

# IRAN

## @Unfair trials of political detainees

Amnesty International remains concerned about unfair trial procedures in political cases in the Islamic Republic of Iran and has repeatedly expressed these concerns in communications to the Iranian authorities and submitted recommendations to safeguard detainees' right to a fair trial in accordance with international human rights standards to which Iran is a state party.

While the Iranian authorities have recently responded to some of the organization's requests for clarification, these responses have not allayed Amnesty International's fears that serious human rights violations continue in Iran, including unfair trials of political detainees.

Most recently Amnesty International wrote to the Iranian authorities on 29 April 1992, raising some of its concerns regarding political detainees' right to fair trial. By the beginning of July 1992 no response had been received.

### 1. Access to legal counsel

Amnesty International believes it is a fundamental right of every political detainee to have access to a lawyer of his/her own choosing promptly on arrest and at frequent intervals thereafter to prepare adequately for his/her defence.

This right is based on the presumption of innocence enshrined in the Universal Declaration of Human Rights and is an essential part of any impartial investigation, fair trial and just verdict.

In practice this principle also acts as an important safeguard against torture, which is often inflicted during the period between a prisoner's arrest and trial, when the prisoner is most vulnerable, often in order to extract information or force confessions.

Article 14 (d) of the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a state party, states the following:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

.....

- (d) To be tried in his presence, and 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 .....

It has been of long standing concern to Amnesty International that this provision has not been applied in trials of political detainees in Iran, where, according to reports the organization has received over the years, political trials are almost always held in secret, inside prisons, proceedings are summary, with no possibility for the detainee's family or even for defence counsel to attend.

The United Nations Commission on Human Rights' Special Representative for investigating human rights in Iran has also focused on this point, most recently in his January 1992 report. Following interviews with prisoners in Evin prison on 10 December 1991, he states<sup>1</sup> "... none of the persons interviewed had had the benefit of legal counsel or had been able to call witnesses and in some cases had not even been allowed to expose the arguments for their defence..."

In addition to Article 35 of Iran's own constitution which guarantees the defendant's right to legal counsel, in 1984 the General Board of the Supreme Court of Iran established a precedent<sup>2</sup>, which stated the following:

"... involvement of the counsel briefed by the Government, in case the accused may not have personally named an attorney, is essential in cases where the main punishments of that crime could be death sentence or life imprisonment.

"... This precedent shall be binding on all benches of the Supreme Court and other courts in similar cases in accordance with the Single Article of the Law on Judicial Precedent ratified in 1949."

Amnesty International knows of no political cases, since that date, where this precedent has been put into practice. Indeed thousands of political prisoners have been executed since this decision, without having had any access to legal counsel.

*(i) The new law*

In the last year, a number of Iranian government and judicial authorities have made public statements regarding a new law passed in the Islamic Republic of Iran which is said to guarantee the defendant's right to legal counsel.

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<sup>1</sup>UN document reference E/CN.4/1992/34 dated 2 January 1992, paragraph 304

<sup>2</sup>Precedent No. 71/62, Decision No. 15

The Head of the Judiciary, Ayatollah Mohammad Yazdi, also referred to the law at Friday prayers at Tehran University on 28 February 1992. Tehran Radio reported some of his statements, a number of which refer to an unnamed organization:-

"It [the organization] has said something about the Council of Guardians which I have to explain despite the shortage of time. It says that the Council of Guardians has rejected the Majlis decree concerning the right to be represented by a lawyer. No. The Council of Guardians has not rejected it; on the contrary, it has expanded it..."

The draft provisions regarding the right to legal counsel, put to the Islamic Consultative Assembly (parliament) in December 1990, reportedly stated:-

... The parties of a legal case have the right to appoint an attorney-at-law, and all the courts ... are obliged to receive attorneys-at-law....

The final text of the new Act, approved by the Assembly for Determination of Exigencies of the State (*Majma-e Tashkhis-e Maslahat-e Nezam*), as reported in the Official Gazette of the Islamic Republic of Iran,<sup>3</sup> is as follows:-

Single Article. The parties to a legal case have the right to appoint an attorney and all courts which are formed according to the Law are obliged to receive the attorney.

Sub-article 1. The parties to a legal case in the Special Court for the Clergy also have the right to appoint an attorney. For this purpose the court designates a number of competent clergymen as attorneys. The defendant may choose any one of them for the defence.

Sub-article 2. If a court, according to the findings of the Supreme Court, had denied the right of a party to appoint an attorney, the judgment issued has no legal validity. This failure for the first time shall be punishable according to the third degree of disciplinary punishment and for the second time by dismissal from judicial post.

Sub-article 3. The attorney, in the position of defence, enjoys the same respect and security as that of those in the position of judgment.

