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The Trial of the Yaran under Iranian Criminal Procedure: "The Justice of God" or Procedural Injustice?

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THE TRIAL OF THE YARAN UNDER IRANIAN CRIMINAL PROCEDURE: "THE JUSTICE OF GOD" OR PROCEDURAL INJUSTICE?

by Christopher Buck, Ph.D., J.D.

[Editor: Iran Press Watch welcomes back Dr. Christopher Buck, a distinguished legal scholar. While most writers expose the injustice of Iranian practice in contrast with the international practice, Dr. Buck demonstrates how the current treatment of the Yaran is even problematic within the context of Iran's own legal framework. Dr Buck's article comes in a critical time when in two short days, on the 7th of February, 2010, the second trial of Yaran is scheduled to take place. The Baha'i Communities around the world are holding devotional gatherings as a response to the call of the Universal House of Justice, the international governing body of the Baha'i Community: "The prayers offered by the [Baha'is] ... worldwide have been a constant source of comfort and support to the former members of the Yaran who have withstood their long ordeal with heroic fortitude and patience." With these thoughts in mind we invite you to consider the discourse by Dr. Buck.]

Part I:

The "Justice of Islam," Jurisdiction and Venue, Prosecution and Indictment

The trial of the Yaran, the "first session" of which took place on January 12, 2010, is being conducted under the current system of Iranian criminal procedure, a creature of the Islamic Revolution of Iran. Just as my previous article, "[Iranian Islam, not the Yaran, on trial in the court of international opinion](#)" (published by Iran Press Watch on January 12, 2010, the day of the first session of the trial of the Yaran), was an effort to show how the treatment of the Yaran reflects poorly on Iranian Islam inasmuch as the "Justice of Islam" is concerned, the present article demonstrates how, by Iranian legal standards, the treatment of the Yaran is in clear violation of the current Constitution of the Islamic Republic of Iran and its existing Code of Criminal Procedure (CCP).

Both articles, therefore, are essentially "Iranian" and "Islamic" arguments. I have not seen this approach taken by others. While the international community is interested to know how the treatment of the Yaran violates international standards, I believe that the Iranian audience would like to know how the legal course of the case of the Yaran is problematic within the Iranian legal context itself. This is not an easy task for anyone who has to comprehend a completely different system of criminal procedure for the first time. Consequently, I add this disclaimer: that my understanding of Iranian law is imperfect, to say the least; yet I have made every attempt to ground my argument in clearly documented principles of Iranian criminal procedure.

The Yaran — who have been held in the notorious Evin Prison since the spring of 2008 — are represented by four lawyers from the Center for the Defense of Human Rights based in Tehran — Ms. Shirin Ebadi (Iran's first female judge prior to the 1979 Islamic

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revolution, and awarded the Nobel Peace Prize in 2003), Mr. Abdolfattah Soltani (co-founder of the Center for the Defense of Human Rights), Mr. Hadi Esma'ilzadeh and Ms. Mahnaz Parakand. The latter two, Mr. Esma'ilzadeh and Ms. Parakand, took part in the hearing on January 12, 2010 and represented the accused, as Ms. Ebadi is out of the country. Mr. Soltani was unavailable, having been twice imprisoned previously.

"Representation" was unduly restrictive. Shortly after the trial, Ms. Ebadi commented: "When I and my colleagues accepted to act as their defense lawyers, they [detainees] had not been allowed to see their families for over a year. And for some time too, they were not allowed to meet with us. After a year and a half when the investigation ended, I and the rest of the lawyers were permitted to read the dossier and we met them on one occasion in prison." ("Iran's Ebadi says seven Baha'is must be acquitted." Washington TV. Online at http://televisionwashington.com/floater_article1.aspx?lang=en&t=1&id=17143.)

The purpose of this article is to help render translucent the otherwise opaque system of Iranian criminal procedure, which will never be fully transparent. See, e.g., Richard Vogler, "Islamic Criminal Justice: Theocratic Inquisitoriality," *A World View of Criminal Justice* (Hants, UK/Burlington, VY: Ashgate Publishing, 2005), 105–126.

As a general rule, Islamic jurisprudence does not recognize the primacy of rights that exist under Western legal systems, but stresses the paramount importance of duties under Islamic religious law. Iran is no exception. Whatever fundamental human rights protected under international law are ostensibly enshrined in the Iranian Constitution, such rights are qualified by subjecting them to ill-defined "Islamic criteria." Any attempt to modernize the Iranian Islamic criminal justice system so as to be compatible with progressive international human rights standards will be doomed to frustration and failure, to the extent that the goals and requirements of Shari'a law are not met. Their reconciliation is, frankly, impossible.

Consequently, Iran's authoritarian criminal justice has obvious conflicts with international human rights standards, thus tempting a hasty generalization that Islam and human rights are incompatible. The reader, however, should resist this conclusion by understanding that the Iranian system is not a definitive "Islamic" legal system (a consensus on which simply does not exist). Indeed, Vogler describes the new Iranian criminal justice system as, *inter alia*, one that "massively overcriminalises" and which may be characterized as "discriminatory, disruptive and a criminogenic endeavour" (124, citations omitted), although, to be fair, some Iranian reformers have been calling for a paradigm shift in the application of Islamic law.

