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Responses to Information Requests

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29 September 2014

IRN104955.E

Iran: Court summonses and arrest warrants, including issuance procedures, methods of delivery, description of the documents and the information they contain; prevalence of fraudulent court documents
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Issuance Procedures

1.1 Court Summonses

According to information obtained from two Iranian lawyers during a fact-finding mission conducted jointly by the Danish Refugee Council (DRC); The Norwegian Country of Origin Information Centre, Landinfo; and the Danish Immigration Service (DIS) [1] in November 2012, summonses are issued by the competent court and forwarded by the police to the person in question (DRC et al. Feb. 2013, 5, 60). The same source indicates that the summons orders the person to appear in court in the "near future," in some cases within three days (ibid., 60). The joint report further states:

Regarding the procedures for delivering a summons, the sources [two Iranian lawyers] stated that the police delivers the summons to the person in question at his or her address or working place. If the person is present, it is handed over to the person in question. He or she is given the original summons and must sign the copy which goes back to the court.

If the person in question is not present, a family member can receive the summons in his or her place. The same procedures for receiving the summons apply in that the family member signs the copy which must go back to the court and keeps the original. There are no consequences for the family member if the accused does not show up in court.

If no person or family member is present on the address, the summons can be put in the mailbox and this will be registered on the copy that goes back to the court. The sources confirmed that the stated procedures were uniform throughout Iran, but commented that sometimes inexperienced police officers bring back the original document to the court and let the person in question keep the copy. It was added that in the case of a murder suspect, the police would arrest the person on the spot.

The lawyers confirmed that a neighbour might accept to receive the summons on behalf of the suspect. In that case, the neighbour must sign the copy of the summons that goes back to the court and show his ID-card. The neighbour will not be punished if the suspect later does not show up in court, according to the lawyers.

The sources added that if there is no address, the summons might be posted in the newspapers. If the summons is published in the papers, at least a month will pass before a trial in absentia would commence. If the accused has an address, the summons will normally not be printed in the newspapers. After being summoned several times, the trial may commence in absentia.

About the possibility of leaving the country if a person has been summoned to the court, the sources stated that in major fraud cases, a suspect would be banned from leaving the country. A private plaintiff may also request that the suspect be banned from leaving the country while the case is ongoing. However, if the case involves theft for example, and the accused has been released on bail, the person will be able to leave the country. (ibid.)

In correspondence with the Research Directorate, the Executive Director of the Iran Human Rights Documentation Center (IHRDC), an independent NGO established by human rights scholars and lawyers with the purpose of establishing "a comprehensive and objective historical record of the human rights situation in Iran" (IHRDC n.d.), indicated that a written summons is generally required to bring a person to court, but also noted that "a judge can order a defendant to be detained without issuing a summons if the crime is punishable by death or amputation, or when the defendant's address or place of work is unknown and the judge has not been able to locate the defendant" (IHRDC 12 Sept. 2014).

In a telephone interview with the Research Directorate, a representative of the International Campaign for Human Rights in Iran (ICHRI), an independent NGO that aims to provide "relevant, verified, and up-to-date information about the human rights situation in Iran" (ICHRI n.d.), said that court summonses are issued by the judicial office and are sometimes hand delivered, but are also sometimes delivered by mail (ICHRI 22 Sept. 2014). He also said that people are sometimes summoned by telephone, even though they are supposed to receive a written document (ibid.). The Executive Director of the IHRDC was also aware of cases in which people reported being summoned by telephone by intelligence officials, who he said are sometimes reluctant to document the criminal process with "sensitive cases" such as those against religious minorities (IHRDC 19 Sept. 2014). Majzooban Noor, the news website of the Nematollahi Gonabadi order in Iran, states that summoning by telephone is "absolutely illegal" but provides examples of cases in which intelligence agents summoned people by telephone, including cases of Gonabadi Dervishes in Mahshahr (Majzooban Noor 26 Apr. 2014). The Human Rights Activists News Agency (HRANA), a press association used to report and disseminate daily news of human rights violations in Iran (HRANA n.d.), reports on a case of a Bahai citizen in Shiraz who was also arrested after a telephone summons by intelligence agents (HRANA 9 July 2013).

