

Justice in Iran

After the initial liberation under the new regime in Iran following the overthrow of the Shah in February 1979 there has developed steadily an ever greater repression with a sickening growth in the number of executions and increasing violence throughout the country. According to the most recent statements, 3,350 persons have been executed since 1979, more than 2,000 of them since the dismissal of President Bani-Sadr, i.e. from June to October 1981. These figures may be substantial underestimates.

Immediately after the February 1979 revolution so-called Islamic Revolutionary Courts were set up to prosecute agents of the Pahlavi regime. The procedures of these courts clearly violated Iran's international obligations. People were tried under retroactive legislation for acts which did not constitute penal offences at the time when they were committed. Accused persons were put on trial with no previous warning of the charges, no opportunity to prepare a defence, to engage a lawyer or to bring witnesses in their defence. They were condemned to death and immediately executed without any rights of appeal, whether in law or for clemency. Those not condemned to death were in peril of double jeopardy; an example was General Nazemi who was condemned to 15 years imprisonment and a few months later was retried on the same charges, condemned to death and executed in violation of all international norms, including the International Covenant on Civil and Political Rights to which Iran is a par-

ty¹. Death sentences have often been accompanied by flogging or carried out by stoning.

Having dealt with former officials of the Shah's regime, the courts began to concentrate on people accused of moral transgressions and of being 'counter-revolutionaries' (i.e. anyone opposed to the Khomeini regime). The charges included "corruption on earth" and "waging war against God, his Prophet, his Imam and the representatives of the Imam". This policy followed the line of action which Ayatollah Khomeini emphasised in a speech in the Feyzia Islamic Institute of Learning: "It is... a day-to-day programme of identifying the opponents of Islam. Our struggle against them shall become more intense"². And so it did. Numerous official statements point to the conclusion that the present repression has now discarded all the safeguards of the Rule of Law. In the words of President Bani-Sadr "There is no more law". Examples of this arbitrary rule are as follows:

- many prisoners under the Shah's regime were released in February 1979, only to be arrested again under similar charges (such as spying), arbitrarily tried and sentenced to imprisonment, if not executed. Such was the case of Reza Saadati who, first sentenced to ten years imprisonment, was shot after a second and secret trial;
- ethnic minorities (Kurds, Baluchis, Turkmens, Azerbaijanis, and Arabs) have seen their demand for a greater degree

of self-government met with a repression, which can only increase the risk of rebellion against the central government. Cases of massacres, imprisonment and executions have been widely reported; religious groups banned by Islam are increasingly harassed under the new regime. The Baha'is, who represent a population of 400,000 in Iran, face charges such as promotion of prostitution, co-operation with Zionism, spying for imperialist powers, corruption on earth and warring against God. Thousands have lost their homes and possessions, hundreds have been dismissed from their jobs and many of them have been executed by revolutionary firing squads; the main opposition groups after the overthrow of the Shah (democratic groups, moderate Islamic groups and left-wing opposition including the Fedayin Khalq and the radical Moslem groups led by the Nujahiddin Khalq) have not only been denied the right to share power in the post-revolutionary Iran, but are severely repressed. Not a week has passed without arrests and executions of many of their members; writers, poets and artists are particularly harassed. The first Islamic Revolutionary Judge and now also a member of parliament, Sheik Sadeg Khalkhali, has not hesitated to demand the execution of intellectuals such as Chamblou, a famous Iranian author who is well-known for his non-adherence to any political party and his non-involvement in any political activity. Five prominent intellectuals who fought against the previous regime, were arrested recently: Homa Nategh (sociologist and professor at the University of Teheran), Mr. Rawandi

(historian and journalist), Mr. Parham (sociologist), Mr. Rahimi (literary critic and writer), Mr. Monzawi (islamologist). Professor Nategh is reported to have been executed in November;