The present writer's primary, but not exclusive, source of information regarding the current system of Iranian criminal procedure is a peer-reviewed article: Hassan Rezaei, "The Iranian Criminal Justice under the Islamization Project," *European Journal of Crime, Criminal Law and Criminal Justice* 10.1 (2002): 54–69. Rezaei notes that the current "project of Islamization of criminal justice" has, in practice, catered mainly to "the interests of the political clergy which determined the guidelines of Islamization, not the ultimate goals of Islamic law." (Rezaei 2002, 68.) Rezaei accentuates the tension between the concept of rights under Western law and the concept of duties under Islamic law: "Observing the difference between the language of modern law under the rubric of rights and the field of Islamic law, which deals with duties, illustrates the depth of the rift between the secular and religious legal theories. Thus the notion of 'God's right' in prosecution of offences and punishment is quite peculiar." (Rezaei 2002, 64.) This dichotomy is instructive, and the reader should bear in mind that the entire notion of "justice" under Islamic law is radically different from the prevailing notions of justice under Western systems of criminal law and procedure.

Since Iran currently does not respect or abide by international human rights standards, as I have previously argued, it should be pointed out that Iran is also a signatory to "The

Cairo Declaration on Human Rights in Islam" (CDHRI), Adopted and Issued at the Nineteenth Islamic Conference of Foreign Ministers in Cairo on 5 August 1990. See <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm>. In the Part III of this article, the principles enshrined in this document will be applied to the case of the Yaran.

The "Justice of Islam"

The "Code of Criminal Procedure of the Public and Revolutionary Courts" (CCP) was passed by the Iranian Parliament on September 20, 1999, and came into force on 26 October 1999. The system of criminal procedure that now prevails in Iran is predicated, in part, on the principle of "the Justice of God in creation and legislation."

Rezaei observes that the Iranian criminal justice system is unique in that it is predicated on the Iranian (i.e., Shi'i) interpretation of Islamic law: "Since the principal aim of drastic changes in the Iranian criminal justice was the application of the divine laws, the features of Iranian criminal justice are different from all other forms of contemporary criminal justice reforms in the West. It may therefore be regarded as a fascinating subject for comparative criminal justice scholars, whose interest is the study of the full range of possible legal phenomena." (Rezaei 2002, 55.)

However, serious questions have been raised, both within Iran and in the international community at large, as to how procedurally fair and just this system of the "Justice of Islam" really is, when principle is put into practice. According to Rezaei, it is primarily the Revolutionary Courts that have, so far, drawn international criticism:

Rather than being Islamic and fair, the history of the last 20 years shows that these courts are in fact revolutionary and arbitrary. Most of the criticism of the international human rights organizations against Iran is based on the practice of these courts. The judges of these courts are mostly clerics with no, or little, knowledge of legal matters, and for this reason they are rarely satisfied with the presence of defence counsel in their proceedings. These Courts created ecclesiastical tribunals having no basis in the law. The procedure of these tribunals also departed from the strict requirements of proof and safeguards for the defence. Initially, the verdicts of these Courts, inspired from the Islamic system of Qadi Justice, were final, and were enforced without any judicial review. It was only in 1988 that a right of appeal was provided. Proceedings have largely taken place in secret and defendants are rarely given the opportunity to have defence counsel. (Rezaei 2002, 62–63.)

The Revolutionary Courts of the Islamic Republic are based on an inquisitorial system, rather than an adversarial system, as exists in the United States, the United Kingdom, and elsewhere throughout the West and the developing world. The judge serves as prosecutor, judge and jury, as well as arbiter. In a word, the judge is an all-powerful authority in any case over which he presides.

In the West, a judge without legal training would be as untenable as it would be unthinkable. In Iran, by contrast, judges generally have no legal training whatsoever. By 1981, the Iranian judiciary was purged of judges who had been trained in law schools. Trained jurists were replaced by untrained seminary graduates and students, as well as by political appointees. By law, Iranian judges today are only required to have a high school diploma. Their primary qualification is unswerving adherence to the Islamic Republic's tenets. An Iranian judge is typically characterized by partiality rather than by impartiality.

Article 232 of the Code of Criminal Procedure provides that the decisions of the Revolutionary Courts (and of the Common Courts) are final, except when the punishment handed down is severe — such as in cases involving the death penalty, in which the case can be appealed to the Supreme Court, which is Iran's highest judicial authority, as

vested under Article 161 of the Constitution of the Islamic Republic of Iran, adopted October 23, 1979, amended July 28, 1989. It remains to be seen what the verdict will be, when judgment is rendered in the trial of the Yaran. If the verdict is severe, as it is expected to be, whether the Supreme Court will hear an appeal is pure speculation at this point.

Thus, the implementation of the "Justice of Islam" in principle has, in practice, been one of procedural injustice, tempting a verdict of the "Injustice of [Iranian] Islam" by prevailing international standards. This verdict may be underscored by the existence of torture and rape complexes within the Iranian archipelago of prisons. As 2003 Nobel Peace Prize laureate, Shirin Ebadi, recently commented: "Unfortunately, for some time now, the Judiciary has distanced itself from justice." (See "[Iran's Ebadi says seven Baha'is must be acquitted](#)," Iran Press Watch, January 13, 2010)

In the course of the present writer's analysis, an effort will be made to "judge" the course of this trial in accordance with Iran's own procedural standards. This is a more challenging standard by which to judge the procedural aspects of the trial of the Yaran, since Iran has effectively distanced itself from the due process revolution that has taken place worldwide since World War II.

Ms. Ebadi, as lead defense attorney for the Baha'i seven, the Yaran, has criticized the trial of the Yaran squarely on procedural grounds, independent of the merits of the case and apart from the substantive (or insubstantive) basis of the charges themselves, each of which, as capital offenses, may carry the death penalty: "This case was set up wrongly from the start, that is, my clients should have been released immediately. This delay which has lasted up to now is a contravention of the laws of the Islamic Republic of Iran." (See "Iran's Ebadi says seven Baha'is must be acquitted," Iran Press Watch, January 13, 2010.) Here, Ms. Ebadi, who has a far greater knowledge of Iranian criminal procedure than the present writer, argues that the Yaran should have been released (and, presumably, charges dismissed) on procedural grounds alone. On comparative grounds, notably absent from Iranian criminal procedure is the notion of "probable cause" which apparently does not have to be demonstrated as a precondition of arrest and "temporary" detention.

