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Documenting the Persecution of the Baha'i Community in Iran

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The Trial of the Yaran under the Iranian "Citizens' Rights" and "Legal Procedures for Revolutionary Courts" Standards

February 20th, 2010

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[Editor's Note: Iran Press Watch is presenting a new work in a series of analytical articles around the Iranian legal framework. This new article, by Dr. Christopher Buck, applies a few of the provisions of Iranian legal document, "Respecting Legitimate Freedom and Protecting Citizen's Rights," to the case of Yaran to demonstrate the procedural violations that Dr. Shirin Ebadi, Yaran's legal representative, has pointed out in her interviews.

In this series you can see:

["Iranian Islam, not the Yaran, on trial in the court of international opinion,"](#)

["The Trial of the Yaran under Iranian Criminal Procedure: 'The Justice of God' or Procedural Injustice?"](#)

["Respecting Legitimate Freedoms and Protecting Citizens' Rights"](#)

The legal framework, the court proceedings, the interviews and facts are all available -- *well is it with them that judge fairly* [طوبى للمنصفين]

The Trial of the Yaran under the Iranian "Citizens' Rights" and "Legal Procedures for Revolutionary Courts" Standards

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

Æquum et bonum, est lex legum.

The equitable and good is the law of laws. (Latin maxim)

Jura debet esse omni exceptione major.

It is proper that laws be greater than any exception. (Latin maxim)

On February 7, 2010, the seven Baha'i former informal leaders, known as the Yaran ("Friends"), were tried in the second session of their trial, reportedly presided over by Judge Moghiseh, head of Branch 28 of the Revolutionary Court in Tehran. (Also transliterated as Moqiseh, from Persian مقیسه. See <http://www.en-hrana.com/2010/02/17/hosseini-noorani-nejad-sentenced-to-three-years-in-prison/>.) This branch, under Judge Sohrab Heydarifard, had previously sentenced Iranian-American journalist, Roxana Saberi, on a charge of espionage, to eight years of imprisonment, then released her and allowed her to leave Iran, and later staged an appeals trial held in absentia, in which Ms. Saberi was formally cleared of espionage. Not so in the case of the Yaran. The fabricated charges that the Yaran face are the work of the intelligence and security organizations of the Islamic regime. As stated by lead defense counsel, 2003 Nobel peace prize laureate, Dr. Shirin Ebadi, the charges include "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](#)

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[Watch, January 13, 2010](#)) Press and pundits have not yet picked up on this evidently new charge of "spying for America" – which has yet to be independently verified.

The January 12, 2010 arraignment and the February 7, 2010 trial session were closed to the public and to the press (at least to the "free press"). Family members of the accused were not permitted to enter the courtroom. (See "[Baha'i leaders make second court appearance](#)") In legal parlance, this closed hearing is called an "in camera" (Latin: "in chambers") session. The approximately one-hour session on February 7, 2010 was reportedly focused on procedural matters.

Dr. Ebadi has recently commented on both the substantive and procedural aspects of this case. On January 24–25, television "News X" of India broadcast an in-depth documentary series on the persecution of the Baha'is of Iran, which included an interview with Dr. Ebadi. As for the charges that have been preferred against the seven Yaran, Dr. Ebadi characterized the charges as baseless and politically motivated:

I am the head of the legal team representing these seven Baha'is. I have studied their files thoroughly. There is not a shred of evidence for the charges leveled against them. Charges such as espionage for Israel, propaganda against the national security and others, are all excuses. Any just and impartial judge would, without a doubt, issue a complete acquittal and release them immediately. ...

I repeat, my clients are innocent. There is absolutely no evidence for any of these accusations. They should be released and acquitted immediately. If the judge finds them guilty and sentences them, he will be breaking the law.

Shirin Ebadi, "Iran: Baha'i Persecution," News X. See "News X of India broadcasts series on Baha'is in Iran," online at <http://iran.bahai.us/2010/01/27/news-x-of-india-broadcasts-series-on-bahais-in-iran>. Select link for "Part 2."

