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HUMAN RIGHTS IN IRAN

TESTIMONY ON BEHALF OF AMNESTY INTERNATIONAL
BY

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BEFORE THE
SUBCOMMITTEE ON
INTERNATIONAL ORGANIZATIONS
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
UNITED STATES CONGRESS

28 February 1978
AI Index: MDE 13/01/78

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Mr. Chairman, Distinguished Members of the Sub-committee,

It is a pleasure to be back in Washington to testify again before this Sub-committee and as a citizen of a foreign country I regard it as an especial privilege.

In April 1977 I was asked by Amnesty International to travel to Tehran to observe a trial which was due to be held before the Military Tribunal in that city. The defendants in the trial were eleven persons who had been charged with anti-state activities. I should like to refer briefly to these proceedings and then turn to a short examination of certain provisions of Iranian law.

It was alleged that the defendants in the case had been involved in terrorist activity and had propounded Marxist ideology. They had allegedly been "attempting to support atheism, weaken national values and mislead..." others into forming organizations aimed at armed revolution. The prosecution did not contend that the eleven had used violence but merely that they were part of a group which had done so.

It was alleged that the defendants had maintained contact with individuals outside Iran who shared "identical terrorist views". It was further alleged that a number of the defendants had undergone subversive "training" in various parts of the world: locations mentioned in court were Cuba, Nankin in China, the University of California, Berkeley and the University of Chicago.

The trial was the subject of a documentary film and cameras were evident throughout the proceedings. The defendants pleaded guilty and lengthy confessions were read.

I was given the opportunity to speak with the eleven defendants and put to them a number of questions. The interview was conducted in the presence of officials, guards, two other observers, and members of the foreign press. I was only permitted to speak with the defendants collectively. It had been an official of the Ministry of Information to whom I had addressed my request for this meeting and it was he who informed me that my request had been granted. Defence counsel were not present.

During the course of the interview, the defendants were forbidden to respond to my request for information on the length of their confessions and the amount of time it had taken them to commit them to paper. I asked this question after the defendants had affirmed that they had been well treated and had made their confessions because the authorities knew of their activities. I was informed by an official present that my question was "not in the national interest".

As you are no doubt aware, Mr. Chairman, allegations have been made against the Iranian authorities that confessions are often extracted under duress. This refusal to allow the defendants to answer my question precluded investigation as to whether the process of writing the confessions had been uninterrupted and voluntary.

Mr. Chairman, Amnesty International has taken note of the declaration deposited by the Imperial government of Iran on 8 February 1978 with the Secretary General of the United Nations in which it declared its intention of complying with the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and to implement through legislation and other effective measures, the provisions of this Declaration.

Amnesty International welcomes this reiteration of Iran's commitment to this United Nations Declaration. It hopes that in accordance with

General Assembly resolution 32/64, maximum publicity will be given to Iran's unilateral declaration within Iran itself. It further trusts that the provisions of articles 8,9,10, 11 and 12 of the Declaration Against Torture will be respected so that impartial investigations of torture will be conducted, redress and compensation will be available where necessary and statements extracted under torture will be inadmissible as evidence in legal proceedings.

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I stayed in Tehran for a period of eight days and as well as observing the case was pleased to be able to speak with the Chairman of the Iranian Bar Association and the Military Prosecutor.

On my return to the U.K., Amnesty International requested the Imperial Iranian Embassy in London for an English translation of the Code of Military Procedures. This is the body of procedural law which governs the trial of persons charged with offences over which the Military Tribunal has jurisdiction. In response to this request a number of articles of law, and the later amendments to the Code, were given to Amnesty International in translation. It is these translations with which I have worked.

On 10 August 1977 amendments were made to the Code. Those are now in force and I should like, Mr. Chairman, to concern myself predominantly with this legislation and explain the reasons for which Amnesty International is compelled to conclude that the current state of the law in Iran does not in practice represent improvement in the human rights situation in that country. In point of fact regulations promulgated as recently as December 1977 show that this concern remains valid.

On 1 November 1977 a memorandum was submitted by Amnesty International to His Imperial Majesty, the Shahanshah of Iran. This memorandum expressed the concern that trial procedures before the Military Tribunal were such as to deny defendants any possibility of a fair trial. The document appears as an appendix to my testimony. I respectfully request that its text and that of a short update be read into the record of these hearings.

Mr. Chairman, I should like to make reference to the main points contained in the memorandum. Amnesty International is concerned that the law provides no institutional or procedural distinction between those who arrest and those whó act as Examining Magistrate. Taken with the rules governing the trial itself, the result is that the legal system has effectively abdicated all its judicial functions with regard to the determination of fact which may arise in a case.

It is one of the prime functions of an examining magistrate to ensure that prosecutions with no prima facie case against the defendant are not committed for trial: effectively there is no such guarantee in Iran. A chronology of any individual case will illustrate the point:

a) SAVAK is entrusted by law with the function of "obtaining and collecting items of information required for maintenance of national security". Information is therefore accumulated and placed on file. SAVAK is also entrusted with the function of Examining Magistrate, normally an impartial judicial officer.

b) If an individual, information on whom exists on file, is arrested on the instructions of the SAVAK, agents assigned to the case will naturally have available to them the information accumulated in (a) above. This information will be used during questioning by SAVAK as well as during the normal procedure whereby a case is formulated by the Examining Magistrate against a given individual. Evidence of this practice is contained in footnotes 2 and 3 of the memorandum.

c) Any information which is elicited during questioning is placed on file by those responsible for the interrogation. Thereafter the file is sent to a committee, the function of which is to decide the course of action which will then be pursued. It is thought that this committee, known as the "Joint Committee" is composed of representatives of SAVAK, the municipal police and the national police.

d) After its deliberations, the Examining Magistrate, SAVAK, now places on formal record all that the committee decided. Thereafter the results of the SAVAK interrogation constitute the "evidence" which appears in the file and which, as I shall describe, is later passed to the court of trial as being the result of a preliminary judicial investigation. But this has happened without any judicial inquiry and without any testing according to due process.

Further, the detainee remains incommunicado during this entire procedure and has no right to consult legal counsel during a period when there is no limit on the time for which he may be detained. This procedure remains totally unchanged by the Amendments.

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In April 1977 I was informed in Tehran by members of the Iranian legal profession that it is the practice in all cases for the Military Tribunal to consider whether the preliminary investigation, that is the SAVAK interrogation, has been adequately completed. This procedure is provided for in law and is dealt with in the memorandum.

Two alarming consequences present themselves:

1. It means that the trier of fact always advises the prosecution on whether their case is adequate and

2. It means that the trier of fact is aware of all the facts in the case before it comes to court.

Such procedures serve immediately to prejudice the impartiality of the Military Tribunal at the trial stage. The fact that the judges are already aware of and have prejudged the contents of the file, which is the "evidence" in the case, is borne out by an examination of the practice according to which the case is conducted at the trial itself.

One of the more striking deficiencies of the procedure is that the prosecution is never required to prove its case. This is a direct result of total reliance being placed by the court upon the file which is prepared by SAVAK. The relevant legal provision is Article 189. This provides that witnesses should be summoned to court at least one hour before the hearing, but that if the court feels their presence is unnecessary it may treat as evidence any statements which they may have made during the preliminary investigation and which appear on the file. Amnesty International is not aware of any case before the Military Tribunal where witnesses have been called and where the defence is afforded a chance to cross-examine them. Thus the procedure may be summarized in the following manner:

1. No witnesses for the prosecution are called; the material in the file is accepted by the court without proof.

2. As a result of 1. the defence are unable to cross-examine those who made statements appearing in the file. It should be noted that the defence was not present at the proceedings of the Examining Magistrate either.

3. The defence are not permitted to call witnesses.

4. As a result of 1,2 and 3 nothing is put to proof. The trial proceedings consist merely of speeches.

5. As a further result, it appears that procedure is the same in all cases irrespective of whether there is a plea of guilty or not- guilty. I was informed in Tehran that in the latter, the confession, without which no case seems to come before the court, is shown to be in the defendant's handwriting. This is the only "proof" undertaken.

6. The defence is incapable of overcoming this de facto presumption of guilt: Amnesty International knows of no acquittals by the Military Tribunal.

Mr Chairman,I would like to turn to the inadequacy of facilities which are afforded the defence to prepare their case.

1. An accused person is denied all legal representation and advice whatsoever from the time of his arrest, throughout interrogation and during the period when the Examining Magistrate exercises his functions. The effect of Article 181 of the Code is that legal representation is permitted only at the time the case is transferred to the court of trial.

2. Whereas previously only military counsel could appear before the Tribunal,and defendants had no freedom to choose their own representation, now by virtue of the amendments civilian counsel may appear before the Tribunal, but by regulations promulgated in December 1977, his "competence" will have to be "endorsed by the authorities concerned". Such a procedure is not compatible with a defendant's freedom to choose his own counsel. Iranian lawyers are reported in the English newspaper The Guardian of 20 December 1977 as being concerned that "endorsement" will depend on political criteria.

3. The regulations provide that the "representation powers" of defence counsel "cease when the Tribunal delivers its verdict". If the effect of this provision is that civilian lawyers will be unable to pursue appeal procedures without further endorsement by the authorities, it presents a situation which is entirely unsatisfactory. Moreover, Amnesty International is most concerned that the new provision should not result in a denial of legal advice and representation post-conviction. Denial of access to a lawyer at this stage would represent a continuance of one of the most fundamentally unacceptable practices in Iranian procedure.