The Baha'i International Community has noted (<http://news.bahai.org/story/753>) that the January 12, 2010 trial in Tehran was marked by "numerous violations" of legal due process. Both domestically and internationally, the trial of the Yaran has been roundly criticized. But whether counsel for the defense can move for a mistrial would have to be addressed under a separate legal analysis.

Jurisdiction and Venue

Jurisdictionally, this case is being tried by the Revolutionary Court, which is essentially a security court. Revolutionary Courts were established in July 1994 under the so-called "Act of Establishing Public and Revolutionary Courts." Article 5 of the 1994 Act sets forth the jurisdiction of the Revolutionary Courts:

Revolutionary Courts as may be required in number shall be formed in each provincial capital and in the districts determined by the head of the judiciary and under the administrative supervision and legal authority of the judicial districts to investigate the following offences:

1. Any crime against the domestic or foreign security of the Islamic Republic of Iran and corruption on earth.
2. Any act amounting to an affront against the founder of the Islamic Republic and/or its leader.
3. Any conspiracy or plot against the Islamic Republic of Iran or any armed uprising, terrorism or demolition of public buildings or facilities with the aim of confronting the Islamic government of the country.
4. Spying for foreigners.
5. Drug trafficking or related crimes.

6. Suits filed under Article 49 of the Constitution (related to the confiscation of illicitly obtained wealth).

Here, the Revolutionary Court in Tehran has properly exercised its jurisdiction in accordance with the charges of the alleged espionage — in which the Yaran, curiously, have been charged with acting as agents for America and Israel, allegedly acting against the security interests of the Islamic Republic of Iran, and allegedly engaging in propaganda against the Islamic Republic's system — with each these charges having been strenuously denied by counsel for the accused. Although the venue is proper, there are serious problems with other procedural aspects of this case under Iranian criminal procedure.

Prosecution and Indictment

Briefly, there are serious problems with the merits of this case. Without any real grounding in evidence, the charges cannot withstand scrutiny. As to the charge of "espionage," on comparative legal grounds, this case bears no facial semblance to any act of "classical spying" that is criminalized under any statutory "Espionage Act" under any other system of jurisprudence. Therefore, I can only conclude that the prosecution, on behalf of the Islamic Republic of Iran, cannot meet its burden of proof by laying out a prima facie case for espionage.

In the West, espionage statutes are typically explicit in phrasing the crime of espionage as an act of obtaining information relating to the national defense to be used to the advantage of any foreign nation (often with no distinction made between friend or enemy). In light of the foregoing, what "state secrets" have been compromised? Where is the threat to the State's external security and internal stability? The accused are not agents of Israel, nor of America. They are not even "minor" espionage agents. In fact, there is not a shred of evidence that any of the seven accused were involved with any known conspiracy, nor has the Court made any attempt to provide any such evidence to the counsel for the accused, nor has any such evidence ever been published.

Provision for capital punishment in case of acts of espionage and treason is based on the tenet that forfeiture of the life of the spy or traitor will serve as a deterrent to those who may thereafter be tempted to commit similar acts. Instantly, this social policy would be frustrated by the wrong outcome in this case. Here, where there is no identifiable act of espionage or treason, any guilty verdict would work a manifest injustice.

However, it is not the purpose of this article to offer a detailed, substantive defense of the Yaran, as the primary focus of this article is to provide a fairly objective analysis of the legal treatment of the Yaran under Iranian criminal procedure. This is a challenging task for two reasons: (1) information on the legal details pertaining to the case of the Yaran is extremely limited; and (2) information on the intricacies of Iranian criminal procedure (especially as regards the exceptions to black letter Iranian law) is also limited, although there is sufficient information available in order to make this analysis possible.

The principal difference between the new "Islamized" system (i.e., supposedly compatible with Shi'i Islamic criteria) and the former Iranian criminal procedural system (under the former Shah of Iran) is that all judicial procedures take place under the supervision of the Court. Thus, the pre-court prosecutorial indictment was removed. There is now no formal pre-trial indictment process under the current system. Instead, the explanation of the charge is regarded as the indictment itself. There is still a "Prosecutor's Office" under the current system, but pre-trial prosecutorial indictment has been dispensed with entirely.

This procedure is in clear contradiction with Article 37 of the Constitution of the Islamic Republic. Article 37 commands: "Innocence is to be assumed and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court." The majority of Iran's people were not previously aware of this problem. However, during the 1999 trial against the mayor of Teheran, Mr. Karbaschi, which was broadcast on Iranian television, this contradiction was publicly disclosed. Since then, the general consensus is

that the new Iranian system of criminal procedure cannot preserve impartiality.

Thus the indictment was effectively conducted in the hearing that recently took place on January 12, 2010, when the Yaran were accused of "spying for America and Israel, acting against national security and [engaging in] propaganda against the [Islamic Republic's] system." (See "Iran's Ebadi says seven Baha'is must be acquitted," Iran Press Watch, January 13, 2010.) It would appear that the charge of espionage on behalf of America has been added to the previously announced charge of spying for Israel.