The "expanded" final text of the bill, approved by the Assembly for Determination of Exigencies of the State, refers only to an attorney (*vakil*), who apparently need not be a legally qualified person, and not to an attorney-at-law (*vakil-e dadgostari*), a qualified lawyer. Such a

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<sup>3</sup>Islamic Republic of Iran Official Gazette No 13578, dated 21 October 1991

person would not, by international standards, be considered to be competent to assist a defendant in preparing the defence and in informing the defendant of his or her legal rights.

Furthermore, no mention is made of the defendant's right to have a lawyer assigned to him/her, if he/she is unable to appoint one, and no provision appears to have been made guaranteeing the defendant the right to apply to the Supreme Court if his/her right to have access to legal counsel and to be represented in court by a lawyer is not respected.

Amnesty International is concerned that, in its present form, the new regulation fails to guarantee the defendant's right to legal counsel in accordance with Article 14 of the ICCPR and Article 35 of the Islamic Republic of Iran's own constitution, which provides:

Both parties to a dispute 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.

*(ii) Re-trial of political prisoners*

In recent communications to the Iranian authorities, Amnesty International has expressed its concern regarding the extent to which this law relates to political prisoners tried before its coming into force.

In response to Amnesty International Iranian authorities have recently stated "Those cases which had been heard in the absence of defence lawyers were returned, pending a re-trial in the presence of defence lawyers".

This would appear to contradict statements made by the Deputy Head of the Judiciary, and several departmental directors of the judiciary, interviewed in December 1991 by the UN Special Representative for Iran, who, in his January 1992 report stated<sup>4</sup> "... it transpired that the new Act on mandatory assistance by defence counsel was not retroactive, and consequently nullity did not apply to sentences handed down, albeit in the absence of defence counsel, before the Act came into force".

Amnesty International is concerned that, as the new Parliamentary Act did not receive final approval until October 1991, cases which would not be referred for re-trial would include all political trials which were held in the absence of defence lawyers, at least up until October 1991.

The organization awaits clarification of these apparently conflicting statements made by the Iranian authorities.

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<sup>4</sup>UN document reference E/CN.4/1992/34 dated 2 January 1992, paragraph 271

Amnesty International believes that making no provision for those prisoners who have been tried without the benefit of legal counsel clearly conflicts with the letter and spirit of the ICCPR, as well as with Article 35 of the Islamic Republic of Iran's constitution.

*(iii) An independent association of lawyers*

The Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders states:-

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.

and adds:-

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.

There is currently no independent association of lawyers in the Islamic Republic of Iran. The Bar Association was forcibly ejected from its office in 1981 and in early 1982 members of the elected Bar Council were arrested and many practising lawyers were imprisoned. Other lawyers were forced to flee the country. Although the Law on the Independence of the Bar Association has not been annulled, Iranian lawyers are unable to elect their representatives. The current president was appointed by the Ministry of Justice in 1982.

Election of members of the Bar Council had been scheduled to take place on 9 October 1991, but was postponed, apparently indefinitely. On 8 October 1991, a law on the reform of the Bar Association was passed<sup>5</sup>, empowering a "Reconstruction Council", with members appointed by the President of the Judiciary, to dismiss certain lawyers from the legal profession, before any election could be held. Those to be dismissed include, among others, lawyers who had served in certain government posts before the establishment of the Islamic Republic; individuals "who have rebelled against the Islamic Republic or have acted effectively in support of unlawful groups; members of misguided sects, or of organizations whose aims are based on the denial of divine religions".

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<sup>5</sup>Published in the Official Gazette of the Islamic Republic of Iran, No. 13578, dated 21 October 1991,

Following interviews with 13 prisoners, including prisoners of conscience and political prisoners, in Evin Prison in December 1991, the UN Special Representative states<sup>6</sup> "... One prisoner reported that with the help of friends he had contracted and actually paid a lawyer but had never been able to speak to him. Another prisoner stated that his family had attempted to find a lawyer for him but that such efforts had not succeeded since none of the lawyers contacted agreed to take the case owing to the impossibility of taking effective action before the revolutionary courts..."

Amnesty International believes it to be a fundamental principle of any meaningful defence that lawyers are allowed to carry out their professional duties without fear of intimidation and pressure from authorities. The absence of an independent association of lawyers undermines this principle in practice and adds to Amnesty International's concerns about unfair trial procedures in the Islamic Republic of Iran.

## 2. Open courts

### (i) *Public trials*

On 28 February 1992 at Friday prayers at Tehran University, Ayatollah Yazdi stated:-

"It [the organization] still continues to ask us why our courts are not open to the public. Yet, all our courts are open to the public. I have repeatedly announced that point from this platform; it is not limited to our country alone. I have said repeatedly that according to our constitutional law all our courts are open. When we say it is open it means that anybody wishing to attend the hearing when the court is in session cannot be prevented from doing so by the presiding [judge] of the court. All our courts are in that position."

In a recent communication to Amnesty International, Iranian authorities have stated "All trials are carried out in open courts, unless the relevant judge decides that part of the court procedure should be held *in camera*".

