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Iran: The circumstances under which court summons and forfeiture documents are issued by courts; information on bail; the circumstances under which notices of conviction are issued by the Islamic Revolutionary Court; the prevalence of forged court documents

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In 7 January 2009 correspondence, the coordinator of the International Campaign for Human Rights in Iran located in New York provided the following information:

The International Campaign for Human Rights in Iran is [an] independent, nonpartisan initiative aimed at supporting human rights and human rights defenders in Iran....These answers below may be considered those of the Campaign.

Court summons [in Iran] are issued in criminal and civil cases. [The Campaign is] concerned by the use of such summons as a form of harassment. In recent years, human rights defenders (including Nobel Peace Laureate Shirin Ebadi), women's rights activists, students, labor activists, journalists, opposition political activists and others have received summons, some of which have contained no information about any possible charges. At times, those summoned have been charged; at times they have been arrested, and in many cases, the summons is an occasion to threaten and intimidate ... people who have been summoned purely on political grounds.

Forfeiture documents are issued to compel individuals to appear in court, otherwise their assets or those assets put up by friends will become the court's. What is problematic in Iran is the extremely high bail required of virtually all who are charged in connection with their human rights activity. Bails as high as 250-400,000 USD have been issued, with the result being that defendants are detained for very long periods, a violation of human rights in itself. Likewise the value of property posted in these cases is very high.

In some cases, notices of conviction (a guilty verdict) [issued by the Islamic Revolutionary Court] mark the conclusion of unfair, politicized trials. Indeed, the verdict in a number of cases has clearly been preordained, with the trial choreographed to appear to be leading to the verdict.

[The Campaign does] not have any independently-confirmed data on [the issue of obtaining forged documents in Iran and their prevalence.]

In December 2008 correspondence, an attorney with a legal firm in London, England provided the following information:

[The attorney has] been out of Iran since October 1979. However, during this period [he has] collected and collated all the legal juridical reports issued in Iran. In addition, [his legal firm receives] the Official Gazette which contains publicly available information on legislative measures passed by Parliament or other law making bodies as well as the decisions of the Supreme Court and Administrative Courts. [He is] involved in many commercial (and sometimes non-commercial) litigations and keep[s] in touch with events in Iran through contacts with colleagues and associates. (Sabi & Associates 22 Dec. 2008)

The controlling law in this respect [the circumstances under which the court summons are issued in Iran] is the Criminal Procedure Code of Public and Revolutionary Courts that was approved in September 1999 on a temporary basis. This has now become final as no replacement code was approved by Parliament. (ibid. 5 Dec. 2008)

In accordance with Article 34 of the Criminal Procedure Code (CPC), the examining magistrate (acting effectively as prosecutor or district attorney) when handling a criminal case, may at any time during the investigation issue a warrant of arrest of the accused. The warrant of arrest shall be submitted to a judge within 24 hours and subject to the approval of the judge, a temporary order for arrest of the accused will be issued. (ibid.)

The order of temporary arrest is subject to approval of the head of the judicial division of the relevant district (Article 33) and is appealable to the Court of Appeal within 10 days from its issuance. The Court of Appeal is required to immediately consider the objections of the accused and shall rule thereon within one month from the date of arrest of the accused. (ibid.)

Further, the law enforcement officers (includes the police, Government militia, the army and gendarmerie) are entitled to arrest anyone [who commits] a crime (Article 21). (ibid.)

... it is well known that the agents of the Ministry of Information (the secret service) have detained many individuals without going through the process that is set out in the CPC. In a particular case that [the attorney] was personally involved, [he] noticed that many months after their arrest, a number of the accused were forced to sign statements that they [had] received temporary arrest warrants on a monthly basis and acknowledged receipt thereof. Some of the detainees ...[were] released without being charged and without any record of their arrest. (ibid.)

...

... In accordance with Article 132 of the Criminal Procedure Code, the judge may ask for bail or surety in criminal cases and release the accused on that basis. Article 134 of the CPC requires that the bail or surety shall be appropriate and proportionate to the importance of the crime committed and the punishment that is envisaged for such crime, as well as the status of the accused and his background. (ibid. 22 Dec. 2008)

The bail provided is normally in the form of a title deed of a property with a

valuation that must substantially exceed the amount of the bail fixed by the court or cash effectively equivalent to a caution, [it] is registered against the title and the original title deeds are kept by the office of the court. The cash is deposited in a special account of the Ministry of Justice designated for this purpose. (ibid.)