In spite of the request by defense counsel, the Court ruled that the hearing would be held behind closed doors, and required that relatives of the accused leave the courtroom. (See "Iran's Ebadi says seven Baha'is must be acquitted," Iran Press Watch, January 13, 2010.) On the same day as the trial, the European Union was quick to react, demanding that international norms be applied: "The EU calls for a just, fair and open trial respecting all international standards and obligations." Whether or not this trial may be considered "just" or "fair" by Iranian standards, it is quite clear that the Iranian judiciary will not respect international standards and obligations, and has turned a deaf ear to the EU's call for an "open trial." Indeed, current Iranian criminal procedure is far from "open."

Prior to the commencement of trial on January 12, 2010, the Baha'i seven were technically under temporary detention. Article 132 provides that "for the purpose of having access to the accused and his due appearance before the court when necessary, and to avoid absconding or hiding or interfering with others, the judge, after explaining the charge to the accused, shall use one of the following guarantees: (1) Obligation under the word of honor to appear before the court; (2) Obligation under bail to appear before the court until the trial has finished and the judgment has been enforced. In case of non-appearance, this shall be converted to surety; (3) Surety; (4) Pawn, including a sum of money or bank guarantee or real or personal property; (5) Temporary detention in accordance with rules."

Here, the Yaran are perceived as a security risk, and thus release under the "word of honor," bail, surety, and "pawn" provisions is unavailable, leaving "temporary detention in accordance with rules" as the option that the Court has exercised. However, whether the detention of the Yaran is indeed "temporary" or even "in accordance with rules" is open to serious question inviting open debate. In any event, the term "temporary detention" has been stretched beyond the limits. Any "temporary detention" that has lasted for over a year and a half stretches credulity and should shock the judicial conscience. (The defendant, Mrs. Mahvash Sabet, was arrested on March 5, 2008 in northeastern city of Mashhad, while the other six defendants, Mr. Behrouz Tavakkoli, Mr. Saeed Rezai'i, Mrs. Fariba Kamalabadi, Mr. Vahid Tizfahm, Mr. Jamaloddin Khanjani and Mr. Afif Na'imi, were arrested in their homes in Tehran on May 14, 2008.) Thus the Yaran have effectively been held under what may be analyzed as "compulsory detention."

Thus, whether the Yaran continue to be held under "temporary" or de facto "compulsory" detention, under Iranian criminal procedure, "temporary detention" has its own "rules" — rules established under the Constitution of the Islamic Republic of Iran and Code of Criminal Procedure for the Courts of General Jurisdiction and Revolutionary Courts that outline the rights of detainees and set clear limits for what is permissible during arrest, interrogation, and detention.

Part II:

Temporary Detention, Access to Counsel

Detention is not about the length of incarceration alone. There are aspects of detention that must also be considered, such as whether the detainees have been properly treated or improperly mistreated. Among the kinds of maltreatment to which a detainee can be subjected are denial of access to counsel, denial of regular visits with family in accordance with prison regulations, denial of humane treatment in a variety of ways — especially when it comes to subjection to physical torture and psychological abuse — in clear

violation of applicable provisions of international law. But, for the sake of developing what may be characterized as an "Iranian" or "Shi'i Islamic" argument, this article narrowly focuses on treatment of the Yaran under Iranian criminal procedure, which is said to be predicated on Iranian Islamic law. Accordingly, the question of international law, and its application to the Yaran, will not be treated, except marginally, in this article. Previous publications, including those of the present writer, have provided ample documentation noting the various violations of international law to which the Iranian Baha'is, in general, and the Yaran, in particular, have been subjected.

Evidence suggests that some or all of the Yaran have been variously detained in solitary confinement. The record is quite clear that, with a single exception, the Yaran were denied access to counsel up until the time the first session of the trial, which took place on January 12, 2010. The Yaran, moreover, have been denied regular visits with their families, although visits have taken place on rare occasions. Further evidence can be produced to show that the Yaran were subjected to severe psychological and physical pressure to recant their belief in the Baha'i Faith.

The present writer has relied on several sources of information, including one important source: "'You Can Detain Anyone for Anything': Iran's Broadening Clampdown on Independent Activism." Human Rights Watch 20.1(E) (January 2008), available online at <http://www.hrw.org/reports/2008/iran0108/iran0108web.pdf>. Other sources will be cited throughout the remainder of this article.

Temporary Detention

Under the Iranian system, is there a distinction between lawful temporary detention and unlawful, arbitrary detention? How long may detainees remain in pretrial detention without formal charges? The answer, at first, appears deceptively simple and straightforward. Article 32 of the Constitution of the Islamic Republic of Iran requires that "charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of 24 hours." Consistent with the Constitution, Article 24 of the Code of Criminal Procedure likewise sets 24 hours as the limit within which authorities must provide a detainee with a written reason "in cases where the detainee must be kept in detention in order for authorities to continue their investigation." This, a judge is required to authorize any pretrial detention and provide written charges within 24 hours of any arrest. These laws obviously were not applied to the Yaran. How is that possible?

There are many exceptions and loopholes under Iranian Islamic law. Article 32 of the Code of Criminal Procedure provides that a judge may issue temporary detention orders for cases involving criminal offenses under Iran's "Offenses Against the National and International Security of the Country" ("Security Laws"), allowing authorities to hold detainees beyond the 24-hour period, without charge:

Article 32 [Arrest]

No one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible. The violation of this article will be liable to punishment in accordance with the law.

What recourse, if any, does the accused have under such circumstances? Article 33 of the CCP gives the accused the right to appeal his or her detention order within 10 days, and that the detainee's case must be resolved in the course of one month. The exception to

this rule is one that allows the judge to renew the temporary detention order, and there is no limit on how many times the judge may renew this order. In the case of the Yaran, the ongoing "investigation, which took over 18 months, effectively kept the Baha'i detainees under a perpetual "temporary" detention that would last until the state had completed its investigation. During this period, the Yaran have been held largely incommunicado during the pretrial investigation period, and were denied access to their attorneys during this period, except for one meeting in Evin Prison, and the authorities allowed but little communication with family members.