4. Defence counsel is allowed only "up to fifteen days" to study the file at the bureau of the court depending on "sufficiency of time". The defence is not permitted its own copy of the file.

5. Article 186 limits a lawyer's freedom to communicate freely with his client to the time "during the course of the hearing". Such a restriction is unacceptable.

6. The new regulations provide that a civilian lawyer is obliged to take on two assigned cases without remuneration for every client whom he represents at the client's request. Thus, whereas the regulations purport to allow a defendant a free choice of lawyer, the lawyer, if he accepts the case, is bound to appear for two other persons as required by the Tribunal. This represents a gross infringement on the independence of the legal profession; it further constitutes unacceptable interference with the process of seeking one's own legal representation.

7. That part of Article 184 which reads "Should the accused or his counsel ... consider the investigation incomplete, they shall give notification to the bureau" ... (of the court) has been applied so as to preclude the defence from calling evidence at trial. It means that if the defendant seeks to argue, for example, that witnesses favourable to the defence have not been contacted, as an impartial examining magistrate is bound to do, and as Article 157 in fact requires, the only course open to the defence is the inadequate one of notifying the bureau. Members of the Iranian legal profession informed me in Tehran that subject to the provisions of Article 187, the defence may only make an objection to the file in court if it has informed the bureau in writing of its wish to do so. Once the substance of the objection has been included in the file, defence witnesses can be excluded, as may those for the prosecution, by an exercise of the court's discretion under Article 189.

Two further points of law remain to be discussed:

a) The Amendment to Article 164

This amendment provides that the accused shall be questioned within twenty-four hours of being brought before the examining

magistrate. At this point a decision as to bail or custody shall be taken by him.

At no stage during the bail hearing is the accused person entitled to legal representation; at no stage is there any requirement that the ruling should be publicly announced; and in no place is there any provision in the amendment which could be relied upon by the accused to ensure that he is given a hearing on the issue of bail or custody within a reasonable time of his arrest. Moreover the decision is taken by SAVAK. The amendment does not purport to do anything other than place a time limit of twenty-four hours within which a decision on bail must be taken after the detainee has been physically brought before the Examining Magistrate. It is no safeguard whatever against arbitrary detention.

Note 1 of the amendment which states in effect that if the Magistrate sets an "inappropriate bail" he shall be liable to disciplinary action, yet again enshrines in the law a provision which removes from the Magistrate the discretion to come to an impartial judicial decision. The Magistrate, a SAVAK officer, shall be liable to discipline, presumably by his superiors, if his decision on bail is considered to be inappropriate. Such a disciplinary provision can hardly be seen as an improvement to any legal system.

b) The Amendment to Article 192

The original text of this Article provided that the proceedings of the Military Tribunal should be public unless "national order or interests" dictate otherwise. The new text provides that "Military Tribunals shall always hold public sessions unless, in exceptional cases where a public session (is) deemed to be against the public order, national interest or against accepted moral standards". The textual difference is apparent.

(d) Further, whereas previously the law provided that the court had no power to refuse a prosecution application that the matter be heard in secret, the discretion now rests with the court.

Between 1972 and 1977 no proceedings before the Military Tribunal were attended by observers from abroad and it is thought that all such trials during this period were held in camera. In 1977 I attended the first "open" trial for five years. Despite television coverage in Tehran, the court room was approximately one-third full. No public sessions of the Military Tribunal since that date have come to the knowledge of Amnesty International.

Finally I should like to refer to three matters not directly connected with the state of Iranian law.

First, on 9 February 1978 the US Department of State in its human rights report on Iran in accordance with section 502B of the Foreign Assistance Act, as amended, referred to ... "Amnesty's criticism of human rights conditions in Iran, particularly its allegation that there were 100,000 political prisoners ".... Amnesty International has never given its own estimate of the number of political prisoners in Iran because it has not felt able to do so with any accuracy. Figures given in official AI publications on Iran are always clearly attributed to either official Iranian sources, foreign journalists or Iranian exile groups. The Department of State had been informed of this fact.

Second, in addition to Amnesty International's continued concern that persons arraigned before the Military Tribunal are not receiving fair trials, it is disturbed by recent reports which suggest that freedom of expression and association continue to be denied.

In November 1977 peaceful demonstrations and meetings attended by students, writers, academics and people formerly engaged in political life. were broken up by police or individuals in civilian dress reportedly armed with

wooden clubs, brass knuckles and chains . An eyewitness account was published in the International Herald Tribune of 23 November 1977. I ask, Mr Chairman, that the text of that article, Appendix 3 to this testimony, be read into the record of the hearings.

In January 1978 demonstrators in the city of Qom were fired upon by police with submachine guns and according to reports received by Amnesty International from Iran, which have been corroborated by foreign journalists, at least 70 persons were killed.

Amnesty International has also received reports that lawyers, intellectuals and some formerly active politicians who have signed open letters addressed to the Shah and the Prime Minister, calling for the observation of the principles of the Constitution and the Universal Declaration of Human Rights, have suffered harassment of various kinds, including frequent interrogation by the authorities. A report from Tehran in the English newspaper The Guardian on 28 November 1977 stated that, "Lawyers are also under renewed pressure. The 143 who signed an open letter last month have been reportedly black-listed in a circular sent last week to all Government agencies."

Third, Mr William Butler, in his testimony to this subcommittee on 26 October 1977, associated Amnesty International with his statement that: " ... we are not aware of any case of torture in any Iranian situation for a period of at least the last 10 or 11 months". In fact, Amnesty has continued to receive allegations that political prisoners in Iran are being tortured. It has not been able to investigate these allegations, however, and so is in no position to comment on their validity.

In conclusion, and as mentioned earlier, Amnesty International has taken note of the declaration recently deposited by the Imperial Government of Iran with the Secretary General of the United Nations. It is bound to point out, however, that the prevailing procedures of the Military Tribunal, by which it will not hear formal evidence that a confession has been improperly extracted, are such that unless and until it becomes apparent that a defendant is given every opportunity to adduce such evidence

and cross-examine prosecution witnesses to this effect, denials of ill-treatment during interrogation may not command a great deal of respect.

Amnesty International is further bound to point out that the current state of the Code of Military Procedures is such that Iran has been and continues to be in breach of the following international laws and standards:

(a) The Universal Declaration of Human Rights for which Iran voted in the General Assembly in 1948:
Articles 10 and 11/1.

(b) The International Covenant on Civil and Political Rights to which Iran is a party and which entered into force on 23 March 1976:
Articles 9/2; 9/3; 9/4; 14/1; 14/2 and 14/3/a; 14/3/b; 14/3/c; 14/3/d; 14/3/e.

(c) The Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel Inhuman or Degrading Treatment or Punishment adopted unanimously by United Nations General Assembly resolution 3452 (XXX) of 9 December 1975, and with which Iran has indicated in a note of 8 February 1978 it is willing to comply:
Articles 8 and 12.

Mr Chairman, Thank You.

Appendix 1

THE PROCEDURE GOVERNING CASES COMING WITHIN THE JURISDICTION OF THE MILITARY TRIBUNAL IN IRAN AS OF 1 NOVEMBER 1977

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ABSTRACT

This document contains an analysis of the procedure governing those cases which fall within the jurisdiction of the Iranian Military Tribunal.

The offences which are heard by this Tribunal include, inter alia, political offences which have been allegedly committed by civilians. Some of these offences carry the death penalty.

The following are among the major areas of concern to Amnesty International

1. ARREST: no legal advice is permitted.
2. LENGTHY PRE-TRIAL DETENTION: no legal advice is permitted.
3. PRELIMINARY INVESTIGATION BY THE EXAMINING MAGISTRATE: These proceedings are conducted by the SAVAK and are held in secret. No legal advice or representation is permitted.
4. PREPARATION OF THE DEFENCE CASE: The law does not provide that defence counsel should be able freely to meet their clients before trial. The defence is allowed only 15 days to study the file at the bureau of the court depending on "sufficiency of time" but is not permitted its own copy of the file. There is no procedure by virtue of which defence counsel can of their own motion appear before the Tribunal to make preliminary applications.
5. AT TRIAL: The court does not require the prosecution to call witnesses and the defence is unable to cross-examine persons who have made statements to SAVAK, and on whose accounts the prosecution relies without proof. Moreover the defence is not permitted to call its own witnesses or adduce formal evidence of mistreatment during the period of pre-trial detention.
6. APPEAL PROCEDURES: are unsatisfactory.

The above matters remain unaltered by recent amendments to the law. As a result Iran has been and continues to be in breach of the following international laws and standards:

(a) THE UNIVERSAL DECLARATION OF HUMAN RIGHTS for which Iran voted in the General Assembly in 1948.
Articles 10 and 11/1

(b) THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS to which Iran is a party and which entered into force on 23 March 1976.
Articles 9/2; 9/3; 9/4; 14/1; 14/2 and 14/3/a; 14/3/b; 14/3/c; 14/3/d; 14/3/e.

A. INTRODUCTION

In the past Amnesty International has voiced criticism of the procedure adopted in the system of Military Justice in Iran. This criticism has been directed, inter alia, towards the following matters:

Pre-Trial

(a) The functions of the examining magistrate are exercised by an official of the National Information and Security Organization (SAVAK) pursuant to Article 3. National Information and Security Organization Act 1336 (1957). The effect of this legal provision is that the pre-trial investigation conducted by the magistrate is not of an independent judicial character.

(b) Lengthy detention of suspects without charge or trial.

During Trial

(c) The defence is given no chance to cross-examine prosecution witnesses. This follows from the fact that such witnesses are not called by the prosecution to give evidence in person and the defence has no right to demand that they be called.