Regarding the arraignment, which took place on Tuesday, January 12, 2010, Dr. Ebadi commented:

The legal proceedings took place behind closed doors. Even the families of my clients were not permitted to be present during the sessions. Also the legal team initially was not permitted to be present in the sessions, during the trial of their own clients. But they objected to this absurd decision and eventually were permitted to be present during the session.

Asked if these proceedings were "fair and transparent," Dr. Ebadi replied:

These procedures are neither just nor transparent. They are not even in accordance with legal procedures and laws of Iran. I want to add that these clients of mine are not the only victims of injustice in Iran, though. The same unjust procedures are applied to all political prisoners. And in that case, I cannot tell you how far he will go in terms of breaking the law.

It should be pointed out, however, that the Iranian authorities do not recognize the existence of "political prisoners" as a distinct category. Asked if international pressure might be effective, Dr. Ebadi agreed, saying:

International pressure will be very effective. We need more international pressure on the government of Iran. But this is not only in the case of the Baha'is, but for all of the many political prisoners in Iran.

From the beginning of the revolution, there has been a lot of persecution against the Baha'is. They have not even been permitted to continue with their university education. But I must add that discrimination has been

applied not just against the Baha'is, but against all other religions and religious minorities in Iran.

Despite the chorus of condemnation from around the world, there has been no obvious effect. Yet international pressure must be maintained, as informed commentators agree that the government of Iran is influenced by global opinion.

As this trial proceeds, protractedly and painfully, some further legal considerations may be brought to bear in the case at bar, particularly as regards the application of an important legal document that has just been made available by Iran Press Watch, in translation. The translation of "Respecting Legitimate Freedoms and Protecting Citizens' Rights" (Qánún-i Ihtirám bih Ázádháiyih Mashrú' va Hifz-i Huqúq-i Shahrvandí), a landmark legal document adopted on May 4, 2004 by the Parliament (Majlis) of the Islamic Republic of Iran, invites commentary in the context of its meaningful application to the current human rights situation in the Islamic Republic of Iran, in which the trial of the Yaran affords a test case. See "[Respecting Legitimate Freedoms and Protecting Citizens' Rights: Excerpt from the Iranian legal framework](http://www.iranpresswatch.org/post/5505)," translated by Omid Ghaemmaghami, a Ph.D. candidate in Islamic studies at the University of Toronto – published for the first time in its entirety by Iran Press Watch – at <http://www.iranpresswatch.org/post/5505>. The original Persian may be consulted online at <http://www.bia-judiciary.ir/tabid/144/Default.aspx>.

A brief application of a few selected provisions of this document will further illuminate the procedural violations to which Dr. Shirin Ebadi has pointed in her "News X" interview, cited above. Since Dr. Ebadi was Iran's first woman judge, she is fully conversant with the Iranian Code of Criminal Procedure, with Iran's Penal Code, and with this newly translated document, "Respecting Legitimate Freedoms and Protecting Citizens' Rights." Although she does not explicitly reference these documents, Dr. Ebadi implicitly invokes them (or evokes their purport) in the course of her interviews. As such, some, if not all of the following selections from the Iranian code may not only be brought to bear on the trial of the Yaran, but may offer a heuristic, or key, for a more nuanced appreciation of Dr. Ebadi's arguments within the Iranian legal framework.

"Respecting Legitimate Freedoms and Protecting Citizens' Rights"

1. The investigation and prosecution of crimes, the performance of searches, and the issuance of rulings governing security and temporary arrests must be based on the law, and must result from judicial decisions and warrants that are clear and transparent. Investigators, prosecutors and judges must set aside all personal interests and eschew the abuse of power or any act of violence or undue detention.