On October 17, 2009, Mr. Abdolfattah Soltani — spokesman for the Defenders of Human Rights Center (co-founded by 2003 Nobel Peace Prize laureate, Shirin Ebadi) and one of the four attorneys representing the Yaran, was interviewed by the Committee of Human Rights Reporters. On the issue of improper detention, Mr. Soltani stated:

On 15 Shahrivar (September 6, 2009), I and other attorneys on this case objected to the temporary detention of these individuals. The deadline for the temporary detention had already expired, and the court did not have the legal right to extend the length of the temporary detention. The case was, therefore, sent to the appeals court to consider our objection. Cases of prisoners who are accused of a crime are usually considered within 4 to 5 days. But 40 days have passed since this case was sent to the appeals court, and we do not even know to which branch it has been sent. Our follow-up with the computer section [of the court] has been futile and they have not yet announced to us which branch is considering the case. ("[Interview with human rights lawyer Soltani](#)," Iran Press Watch, October 22, 2009)

Here, Attorney Soltani, acting on behalf of the Yaran, has filed an appeal with an appellate court on the grounds that the lower Revolutionary Court exceeded its jurisdiction in extending, yet again, the length of temporary detention. This appeal illustrates the application of Iranian criminal procedure to the case of the Baha'i seven. Note that, in this legal action, Mr. Soltani has filed his appeal pursuant to the clear provisions of the Code of Criminal Procedure, and not under the authority or procedures of international law. The basis for this appeal is clear: The Revolutionary Court, according to the appeal filed by the Defenders of Human Rights Center through Mr. Soltani, exceeded its own authority by violating procedural rules governing temporary detention under Iranian criminal law. The present writer does not presently know of the outcome or current status of this appeal, and it may well be that Mr. Soltani himself has not been so informed.

Access to Counsel

The right to counsel is protected under Iranian law as well as under international law. Article 35 of Iran's Constitution guarantees the right to counsel:

Article 35 [Right to Counsel]

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

Article 128 of the Code of Criminal Procedure, however, effectively undermines this right. Article 128 provides that, during the investigative phase, counsel may be denied "in cases where the issue has a secretive aspect or the judge believes that the presence of anyone other than the accused may lead to corruption." Although the investigative phase may last up to a month, a judge may renew the detention phase indefinitely. In crimes involving national security, "the presence of the lawyer during the investigative stage takes place with the permission of the court." Article 128 grants the judge discretionary power to deny counsel during the investigative phase. In the case of the Yaran, the Baha'i seven were permitted to meet with their attorneys only once prior to the first session of

the trial on January 12, 2010.

This protection, however, is of little avail unless upheld by the Iranian authorities, both in spirit as well as in letter. The Yaran, as previously mentioned, are represented by four lawyers from the Center for the Defense of Human Rights — Ms. Shirin Ebadi (Iran's first female judge prior to the 1979 Islamic revolution, and awarded the Nobel Peace prize in 2003), Mr. Abdolfattah Soltani, Mr. Hadi Esma'ilzadeh and Ms. Mahnaz Parakand. The latter two, Mr. Esma'ilzadeh and Ms. Parakand, took part in the hearing on January 12, 2010, as Ms. Ebadi is out of the country. Mr. Soltani was unavailable, have been twice imprisoned previously.

As noted earlier, the Yaran's "representation" was unduly restrictive. Shortly after the trial, Ms. Ebadi commented: "When I and my colleagues accepted to act as their defense lawyers, they [detainees] had not been allowed to see their families for over a year. And for some time too, they were not allowed to meet with us. After a year and a half when the investigation ended, I and the rest of the lawyers were permitted to read the dossier and we met them on one occasion in prison." (["Iran's Ebadi says seven Baha'is must be acquitted."](#) Washington TV)

Although the application of international law to the case at bar is outside the purview of this article, brief mention will be made of applicable international standards. There are a number of applicable provisions of international law that may be brought to bear in the case of the Yaran. Two representative provisions will be provided here, for purposes of illustration: (1) The United Nations' "Basic Principles on the Role of Lawyers" provides, in relevant part: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within hearing, of law enforcement officials." (Basic Principles on the Role of Lawyers, A/CONF.144/28/Rev.1 at 118 (1990), art. 8.) (2) Similarly, the United Nations' Standard Minimum Rules for the Treatment of Prisoners requires, in relevant part: "An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution." (Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), Rule 92.) As the two foregoing provisions of international law demonstrate, Iranian authorities have clearly violated international standards regarding the treatment of detainees in denying the Baha'i seven immediate and adequate access to counsel, and denying regular family visits in accordance with prison regulations. In this respect, the Yaran have not received equal treatment with similarly situated detainees in Iran in general, although it could be argued that the Yaran have, indeed, have received equal mistreatment with similarly situated security detainees.

Strangely, international human rights law does not specify a maximum allowable period of detention before trial. Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) commands that "anyone arrested or detained on a criminal charge ... 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 subjected to guarantees to appear for trial." However, the Iranian Code of Criminal Procedure (CCP) does set limits (i.e. Article 32 of Constitution of the Islamic Republic of Iran and Article 24 of the Code of Criminal Procedure both set a limit of 24 hours within which formal charges, in writing, must be communicated to the accused), although security exceptions are commonly applied to circumvent requirements of Iranian law. However, the security

exceptions in Article 32 of the Code of Criminal Procedure (and ensuing provisions allowing for judicial renewals of temporary detention orders of indefinite duration) stand in stark violation the ICCPR's due process guarantees.