(d) The defence is not permitted to call its own witnesses.

(e) The defence is not allowed to adduce formal evidence that a confession has been improperly obtained.

(f) The refusal of the court to order the production by the prosecutor of exhibits, such as seized books or weaponry, which it is alleged are incriminating.

(g) The fact that the burden of proof is such that it is effectively for the defence to prove innocence rather than the prosecution to prove guilt.

(h) The fact that trials have been held in camera.

(i) The fact that accused persons are denied representation by counsel of their own choice and have been represented in court by military officers.

(j) That accused persons are denied any legal representation, or the benefit of legal advice, during the preliminary examination.

The conclusion has therefore been drawn that legal procedures are not such as to provide a fair and adequate chance for the accused or his lawyer to challenge the prosecution or present the case for the defence.

Amnesty International believes that the above have reflected a deficiency in procedure enshrined, inter alia, in Articles 164, 172, 173, 174, 175, 182, 184, 189 and 192 of the Code of Military Procedures.

Amnesty International is extremely concerned that cases have been conducted in a manner which does not allow for accurate or impartial examination of fact or independent judicial pronouncement thereon. It is our belief that a fair trial has not been afforded to those persons charged with offences over which the military tribunal has jurisdiction.

Recent Amendments to the Code

Amnesty International has noted that certain articles of the code were amended on 10 August 1977. The amendments as adopted make, inter alia, the following changes:

(1) Article 164

An accused person should have a bail hearing within 24 hours of his being brought before the Examining Magistrate. There is still no provision for legal counsel at this stage nor does the amendment govern how long an accused may be detained before he is brought before a magistrate. Moreover, the accused remains unable to take proceedings before a court to test the lawfulness of detention. In the event of a magistrate setting an "inappropriate bail", he is liable to "disciplinary action". He is therefore not independent.

(2) Article 182

An accused person may be represented by civilian defence counsel. It is not clear whether past practice will continue and an accused will have to choose his counsel from an officially approved list. Defence Counsel should not be prosecuted "in connection with the discharge" of their duties.

(3) Article 184

Whereas previously defence counsel were only allowed to study the file of the case for "up to seven days" this time limit is extended to "up to 15 days". Defence counsel remain under the following disabilities:

(a) They may not have their own copy of the file;

(b) They may only study the file "at the Bureau of the Court";

(c) The time limit is entirely at the discretion of the President of the Court and he shall consider the "sufficiency of time".

(d) There is no provision whereby the defence may ask for further adjournment.

(4) Article 192

Whereas previously the military tribunal was bound to have a hearing in camera if the prosecutor so requested on the grounds of "national order and interests", discretion to hold secret trials is now exercised "in exceptional cases" by the court if the prosecutor applies on the grounds of "public order, national interest or...accepted moral standards".

(5) Article 203

This article affirms that judges should reach decisions "in complete liberty and independence".
Amnesty International remains of the opinion that the complete absence of any requirement that facts in issue be proved in court does not allow for accurate, impartial or informed rulings by the judges.

As a result of the foregoing lack of due process of law, Iran has been and continues to be in breach of the following international standards and obligations:

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, for which Iran voted in the General Assembly in 1948.

Article 10

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 charge against him.

Article 11/1

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS to which Iran is a party and which entered into force on 23 March 1976:

Article 9/2

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Article 9/3

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Article 9/4

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a

court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Article 14/1

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Article 14/2

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Article 14/3

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

(a) To be informed promptly and in detail in a language

which he understands of the nature and cause of the charge against him;

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

(c) To be tried without undue delay;

(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, 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;

(e) 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 ...

B. AN EXAMINATION OF PRE-TRIAL AND TRIAL PROCEDURE

Amnesty International finds that the trial of civilian defendants by military tribunals is a disturbing phenomenon considering that justice is generally best secured by civilian courts composed of civilian judges, civilian jurors, if juries are to be empanelled, and civilian counsel for both prosecution and defence.

Without prejudice to the above, this section seeks to examine in detail the trial procedures adopted in the Military system. Merely because recommendations are made for the improvement of this system, it does not follow that Amnesty International is of the opinion that military trial for civilian defendants, whatever the safeguards, is ever satisfactory.

(a) The Preliminary Proceedings and the Function of the Examining Magistrate

A representative of Amnesty International [1], who was in Tehran in April 1977 to observe a trial of 11 persons charged with offences under Article 310 of the Military Penal Code, was informed that the function of the Examining Magistrate in Iran is meant to be similar to that of Juge d'Instruction.

In those legal systems from which that of Iran has drawn inspiration, the duty of the Juge d'Instruction is to make a thorough investigation of the criminal complaint and, if it is substantiated, to prepare a case for trial. As a judicial officer it is not his function to act in the interest of either prosecution or defence but rather to pursue the interest of the State in impartially examining the facts behind a criminal charge and arriving at a preliminary judicial decision on whether a prima facie case exists.

Being a judicial officer he may exercise all the relevant compulsive powers of the State to further the investigation and, although he does not necessarily perform all the acts of investigation himself, he exercises full authority over police and administrative personnel involved in the case.

Thus, in short, his function is twofold; first, the procedure is designed to ensure that unsubstantiated prosecutions are not committed for trial, and second, that in those cases where it is appropriate that a full trial be held, to forward relevant material to the court which will hear the matter.

Article 157 of the code places a duty on the Examining Magistrate to "conduct his investigation with impartiality and in his search for evidence .... make no distinction between such evidence, proof and/or circumstances which might favour or disfavour the accused". It is the belief of Amnesty International that current procedures in Iran are such that the Examining Magistrate is in no position to fulfill such functions in an impartial way and that the legal system of Iran lacks

elementary safeguards which exist in many other jurisdictions, viz:

1. The SAVAK acts as Examining Magistrate;
2. The procedure of preliminary investigation is held in secret;
3. Defense counsel are denied access during these proceedings and therefore prosecution evidence is not subjected to scrutiny by legal representatives of the detainee;
4. The preliminary proceedings may take place after lengthy periods of detention so that any confession made by a defendant may not be truly voluntary or informed.

Amnesty International respectfully requests information showing whether the SAVAK official who sits as Examining Magistrate is expected to hold separate investigations to those of the SAVAK officials who arrest and question a detainee, or whether his function is purely to formally process the result of the investigation undertaken by his colleagues.

If the law is being applied so that there is no institutional or procedural distinction between those who arrest and those who act as Juge d'Instruction, it means that with the type of procedure adopted by the Military Tribunal (see below) the Iranian legal system has effectively abdicated all its judicial functions with regard to the determination of facts which may arise in a case. If, however, there is a distinction in procedure and responsibility between SAVAK as intelligence agency and SAVAK as Examining Magistrate, Amnesty International would like to receive the exact rules of evidence and code of conduct for this latter office.

(b) Procedure between the Close of Investigation by the Examining Magistrate and the Opening of the Trial

The articles of the code which govern this stage of the proceedings are, inter alia, 172, 173, 174 and 175. These articles are reproduced here for the sake of clarity, unofficial translations having been gratefully received from the Imperial Iranian Embassy in London.

Article 172

Upon completion of investigation and inquiry, the Examining Magistrate shall ask the accused to make, as a final defence, any additional statement in support of his innocence. This being done, the Examining Magistrate shall close his investigations and refer the case to the Prosecuting Officer, expressing his own views thereon.
If the Examining Magistrate should decide that the defendant has not committed a criminal act subject to prosecution, he shall explicitly say so in his award. Conversely, should he base his opinion on the prosecution of the accused he shall assert the nature of the crime and cite, in conclusion of his award, such provisions of the law that he believes to be applicable to the case.

Article 173

The Prosecuting attorney, after receipt of the file (of the case) and the award of the Examining Magistrate, is duty bound to study it at the soonest possible time. In case he finds no default in the investigations and considers the file as complete, he shall give his opinion, either in approval or disapproval, on the award (issued by the Examing Magistrate) and report the matter to the Commanding Officer who has issued the original instructions for investigation of the case.

Article 174

In case the investigations and inquiries are, in the opinion of the Prosecuting Attorney, incomplete, he may, before making a definite pronouncement on the award, ask the Examining Magistrate to complete the investigations. Such being the case he shall have to specify clearly those areas where further investigations are required, so that the Examining Magistrate can act accordingly.

Article 175

In the event of disagreement the Examining Magistrate and the Prosecuting Attorney (be it Prosecutor of Military Tribunal or Army Prosecutor) with respect to prosecution, non-prosecution, the competence of the court, or the nature of the crime, each of the two sides shall present his arguments, based on legal evidence and documents, in writing and shall refer the file to the Military Tribunal which had been designated to consider the substance of the case. In such instances the Military Tribunal, in a procedural session which shall be held without the presence of the Prosecutor or the Examining Magistrate, shall examine the arguments and shall pronounce itself on procedural aspects of the case. Such verdict shall be deemed final and not subject to an appeal.

Article 176, a translation of which was undertaken by Amnesty International, provides in pertinent part that in a case falling within the provisions of Article 175, the Court may summon the prosecutor or accused in order that they may assist the Court. If the Court forms the opinion that the preliminary investigation is insufficient, it may make an order that it be resumed.

Amnesty International is concerned that the procedure contained in the above articles of law is of itself unsatisfactory. Thus, even if the SAVAK was not charged with exercising the functions of Examining Magistrate, we feel that the Code would still have to be amended to ensure that an authoritative and impartial judicial decision at the preliminary stage could be reached by him.

