power to determine the Constitutionality of the current legislation such as the 1957 SAVAK law, the military penal code, and other enactments herein contained.

At this final stage, the only hope left to the political prisoner is that he be granted amnesty by the Shah himself. Often such amnesties are forthcoming at the time of traditional celebrations, such as the Solar New Year and the anniversary of the Shah's birth. Some prisoners have been freed by this method, often after making statements publically acknowledging their loyalty to the throne and its policy of bloodless revolution.

II: POLITICAL TRIALS IN IRAN SEEN IN THE CONTEXT OF INTERNATIONAL LAW

The Universal Declaration of Human Rights.

On 10 December 1948, the General Assembly of the United Nations adopted by a vote of 44-0-8 the now famous Universal Declaration of Human Rights. Among the 44 States voting in favour of its adoption was Iran. The UDHR contains several provisions which the above described practices currently pursued in Iran ignore. Among these are the requirement that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him.(Article 10). Trial by military tribunal clearly fails to satisfy this demand. Article 11 (1) requires that everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. Here, too, lack of public trials and effective burden on the defence to prove innocence provide instances of practice in contravention of the UDHR. Also declared is that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. (Article 8). This article also provides a stark contrast between the publicly stated beliefs of the Iranian Government and its domestic practice. The lack of a civil enquiry into the protection of Iranian citizens' Constitutional rights, as is evinced by the narrow review permitted the Suprem Court in cases of conviction by a militry court of a political crime, amounts to a manifest abrogation of this requirement of the UDHR.

While international lawyers presently argue about the legal effect of UN Resolutions, it cannot be denied that the UDHR remains the Resolution most repeatedly referred to by the General Assembly to date. And while practices not in conformity with its terms cannot today be definitely termed a breach of international law, it is significant that not only the Iran delegation voted for the initial adoption of the Declaration in 1948, but also that the Shah himself has recently spoken in its support. Thus these three instances of practice quoted here which do not conform to the Universal Declaration do operate to cast the description of the Declaration by the Shah as the "new moral code of the world" in a somewhat hypocritical light. (Address delivered by His Imperial Highness, the Shahinshah, at the opening of the International Conference on Human Rights in Teheran, 1968.)

The International Covenant on Civil and Political Rights

Furthermore, it is extremely important to realise that Iran has recently (4 April, 1968), signed the 1966 International Covenant on Civil and Political Rights. It is well known that, unlike its fraternal twin, the International Covenant on Economic Social and Cultural Rights, the Civil and Political Rights Covenant provides for mandatory rights and duties which operate to bind the States party thereto in international law. By signing this Covenant, Iran has demonstrated its intent to take all steps necessary to give effect to the rights recognised by the Covenant. Among the more obvious of the various and detailed rights enumerated by the Covenant not observed in Iran's prosecution of persons charged with a criminal offence: the right to be presumed innocent until proven guilty; the right to have adequate time and facilities for the preparation of his defence and to communicate with Counsel of his own choosing; the right to be tried without undue delay; the right to examine or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

Although Iran has yet to ratify the Convention, it is significant that Iran is on record as recognising the principle that it will be in breach of International Law if it does not refrain from acts which would defeat the object and purpose of any treaty, including the International Covenant on Civil and Political Rights. Iran acknowledges this principle through Article 18 of the 1969 Vienna Convention of the Law of Treaties which it signed on the very first day that Convention was open for signature, 23 May 1969. It is true that neither the Covenant nor the Vienna Convention have yet entered into force. Nevertheless, the principle which Iran has accepted may well be part of customary international law today, and if so it will have been breached by the disregard shown by Iran for its international undertakings, not only in relation to the trial procedure regulations described above, but also to the broader freedoms guaranteed by the Covenant such as freedom of thought and freedom of association. The right of the individual to be protected from torture or degrading treatment is of course secured by the Covenant and the Universal Declaration.

The International Conference on Human Rights

In 1968, Iran played host to an International Conference on Human Rights held at Teheran, 22 April to 13 May. That conference adopted with the approval of Iran a Resolution on the Rights of Detained Persons which states in pertinent part:

> "Recalling...that...the International Covenant on Civil and Political Rights provides...that anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release, considering that nevertheless infringements of these rights continue to occur, recommends to member states that they review their laws and practices relating to the detention of persons and take all possible steps to insure that persons are not detained in prison for prolonged periods without charge and that the detention of persons awaiting trial is not unduly prolonged".

Nevertheless, under the SAVAK law, gross abuses of this very right continued before and still continue after the adoption of this resolution.

At the same Conference, Iran co-sponsored a draft resolution which, owing to pressure of lack of time, was unable to be considered. Yet a citation of part of its language here is apposite:

> "The International Conference on Human Rights Recommends:
>
> 1. That Governments take steps as necessary to establish national commissions on human rights or similar institutions and encourage the creation for the same purpose, of similar local bodies;

> 2. That specific responsibilities be assigend to national commissions particularly to examine individual complaints and seek the solution of problems involved, and to recommend legislation or other official action to strengthen the protection of individual rights..."

The Conference, in addition to Resolutions in its Final Act also adopted the "Proclamation of Teheran, 1968, which states in part:

> "The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community... The International Covenant on Civil and Political Rights...(has) created new standards and obligations to which States should conform".

Ironically, the forceful use of the above obligatory language in the Proclamation was adopted and signed on behalf of the Conference by H.I.H. Ashraf Pahlavi, not only in her capacity as "Chairman" of the Iran Delegation to the Conference but as President of the Conference as well. Her Imperial Highness is the twin sister of the reigning Shah and her actions at the conference, with all of their policical and legal ramifications, must be evaluated with this fact paramount in mind.

CONCLUSION

The dramatic dichotomy cleft between the words and deeds of the Iranian government seem sufficiently established for the purposes of this brief report. The denial of individual rights to political prisoners between arrest and imprisonment or execution is obvious. Also apparant is the breach of various international undertakings, many of which may be binding in international law on Iran. The repudiation by its domestic practice of the principles of human rights publicly espoused by Iran is unfortunately manifest.