The present writer had originally intended to discuss the treatment of the Yaran inside Evin Prison, having had access to some personal narratives that provide important details as to their experience in prison. However, the author has chosen not to engage in this analysis because of the security risks to parties in Iran involved. Moreover, disclosure of such intimate details could have the unwelcome effect of subjecting the Yaran to even worse treatment. However, what has been made public is the following information:

Each one of them [the Yaran] is facing a particular physical hardship, while they are deprived of things as basic as having a bed to sleep on. ([Ma'man Rezaee, "For my Father," Iran Press Watch \(October 21, 2009\).](#))

Here, each of the Baha'i seven were denied so basic a necessity as a bed upon which to sleep. Moreover, each of the Yaran was subjected to unspecified instances of "physical hardship." The reader is left to fill in the details, as it simply was not expedient for the daughter to reveal specific details regarding the physical deprivations that the Yaran have been made to endure.

Part III:

Application of "The Cairo Declaration on Human Rights in Islam" (CDHRI)

To be fair, "The Cairo Declaration on Human Rights in Islam" (CDHRI) — promulgated at the Nineteenth Islamic Conference of Foreign Ministers in Cairo on 5 August 1990 — is a historic document that should command international respect. Certainly, each of the members of the Islamic Conference of Foreign Ministers, including Iran, which is a signatory, is bound by the terms of this declaration. Although no enforcement provisions have been incorporated, each member of the Islamic Conference of Foreign Ministers stands accountable for its compliance, or noncompliance, with respect to each and every one of its provisions. In the present analysis, it makes sense to begin with Article 1, which provides:

Article 1

- (a) All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection.
- (b) All human beings are God's subjects, and the most loved by him are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds.

Here, note that respect for all human beings is the respective of "religious belief." The problem is that Iran has taken every measure to ensure that the Baha'i Faith is not recognized as a religion. By excluding Iran's largest non-Muslim religious minority — a community estimated to be 300,000 — from the category of a "recognized" religion, the Iranian regime has rendered Article 1 inapplicable to the Baha'is of Iran.

Even if another member Islamic state were to lodge a protest against Iran's treatment of the Baha'is in general, and of the Yaran in particular (an unlikely event), Iran can easily appeal to the final provisions of the CDHRI, which state:

Article 24

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

Article 25

The Islamic Shari'ah is the only source of reference for the explanation or clarification to any of the articles of this Declaration.

Here, the application of the Islamic law code (the "Shari'ah") can effectively nullify the application Article 1 to the to the Baha'is of Iran, and, indeed, application to the Baha'is of every member state of the Islamic Conference of Foreign Ministers, for the simple reason that Islam does not recognize even the possibility of a post-Islamic religion.

There are, however, other provisions that, although predicated on the application of Islamic law, may be invoked as "Islamic" protections that should be extended to the Baha'is of Iran and, instantly, to the Yaran:

Article 19

- (a) All individuals are equal before the law, without distinction between the ruler and the ruled.
- (b) The right to resort to justice is guaranteed to everyone.
- (c) Liability is, in essence, personal.
- (d) There shall be no crime or punishment except as provided for in the Shari'ah.
- (e) A defendant is innocent until his guilt is proven in a fair trial in which he shall be given all the guarantees of defence.

Article 20

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity. ... Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

Here, Article 19(e), in principle, should be fully and evenhandedly applied to all individuals, irrespective of religious affiliation. Unfortunately, this Declaration offers no definition of what constitutes a "fair trial." Nor does this Declaration provide any legal or diplomatic recourse for violations under any of its (presumably inviolable). provisions.

Article 20 prohibits any act of "physical or psychological torture or to any form of humiliation, cruelty or indignity." Without divulging significant details that may pose a danger to the Yaran, suffice to say that evidence exists that the Yaran were subjected to privations, indignities, as well as physical and psychological abuse, some of which may well qualify as acts of "torture."

Conclusion

The foregoing legal analysis of the case history and treatment of the Baha'i seven, known as the Yaran ("Friends"), has demonstrated clear violations of Iranian criminal law, as set forth and the applicable provisions of the Code of Criminal Procedure (as previously cited), and egregious infringements of constitutional protections as enshrined in the Constitution of the Islamic Republic of Iran. One further example regards freedom of religion. In principle, but not in practice, the Iranian Constitution protects freedom of belief:

Article 23 [Freedom of Belief]

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

Of course, this constitutional protection has never been extended to the Baha'is of Iran. Instead, what has happened is quite the opposite: The full panoply of Iranian state apparatus has been extensively mobilized to conduct investigations of individuals' Baha'i beliefs, and Baha'is have, in the very terms of Article 23, been regularly molested and

taken to task simply for holding Baha'i beliefs.

Part IV:

The Right to a Defense

The Iranian State is using the instrumentality of the legal system to prosecute what may be fairly characterized as a "show trial" for the benefit of anti-Baha'i hardliners—yet to the great detriment of Iran's international standing in the community of nations, as well as a betrayal of its own stated principles. Worst of all, the fair name of Islam—which stands for "submission" to the powerful presence of justice under divine precept and praxis—will be tarnished if this travesty of pretextual espionage, and other security charges, is allowed to go forward.

On procedural grounds alone, the Revolutionary Court should dismiss this case, with prejudice, for lack of due process. As a signatory of the U.N. International Covenant on Civil and Political Rights Due, Iran has committed itself, under international law, to the exercise of due process. Due process, however, is absent from this case.

Even if Iran were to openly repudiate international law (instead of maintaining the pretense of abiding by it, albeit on its own terms and subject to its own legal interpretations), Iran cannot escape the charge of violating its own procedural requirements.