The ICHRI representative also confirmed that the following information, which he provided to the Research Directorate in January of 2009, continues to be in effect:

Court summons are issued in criminal and civil cases. We are concerned by the use of such summons as a form of harassment. In recent years, human rights defenders ..., 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 innocent people who have been summoned purely on political grounds. (ICHRI 22 Sept. 2014)

Similarly, the IHRDC Executive Director stated that local branches of the Ministry of Intelligence sometimes issue a summons to their targets "as a prelude to arrest and sometimes simply as a form of intelligence-gathering and/or harassment" (IHRDC 19 Sept. 2014).

1.2 Arrest Warrants

In correspondence with the Research Directorate, a UK-based Iranian lawyer, who advises on Iranian law and human rights issues, said that the Criminal Procedures Code of 1999 was repealed in 2012 and that a new Criminal Procedures Code was approved by Parliament in March 2014 (Lawyer 19 Sept. 2014). He said that, while similar to the former Code "in substance," there "are major changes in the process of investigation as well as arraignment and trial" in the new Code (ibid.). He quoted the following articles of the new Code that relate to the issuance of arrest warrants:

Article 182:

The arresting officer after serving the arrest warrant on the accused shall invite the accused to accompany him to appear before the magistrate. Should the accused refuse to do so, the arresting officer should arrest the accused and bring him before the magistrate and if so required obtain assistance from other officers. (ibid.)

Article 183:

The accused shall be arrested, except in emergency circumstances, in the day light and shall be brought before the magistrate or a duty judge for determination. (ibid.)

Article 184:

In case the accused is a fugitive of justice and the same is proven to the magistrate who will issue the arrest warrant for a limited period and request the law enforcement officers of the Ministry of Justice to arrest the accused wherever he is found to be brought before the magistrate. (ibid.)

The Executive Director of the IHRDC provided information about the laws governing the issuance of arrest warrants in Iran from the 1999 Criminal Procedures Code (IHRDC 12 Sept. 2014). He said that, to his knowledge, the revised Criminal Procedures Code was not yet in effect (ibid. 19 Sept. 2014) [2]. He provided the following information:

The Islamic Republic of Iran's [1999] Criminal Code of Procedure for Public and Revolutionary Courts distinguishes between "evident" and "non-evident" crimes. According to Article 21 of this code a crime is considered "evident" in the following circumstances:

1. If a crime is committed in sight of judiciary officers, or the mentioned officers are immediately present at the crime's scene or observe the evidence of the crime right after it having been committed.
2. If two or more people have witnessed the crime or the victim identifies an individual as an offender immediately after the crime is committed.
3. If the obvious evidence of a committed crime or the equipment and proof for the crime are found in the possession of the accused, or they are found to be the belongings of the accused.
4. If the accused intends to abscond, is escaping, or is arrested immediately after the crime is committed.
5. If a resident asks for the presence of the officers in his or her home immediately after the crime is committed.
6. If the accused is a vagrant.

If a crime is "evident," the police or other authorized entities may arrest a suspect without a warrant. However, unless a judge issues an arrest warrant, the authorities may not detain a suspect more than 24 hours. In addition, the authorities must inform the suspect of the charge or charges he or she is facing in writing.

If a crime is not "evident," an arrest can only be made when a defendant appears in court after being summoned, or if he or she fails to appear in court after being summoned.

The police or other authorized entities must inform the judiciary as soon as they are informed about a crime. After the initial investigation, a judge may summon the defendant to court. When a defendant appears in court, the judge may release the defendant on his or her recognizance. The judge can also release the defendant by securing a bondsman with a deposit or through securing bail. Alternatively, the judge may order the defendant's arrest and detention. The arrest order may be appealed to the provincial appeals court. If the appeal is successful, the defendant may be released through one of the options mentioned above.

Articles 32 of the Criminal Code of Procedure for Public and Revolutionary Courts delineates the crimes for which an arrest warrant may be issued after the defendant is seen by a judge following the issuance of summons:

Article 32 - In the following cases, whenever the existing evidence and affairs incriminates the accused, the issuance of a sentence for temporary detention is allowed in the following cases:

1. Crimes for which the legal punishment is execution, stoning, crucifixion and amputation of a body organ.
2. Intentional crimes for which the minimum legal punishment is a three-year imprisonment.
3. Crimes related to Chapter One of Book Five of the Islamic Penal Code.
4. In cases where the freed accused might destroy evidence, or the accused colludes with other accused, or with the witnesses and others who were aware of the incident; or if the accused can cause witnesses to refuse to testify. Also, when there is a fear that the accused might escape or hide, and there is no other way to prevent it.
5. Maximum of six days for murders when the parents of the murdered request evidence.