Commentary: The Iranian Islamic Revolutionary Court is considered an "extraordinary court" – that is, a special tribunal whose jurisdiction is primarily security matters. Enacted in 1996, a section within Iran's Islamic Penal Code, entitled "Offenses Against the National and International Security of the Country," sets forth those offenses over which Revolutionary Courts have jurisdiction. The charge of espionage is obviously a security matter, which explains why the Yaran were detained and eventually summoned before Branch 28 of the Revolutionary Court in Tehran. Extraordinary tribunals are typically set up to try certain offenses, generally without following all the procedures of the ordinary court system. The United Nations Working Group on Arbitrary Detention has observed that these types of courts generally practice arbitrary detention, and typically deny their detainees the due process of a fair trial:

One of the most serious causes of arbitrary detention is the existence of special courts, military or otherwise, regardless of what they are called. Even if such courts are not in themselves prohibited by the International Covenant on Civil and Political Rights, the Working Group has none the less found by

experience that virtually none of them respects the guarantees of the right to a fair trial enshrined in the Universal Declaration of Human Rights and the said Covenant.

(Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/1996/40, at 26.)

Notwithstanding the foregoing, it is important to note that this provision, Section 1 of "Respecting Legitimate Freedoms and Protecting Citizens' Rights," requires the issuance of "warrants that are clear and transparent" for "the investigation and prosecution of crimes ... and temporary arrests." The present writer has not been able to determine whether official arrest warrants were issued, as required by this provision. Iran Press Watch readers are invited to inform the present writer as to whether these required warrants were duly issued, or not.

In connection with the "abuse of power" that this provision proscribes, the Baha'i International Community has implicitly suggested that the Iranian criminal justice system, in cooperation with the Ministry of Intelligence, has abused its power in its treatment of the Yaran. In its open letter of March 4, 2009 to Ayatollah Qorban-Ali Dorri-Najafabadi, Prosecutor General of the Islamic Republic of Iran, the Baha'i International Community implied an abuse of power in the following documented abuse of the seven accused Baha'is:

Then last year the seven members of the Yaran were imprisoned, one of them in March and the remaining six in May. For some time they were held in solitary confinement and denied access to their families. Although eventually family members were allowed brief visits under strict observation, the prisoners have yet to be given access to legal counsel. The conditions of their incarceration have varied in degree of severity over the course of the past several months, with the five male members confined at one time to a cell no more than ten square meters in size, with no bed.

(Baha'i International Community, "Letter to Ayatollah Qorban-Ali Dorri-Najafabadi, Prosecutor General, Islamic Republic of Iran," online at <http://bic.org/areas-of-work/persecution/prosecutor-general-iran-en.pdf>.)

Precise dates, within a general timeframe, may be noted here. On March 5, 2008, Mahvash Sabet, one of the Baha'i leaders, was arrested by agents of the Ministry of Intelligence in Mashhad. (The case was later transferred from the Ministry of Intelligence and is now in the hands of the Judiciary.) On May 14, 2008, the remaining six Baha'i leaders – Jamaloddin Khanjani, Behrouz Tavakkoli, Saeid Rezaie, Fariba Kamalabadi, Vahid Tizfahm, and Afif Naeimi – were arrested at their respective homes in Tehran. The first reported family visit took place in September 2008, after the Yaran had spent about four months in solitary confinement. The Yaran are incarcerated in Section 209 of Iran's largest and most notorious prison, Evin Prison, located in the northwestern region of the Iranian capital, Tehran. The four-month solitary confinement had no justification whatsoever, and was an arbitrary abuse of power.

2. Convictions must be in accordance with legal procedures and should be restricted to those who commit the crime and their accessories. Until such time as the crime has been established in a court of law and a verdict that is based on sound arguments and supported by legal evidence or based on sources of religious jurisprudence (in the event that legal evidence is not available), the defendant is presumed innocent. Each person is entitled to protection under the law.

Commentary: In the American legal system, as is common practice elsewhere, criminal

charges are presented as "allegations," and the judiciary refrains from conclusory statements prior to the conclusion of any given trial. Not so in the case of the Iranian judiciary. Ayatollah Qorban-Ali Dorri-Najafabadi, Prosecutor General, for instance, was quoted by Iran's state-run "Press TV" as stating that the Iranian Baha'is in general (and, by direct implication, the Yaran in particular) are enemies of Islam and pose a threat to Iran's national security: "Baha'i organisations are illegal and their connections to Israel and their enmity toward Islam and the Islamic system are absolutely certain and their threat against the national security is a proven fact." See this statement in the original Persian online at <http://www.farsnews.com/newstext.php?nn=8711271271>.