It is, therefore, Amnesty International's belief that the functin of the SAVAK in performing the duties of Examining Magistrate serves to compound a deficiency in procedure. Not only is Amnesty International of the opinion that the SAVAK official does not act as an impartial judicial officer but furthermore that in law the Examining Magistrate is neither

independent nor fully in charge of the investigation. The following issues arise:

(a) Articles 172, 173 and 174 when read together require that the Examining Magistrate refer the case to the Prosecuting Attorney for "approval or disapproval". If the Prosecuting Attorney feels the investigation is incomplete he should specify in what respect so that the Examining Magistrate can "act accordingly".
Amnesty International does not seek to argue that an independent Examining Magistrate should never have to obtain the opinion, or even in limited circumstances, the approval of the Prosecutor. Indeed in other relevant legal systems there is often express provision that the Juge d'Instruction must keep the Prosecutor informed of what is being done and give him access to the file at any time. Although legal systems may differ, it is true to say that in general terms there is no secrecy in the investigation so far as the Prosecutor is concerned.
A satisfactory set of procedural norms therefore would reserve the right of the Prosecutor to ensure that nothing relevant is excluded in the formation of the case. He could recommend that the Examining Magistrate undertake certain acts in the interest of the Prosecution. However, although he might recommend such acts, the crucial point is that the Examining Magistrate must have complete liberty to accept or reject the recommendation.

(b) Article 175, in saying that "in the event of disagreement [between] the Examining Magistrate and the Prosecuting Attorney [they] shall present .... arguments based on legal evidence and documents in writing and shall refer the file to the Military Tribunal which had been designated to consider the substance of the case" seems to be placing the Examining Magistrate and Prosecutor as two parties to a dispute. Apart from the fact that it is Amnesty

International's belief that in the circumstances the Examining Magistrate and the Prosecutor are unlikely to disagree on such fundamental aspects of the case as whether or not the prosecutor should proceed, the procedural position itself is far from satisfactory. Amnesty International does not argue that the Prosecutor should be without the right of appeal from any decision taken by the Examining Magistrate. We merely seek to emphasise that although the Examining Magistrate, the SAVAK and the Prosecutor must all be seen to be separate in function there should be no doubt that it is the Examining Magistrate who possesses plenary powers over the investigation. To this end we respectfully suggest that the code be amended so that it is clearly stated that at the moment when the Examining Magistrate becomes seized of the matter, he takes charge of the investigation and the authority of the SAVAK immediately lapses. This also requires that the position of Examining Magistrate is not filled by a SAVAK official.

(c) Thorough and adequate preparation of cases for trial by an Examining Magistrate can only be possible if the powers available to him are exercised not only with complete independence but also with complete impartiality. If such impartiality is not present then the inequality between Prosecutor and defence at this stage of the proceedings, and that governing the process of transfer to the court of trial, becomes unacceptable.
The Prosecutor has access to documents at any time; he may participate in the investigation and he has numerous personnel to deploy in order that the investigation may proceed along lines which he desires. At the same stage in the proceedings the accused has no right to communicate with a lawyer; a defence lawyer has no right to be present at the examination and the accused will most probably be under the pressures of being in detention.

> Furthermore, the examination is in camera and an accused person, without representation, finds himself as the subject of proceedings where his elementary rights are not protected.

Amnesty International seeks legal procedures which would give an accused person such rights in law as would guarantee a fair preliminary investigation.

(c) Deficiencies in Procedure at the Court of Trial

1. The prosecution case

One of the most striking deficiencies of procedure in the Iranian military tribunal is that the prosecution need not actually prove its allegations. The situation is a direct result of undue reliance being placed by the court upon the file which is prepared by SAVAK, in its capacity, inter alia, of Examining Magistrate, the relevant legal provision being Article 189. This provides that witnesses should be summoned to court at least one hour before the hearing but that if the court feels their presence is unnecessary it may treat as evidence any statements which they may have made during the preliminary investigation and which appear on the file.

Amnesty International is not aware of any case where witnesses have been called and where the defence is afforded a chance to cross-examine.

It is necessary at this stage to trace the chronology of the file in question from its birth as a descendant in part of the general SAVAK files to its status as the document upon which the court relies in reaching its final decision. Without so doing the full impact of the lack of proof is not apparent.

(a) Pursuant to article 2 of the Establishment of Security Organization

Act, 1336 (1957), the SAVAK is entrusted, inter alia, with the function of "obtaining and collecting items of information required for maintenance of national security". Information is therefore accumulated and placed on file.

(b) If an individual, information on whom exists on file, is arrested on the instructions of the SAVAK, agents assigned to the case will naturally have available to them the information accumulated in (a) above. (2) This information will be used during questioning by SAVAK as well as during the normal procedure whereby a case is formulated by the Examining Magistrate against a given individual. (3)

(c) Any information which is elicited during questioning is placed on file by those responsible for the interrogation. Thereafter the file is sent to a committee, the function of which is to decide the course of action which should then be pursued. It is thought that this committee, known as the "Joint Committee" is composed of representatives of SAVAK, the municipal police and the national police. (4)

(d) It is not clear to whom the file is next forwarded. Amnesty International has received information, however, that the function of the Examining Magistrate is merely to place on formal record all that has already been decided by the Committee as a result of the interrogation. This is hardly surprising as, as noted above, the Examining Magistrate's position as a SAVAK official removes any independence between himself and the authorities seeking the prosecution. They are professional colleagues so to speak, and in such capacity the Examining Magistrate may not hold the most senior rank of the SAVAK officials engaged on the case.
If, in practice, this constitutes the function of the Examining Magistrate, this means that the result of the

questioning which has already taken place constitutes the "evidence" which appears on the file and which, as will be seen below, is later passed to the court as being the result of the preliminary investigation.
If the Examining Magistrate merely ratifies the results of the interrogation conducted by his SAVAK colleagues and places them on formal record it follows that no judicial inquiry takes place at all. Moreover, it means that evidence which, as will be seen later, is not proved in Court by the prosecution nor subjected to cross-examination by the defence has never been tested by any legal procedure at the preliminary stage.

(e) After the Examining Magistrate has completed his work he is obliged by Article 172 to "close his investigations and refer the case to the prosecuting officer". He then adds to the file by "expressing his own views thereon". In the case of a decision to prosecute, any relevant law should also be cited.

(f) Article 173 provides that as soon as the Military prosecutor receives the file he should study it with a view to "approval or disapproval". The Military Prosecutor then makes a "definite pronouncement" thereon (Article 174). In the French system, for example, the Procureur de la Republique appends his views and it it then for the Juge d'Instruction to decide whether or not a valid charge can be made. The Iranian system seems to be a reversal of this and a consequent removal of authority from the Examining Magistrate.

(g) Article 175 is the provision which governs the transfer of the file from the stage of investigation to that where it is heard by the military tribunal. It should be recalled that the Article provides that in the event of disagreement between the Examining Magistrate and

the Prosecuting attorney on the question of, inter alia, whether or not the prosecution should continue, both the Examining Magistrate and the prosecuting attorney present argument in writing and refer the file to the Military Tribunal which has been designated to consider the substance of the case. The Military Tribunal then holds a procedural session and pronounces on the "procedural aspects of the Case". This provision gives much cause for concern.
Although the law purports merely to be giving the court an interlocutory jurisdiction to "pronounce itself on the procedural aspects of the case", in reality the court is having to decide, inter alia, on "prosecution or non-prosecution". Thus the Military Tribunal, which one would think would later hear the case on its merits, is considering a substantive issue of policy as well as law; viz: whether or not the prosecution needs further material before the case is brought to trial.
Amnesty International has received information, moreover, that the court will go further and will itself exercise the discretion placed on the prosecuting attorney by Article 174 to "specify clearly those areas where further investigations are required". (See also the provisions of Article 187 on page ~~22~~ 37).
In April 1977, at the time of his visit to Tehran, Amnesty International's representative was informed that it is the practice in all cases (5) for the Military Tribunal to consider these matters. This has two alarming results:
1. It means that the trier of fact always advises the prosecution on whether their case is adequate and
2. It means that the trier of fact is aware of all the facts in the case before it comes to court.

Such a procedure is quite unacceptable as it serves immediately to prejudice the impartiality of the Military Tribunal at the trial stage. In all cases where there is a need for further

adjudication after a decision of the Examining Magistrate, the case should be referred to a body which is independent of the court of trial. In France this would be the Chambre d'accusation of the Cour d'Appel.

(h) The fact that the members of the court are already aware of the contents of the file, that is of the "evidence" in the case, is borne out by an examination of the procedure according to which the matter is heard in court. Amnesty International's representative in Tehran heard that the facts appearing below apply both to cases where there is a plea of not guilty and to those where there is a plea of guilty, only one distinction between the two being taken. This appears below.
Following on from the court's use of the file to advise on the preparation of the prosecution case, its knowledge of the "evidence", its decision as to whether the allegations are sufficient for the matter to come to trial, and if insufficient, its ability to order further investigation, it is difficult to conclude that the trial itself will meet acceptable standards of legal and judicial propriety. This is in fact the case and a trial becomes a forum where issues are neither put to proof nor properly tested; viz:

(1) No witnesses for the prosecution are called, the material in the file is relied on by the court without proof [6].

(2) As a result of (1), the defence are unable to cross-examine those who made statements appearing in the file. It should be noted that the defence was not present at the proceedings of the Examining Magistrate either [7].

(3) The defence are not permitted to call witnesses.

(4) As a result of (1), (2) and (3) nothing is put to proof. The trial proceedings consist merely of speeches.