- lawyers and judges are also among the victims of government's policies. According to Judge Abdolkarim Ardebili, President of the Supreme Court, Islamic judges have been convicted because they "made mistakes" and are at present detained in Kevin prison. There is also evidence that defence lawyers have been arrested, imprisoned and in at least one case, executed;
- those who face firing squads now include women and youths. It was reported in Time Magazine on 20 September 1981 that 150 youngsters were shot in a mass execution on 4 September³. In a recent statement, Teheran's revolutionary prosecutor, Assadollah Lajevardi declared: "Of course, even a 9-year old can be executed if it was proved to the court that he or she is grown enough"⁴. Although the Prosecutor asserted that such a case had not happened yet, it has been reported in the Iranian press that 13-year-old children have been shot⁵;
- 'counter-revolutionary activities' include the distribution of leaflets, incitement of innocent youths to subversion, and participation in demonstrations (charges often leading to death sentences). In a campaign to muzzle dissent in the schools, the government has arrested teenagers. The number of students barred from school is estimated at up to 70,000;
- cases of torture and ill-treatment have been regularly reported. An example of ill-treatment was Nasrollah Entezam,

1) *Human Rights Violations in the Republic of Iran*, Chicago, 111., May 1980.
2) Imam Khomeini, "The revolutionary line of action", Great Islamic Library.

3) Time Magazine, 20 September 1981.

4) International Herald Tribune, 30 September 1981.

5) *Ghiame Iran* newspaper, Teheran, 28 June 1981.

⁴ Int'l Commission of Jurists Review
No. 27 December 1981 "Iran": Justice in Iran

aged 82, former president of the fifth Session of the UN General Assembly, who died in prison for lack of medical attention. When Bani-Sadr was still President he said "They are arresting people as before, they torture... Everybody knows there are tortures. It is just like before, man has no rights, they arrest him and eliminate him just as one throws out garbage".⁶

The government seeks to justify these measures as necessary to repress attacks made by terrorists. Undoubtedly, the attack against the Islamic Republic Party on 28 June 1981 (killing 74 of the party's officials and leaders and Ayatollah Beheshti) and the bombing on 30 August 1981 (killing President Mohammed Ali Radjai and the Prime Minister Mohammed Bahonar) were turning points in the escalation of violence and repression. Recently the government of Iran claimed that the entire population condemns these criminal acts so strongly that "even relatives of the terrorists help the Judicial Body for their arrest and for their execution". The International Commission of Jurists in no way supports acts of terrorism, but where a regime treats all criticism of itself as treason and as an offence against God, to be met with execution, attempts at political assassination are to be expected.

The Ministry of Foreign Affairs on 12 August 1981 ordered Iranian embassies and missions to draw up a list of Baha'is, counter-revolutionaries and "so-called students" living in their jurisdiction. It has also prohibited the renewal of their passports and has ordered instead the delivery of a "transit-paper" which is valid only for a return journey to Iran.⁷

6) ICJ Review No. 26, p. 23.

7) The ICJ is in possession of a photocopy of this instruction.

8) *Le Monde*, 2 September 1981.

Present Trial Procedures

In ICJ Review No. 25 of December 1980 the Rules of Procedures of the Islamic Revolutionary Tribunals were summarised. While recognising that the rules covered a number of safeguards, concern was expressed about important omissions regarding the preliminary investigations, lack of adequate time for the preparation of the defence, limitation of the maximum period of the trials to one week and the denial of any right of appeal or revision.