If the accused fails to appear at the due date for the trial or for any hearing, then the court may issue an order for forfeiture of the bail. The accused, the surety and the person who has provided bail shall have the right to protest ... the forfeiture within 10 days to the Court of Appeal who would consider the matter in an emergency session of the court. (ibid.)

... certain bail amounts that are now being fixed by the courts are disproportionate to the crime committed and especially in cases with some political overtones, the courts are requesting unreasonable and very high amounts for bail to make sure that the accused will be held for an unlimited period of time in prison. Also, ... in cases where bail has been provided, the court will refuse to release the bail, even after the accused has appeared before the court, on the due date or the case has been dismissed. (ibid.)

[With respect to notices of conviction issued by the Islamic Revolutionary Court], [if] the accused is present during the trial, the judgment of court is served on him at the conclusion of the trial and he is required to sign the minutes of the trial that are prepared by the clerk of the court. (ibid. 5 Dec. 2008)

Otherwise, if the judgment is reserved, the judgment, within three days of its issuance shall be served on the accused (Article 213) and its content be carried out. If the accused is not in custody at the time, then the service will be carried out through law enforcement officers of the court. (ibid)

In case the accused is not present at any time during the proceedings or the trial, then the judgment will be considered to have been issued *in absentiam* (Article 217). The accused is then entitled to ask for a re-trial within 10 days from being actually served with the judgment. If the judgment is served at the accused's last known address, then the accused is entitled to ask for a re-trial within 10 days of being informed of the service. In any event, the judgment of the court will be subject to appeal to the Court of Appeal. (ibid. emphasis in original)

The source stated that he does not have reliable information on forged legal documents in Iran (Sabi & Associates 5 Dec. 2008).

In 6 March 2009 correspondence, the refugee coordinator of Amnesty International (AI) in Toronto provided the following information which was forwarded to her by a researcher with the Iran team of Amnesty International's International Secretariat in London:

Please note that the Code of Criminal Procedures cited in this letter refers to the 1999 version. A revised draft is, at the time of writing, under parliamentary consideration.

Courts summons may be issued by prosecutors' offices or judges from a variety of courts including those in the Revolutionary and General Criminal

Courts (*Dadgah-ha-ye Enghlab va 'Omomi dar Omour-e Keyfari*); Civil (*Dadgah-ha-ye 'Omomi*); specialised courts, including those for government employees, family courts; military tribunals and so forth and special courts, notably the Special Court for the Clergy.

Prosecutors and judges may, in Amnesty International's experience, issue court summons for a variety of reasons, including questioning, to take part in an investigation (whether as suspect or witness); to take part in a trial (whether as suspect or witness), to deal with bail or for attendance in court for the delivery or enforcement of a verdict.

Judges responsible for implementing a verdict (*Qazi-ye Ejra*) may issue summons in order that those convicted report for the allocated punishment, notably to start prison terms.

A summons may be sent by post, but it is more usually delivered by court bailiffs, sometimes also called 'sheriffs' ; in Persian *zabeteyn*. Individuals may also be brought to court in the absence of a summons, under duress, including by plain-clothed officials (called in Persian *lebas shakhsi*), though Amnesty International is not aware of the agency affiliation of such officials, nor whether they have any such formal affiliation. It is impossible to judge the frequency of the latter.

If summons here is also meant to mean a 'notice of conviction,' this could be in reference to a summons from the implementation, or *Ejra* section of the Prosecutors Office.

...

... [There are] two different processes: (1) that of providing bail, or security for a person who is to be released from custody, and (2) that in which the bail 'put up' is taken away from the signatory on the basis that the person(s) about whom the bail was put up in the first place has fled.

While aware that articles 132 to 147 of the Code of Criminal Procedure set out what has been termed 'forfeiture' documents, Amnesty International has no specific information as to the actual operation of the procedures described.