(5) As a result of the foregoing, it seems that the actual trial procedure in the military tribunal does not differ according to whether there is a plea of guilty

or not-guilty. The only difference in procedure between the two seems, according to a lawyer involved in the case observed by AI's representative during his stay in Tehran, to be that in the latter, the confession, without which no case seems to come before the court, is shown to be in the defendant's handwriting. AI's representative was informed that this was the only "proof" undertaken. Allegations of coercion in the making of the statement are dismissed expeditiously according to Amnesty International's own information.

(6) The judges take few, if any, notes.

(7) The defence is incapable of shifting this de facto presumption of guilt.

The difference between the above and those jurisdictions where the Juge d'Instruction is properly employed for the preliminary investigation is manifest. In the latter the following procedure is adopted at the trial stage.

(1) The evidence taken at the preliminary investigation can be challenged at trial.

(2) The means by which information was gathered can be shown to have been improper.

(3) Witnesses are called to give evidence on issues of fact.

(4) Cross-examination is practiced and therefore

(5) The facts in issue are proved according to proper evidential tests.

(i) Confessions and Pleas of Guilty

Amnesty International has noted that in all the cases before the Military Tribunal of which it is aware [8], the prosecution has made reference to a confession by the accused. On occasions in the past the defendants have alleged that the confession was extracted under torture, on other occasions the accused has accepted that the confession was freely made.

The fact that cases only seem to come before the military tribunal once a confession has been obtained raises the fundamental question whether the procedural bias against the defence is such as to place pressure on an accused to acquiesce in the prosecution case.

Amnesty International knows of no acquittals by the Military Tribunal. AI further believes that defendants often feel that no purpose can be served by challenging the SAVAK version of the facts in issue.

The secrecy surrounding, and lack of defence counsel at, the investigation stage before the Examining Magistrate, the absence of any requirement that the prosecution prove their case, the inability to cross-examine on behalf of the defence, and the lack of acquittals before the military tribunal seem to combine in such a way as to place pressure on the defendant to abstain from allegations that he has been mistreated and they may also make him plead guilty.

To follow this further it is necessary to draw an analogy with a common practice known as "plea-bargaining", whereby a defendant will plead guilty to a given charge thus obviating the need for a trial on the evidence. This is done in return for the expectation of a lower sentence than if he was tried and found guilty.

Amnesty International's representative in Tehran was told that one of the reasons for which the military tribunal was given jurisdiction over civilians was the necessity for "quick harsh" treatment of those acting against the state. A necessity of avoiding the ordinary criminal courts was expressed because the backlog of cases there is such that plea-bargaining has become exceptionally common so that it is believed in Iran that offenders often get sentences which are too lenient. It is apparent that all the dangers inherent in plea-bargaining, for example that the true merits of a case might never be heard as an accused may wish to settle for a lighter sentence even if he is not guilty, are overwhelmingly present in the system of military tribunals but in a way which can only benefit the prosecution and not the defence.

This is so because the defence are totally handicapped at every stage and compliance with prosecution demands may often be the only way of mitigating a sentence.

The nature of a legal system in which a Court will never hear proper evidence that a confession has been extracted, for example under torture, is ipso facto so coercive as to cast doubt on whether anything said by an accused to those responsible for questioning is ever truly voluntary or the result of no threat.

In conclusion, unless and until it can be seen that a defendant is given every opportunity to allege that a confession has been extracted improperly and to call evidence and cross-examine prosecution witnesses to that effect, denials by the authorities of mistreatment during interrogation may not command a great deal of respect.

2. Facilities afforded the Defence

(a) Availability of Counsel and Preparation of the Defence Case.

Article 181 of the Code provides that:

"After receiving the case, the President of the Court shall have the accused brought to the court for the purpose of appointing a counsel to defend him, which counsel shall have agreed in writing to do so ...."

This provision makes the point clearly that an accused person is denied any legal representation whatsoever from the time of his arrest through the interrogation and during the period when the Examining Magistrate exercises his functions. It is only at the time that the case is formally transferred to the military tribunal that an accused is entitled to the advice of counsel.

Remembering that the time during which the interrogation and investigation takes place may be lengthy and further noting

the role of the Examining Magistrate and the facilities afforded the prosecution, it is instructive to refer to article 184.

Article 184 provides that defence counsel may have only "up to 15 days" (formerly one week) to study the file at the bureau of the court. The defence are not permitted to have their own copy of the file. The text of the Article is as follows:

Article 184:

> After the appointment and nomination of the counsel, if the accused or his counsel or both apply for respite to study the case, the President of the Court, considering the sufficiency of time, may give them up to 15 days during which the case may be studied at the bureau of the Court. Should the accused or his counsel take exception to the competence of the Court or to limitation, or consider the investigation as incomplete, they shall give notification (in writing) to the bureau to that effect within the very one week time.

It must be remembered that the material on the file, which has not yet been subjected to possible defence motions, applications arguments has at this stage been seen by the members of the court and will later be taken as conclusive evidence without any requirement of proof.

That part of Article 184 which reads "Should the accused or his counsel .... consider the investigation as incomplete, they shall give notification to the bureau ...." is revealing. It means that if the defendant seeks to argue, for example, that the investigation has not been conducted impartially by the SAVAK officials, or that witnesses upon whom the defence might, if allowed, rely to establish innocence have not been

questioned, the only course open to the defence is to notify the bureau.

In short, therefore, and this was confirmed to Amnesty International's representative in Tehran by members of the Iranian legal profession, but is subject to the provisions of Article 187 below, the defence may only make an objection to the file in court if it has informed the bureau in writing of its wish so to do. It is the understanding of Amnesty International that the duty of the bureau is to include the defence objection in the file.

According to Article 187 the court will consider such objections in private and may call upon prosecution or defence for an explanation. However, there is no right for prosecution or defence to attend.

The absence of such a right for the defence is extreme cause for concern. It results yet again in their effective exclusion from the pre-trial process despite the ability of the prosecution to object fully to the contents of the file at the investigation stage pursuant to Article 174.

For further discussion see pages ~~29~~ 44 - ~~32~~ 47

(b) Counsel appearing for the Defence

(See discussion of Article 182 of the Code on pages ~~27-29~~ 41 - 44)

(c) The Proceedings from the point of view of the Defence

The following chronology may serve to illustrate the procedural bias against the defence. It should be considered in the context of the prosecution practices dealt with above.

1. ARREST: No legal advice permitted

2. LENGTHY DETENTION: No legal advice permitted. Held incommunicado.
3. PRELIMINARY INVESTIGATION BY EXAMINING MAGISTRATE: Proceedings are secret and no legal advice or representation is permitted.
4. APPOINTMENT OF COUNSEL: Previously representation was by military officers who were not necessarily legally qualified. They were chosen from an officially approved list. Civilian counsel now to be permitted but it is unclear whether they are to be officially approved or chosen from a list.
5. PREPARATION OF DEFENCE CASE:
   (a) No provision in law that defence counsel should be able freely to meet their clients before trial
   (b) Up to 15 days (formerly 7) allowed to study file at bureau of the court depending on "sufficiency of time".
   (c) Defence not permitted their own copy of file.
   (d) No procedure by which the defence can of its own motion appear before a court to make a preliminary application.
6. AT TRIAL:
   (a) Predominantly in camera
   (b) Not permitted to cross-examine prosecution deponents (witnesses)
   (c) Not permitted to call defence witnesses.
7. ON APPEAL: There is absolutely no method of challenging in proper form either factual decisions taken at the trial or for that matter the method by which such information was accepted by the court.

The above procedures do not meet any minimum standard of due process of law. It should be noted that they may result in the death penalty being imposed.

C. RECENT AMENDMENTS TO THE CODE OF MILITARY PROCEDURES

On 15 June 1977 it was announced in Kayhan International newspaper

of Tehran that the Government had submitted a bill to Parliament which, if enacted, would make important amendments to the rules of procedure in the Military Tribunal. The provisions became effective on 10 August 1977 and Articles 164, 182, 184, 192 and 203 were amended accordingly.

(a) Article 164

The original text of this Article reads as follows:

"Whenever an accused is summoned or arrested on orders of the examining magistrate the latter shall conduct the preliminary investigations and shall issue within 24 hours an appropriate warrant, be it a warrant for the release of the accused on bail or a warrant for imprisonment of the accused."

Note: In the case of military officers the magistrate shall normally set a bail unless special considerations warrant imprisonment.

The Imperial Iranian Embassy in London has informed Amnesty International that the text as amended reads as follows:

"The accused shall be questioned within 24 hours after he is brought before the examining magistrate who shall thereupon issue an appropriate warrant be it a warrant for the release of the accused on bail or for his imprisonment. The amount of bail must be commensurate with the importance of the crime, the elimination of incriminating evidence, the record of the accused, his age, health and social status."

Note 1: Setting of inappropriate bail is an offence which shall subject the magistrate to disciplinary action.

Note 2: In the case of the military officers the magistrate shall normally set a bail unless special consideration warrant imprisonment.

The original text of this Article places a duty on the Examining Magistrate to determine within 24 hours of an arrest ordered by him whether or not the accused person should be remanded in custody or on bail. Where it was not the magistrate who ordered the arrest, as may very often be the case [9], there is no provision for any bail hearing.

At no stage during the bail hearing is the accused person entitled to legal representation. At no time is there any requirement that the ruling should be publicly announced. The bail hearing, as with all proceedings prior to trial, is held in secret.