According to the Fars News agency, this statement was made in a letter that Ayatollah Qorban-Ali Dorri-Najafabadi had addressed to Hojjatol-Islam Gholam-Hossein Mohseni-Eje'i, who was the head of the Ministry of Intelligence in Iran from 2005 to July 2009, when he was abruptly dismissed and then appointed Iran's prosecutor general by the new judiciary chief, Ayatollah Sadeq Larijani. Dorri-Najafabadi commented on why the Baha'is should not be guaranteed the protections otherwise afforded by Article 20 and Article 23 of the Constitution of the Islamic Republic of Iran, which, under Chapter III ("The Rights of the People"), commands:

Article 20

All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.

Article 23

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

Dorri-Najafabadi has taken the position that these constitutional protections do not apply to those Iranians who, individually or collectively, have been identified by the Government as posing a national security threat (regardless of whether or not evidence exists to support that claim). Freedoms enjoyed under the Iranian Constitution, according to Dorri-Najafabadi, must, in the public interest, be suspended in favor of the national security and to preserve territorial sovereignty. Referring to Israel as "Occupied Palestine," Dorri-Najafabadi states that there is incontrovertible evidence of ties between Iranian Baha'is and the "Zionist" state. The Baha'i World Centre is located on Mount Carmel in Haifa, Israel – not because of any connection with "Zionism," but because the prophet-founder of the Baha'i Faith, Baha'u'llah (1817–1892), was exiled, along with around 70 other exiles, to Palestine, and was incarcerated in the most notorious prison of the Ottoman Empire, the ancient Crusader fortress-prison of 'Akká, next to the Bay of Haifa.

Dorri-Najafabadi's "finding of fact" (to use the American legal expression) is hardly a presumption of innocence. Rather, it is a foregone conclusion – that is, a decision made before the evidence for it is known. Although citing unspecified documents that reputedly provide evidence of such a connection, the argument that Dorri-Najafabadi has articulated is basically nothing more than what may be termed, "guilt by association." Here, the guilt is not defined at all. Nowhere does Dorri-Najafabadi accuse Baha'is of overtly plotting to overthrow the Iranian regime, or covertly seeking to undermine its authority, or perversely intending to commit terrorist acts, or inchoately attempting to transmit state secrets. As such, Dorri-Najafabadi's vague accusations amount to scarcely more than a presumption of guilt, not a presumption of innocence.

Dr. Shirin Ebadi clearly evoked the purport of Section 2 of "Protecting Citizens' Rights" when she said: "If justice is to be carried out and an impartial judge should investigate the charges leveled against my clients, no other verdict can be reached save that of acquittal." See "Iran's Ebadi says seven Baha'is must be acquitted." Iran Press Watch (January 13th, 2010). (Hear the audio in Persian, online at

<http://www.televisionwashington.com/media1.aspx?lang=fa&id=2802>.) Pursuant to the clear terms of Section 2 of "Protecting Citizens' Rights," Judge Moghiseh's investigation must be based on "sound arguments" and his verdict must be "supported by legal evidence."

3. The court and the public prosecutor's office must not deprive defendants and the accused of the right to a legal defense, and must always provide the accused an opportunity to seek the counsel of an attorney or [legal] expert.

Commentary: This requirement has partly been met, yet partly denied. First, in the case of offenses against national security, Article 128 of Iran's Code of Criminal Procedure permits a judge to deny access to lawyers during the investigation phase (which can last months). Article 128 may also be invoked where strict confidentiality must be maintained, or where the presence of someone other than the defendant may, at the discretion of the judge, cause "corruption." Thus, Article 128 is routinely used to deny the accused access to family members and their attorneys during the course of the inquest. There appears to be no judicial review, much less judicial oversight, of a judge's abuse of this discretionary authority.