Note 1 - In crimes of unchaste behavior, if there is no personal element involved, the detention of the accused is allowed only if his or her freedom would result in depravity.

....

Articles 35 of the Criminal Code of Procedure for Public and Revolutionary Courts delineates the crimes for which an arrest warrant must be issued after the defendant is seen by a judge following the issuance of summons:

Article 35 - In the following cases, while observing the bonds in article (32) of this code and its notes, whenever existing proof and evidence implicate the accused, issuance of the temporary detention verdict is mandatory and continues until the issuance of the initial sentence, provided that its duration does not exceed the minimum duration of the legal punishment for the committed crime.

1. Murder, kidnap, acid spray, battle, public corruption.
2. Crimes for which the legal punishment is execution or life imprisonment.
3. Crimes such as robbery, scams, embezzlement, bribery, malversation [official corruption], forging and using a forged document provided that the accused has at least had a record of a definite condemnation and two or more records of indefinite condemnation due to having committed any of the above-mentioned crimes.
4. In cases when the freedom of the accused causes corruption.
5. All crimes specified within the special rules. (IHRDC 12 Sept. 2014)

The IHRDC Executive Director summarized that, according to the law, arrests can only be made in the following circumstances: after the defendant appears in court after being summoned; after the defendant fails to appear in court after being summoned; when a judge issues an arrest warrant in cases of crimes punishable by death or amputation; or when the crime is "evident" (ibid.).

The same source said that "[i]n practice, Iranian authorities do not necessarily observe the provisions of the Criminal Code of Procedure for Public and Revolutionary Courts, and they regularly make arrests without issuing summons when it is required by law to do so" (ibid.). Similarly, in a written submission to the UN Universal Period Review, the ICHRI stated that arrests are "routinely made without presenting warrants or any other court documents" (ICHRI 15 Mar. 2014, Sec. 3.2). The report includes specific examples of cases in which arrests were made of student activists without the serving of a summons (ibid., Sec. II.7 and III.24). A report by the UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, indicates that of the majority of people interviewed who had been detained, the authorities either did not have arrest warrants or did not show the warrants to the accused (UN 18 Mar. 2014, para. 29). The same source indicates that "[i]n some cases, arrests were made at an intelligence office or revolutionary court after individuals responded to a verbal summons, not a written summons as required by the Code of Criminal Procedure" (ibid.).

2. Appearance and Information Contained in Court Documents

2.1 Summonses

Regarding information contained in a summons, the Executive Director of the IHRDC stated:

According to Article 113 of the [1999] Criminal Code of Procedure for Public and Revolutionary Courts the summons should include the name of the defendant, the date, the reason for summoning the defendant, the place at which the defendant should appear, and the consequences the defendant would be faced with if he or she does [not] appear in court. However, this article also states, "if deemed necessary, the reason for the summons and consequence of not appearing will not be mentioned for some crimes." (IHRDC 12 Sept. 2014)

In terms of the revised Criminal Procedure Code, the lawyer noted that Article 70 states:

In the court summons the family name of the person summoned; the date, time and place of appearance and the reason for summons as well as consequences of non-attendance shall be indicated and it should be signed by a judicial authority. (Lawyer 19 Sept. 2014)

The Executive Director provided three samples of Iranian court summonses, which are attached to this Response. Regarding the standardization of court summonses, the Executive Director said:

The form represented in the documents numbered one [attachment 2] and three [attachment 4] are more common as far as I know, but inconsistency of formatting is not at all uncommon, and there may be geographical or institutional variations. Keep in mind also that local branches of the Ministry of Intelligence also issue summons ... [that] may be handwritten, it may look unofficial, or there may not even be written record of it. (IHRDC 19 Sept. 2014)

2.2 Arrest Warrants

Regarding information contained in an arrest warrant, the Executive Director noted that Article 37 of the 1999 Criminal Code of Procedure for Public and Revolutionary Courts states:

