

Trial of Iran's seven Baha'i leaders

## Violations of legal procedures

<http://news.bahai.org/human-rights/iran/yaran-special-report/feature-articles/violations-of-legal-procedures.html>

Under international law, the seven Baha'i leaders initially sentenced to 20 years imprisonment in Iran should never have been arrested in the first place.

The charges against them clearly stemmed from their religious beliefs and activities – and freedom of religion is protected by numerous international covenants and treaties, most of which Iran itself is party to.

But even under Iranian law, the seven prisoners have repeatedly been denied their rights. According to specialists, the case has been marked by a number of major violations, for example:

- Iranian law requires that detainees be quickly and formally charged with crimes. The seven Baha'is were held at least nine months before any word of the charges against them were uttered by officials, and even then it was at a press conference, not in a court setting.
- The right to legal counsel is spelled out in Iranian law. The seven were denied access to their lawyers for more than a year and then only allowed barely one hour of contact before their trial began.
- Detainees who have been charged also have the right to seek bail and to be released pending trial. The Baha'i leaders were denied bail, despite numerous requests.

“These are basic issues, in international law and Iranian law,” said Bani Dugal, the principal representative of the Baha'i International Community to the United Nations.

“They were waiting for more than a year without charges, and they were for a long time denied access to their lawyers. These are black and white concerns, not subject to interpretation,” she said.

### **Protections under Iranian law**

The nature and severity of the charges aside, the Iranian Constitution also offers a number of protections for defendants in terms of legal process, even if the government does not always heed them.

One of these is the right to be promptly informed of charges. Article 32 of the Constitution states that in cases of arrest,

“charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing. ...”

The seven Baha'is were not presented with any charges during the first nine months of their imprisonment and have, in fact, never been directly informed of the charges against them as required by law.

The right to an attorney of one's choice is also spelled out in the Iranian Constitution. Article 35 states: “Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel.”

Those accused also have the right under Iranian law to have a lawyer present during the investigation and legal procedure. This right was denied to the seven Baha'i leaders for more than a year. When their rights were finally granted, they were allowed only half an hour to meet with their attorneys. Further, many attempts were made to dissuade them from using as their attorney Nobel Peace Prize laureate Shirin Ebadi and other members of the Defenders of Human Rights Center, which Mrs. Ebadi founded.

Mehrangiz Kar, a prominent Iranian lawyer and human rights activist, said that even though the Iranian Constitution excludes Baha'is from the full rights of citizenship, the laws regarding legal procedure and due process should still apply to them.

“Those parts of the legal system that deal with the process of investigation and the processes of the trial, they do have very good rights for the accused,” said Ms. Kar. “And you cannot find any exception in these articles that separate Baha'is and Muslims.”

In the area of punishment, however, Baha'is do not have the same rights as Muslims or the three officially recognized religious minorities in Iran. “It is in the Islamic Penal Code that everything is against Baha'is,” she said.

While the Constitution itself does not spell out the right to bail, it does uphold the idea of the presumption of innocence, which is recognized as the legal foundation for any sort of pre-trial release.

Article 37 of the Constitution states: “Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court.”

## **Illegality of their detention**

None of Iran's regulations concerning "temporary detention" were observed in this case. Contrary to the law, the seven Baha'i leaders were held in temporary detention for more than two years without a writ of conditions for release, without the judicial authorities having provided evidence of grounds for the extension of the detention, as required by law. Further, once the preliminary investigations were completed and a hearing date set, the judiciary had no right to extend the writ of arrest.

Statutes governing the operations of prisons in Iran restrict the holding of inmates in solitary confinement to not more than 20 days; immediately following their arrests, one of the seven was held alone for 175 days and the other six for 105 days.

Further, an inmate may only be held in solitary confinement with the approval of the prison's governing council and only in cases involving "disciplinary violations;" there is no provision that allows the holding of inmates in solitary while an investigation is being carried out against them. The seven were held in solitary confinement without any disciplinary violation or a notice from the prison's governing council.

## **International law**

Iran is specifically a party to many of the international treaties that spell out human rights in international law.

The International Covenant on Civil and Political Rights (ICCPR) is perhaps the main such instrument. In 1975, Iran became one of the first countries in the world to ratify the covenant. The covenant spells out clearly the concept of freedom of religion or belief, as do other human rights treaties.

Article 18 of the ICCPR, for example, states that "[e]veryone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

The ICCPR also spells out specific rights to due process "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

These include freedom from arbitrary arrest or detention, the right to be “promptly informed” of charges, and the right to legal counsel.

Article 9 of the ICCPR states that “[n]o one shall be subjected to arbitrary arrest or detention.”

It also states that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

The seven Baha’is were accepted as “arbitrarily detained” by the United Nations Working Group on Arbitrary Detention, further giving legal force to this issue.

Article 14 spells out the right to legal counsel, stating everyone has the right “to defend himself in person or through legal assistance of his own choosing. ...”