5. The guiding principle that individuals should not be arrested or detained without due process demands that all necessary arrests and convictions follow the procedures and conventions that have been determined by the law. In the event of a moratorium, the file must be sent to the appropriate judicial authorities, and the family of the detained must be apprised of any and all developments.

Commentary: With respect to this provision, the present writer has previously published an analysis of the pretrial proceedings in light of the Constitution of the Islamic Republic of Iran, and with reference to Iran's Code of Criminal Procedure. (See Christopher Buck, "The Trial of the Yaran under Iranian Criminal Procedure: 'The Justice of God' or Procedural Injustice?") Clearly, "the family of the detained" was not regularly "apprised of any and all developments" after the serial moratoria (procedural delays), as mandated by Section 3 of "Protecting Citizens' Rights."

15. The head of the judiciary must appoint a committee to supervise the implementation of the above provisions. All departments that are in some way affected by this law must cooperate with this committee. The committee has the duty to prosecute those whom it finds to be in violation of these provisions. It must also work to correct any deficiencies in procedures, and bring them into compliance with these legal stipulations. It must prosecute violators severely, and must report all its actions to the head of the judiciary.

Commentary: If the pretrial and trial proceedings of the Yaran are any indication, this provision is largely inert. What is interesting is that, in principle, although not in practice, egregious violations of the protections and procedural guarantees mandated by "Protecting Citizens' Rights" would, within the Iranian criminal justice system, constitute actionable criminal behavior.

Trial Rights (and Exceptions) under Another Iranian Standard: The "Code of Legal Procedures for Common and Revolutionary Courts in Criminal Matters"

The Revolutionary Courts follow the rules of court known as the "Code of Legal Procedures for Common and Revolutionary Courts in Criminal Matters," the Persian original of which may be consulted online at http://hoghoogh.online.fr/article.php?id_article=67. Three of its provisions will here be cited in translation, and applied to the trial of the Yaran.

Article 188

Court proceedings are open to the public, except in cases in which:

1. The case involves acts that are incompatible with norms of chastity and crimes that are against morality.
2. The case involves family or private matters, as per the request of the individuals involved.
3. Openness of the court might harm religious feelings or security.

Commentary: Here, the third exception, which is the standard that has been applied in this case, again proves that the trial of the Yaran has been ruled by exceptions to the clear provision of Iranian criminal procedure. Regarding the arraignment on January 12, 2010, Dr. Ebadi recounted:

On the basis of the information given to me by the families of my clients, the first session of the trial began today; out of the four lawyers which the Centre for the Defense of Human Rights [established by Ebadi and other lawyers in Iran, and currently closed by the authorities] had assigned to them – myself, 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, but in spite of our request, it was announced that the hearing would be held behind closed doors, and they even made the relatives leave the room.

See "Iran's Ebadi says seven Baha'is must be acquitted." Iran Press Watch (January 13th, 2010).

While the closed hearing operated pursuant to an exception to the public trial requirement of Article 188, if there is really no security risk posed by the seven Baha'i accused, then one can only conclude that the closed session was intended to protect the Court from public scrutiny, in the name of safeguarding Iran's security interests.

Article 190

When the investigations are complete and a date for the trial is set, the defendant or his lawyer have the right to go to the court office and receive necessary information regarding the contents of the dossier.

Commentary: Here, the involvement of Dr. Shirin Ebadi caused pretrial procedures and trial proceedings to be studied more scrupulously. Commenting on the pretrial proceedings, Dr. Ebadi stated:

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.

After the inquest had run its course and the investigation was completed (presumably by the Ministry of Intelligence), the case file, or dossier, was finally given to Dr. Ebadi and her legal team. After examining the government's case as presented in the dossier, Dr. Ebadi remarked: "I read the dossier and fortunately or unfortunately, found in it no cause or evidence to sustain the criminal charges upheld by the prosecutor." See "Iran's Ebadi says seven Baha'is must be acquitted." Iran Press Watch (January 13th, 2010).

Article 210

The judge must make no public statements regarding either the innocence or guilt of the defendant until a verdict is pronounced and the trial is ended.