The closed trial of the Yaran, moreover, has put Iranian Islam on open trial. This charade of justice promises to be a spectacle of debacle, a travesty of due process, a perversion of Iranian "Islamic" justice, a flagrant repudiation of universal standards of human rights, a shock to the judicial conscience, an affront to human dignity, an international scandal and a national disgrace. This high-profile, show trial will backfire.

The Iranian authorities should take into consideration the ramifications of this trial should it produce an unjust result. The international community, according to Article 3 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, is duty-bound to roundly condemn such actions, and to make compliance with this requirement of international law a precondition to normalized diplomatic relations. The "world court" of international public opinion will render its verdict, either way, depending on the outcome of this widely publicized and highly symbolic case. If the Yaran are declared guilty and are sentenced, Iran will be roundly declared as having violated international law (and, arguably, Iranian criminal procedure) and pronounced "guilty", and sentenced to further isolation by the international community.

In the final analysis, Iran's anti-Baha'i policy does serious damage to the reputation of Islam globally, not only to the Shi'i Islam of Iran, but also to the Sunni Islam of most other Islamic countries. As a consequence of Iran's treatment of its Baha'i minority — and especially of the Yaran — the ultimate injury-in-fact is refractory damage to the reputation of Islam in the eyes of the international community. As Mr. Soltani has stated in his October 17, 2009 interview: "Therefore, given international conditions, as well as the domestic situation in Iran, keeping the Baha'i leaders in prison is nothing but a [political] cost for the authorities. This is especially true because these individuals were not politically active, and do not represent a political front. They were only active within the realm of their beliefs." And furthermore: "No physical evidence exists for any of the seven individuals on the charge brought against them. The charges are only in terms of generalities and, like many political and religious cases, contain no legal reasoning at all." (["Interview with human rights lawyer Soltani," Iran Press Watch \(October 22, 2009\).](#))

Taking the charitable view that the State's case here may be the result of invincible ignorance, dismissing the case against the Yaran on procedural grounds alone would be the best way for all parties to "save face." This way, the Iranian state will not have to meet its burden to "prove" its baseless accusations, as the merits of the case will no

longer have to be reached. This, I submit, would be the most expedient way for the Court to extricate itself from the procedural objections which, on appeal, would predictably go before the Supreme Court of Iran for judicial review.

The sentencing trial of the Yaran is now set for February 7, 2010. This trial will test legislation passed less than six years earlier. On May 2, 2004, the "Law of Protection of Citizens" was passed by former President Mohammad Khatami and the Sixth Parliament of Iran. It was accepted by the Council of Guardians the next day. Article 3 obliges the court to observe the right of the accused to offer a defense, and the court's duty to provide the accused with the opportunity to obtain an attorney and an expert. Although Article 3 of the Law of Protection of Citizens has removed the limitations imposed by Article 128 of the Code of Criminal Procedure, the courts have reportedly not implemented Article 3 of the Law of Protection of Citizens. See "[Rights of Detainees and Accused in the Legal System of Islamic Republic of Iran](#)," by Navid R. Sato, Esq. See also Silvia Tellenbach, "Aspects of the Iranian Code of Islamic Punishment: The Principle of Legality and the Temporal, Spatial and Personal Applicability of the Law." *International Criminal Law Review* 9 (2009): 689–705.

According to Judge Stefan Trechsel, Duty Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia (ICTY), at The Hague in The Netherlands, criminal proceedings must comport with two fundamental principles of justice: procedural and substantive. Procedural due process, under a defined code of criminal procedure, must uphold the right to a fair trial. Fair trial guarantees include the right to a public hearing, the right to be tried within a reasonable time, the right to be heard before an impartial and independent tribunal, the right of the accused to be presumed innocent—until such time as the prosecution can prove culpability beyond a reasonable doubt—and the right to an appeal under judicial review. There must be an equipotent "equality of arms" between the prosecution and defense. The right to a fair and open trial protects the defendant from secret trials. Trials must be fair in order to succeed in their "presentation of justice" and thus inspire confidence in the administration of justice. A fair trial is not only for the accused; it also protects the right of the public (including the international community) to scrutinize the integrity of proceedings. It confirms or denies the legitimacy of State authority to its own people and to the world. See "[Report: Workshop: Procedural Justice—Comparative Aspects, 1st December 2007](#)"

Is an "Iranian fair trial" an oxymoron? The Yaran's access to fundamental fair trial rights is a key indicator of equitability in the Iranian system of criminal justice. Iran's criminal justice system will lose its integrity and credibility if due process standards are not applied in this high-profile show trial. Unless and until the Yaran are tried for internationally recognizable criminal offenses in proceedings that meet internationally recognized fair trial standards, the Iranian criminal justice system will lose face—indeed, will be shamefaced—in the court of international opinion.

APPENDIX:

CHECKLIST OF PROCEDURAL DUE PROCESS REQUIREMENTS UNDER IRAN'S CODE OF CRIMINAL PROCEDURE

The manner in which the Yaran were treated violated the Constitution of the Islamic Republic of Iran, Iran's Code of Criminal Procedure, and international standards of due process.

To consult the Iranian Code of Criminal Procedure, see Qanun-i A'yn-i Dadrisiyih Dadgahhayih Umumi va Inqilab dar Umur-i Kayfari [Criminal Procedure Code for Public and Revolutionary Courts] (1379) [2001], online at http://hoghoogh.online.fr/article.php?id_article=67 (in Persian).