Despite, or perhaps because of, the original text of this Article, Amnesty International has in the past received many reports of persons who were being detained for lengthy periods without formally being charged or brought to trial. This matter is of especial concern and we respectfully suggest that as a result of previous evidence of such detentions, the only proper criterion according to which the proposed amendment should be judged is whether it renders detention without trial or charge less likely to occur. Three issues arise:

1. According to the unofficial translation supplied by the Imperial Iranian Embassy in London, the proposed amendment provides that the accused person shall be questioned within 24 hours "after he has been brought before the Examining Magistrate". It does not purport to do anything other than place a time limit within which a decision on bail must be taken after the detainee has been physically brought before the Examining Magistrate.

   At no stage is there any provision in the amendment which could be relied upon by the accused to ensure

that he is given a hearing on the issue of bail or custody within a reasonable time of his arrest. (But see pages 53-54.

2. Note 1, which states in effect that if the Magistrate sets an "inappropriate bail" he shall be liable to disciplinary action, yet again enshrines in the law a provision which removes from the Magistrate the discretion to come to an impartial judicial decision. The Magistrate, a SAVAK officer, shall be liable to discipline, presumably by his superiors, if his decision on bail is considered to be inappropriate. Such a disciplinary provision cannot be seen as an improvement to the legal system, as it in fact seems to inject a measure of executive discretion into what should be a purely judicial procedure.

3. The amendments to this Article set out criteria which should be considered by the Magistrate when determining the amount of bail. As drafted, there are no criteria which purport to govern the discretion to grant bail. Thus the SAVAK retains an untrammelled discretion on this issue and there is still absent from the law any provision which could be seen to be analogous to habeas corpus.

It is with regret that Amnesty International is bound to come to the conclusion that the proposed amendment to Article 164 does nothing whatsoever to give any significant rights to a detainee.

(b) Article 182

The original text of this Article reads as follows:

"The accused may select from among qualified military men, whether still in service or retired, one or two counsels. Conditions and manner of

acting as counsel shall conform to the provisions of the regulations to be approved by the Ministry of War."

Note: In the event that the Military Counsel referred to above should be accused of any crime in connection with their brief, the charge shall be heard by the Military Tribunal.

The Imperial Iranian Embassy in London has informed Amnesty International that the text as amended reads as follows.

"The accused may choose one or two persons from among the legally qualified military personnel, whether in active service or retired, to act as his defence counsel. Civilian defendants may make their choice from among civilian defence attorneys."

Note: Defence counsel enjoys complete freedom in defending his clients before the Military Tribunals and is not liable to prosecution in connection with the discharge of such duties.

Article 183 (not subject to amendment) provides:

"Should the accused refuse or be unable to nominate his counsel the president of the court shall select and appoint one for him, in accordance with the provisions of the preceding article, from among military officers or civilians of the same rank (in the services) as such officers."

Article 182 as originally worded and Article 183 resulted in a practice whereby defendants were usually represented by retired military officers. These officers did not always possess legal qualifications.

They were selected by defendants from a short list of personnel supplied to them by the tribunal. In cases with more than one defendant, counsel could act on behalf of a number of accused persons; this happened in the trial in April 1977 when four counsel represented 11 defendants.

Representation by military officers was a manifest disadvantage to an accused person not only because it meant that his representative might not have had the training which would allow proper examination of the file, but also because it resulted in an imbalance given that the prosecutor is a lawyer (10).

The Note appearing at the bottom of the original version of Article 182 served effectively to warn military counsel that they could have been charged with, for example, anti-state activities or disciplinary offences, for actions undertaken on behalf of a client. There is a recorded instance of counsel being charged with such offences merely because they worked on a case in a manner which the authorities regarded as overly conscientious (11).

Amnesty International welcomes the amendment whereby military counsel are now required to be legally qualified and civilian defendants are now allowed to "make their choice from among civilian defence attorneys".

The amended text does not state whether defendants will be required to choose from a list of officially approved civilian lawyers. If past practice is continued whereby the choice has had to be made from such a list of named military counsel, the amendment would not provide any proper benefit to defendants as they would still be unable to secure representation of their own choice.

If the amendment means that only those defendants who are able to pay for their own civilian counsel will have the opportunity for such representation, the situation would remain far from satisfactory. Whether or not a defendant is to have the benefit of civilian counsel should not depend on means. This applies especially if the defendant

is undergoing lengthy pre-trial detention without the possibility of earning. Amnesty International hopes that the amendment will result in a situation whereby the state provides funds where necessary for independent civilian legal representation of a defendant's choice.

There is, furthermore, no reason why civilian defendants should be the sole beneficiaries of any possible improvement. Amnesty International respectfully suggests that if the object of the proposed reform is to provide a greater measure of fairness, military persons arraigned before tribunal should also have the benefit of civilian counsel if they so desire.

Amnesty International welcomes the fact that the amendment provides that defence counsel will enjoy "complete freedom" in their work and will not be liable to prosecution in connection with the representation of their clients.

(c) Article 184

The original text of this Article reads as follows:

"After the appointment and nomination of the counsel if the accused or his counsel or both apply for respite to study the case, the President of the Court, considering the sufficiency of time, may give them up to one week's time during which the case may be studied at the Bureau of the Court. Should the accused or his counsel take exception to the competence of the court or invoke statutory limitation, or consider the investigation as incomplete, they shall give notification (in writing) to the Bureau to that effect within the same time limit. (Emphasis added.)

The Imperial Iranian Embassy in London has notified Amnesty International that the text as amended will be as follows:

"After the appointment and nomination of the counsel,

if the accused or his counsel or both apply for respite to study the case, the President of the Court, considering the sufficiency of time, may give them up to 15 days time during which the case may be studied at the Bureau of the Court. Should the accused or his counsel take exception to the competence of the court or invoke statutory limitation, or consider the investigation as incomplete, they shall give notification (in writing) to the Bureau to that effect within the same time limit." (Emphasis added.)

A number of issues arise:

1. The amendment gives defence counsel up to 15 days to study the case. This is an improvement over the period of up to one week that was previously allowed by the original provision. It is open to serious doubt, however, whether a period of 15 days is sufficient for defence counsel to study the prosecution file and take instructions thereon from his client. It should be noted that the discretion of the court depends upon the "sufficiency of time" and the period is only "up to 15 days".

2. One of the fundamental principles which a legal system should reflect is that a lawyer is free to communicate with his client on the subject matter of the case in question. We note that this right is guaranteed by Article 186 during the course of the hearing [12] but are concerned lest the application of Article 184 is such as to curb such freedom before that stage.

Both the original and amended texts of Article 184 state that an accused can apply for time to study the case at the bureau of the court. The same applies to defence counsel. Although Amnesty

International feels that due process of law requires that the defence be given its own copy of the file, for without such provision it is our belief that the defence is not given a chance adequately to prepare a case, we feel the current (and amended) versions reflect another equally fundamental deficiency.

The deficiency in question is that no express provision exists in the code by virtue of which the defendant and/or his counsel may at this stage of the proceedings see the file on any and every reasonable occasion that they desire. There is, further, no express provision that they may see the file for as long as they, in their own discretion, may reasonably require.

Although Amnesty International is of the opinion that the inclusion of such provisions would not of themselves go far enough towards curing the defects in a procedure where the defence is afforded so few facilities, their current absence from the code is symptomatic of the overwhelming disadvantage at which the defence finds itself.

If a copy of the file is not to be given to the defence, the only proper way in which the law can operate is for it explicitly to provide that an an accused will be taken from prison to the bureau of the court on any and every reasonable occasion that he or his lawyer feel is necessary so that they may study the file separately or together for as long as they reasonably require within a given time limit. Moreover, Amnesty International does not consider that 15 days is sufficient.

3. Comments relevant to this discussion which appear on

pages 36 - 37 apply equally here.

4. It should also be noted that the provision does not allow the defence to ask for any further adjournment. Such an absence is unfair because, inter alia, of the latitude allowed the SAVAK before they bring the matter to the stage of investigation before the Examining Magistrate.

5. Amnesty International affirms the paramount right of an accused person to know exactly and in detail that which it is alleged he has done. The current state of the law does not satisfactorily meet this requirement.

(d) Article 192

The original text of this Article reads as follows:

"The proceedings of the Military Tribunals shall be public unless national order or interests shall dictate otherwise in which case the prosecuting attorney shall apply for them to be held in camera. The court shall, accordingly, order the sittings to be held in private, and the sentence issued by the court on completion of the hearings shall be read only to the prosecuting attorney, the defendant and his counsel." (Emphasis added.)

The Imperial Iranian Embassy in London has notified Amnesty International that the text as amended will read as follows:

"Military Tribunals shall always hold public sessions unless, in exceptional cases where a public

session may be deemed to be against the public order, national interest or against accepted moral standards. The court will determine the applicability of such circumstances upon the request by the prosecutor in which case the court session will be held in camera." (Emphasis added.)

Between 1972 and 1977 no proceedings before the Military Tribunal were attended by observers from abroad and it is thought that all such trials during this period were held in camera. It follows, therefore, that if this information is correct, the prosecuting attorney requested secrecy in every case as the provisions of the original text were such that the court had no discretion to refuse his request and was bound to order "accordingly". The original text further provided that the sentence of the court would be read only to the prosecuting attorney, the defendant and his counsel.

The next text makes substantial amendments. It provides that only in "exceptional cases" where "public order, national interest or ... (accepted moral standards)" require should a hearing be in secret.

The essential differences between the amended text and that previously in force are as follows:

1. The discretion whether or not the matter should be heard in camera is exercised by the court. Under the amended text the court need not follow the wishes of the prosecuting attorney.