Commentary: Unlike Ayatollah Qorban-Ali Dorri-Najafabadi, Judge Moghiseh, head of Branch 28 of the Revolutionary Court in Tehran, has refrained from making public statements on the guilt or innocence of the accused Yaran. In theory, execution of the "Respecting Legitimate Freedoms and Protecting Citizens' Rights" Act and its executive code is supposed to prevent any infringement of the constitutional and statutory rights of individuals as Iranian citizens. But various exceptions to these protections have been applied to the Yaran, with the result that their pretrial and trial proceedings have in many instances followed, not the black letter law, but its exceptions.

Conclusion

The United Nations Human Rights Commission (UNHRC) is scheduled to review the Islamic Republic of Iran's human rights record on February 15, 2010. On February 8, 2010, Dr. Ebadi wrote to the UNHRC, urging the Commission to review Iran's record in light of recent events. She states, in relevant part:

Although I have already highlighted the deteriorating human rights situation in Iran on several occasions in writing and in person, I deem it necessary to once again draw the attention of Your Honour and the distinguished members of the UNHRC to the following issues as you prepare to review the Islamic Republic of Iran's human rights record, on 15 February 2010: ...

Not only non-Muslims are persecuted – such as members of the Baha'i faith who, since the establishment of the Islamic Republic of Iran, have not even been allowed to study at university – but even the followers of Iran's official religion, Shi'ite Islam, have not been immune from government repression; as an example, one could cite the persecution and detention of the Gonabad Dervishes. ...

So, I urge you, yet again, to use whatever means possible to convince the government of the Islamic Republic of Iran to abide by the resolutions adopted by the UN General Assembly, in particular the resolution of December 2009; to allow human rights rapporteurs, especially those who deal with arbitrary arrests, freedom of expression, religion and women's rights, to enter Iran, and to cooperate with them.

I also urge you to appoint a special rapporteur on the human rights situation in Iran, who would be able to continuously monitor the government's conduct and, by offering prompt advice and suggestions, help end the political crisis and mounting repression.

My honourable friends! Please bear in mind that we are all responsible and accountable to history.

Dr. Shirin Ebadi
08 February 2010

See "Open Letter to Honourable Madam Navanethem Pillay, United Nations High Commissioner for Human Rights, and Members of the United Nations Human Rights Council (UNHRC), By Shirin Ebadi, Human Rights Advocate and 2003 Nobel Laureate," online at http://www.humanrights-ir.org/php/view_en.php?objnr=345.

In my survey of the relevant Iranian law, it is clear that Iran's Constitutional protections may be effectively suspended if anything deemed contrary to the current Government's interpretation of "Islamic criteria" may be invoked. In the immediate aftermath of the Islamic Revolution of 1979, Iran's draft constitution was published by the provisional government of Bazargan in June 1979. This draft was modeled on the 1958 constitution of the French Fifth Republic. The cleric-dominated Assembly of Experts subsequently altered this draft beyond recognition. A case in point is Article 4.

Article 4 presumptively and preemptively trumps all Iranian constitutional guarantees and safeguards. All that has to happen is for the Guardian Council to decree that any protection, whether extended to an individual or a group, effectively conflicts with "Islamic criteria." A binary opposition of principles obtains here: Islam and the Constitution are potentially brought into conflict within this presumably "Islamic Constitution." Article 4 commands:

Article 4

All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the fuqaha' [jurists] of the Guardian Council are judges in this matter.

See "The Constitution of the Islamic Republic of Iran," online at http://www.iranchamber.com/government/laws/constitution_ch01.php.

Within the four corners of this Constitution, citizens' rights are cornered. The effective application of each and every one of those rights may be compromised by interpretations of "Islamic criteria." Not only are Constitutional protections subject to suspension, but the Code of Criminal Procedure contains various exceptions as well, which I have previously analyzed. Doubtless there are even more exceptions that can effectively neutralize, nullify and nix whatever procedural guarantees have been extended to all Iranian citizens, on paper. With respect to "Respecting Legitimate Freedoms and Protecting Citizens' Rights" that Iran Press Watch has recently brought to light in Omid Ghaemmaghami's translation of that document, reputedly "Islamic criteria" and putative "security" considerations have combined to effectively create a subtext that renders this document largely ineffective and unenforceable.