Amnesty International points out that despite the existence of laws requiring that court or other judicial officials write up and issue judicial documents to those affected by such documents (those putting up forms of bail; witnesses, suspects, lawyers, other judicial officials), such documentation may not, be produced and those affected may ultimately be ignorant of decisions taken, by virtue of not having been informed.

Bail in Iran, like many other countries, consists of a form of valued (in monetary terms) surety, whether of *res mobile*, or movable things — usually a sum of cash, a bank guarantee (and other methods) or a monetary bond, or *res immobile*, real estate.

Bail is required for the temporary release of someone held before or during a trial in connection with a crime, generally one attracting a prison term and is

seized if the designated person does not appear in court, where not provided with a court accepted reason for the absence, whether beforehand or retrospectively...

There are a variety of terms for bail in Persian, used in a variety of ways to indicate a range of processes. The same term used by different speakers may not indicate a shared understanding of the terms, or the processes the speaker wishes to identify. The following uses only *kefalat* and *vasiqeh*.

The most common form of bail is known as *kefalat* in Persian, or guardianship, a non-valued form of surety in the first instance and indicates the guardian's 'word' or 'honour' that the designated person appear in court at the appointed time and corresponds to the provisions set out in article 132.1 of the Code of Criminal Procedures (1999).

Under this arrangement the guarantor is personally liable and responsible for delivering the accused to the court whenever he or she is summoned. *Kefalat* constitutes a specified monetary value which will be paid post facto if the guarantor fails in their undertaking to 'deliver'. The guarantor is not required to produce the cash 'up front' and often offers a property deed or another asset, or proof of asset as guarantee that the specified sum would be paid if the occasion arises.

The Persian term *vasiqeh* / *vasiqeh* is understood by Amnesty International to generally indicate the advance provision, or deposit, of a form of surety.

While the Code of Criminal Procedure sets out those cases where bail may and may not be provided, and the manner in which it is to be set, in our experience, the bails we report on often appear excessive in terms of the "crimes" alleged and in terms of average incomes in Iran, appearing to fly in the face of Article 134 of the 1999 Code of Criminal Procedures, which requires bail bonds or security to be commensurate with, inter alia, the severity (Persian: *sheddāt*) of the alleged crime. Bail, in terms of the largely political cases that AI sees, is taken in the form of property deeds and can involve several properties, generally belonging to family members.

We have no information on how bail is collected, or, confiscated, that is, how people are evicted from their places of residence and the property seized; nor in what manner bail is disposed.

We understand 'notice of conviction' to be a verdict. As far as AI is aware, verdicts are always issued at the conclusion of trials held in General and Revolutionary Courts (they share the same Code of Criminal Procedure). Verdicts pronounced in court may not be provided, in written form, to the parties involved in a dispute. In a great many of the cases that AI has worked on, written verdicts have not been provided to lawyers.

AI has no information on the relative difficulty in obtaining forged or false court documents in Iran. Anecdotal evidence suggests that within Iran forgeries are rarely used since the provenance of a document can be easily checked by reference to court or office registers. It is impossible to determine whether forged court documents found outside Iran are produced within or outside the country.

...

The information provided in this letter is provided officially on behalf of Amnesty International.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

Amnesty International (AI), Toronto. 6 March 2009. Correspondence from the refugee coordinator.

International Campaign for Human Rights in Iran, New York. 7 January 2009. Correspondence from the coordinator.

Sabi & Associates, London. 22 December 2008. Correspondence from an attorney.

_____. 5 December 2008. Correspondence from an attorney.

Additional Sources Consulted

Oral sources: The Embassy of the Islamic Republic of Iran in Ottawa, Human Rights Watch (HRW), the International Commission of Jurists in Geneva, the Iranian American Lawyers Association, the Islamic Legal Studies Program at Harvard Law School, the Legal Iran International Services Bureau in Tehran, the Middle East Institute in Honolulu, the Thomas Jefferson School of Law in San Diego, and a legal firm in London and another in Tehran were unable to provide information or did not respond to requests for information within the time constraints of this Response.

Internet sites, including: European Country of Origin Information Network (ecoi.net), Freedom House, Human Rights First, Human Rights Watch (HRW), Judicial System of the Islamic Republic of Iran, ParsTimes, Transparency International (TI), United Kingdom (UK) Home Office, World Legal Information Institute, World Legal Materials.

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