Since then it is clear that the rights of the defence as provided for in the Rules of Procedure are being disregarded. Frequent use is made in official reports of the expressions "summary trials" and "justice on the spot". 'Summary trials' appear to cover either cases in which there is no trial at all, or in which, following a mere examination of the 'file', a person is condemned without being heard, or with little or no defence rights. That this is official policy appears from a statement made by the High Judicial Council after the bomb attack on 30 August 1981, in which President Radjai, the Prime Minister and many others were killed. It asked all persons in charge of the judicial system to "shoot immediately traitors to Islam and to the Islamic country after a rapid examination of their files".⁸

Arrested persons who are tried are still held incommunicado, without being told the charges against them and without access to a lawyer. No mention is ever made of defence counsel taking part in trial proceedings. It seems that practicing lawyers are not now permitted to defend in political trials. Indeed, according to statements by higher judicial officials, the defence of offenders would be contrary to Islamic

laws, in that the defender is thereby an accessory to the accused person's crimes. This is borne out by a report that a newly qualified lawyer, Mr. Mohsen Jahandar, was accused of defending prisoners before Revolutionary Committees, condemned to death and shot before a firing squad about the end of August 1981.

The Teheran Procurator General, Mr. Lajevardi, when asked why journalists could not attend trials, answered: "We don't have time to invite journalists. We work hastily day and night".⁹

The Revolutionary Tribunals have recently turned to trying cases which are not within their jurisdiction as defined in the regulations¹⁰. These include charges of prostitution, adultery, simple theft and drinking alcohol. Sentence of death by firing squad or by stoning have been imposed for prostitution or adultery, and the cutting off of a hand for simple theft.

Justice 'in the streets'

In other cases there has been no trial of any form, and this has been justified on the highest authority. On 19 September 1981, in an address broadcast on radio and television Ayatollah Moussave, the Revolutionary Procurator General, stated that "to kill the people who stand against this regime and its just Imam is a prescribed duty according to Islamic laws. If they are captured, our men will not let them eat and sleep for a few months. The trial of these people is in the streets. I also order the city prosecutors to do the same; otherwise they themselves will be punished".¹¹

On the same day, Ayatollah Mohammadi

9) *Le Monde*, 22 July 1981.

10) See ICJ Review No. 25, at p. 21.

11) *Kyhan* newspaper, Teheran, 20 September 1981.

12) *Ibid.*

Gilani, the Ghazie Shara' of Teheran, stated at a press conference in Evin prison, "Islam permits people engaged in armed demonstrations in the streets to be captured, stood against the wall of the street and shot".¹²

The Law of Talion

An unusual Bill known as the 'Bill concerning the Law of Talion' was submitted to the Parliament in April 1981, but has not, at the time of writing, been passed into law.

The Bill, which contains 199 articles, was drafted by the Higher Judicial Council. It would revive the right of a person physically injured or the relatives of a person put to death to seek revenge by inflicting a similar injury or, in the second case, by causing the death of the assailant. The Bill goes into a great deal of detail as to the manner and circumstances in which the right can be exercised.

The provisions of the Bill follow closely the requirements of the Islamic Law of *Qesas* as enumerated in the late seventh century AD and as developed by Islamic Jurisprudence in the eighth and ninth centuries. It disregards, however, later developments of Islamic jurisprudence which apply the principles underlying that law to changing circumstances in such a way as to moderate their application.

In spite of the title of the Bill, 119 of the 199 articles of the Bill do not relate to the Law of Talion but are concerned with the punishment of various offences such as adultery, sodomy, lesbianism, proxenetism and drinking of wine. If the Bill passes into

aw, it will replace large parts of the existing civil and penal codes.

Protests

The manner in which 'Islamic justice' is being administered in Iran has been denounced by courageous Iranians within the country, as well as those in exile.

In a recent speech addressed to the Majlis (Parliament), Mehdi Bazargan said that "bloodshed and intolerance was threatening the future of the Islamic republic". Mr. Bazargan has been reported to be in hiding after a violent reaction following his speech.

A group of 38 prominent Iranian intellectuals (writers, academics, lawyers) said in an open letter that two years of Islamic rule had brought repression, torture and injustice.

Fanaticism, rule by torture and destruction of the country in the name of Islam were among the criticisms made by Hojatoleslam Hossain Khomeini, the Ayatollah's grandson, in a speech in Mashad which led to his imprisonment for a brief period¹³.