2. The presumption is strong that sessions should be held in public as it is only in "exceptional cases" that the matter may be held in camera.

3. The amended text does not provide that sentencing sessions of closed trials will themselves be held in

camera. Amnesty International welcomes this improvement.

Amnesty International hopes that the change in the law will be accompanied by a change in practice. Since April 1977, the date of the trial of 11 persons charged under Article 310 of the Code, Amnesty International has received information that the following trials were heard in camera:

AYATOLLAH TALEGHANI: Sentenced to 10 years' imprisonment by a military tribunal on 12 July 1977.

BEHROOZ BEHZADI: Sentenced to 4 years' imprisonment August 1977. Six other persons were tried at the same time, but neither their identities nor their sentences are known to Amnesty International.

MOHAMMED REZA AKHOUNDI: Executed 17 October 1977, according to Iranian government announcement which did not give date of his arrest or trial. Amnesty International has been informed that no information about his arrest or trial has appeared in the Iranian press.

Amnesty International respectfully requests information on the above cases and begs to point out that trials in camera, particularly if followed by executions as in the case of Akhoundi, are totally inconsistent with any amelioration of those circumstances which bear relevance to human rights.

(e) Article 203

The original text of this Article reads as follows:

"In the pronouncement of the verdict the Judges are free subject to the provisions of law. They must nevertheless

keep the God, the Shahanshah and law and justice in mind."

The Imperial Iranian Embassy in London has informed Amnesty International that the text as amended will be as follows:

"The Judges will keep the God, the Shahanshah and justice in mind and subject to provisions of law and with due regard to the character of the defendant will pronounce their verdict in complete liberty and independence."

Amnesty International is pleased to read that the amended text provides that the judges will reach their decision in "complete liberty and independence."

Amnesty International respectfully suggests, however, that the amendment should not only make reference to God, the Shahanshah, justice, the law and the character of the defendant but might also direct the court towards the evidence.

D. MISCELLANEOUS PROCEDURAL ISSUES

1. Jury Trials

Article 79 of the Supplementary Constitutional Law of 8 October 1907 provides: "In political and press offences a jury must be present in the court". On occasions in the past, counsel for the defence in cases before the Military Tribunal, have argued that the Tribunal has no jurisdiction to hear a contested case if a jury is not present. Argument to this effect has never met with success and the Military Tribunal has continued to sit without a jury, questions of fact therefore being determined by the members of the court.

In April 1977 Amnesty International's representative was informed by a number of persons, including the President of the Iranian Bar Association, that the reason why the Military Court sits without a jury was that the term "political" in the Supplementary Constitutional Law did not refer to offences against the State but rather to offences committed by civil servants in the course of their duty.

This rather esoteric meaning of the word "political" is not borne

out by the practice of the Military Tribunal. On 29 April 1977 it was reported by the Associated Press from Tehran that the former Director of the Iranian Civil Aviation Agency was among a number of defendants convicted of embezzlement charges and sentenced by the Military Tribunal to a term of imprisonment. This case, involving embezzlement by a civil servant, who also held the post of Vice-Minister of War, seems to fall exactly within the definition of the term "political" that was given by the President of the Bar Association.

Amnesty International undertook inquiries as to whether a jury was present to hear this case. According to our information, although it was a contested matter involving a civil servant, no jury was present. Amnesty International therefore regrets that it has no course other than to reach the conclusion that the Military Tribunal is constituted in contravention of the Supplementary Constitutional Law in question. Naturally, if a properly constituted and independent jury was present in court to decide questions of fact, those issues would have to be subject to proof. Reliance on the file in the manner which is current would therefore be impossible.

Amnesty International would point out that it is aware that Article 87 of the Supplementary Constitutional Law permits the making and adoption for the Tribunals of special regulations. We further understand that one of the relevant regulations provides for trial without jury. If this were the basis on which Iranian courts were to rely in holding their sessions without a jury, the matter would not be subject to the same level of doubt. If a constitutional provision can legally delegate such an issue to those who draft regulations, the legality of trial without jury is not in issue although the fact would continue to give rise to concern.

Amnesty International respectfully requests information on this matter from the Iranian government.

2. Appeals

The President of the Iranian Bar Association gave the impression

to Amnesty International's representative in April 1977 that no distinction is taken in Iranian Law between an appeal against conviction and an appeal against sentence. In most legal systems the former involves an assertion by the accused that he is not guilty; whereas the latter involves dispute not on the question of guilt or innocence, but merely an assertion that the sentence is unjust.

Amnesty International is under the impression that in all appeals before the Military Tribunal the facts of the case are taken to be those which appear in the file. This is taken from a reading of Articles 226 and 237 which provide, according to translations received from the Imperial Iranian Embassy to London:

Article 226:

"The President of the Court of Appeal will grant the accused or his defence attorney a give (sic) to 10 days respite period in order to review the files and prepare the necessary brief for the defence of the accused and submit it to the Court. The clerk will register the written materials submitted by either the prosecutor, the accused or his defence attorney in the order of the dates received."

Article 237:

"Other Procedures of the Court of Appeal with respect to the examination of the case shall be the same as and in conformity with those procedures stipulated for the trial in the military court."

It seems therefore that an appellant cannot effectively argue before the Appeal Tribunal that the Military Tribunal at first instance decided questions of fact incorrectly. This is so because it would seem that the Appeal Tribunal is itself bound by the file. This may be the reason why no distinction is taken in procedure, or for that matter law,

between appeals against conviction and those against sentence.

Clearly there have been occasions where sentences have been reduced on appeal, but this is not the issue which is here under discussion. Our concern is that the rights of the defence are as severely curtailed on appeal as at any other stage in the proceedings. This may of course follow logically from the fact that there is no difference in procedure at first instance between a plea of guilty and one of not-guilty. It may also be consistent with the fact that the defence case has to be incorporated into the file.

3. Pre-trial Detention

Amnesty International's representative was informed that there is a provision in Iranian law under which a detainee may be held without charge for a period of four months. At the end of the four month period he must be brought to trial or released unless the prosecutor is of the opinion that a "strong case exists against the accused". If in the opinion of the prosecutor such a case exists, a detainee may be kept in custody for a further four months. There is no limit to the number of times that the four month period can be renewed.

There are provisions in law whereby an Examining Magistrate can release a detainee on bail (see, for example, article 129 of the Penal Code). Amnesty International is concerned, however, that if this information is correct, and it was supplied by the President of the Iranian Bar Association, it amounts in essence to indefinite detention without trial and without legal advice.

Amnesty International is aware that the provisions of Article 166 allow for an accused person to appeal to the Military Tribunal against a decision by the Examining Magistrate to refuse bail. We regret, however, that we are not convinced that this safeguard is effective as at the stage in question the accused is kept incommunicado and has no access to legal representation.

Amnesty International will be pleased to receive from the Government of Iran confirmation of the exact state of the law on this issue.

E. CONCLUSION

It follows from the foregoing that despite recent amendments to the Code, Amnesty International is compelled to conclude that the criticisms enunciated on page 1 of the present report retain their validity and that the legal procedures here examined are not such as to provide a fair and adequate chance for the accused or his lawyer to challenge the prosecution or present the case for the defence. Nor do such procedures comply with those international laws and standards that are indispensible to ensure due process of law. Furthermore, certain deficiencies in the procedures are such that minimum protection against threats to or violations of the physical integrity and security of persons under arrest or detention is not guaranteed.

F. NOTES

1. Mr Brian Wrobel

2. See Article 3 of the Supplement to the Military Justice and Penal Law, approved on 1 Bahman 1319 (1939), which Amnesty International believes may be usefully referred to as a forerunner of some current practices:

"Chiefs of sections and the commanders concerned shall give the necessary information to the investigators and provide for them any documents or papers needed for the case."

3. It was stated during the hearing which related to those persons who pleaded guilty in April 1977 to charges under Article 310 of the Military Penal Code that the indictments were drawn up on the basis of the following material:

(a) Confessions made to SAVAK
(b) Confessions during preliminary examination
(c) Statements made by the accused about each other; a "careful comparative analysis" of such statements
(d) Confiscation of "subversive" literature
(e) Confiscation of documentation showing association with Tudeh (Communist Party)
(f) SAVAK reports on activities undertaken in Iran and abroad
(g) SAVAK's final report on each Defendant

4. Amnesty International has received information which suggests that the Military Prosecutor may also be involved at this stage of the proceedings. It may be relevant to refer to Article 1 of the Supplement to the Military Justice and Penal Law referred to in note 2 above:

"In all cases when the military investigators examine cases and files of significant nature (to be decided by the director of the Military Justice Department), particularly when examining criminal cases a representative of the military prosecutor shall be present. The investigator concerned shall indicate the presence of a representative of the military prosecutor in each daily report of his examinations and shall ask the representative to sign the report."

The use of committees with extensive powers in not new to Iranian procedure. The 1939 Supplement also provides:

Article 4:

When the director of the Military Justice Department becomes aware of any improper conduct by the investigators or the military prosecutor or a military court or receives

any complaints against any of these authorities and finds them reasonable, he shall report to the Ministry of War when necessary.

Article 5:

The Ministry of War shall then appoint a committee of five or seven officers selected by the Ministry or the chief of the general staff to investigate the case.

Article 6:

The committee shall investigate and shall have the authority to instruct the investigator concerned or the military prosecutor as to the course of his action. The committee can also, when necessary, obtain the file of the case from an investigator or a court and refer it to another investigator or another court for consideration.