See also the Qanun-i Ihtiram bih Azadihayih Mashru' va Hifz-i Huquq-i Shahrivandi ("Law Respecting Legitimate Freedoms and Protecting Citizen Rights" or "Citizen Rights Law")

1383 [2004], online at <http://www.bia-judiciary.ir/tabid/144/Default.aspx> (in Persian).

The following provisions from the Iranian Code of Criminal Procedure provide a checklist by which the Iranian judiciary's compliance with its own national (and Islamic) standards, as applied to the Yaran's due process rights, may be measured.

1. Article 112: "The accused shall be summoned by an arrest warrant. There should be two copies of the arrest warrant; one is served to the accused and the other must be signed by the accused and handed back to the serving officer."
2. Article 119: "The accused shall be summoned by an arrest warrant. The arrest warrant, which contains the reasons for the summons, must be read to the accused."
3. Article 121: "The accused should be summoned during the day, except in case of an emergency."
4. Article 123: "The accused shall be accompanied and monitored from the time of summoning to the time he or she is presented to a judge."

Comment: The officers are responsible for presenting the summoned person immediately to a judge. The accused may only be detained if there is the possibility of flight or the destruction of evidence; in the absence of these two conditions, officers do not have the right to detain an individual for more than 24 hours."

5. Article 132: "For the purpose of having access to the accused and his due appearance before the court when necessary, and to avoid absconding or hiding or interfering with others, the judge, after explaining the charge to the accused, shall use one of the following guarantees: (1) Obligation under the word of honor to appear before the court; (2) Obligation under bail to appear before the court until the trial has finished and the judgment has been enforced. In case of non-appearance, this shall be converted to surety; (3) Surety; (4) Pawn, including a sum of money or bank guarantee or real or personal property; (5) Temporary detention in accordance with rules."
6. Article 185: "All parties to a criminal dispute have the right to select and introduce their own legal counsel(s) to a court of law. The date and the time of the court appearance will be announced to the accused, plaintiffs, defendants and their attorneys. If the disputing parties have multiple lawyers, the presence of one lawyer from each side is sufficient for the court to proceed."

Comments Add your comment below...

William M. Danjon Dieudonné | February 6th, 2010 - 10:53 am

Ce samedi, 6 Février 2010

Permettez-moi d'exprimer mon émotion, quant à la lecture de ce rapport, mon émotion et ma tristesse face à la situation des Yarans et tout ce que cela signifie de souffrance pour eux, leur famille, leurs amis proches et pour tous les bahá'ís de par le monde. Souffrances que nous partageons avec une grande intensité et qui grâce à nos prières qui s'élèvent vers Bahá'u'lláh pour Lui demander de les protéger nous permettent d'espérer que la Justice sera appliquée envers eux comme ils le méritent. Tous mes remerciements vont vers vous qui avez su rédiger avec sagesse ce long rapport si explicite, remerciements qui s'étendent avec mon profond respect vers l'incomparable Juge Madame Shirin Ebadi pour laquelle je demande, avec ferveur, à DIEU de la protéger et de la préserver de tout mal.

Ce n'est pas lyrique mais simplement ce que je ressens spirituellement en tant que bahá'í au plus profond de moi-même.

Avec l'expression de mes sentiments les plus chaleureux.

TheRammer | February 6th, 2010 - 3:46 pm

Google's French -> English:

This Saturday, February 6, 2010

Let me express my feelings on reading this report, my emotion and my sadness at the situation Yaran and all that it means suffering for them, their families, their friends and relatives for all Bahá'ís all over the world. Suffering that we share with great intensity and with our prayers rising to Bahá'u'lláh ask Him to protect us hope that justice will be applied to them as they deserve.

My thanks go out to you who have wisely managed to write this lengthy report whether explicit acknowledgments extend my deep respect to the incomparable Mrs. Shirin Ebadi Judge why I ask fervently to God to protect and the preservation of all

evil.

This is not lyrical but simply what I feel spiritually as a Baha'i in the depths of myself. With the expression of my warmest.

FE | February 6th, 2010 - 6:03 pm

A profound article analysing Iranian criminal law.

I did not know that the judges and prosecutors have not studied law and just decide by their feelings and their religious learning somehow like the inquisitors in Christianity in the middle ages. How pity that they also don't understand the Holy Koran and the Shia doctrine of justice. How else they can invent and present cases like this which are in clear contradiction to the truth? When there is no truth and absence of reality there can be no justice. According to their own belief system they will be judged according to the principle of justice.

tooba | February 7th, 2010 - 3:48 pm

Thank you for writing this excellent article. I hope it gets translated into Persian, too. Continue defending the oppressed. The oppressors think that there is no tomorrow.

Robert | February 7th, 2010 - 4:42 pm

Recent years of American "justice" (i.e. Guantanamo Bay detainees) is as oppressive and unfair as that of the Iranian courts. Only a new type of secular state government and court system in Iran, and in America, will fix this type of problem which is born of religious bias. Courts of justice should never be allowed to be influenced by religious beliefs.

William Dunning | February 9th, 2010 - 3:19 am

I know it's just a matter of accuracy in translation, but it is amusing to read that under agreements signed and subsequently repudiated in practice by the Iranian Criminal Justice System (pun intended? you decide), "investigation of the beliefs" of Baha'i and others is outlawed.

Would that the mullahs, the imams and the ayatollahs DO investigate the beliefs and teachings of the Baha'i Faith. Of course they won't — history is replete with examples of militant Islamic clerics, obviously very intelligent men, who did just that. During the lifetime of Baha'u'llah and the Bab, these wise men looked into, listened to and disputed the teachings of this new dispensation revealed by "Him whose coming you have prayed for over the last thousand years." They became believers, in so many cases, and often martyrs themselves.

What are they afraid of? Nothing — except the truth.