These statements conflict with reports of political trials received by Amnesty International, as well as with the UN Special Representative's findings. Following interviews with prisoners in Evin Prison in December 1991, he states:<sup>7</sup> "None of the trials described was held in public and in some cases the proceedings lasted only for a few minutes".

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<sup>6</sup>UN document reference E/CN.4/1992/34 dated 2 January 1992, paragraph 304

<sup>7</sup>UN document reference E/CN.4/1992/34 dated 2 January 1992, paragraph 304

A former political prisoner, tried in late 1990 has reported the following:<sup>8</sup>

"... I was taken to court after my interrogation. It was a large room and two people were there: One was the clerk and the other was the judge. When I entered the courtroom, the judge was feeding a little goat with watermelon peel. He continued for several minutes.

"For a long time I had been waiting for this moment to defend myself and explain my beliefs and actions, and was fully prepared. But all this seemed absurd when I saw the judge occupied with the goat. The judge told me that they had made a mistake not to shoot me [when I was arrested the first time] but that this time I would definitely be hanged. There was no other question and I was dismissed..."

Later she was told that she had been sentenced to a five-year prison term. She had no right of appeal.

This report is similar to many others Amnesty International continues to receive about political trials in Iran, where an unknown number of political prisoners have been sentenced to prison terms and execution following unfair trials.

*(ii) Trial observation*

On 28 February 1992 the Islamic Republic News Agency (IRNA) quoted Ayatollah Yazdi as follows:-

"We have announced time and again that anyone who wants, can attend the trial proceedings in the Islamic Republic."

Amnesty International has submitted repeated proposals to the Iranian authorities to send delegates to attend, as observers, the trials of prisoners of conscience in Iran. They included a group of nine held since June 1990 in connection with their activities for the Association for the Defence of Freedom and Sovereignty of the Iranian Nation and an open letter addressed to President Hashemi Rafsanjani<sup>9</sup>. No response was received. The prisoners were sentenced to prison terms and lashes after summary proceedings at trials held in secret, in May and June 1991.

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<sup>8</sup>The identity of the former prisoner is not given for fear of reprisals to family members remaining in Iran.

<sup>9</sup>Amnesty International welcomes recent reports that they were among 108 prisoners pardoned in April 1992, and is seeking official confirmation that their release is unconditional.

In a letter sent to the Iranian authorities in February 1992 Amnesty International sought information about the current legal situation and the charges brought against a number of political prisoners, who had reportedly been in detention for over 15 months. In its letter the organization proposed sending a delegate to observe their trials. This request was repeated in a letter sent in April 1992. Amnesty International awaits the authorities' positive response to its latest request.

### **3. Recent mass arrests and executions**

At the end of May 1992 reports were received of the arrest of at least 300 people following riots and demonstrations in Mashhad on 30 May 1992. They were the latest in a series of protests apparently sparked off by incidents such as municipal authorities' attempts to destroy illegally constructed dwellings and forcibly evict their inhabitants, and discontent with the government's social and economic policies. The demonstrations began in Shiraz on 15 April 1992 and were reportedly followed by at least 200 arrests after violent demonstrations in Arak at the end of May.

On 1 June 1992 the Head of the Judiciary, Ayatollah Mohammad Yazdi, was quoted by Reuters as saying that a number of experienced judges had been assigned special briefs to deal with the perpetrators of the Mashhad disturbances. The Khorasan provincial governor, Ali Jannati, was reported to have said that the interrogation of more than 300 people detained indicated the involvement of "foreigners and agents of arrogance",

Other reports said that officials described those arrested in the Mashhad riots as "insurgents" and "corrupt on earth" and that they would be tried by the Islamic Revolutionary Courts.

On 10 June 1992, less than two weeks after their arrest, Tehran radio announced the execution of four people arrested in Mashhad in connection with the riots. They were convicted of various charges which included "creating terror", the use of firearms, setting fire to government buildings and burning books which included the Qur'an. Tehran radio added that a number of people had been sentenced to long-term imprisonment and flogging, for their part in the riots, while a number were yet to be tried. A day later IRNA announced that four people had been executed and five others sentenced to death for their part in the 15 April riots in Shiraz. Unconfirmed reports indicate that the true number of executions may be considerably higher.

Amnesty International opposes the detention of political prisoners following unfair trials, worldwide. The organization opposes the death penalty and is all the more concerned if a death penalty is imposed following procedures which are not consistent with internationally recognized standards of fairness.



Amnesty International believes that an extensive review of trial procedures for political prisoners is long overdue. The urgency is all the greater when so many unfair trials continue to result in death.<sup>10</sup>

Amnesty International calls on the Government of the Islamic Republic of Iran to introduce safeguards which guarantee the right to a fair trial, in law and practice, in accordance with Articles 6, 14 and 15 of the ICCPR to which the Islamic Republic of Iran is a state party.

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<sup>10</sup>According to Amnesty International's records, at least 775 people were executed in Iran in 1991.