Article 7:

In the case of the above article the committee shall appoint members of the court from among its members or from outside to investigate the case after approval.

It is interesting to speculate whether a representative of the Military Prosecutor is present at the time of the interrogation itself. Article 2 of the Supplement, which can only be referring to the stage at which the file is passed from those whose duty it is to investigate a case, provides:

"Reports of the investigators concerning offences or crimes shall be supported by proofs and legal documents".

5. That is even in the absence of the type of disagreement between Military Prosecutor and Examining Magistrate which is envisaged in Article 175. (This information came from members of the Iranian legal profession.)

6. There was no witness box in the courtroom where the case in April 1977 was heard. The military court itself physically reflects possible bias against the defendants. The judges sit in a row at the end of the room; the prosecutor is at a desk at an oblique angle to their right and the clerk of the court at an oblique angle to their left. Directly in front of the judges and facing them sit the defence counsel, who have to make do with writing on their knees or on brief-cases placed on their knees. Whereas it could possibly be argued that there are courtrooms in other countries which tend to reflect bias, the impression given by the Iranian court was so strong in this regard that it cannot be disregarded.

7. The explanation advanced to Mr Wrobel by lawyers involved in the case in April 1977 that cross-examination is made at the stage of preliminary investigation is quite unacceptable: the preliminary investigation is conducted by SAVAK and, due to the absence of defence counsel, is not subject to any scrutiny on behalf of the accused.

8. These trials include those observed by foreign lawyers in September 1965, November 1965, December 1968/January 1969, February 1972, January/February 1972 and April 1977.

9. For example SAVAK has the power to arrest and this power, so Amnesty International is given to understand, is not only exercised on the orders of those officials who may sit as Examining Magistrates. Furthermore, Amnesty International is given to understand that persons placed under arrest are not shown a warrant.

10. In the case which took place in April 1977 counsel for the Military Prosecutor was Major Mahmoud Guerami. He had received his training at the University of Virginia and in the office of the Judge Advocate-General in Washington D.C.

11. In 1964 four defence counsel were arrested by SAVAK and held for almost a year before trial. It seems that these retired officers were arrested for arguing too strongly for their clients. Amnesty International received information that because one of the officers in question had not sought to charge his client for legal services, SAVAK asserted that he was involved in a conspiracy. All four were convicted.

12. Article 186 provides:

"Counsel may freely meet the accused in the course of the hearing. He may also study and consult the file pertaining to the case without taking it out of the court premises and take such notes as he may deem necessary (for the defence)."

APPENDIX 2

CIVILIAN LAWYERS AND THE MILITARY TRIBUNAL

(update to Memorandum)

The Memorandum dated 1 November 1977 which was submitted by Amnesty International to His Imperial Majesty the Shah of Iran, and which is reproduced in this document as Appendix 1, contained the following commentary on the amended text of Article 182 of the Code of Military Procedures:

"Amnesty International welcomes the amendment whereby military counsel are now required to be legally qualified and civilian defendants are now allowed to "make their choice from among civilian defence attorneys".

"The amended text does not state whether defendants will be required to choose from a list of officially approved civilian lawyers. If past practice is continued whereby the choice has had to be made from such a list of named military counsel, the amendment would not provide any proper benefit to defendants as they would still be unable to secure representation of their own choice."

"If the amendment means that only those defendants who are able to pay for their own civilian counsel will have the opportunity for such representation, the situation would remain far from satisfactory. Whether or not a defendant is to have the benefit of civilian counsel should not depend on means. This applies especially if the defendant is undergoing lengthy pre-trial detention without the possibility of earning. Amnesty International hopes that the amendment will result in a situation whereby the state provides funds where necessary for independent civilian legal representation of a defendant's choice."

On the weekend of 17/18 December 1977 the Iranian Ministry of War and the Iranian Ministry of Justice approved a set of regulations

governing the appearance of civilian lawyers before the Military Tribunal. The text of these regulations does not diminish the concern expressed by Amnesty International at the earlier date.

The Tehran newspaper Kayhan International stated on 18 December 1977 that "first class lawyers or active or retired officers of the Imperial Army of State Gendarmerie ... (would be entitled to) ... defend cases before the Tribunal". It further stated that the following qualifications would be required for counsel:

"1. Possession of a licence to practice from the Bar Association, or a bachelor degree in law, or the Advanced Law-Course Certificate of the Imperial Army, or a service record of at least three years in military legal corps or a practice record of at least five years in military tribunals.
2. Absence of a criminal record.
3. Clearance from prosecution on account of crimes and misdemeanours.
4. Endorsement of the applicant's competence by the authorities concerned."

The regulations impose the following conditions:

"1. Representation powers of defence attorneys will begin immediately after their accreditation and cease when the tribunal delivers its verdict.
2. Maximum rates for attorneys hired by defendants are 15,000 rials in criminal cases and 5,000 rials in misdemeanour cases.
3. For every free-choice case the lawyer represents, he or she must accept responsibility to defend two cases at the discretion of the tribunal without getting any pay.
4. Failure to attend the tribunal session without reasonable excuse will be considered a violation of procedure. Presence at these sessions will have priority over all other commitments of the attorneys, even when they have been officially summoned to other courts and offices."

Amnesty International repeats its concern that these regulations are capable of being applied so as to constitute an effective continuance of former procedures whereby defendants were not entitled to legal representation of their own choice. Reference is made to pages 7 and 8, paragraphs 2, 3 and 6 of this document.

Appendix 3

International Herald Tribune 23 November 1977

Students Are Beaten

Iran Secret Police Accused in Thug Attack

By William Branigin

TEHRAN, Nov. 22 (WP).—A mob of thugs brandishing rough wooden clubs, brass knuckles and chains and shouting "*Javid Shah*" (long live the Shah) yesterday attacked a group of dissidents gathered for a lecture at Aryamehr University in western Tehran.

Dissidents said that the gang of about 100 men, who wore civilian clothes and arrived in two buses, were members of the Iranian secret police, Savak. This could not be confirmed. Both Savak and the Iranian Information Ministry declined comment on the incident.

The obviously orchestrated attack was the latest in a week of violent incidents in which dissidents, mostly students, have been beaten at or near universities in Tehran. On Saturday, more than 350 policemen wearing U.S.-made helmets, and armed with long wooden clubs invaded Tehran University and battered students indiscriminately, witnesses said. About 60 to 70 persons, including at least four professors, were injured and more than 100 students were arrested in the attack hours after Shah Mohammed Reza Pahlevi returned to Tehran via Paris from his visit to Washington.

A Dozen Injured

In yesterday's attack, at least a dozen dissidents were injured and a few were arrested in front of the Aryamehr University gates. More than 200 dissidents have been rounded up in the last week, students said.

The incident occurred after about 400 persons had gathered to hear an evening lecture on "freedom" by leftist writer Mahmoud Baharzin. But the gates were locked and a notice said that the lecture had been canceled for the second consecutive day. The dissidents milled around quietly in front of the university for about an hour and were calmly dispersing when the thugs came running from their buses and chased them down Eisenhower Avenue. Some of the dissidents were cornered in alleys and beaten while others were kicked, clubbed and punched on the sidewalk.

Members of the mob holding chains and clubs prevented three Western journalists, including this reporter, from following the dissidents down the avenue. A gang member forced two of the reporters into a taxi and ordered the driver to take them to nearby Shahyad Monument, built by the Shah to commemorate 2,500 years of Persian monarchy.

After the charge, the thugs, most of whom were carrying identical rough-hewn clubs about two feet long, broke up into smaller groups and patrolled the street, chanting pro-Shah slogans.

Riot Police

Two truckloads of police arrived later and arrested a few of the dissidents, but no members of the mob.

Observers said the attack apparently signaled a shift in tactics by the government. They said they expected the government to claim that the incident was a clash between unruly extremists and patriotic pro-Shah citizens.

Not all of the dissidents were students. Asked why he had come to the lecture, a middle-aged company employee complained about repressive government policies and said, "There is no law in Iran." He said that he felt he could no longer remain silent.

"The knife is on the bone," he said.

Saturday's clash was the most violent so far in a crackdown on dissidents that began while the Shah was in Washington to confer with President Carter. Both sides have expressed satisfaction with those meetings, during which Mr. Carter apparently soft-pedaled his human-rights policy regarding Iran in deference to strategic and oil considerations.

Although it could not be confirmed, the sources said they thought the crackdown was ordered by the Shah upon his return. "He came back and gave the order: 'The party's over,'" a professor said.

The series of incidents started on Nov. 15, when 4,000 students occupied a gymnasium at Aryamehr University after about 50 of their fellows were arrested in a clash outside the college gates. This was followed the next day by a protest march that was ambushed by club-swinging police. There were more arrests and scores of dissidents were injured.

Appendix 4

Torture and Legal/Administrative Procedures

The Declaration on the Protection of all Persons from being subjected to Torture and other Cruel Inhuman or Degrading Treatment or Punishment was adopted unanimously by United Nations General Assembly resolution 3452 (XXX) of 9 December 1975. On 8 February 1978 the Imperial Government of Iran deposited a unilateral declaration with the Secretary General of the United Nations in which it declared its intention of compliance with and implementation of the provisions contained in that document.

The following articles of the Declaration are apposite when considering the adequacy of national legal and/or administrative procedures:

Article 8

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

Wherever there is reasonable ground to believe that an act of torture as defined in Article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under Article 8 or Article 9 establishes that an act of torture as defined in Article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment may not be invoked as evidence against the person concerned or against any other person in any proceedings.