Very recently, Ayatollah Shariat Madhari, perhaps the most moderate of the religious leaders, who is confined to his house in Qom, asked for a visa to travel abroad. This request is seen as a protest against the repressive measures and the arbitrary executions of opponents to the regime¹⁴.

Outside the country, voices have been raised against the regime both from organisations and individuals. In an open letter to the Human Rights Division of the United Nations, Chapur Baktiar denounced, early 1981, the ongoing violations of human rights which resulted, among other things, in the death of Nasrollah Entezam referred

to above. In another letter to the General Director of UNESCO, he denounced the cultural repression which represents a systematic destruction of Iranian culture.

In September 1980 and in April 1981, the European Parliament adopted two resolutions requiring protection of Baha'is and of their freedom of religion. In September 1980, the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities adopted a resolution stating it had heard statements 'clearly demonstrating the systematic persecution of the Baha'is in Iran, including summary arrests, torture, beatings, executions, murders, kidnappings, disappearances, abductions, and many other forms of harassment' and expressing its conviction 'that the treatment of the Baha'is is motivated by religious intolerance and a desire to eliminate the Baha'is Faith from the land of its birth'. This comes close to an allegation of genocide. The resolution went on to draw the attention of the Commission on Human Rights to the 'perilous situation faced by the Baha'i Community of Iran'.

The Human Rights Committee under the Covenant on Civil and Political Rights decided at its meeting in Bonn on 26 October 1981 (after its proceedings had been interrupted by a group of Iranian students) to request the government of Iran to submit its overdue report on the protection of civil and political rights of Iranians. The Iranian Ambassador to Bonn declared that his government had every intention of fulfilling its obligation but was not in a position to finish work on the report due to the state of war. Nevertheless, the Chairman of the meeting, Mr. Mavrommatis, asked for a report or at least an interim report without further delay.

It is hoped that the United Nations' Hu-

man Rights Commission and other organisations will do all in their power to bring pressure upon the government of Iran to observe its obligations under international law

by instituting a system of fair trials under the rule of law, with full respect for defence rights, rights of appeal and the other rights specified in the International Covenant.

Malaysia

Amendments to the Societies Act and to the Constitution

Malaysia is one of the few countries in South East Asia with an elected government under a democratic constitution. Unlike most other countries in the region, where participation in political life tends to be limited under one or another form of authoritarian government, Malaysia has retained the structures of a Parliamentary democracy supported by an active and effective "informal sector". Nevertheless, recent events give cause for concern and have even led some to fear that democratic freedoms in the country may be restricted.

These concern in particular amendments to the Societies Act and changes in the constitution which are seen by some to pose a potential threat to these democratic freedoms, especially freedom of speech and association. The changes to the Societies Act may result in restrictions on political dissent and the alterations to the constitution mean that the country could be ruled by decree indefinitely after the declaration of an emergency. The amendments, which were passed through parliament precipitately are causing widespread disquiet among lawyers, non-governmental organisations and professional people including some members of the government parties. It is

relevant to examine these two amendments in the light of opinions voiced against them.

Amendments to the Societies Act

Already in 1975 the *Universities and Colleges Act* restricted student activities in the country's campuses. In 1979 regulations were drawn up to forbid university lecturers from participating in politics. Further, in 1980, Parliament passed amendments to the *Trade Union Ordinance*, placing numerous restrictions on the activities of trade union organisations and giving much stronger powers to the Trade Union Registrar.

Recent amendments to the existing *Societies Act 1966* give the government sweeping powers through the Registrar of Societies to control the activities of the 14,000 societies registered in Malaysia.

- The changes make it illegal for any society to comment on political affairs or anything to do with government unless it has been registered as a political society.
- The Registrar is given power to de-regis-

13) Iran Press Service, 10 June 1981.

14) *Le Monde*, 9 November 1981.