"All orders for temporary detentions shall be reasonable and based on documents, stating in the order the reasons for the detention and the right for the detainee to object. In all cases, if required, the judge is bound

to renew the court order for temporary detention after a month, stating the reasons and providing documentation; otherwise the accused shall be released with proper bail." (IHRDC 12 Sept. 2014)

The UK-based Iranian lawyer said that, according to Article 181 of the new Criminal Procedures Code:

"The arrest of the accused shall be in accordance with the arrest warrant. The contents of the arrest warrant shall include the details of the accused and the reason for his arrest and shall be signed by the magistrate and served on the accused." (Lawyer 19 Sept. 2014)

The Executive Director provided a sample of an Iranian arrest warrant, which is attached to this Response.

3. Prevalence of Fraudulent Court Documents

Information about the prevalence of fraudulent court documents in Iran could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

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.

Notes

[1] The Danish Refugee Council (DRC) is an NGO that "provid[es] direct assistance to conflict-affected populations" and assists refugees in Denmark with asylum procedures and integration (DRC n.d.). The Danish Immigration Service (DIS) is the Danish government agency responsible for asylum claims (Denmark n.d.). The Norwegian Country of Origin Information Centre, Landinfo, is "an independent body within the Norwegian Immigration Authorities" and "is responsible for collecting, analysing and presenting objective and updated country of origin information" (Norway n.d.).

[2] It is unclear whether the revised Criminal Procedures Code is currently in effect. The lawyer stated that the revised Code was passed in March 2014 (Lawyer 19 Sept. 2014). Similarly, Amnesty International reported that the Revised Code of Criminal Procedure was passed into law in April 2014 (AI July 2014, 15). However, both the IHRDC Executive Director and the ICHRI representative were unsure whether the revised Code was yet in effect (IHRDC 19 Sept. 2014; ICHRI 22 Sept. 2014). The ICHRI representative said that even though the law was passed, there have still been cases prosecuted according to the old procedures (*ibid.*). However, he expressed the opinion that the Revised Code would not affect the procedures for the issuing of summonses (*ibid.*).

References

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Human Rights Activists News Agency (HRANA). 9 July 2014. "A Bahai Citizen Has Been Arrested in Shiraz." <<https://hra-news.org/en/a-bahai-citizen-has-been-arrested-in-shiraz>> [Accessed 26 Sept. 2014]

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United Nations (UN). 18 March 2014. Human Rights Council. *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran.* <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_25_61.pdf> [Accessed 26 Sept. 2014]

Additional Sources Consulted

Oral sources: Attempts to contact representatives of the following organizations were unsuccessful within the time constraints of this Response: Amnesty International; Foundation for Democracy in Iran; International Organization to Preserve Human Rights in Iran. A representative of the Human Rights Unit of Brooklyn College, City University of New York was unable to provide information.

Internet sites, including: Al Jazeera; Alkarama; eoi.net; Factiva; Foundation for Democracy in Iran; Freedom House; Human Rights Watch; International Crisis Group; Iran – Ministry of Justice; United Nations – Refworld; United States – Department of State.

Attachments

1. Iran. 17 February 2013. Saqqez County General and Revolutionary Courthouses. Arrest Warrant. Sent to the Research Directorate by the Executive Director of IHRDC, 12 September 2014. Translated by the Translation Bureau, Public Works and Government Services Canada.

2. Iran. 28 May 2013. Branch 76 of Criminal Court of the Province of Tehran, Ministry of Justice. Court Summons. Sent to the Research Directorate by the Executive Director of IHRDC, 12 September 2014. Translated by the Translation Bureau, Public Works and Government Services Canada.

3. Iran. 31 May 2012. Branch 1172 of General Court (Criminal), Ghods Judicial Complex of Tehran, Ministry of Justice. Court Summons. Sent to the Research Directorate by the Executive Director of IHRDC, 12 September 2014. Translated by the Translation Bureau, Public Works and Government Services Canada.

4. Iran. 6 September 2004. Social Affairs Office. Summons. Sent to the Research Directorate by the Executive Director of IHRDC, 12 September 2014. Translated by the Translation Bureau, Public Works and Government Services Canada.

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