These unrelenting erosions of citizens' rights have altered the social landscape of Iran. The judicial face of Iran has been transmogrified. Unfortunately, the proverbial parchment, on which the Constitution of the Islamic Republic of Iran has been indelibly inscribed, has itself been parched and blackened by flaming abuses of power, seething violations of criminal procedure, and scathing pretextual accusations without foundation – not to mention by the protracted inquest conducted in the name of the criminal "investigation," by the harassment and various threats posed to lead defense counsel, Dr. Shirin Ebadi, and her family, by the imprisonments of her co-counsel, Mr. Abdolfattah Soltani (co-founder of the Center for the Defense of Human Rights), by the isolation of the Yaran from family members for extended periods of time, by cells without beds, and by the possible occurrence of unspoken, but unspeakable acts of intense interrogation constituting unreported psychological torture.

The real "security risk" is not any connection of the Yaran with Israel or America. The actual security risk is the threat to the security of Iran's citizens. The sanctity – both secular and sacred – of their constitutional and statutory rights is in grave peril.

"Unfortunately, for some time now," Dr. Ebadi has commented, "the Judiciary has distanced itself from justice." Because of the several violations of criminal procedure, the Yaran have been subjected to procedural injustice. This is why Dr. Ebadi concludes: "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 13th, 2010).

The Hon. Judge Moghiseh has the duty and discretion to review the procedural violations that Dr. Ebadi has publicly decried, as well as the duty to review the procedural exceptions that have been applied, even if lawfully so. May the Hon. Judge Moghiseh be

guided by this venerable Latin maxim: *Jura debet esse omni exceptione major*. "It is proper that laws be greater than any exception." May the procedural exceptions no longer prove to be the rule in the trial proceedings, as they have in the pretrial proceedings.

The evidence of procedural violations should carry special weight in the calculus of determining the outcome. The Hon. Judge Moghiseh has the discretion to dismiss the state's case against the Yaran on procedural grounds alone, without ever reaching the merits of the case. This would arguably be the most expedient resolution of these proceedings, thereby allowing the state to "save face" by not subjecting the Iranian judiciary to worldwide opprobrium when the state's evidence is exposed as a sham, just as Dr. Ebadi, after having read the state's dossier, "found in it no cause or evidence to sustain the criminal charges upheld by the prosecutor." May the Hon. Judge Moghiseh be guided by this venerable Latin maxim: *Æquum et bonum, est lex legum*. "The equitable and good is the law of laws."

As the trial proceeds, the Hon. Judge Moghiseh must evenhandedly consider the state's case, hear the defense, weigh the evidence, and render a just verdict. Pursuant to Iranian law under the provisions of "Respecting Legitimate Freedoms and Protecting Citizens' Rights," may the Hon. Judge Moghiseh "set aside all personal interests," assure "the accused of the[ir] right to a legal defense," uphold "due process" and, "based on sound arguments and supported by legal evidence," issue a "judicial decision" that is "clear and transparent." May the Hon. Judge Moghiseh, after reviewing the evidence (or lack of evidence, as the case may be), see fit to dismiss all seven of the Yaran, on procedural grounds alone, or on the merits of the case, or both.

We may never know the full history of the trial of the Yaran – the "canaries in Iran's cages." (See <http://www.theglobeandmail.com/news/opinions/the-canaries-in-irans-cages/article1427611/>.)

But history will know full well of our response.

* * *

Comments Add your comment below...

William M. Danjon Dieudonné | February 21st, 2010 - 11:15 am

"When man turns his face to God – he finds sunshine every where."

" Every eye which is weeping for the sake of the love of God is blessed – every ear which is hearing the Divine Call is blessed -
Then may thine eyes flow with tears of joy, because of the coruscation of the fire of the heart, and may thy soul and thy spirit be attached to the Beauty of the Beloved"

Abdu'l-Bahá
(1844-1921)