

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Would a person detained and brought before the Revolutionary Court, fined and sentenced to 100 lashes, and released upon their family putting up house deeds for security, have received upon release any documents from the Court, for example in relation to both penalty and surety for release?**
- 2. If the person did not return to court would the family house have usually been confiscated by the authorities 9 months later?**

RESPONSE

- 1. Would a person detained and brought before the Revolutionary Court, fined and sentenced to 100 lashes, and released upon their family putting up house deeds for security, have received upon release any documents from the Court, for example in relation to both penalty and surety for release?**

Some background information, including the jurisdiction of Iran's Revolutionary Courts, or Islamic Revolutionary Tribunals, is provided by the International Commission of Jurists:

Jurisdiction of the Tribunals

Article 2 of the regulations states that the Tribunals have competence to try cases of:

- (i) Murder and massacre under orders of aiding and abetting the same with the purpose of consolidating the Pahlavi regime and repressing the struggle of the Iranian people;
- (ii) Torture and imprisonment under orders or aiding and abetting the same against persons who had fought (the Pahlavi regime);

(iii) Gross economic crimes, that is to say pillage of the public treasury or the 'lapidation' of the national wealth for the profit of foreigners;

(iv) Conspiracy against the Islamic Republic of Iran by armed action, assassination and destruction of institutions for the profit of foreigners;

(v) Armed attack, assault and battery, and manufacture and distribution of drugs.

Other crimes are to be tried by military court or the ordinary civilian courts. In this connection it may be noted that the new Iranian Constitution makes no mention of the Islamic Revolutionary Tribunals, and confers jurisdiction on the ordinary courts to try cases of a political nature (principle 168). The constitution also contains the principle of non-retroactivity of crimes (principle 169) (International Commission of Jurists 1980, 'Islamic Revolutionary Tribunals' Rules of Procedure', *The Review*, No. 25, December, pp. 20-23, Iran Rights website <http://www.iranrights.org/english/document-85.php> – Accessed 27 July 2009 – Attachment 1).

A response from the Immigration and Refugee Board of Canada (IRB) dated 12 March 1999 describes a range of court documents which are issued in Iran, particularly the "notice of conviction" and the "forfeiture document," which is "a judgement of the revolutionary court to lose your assets":

The following information was obtained during 4 and 10 March 1999 telephone interviews with an attorney from a Tehran law firm that maintains liaison offices in Paris and New York. He described Iran's system of law as very similar to that of France, but added that **there are a number of different courts/tribunals that issue a wide range of forms or notices. However, the forms used by one court/tribunal are generally consistent throughout the country.** Furthermore, as in the French legal system, an "investigative" judge, rather than a grand jury, is used to determine whether there is enough substance for a case to proceed. As such, that judge has the authority to summon witnesses and/or a potential accused to determine whether a trial will actually occur.

He stated that **what can be referred to as a "court summons" is used in both civil and criminal cases, but that in Iran they are generally known as a "notice to appear."** The lawyer described the summons/notice as a "warning" in a civil case that legal action is being taken and, as such, if the summons is ignored then the lawsuit will proceed without the participation of the person named in the summons/notice. In criminal cases the summons/notice can be understood as "official notification" that the participation of the named person is required in a criminal investigation, either as a witness or as an accused. **The lawyer said that for "mainstream criminals" warrants for their arrest are usually issued, which means that police will take the person into custody. However, in these cases the accused normally has an opportunity to post a "bond" or bail to maintain their freedom pending their trial.** Court summons/notices are also used for traffic offences and minor criminal cases. If summons/notices in criminal cases are ignored by the person served, then a warrant for their arrest could be issued. However, the lawyer indicated that this would depend on the circumstances and the severity of the case.

If a person is found guilty in a criminal case then a "notice of conviction" is issued by the presiding judge. The lawyer indicated that the judgement could be hand-written but that it is more common now for it to be typed. **The convicted person is served with a copy of it. The lawyer stated that when a person is notified of their conviction then they must fulfill the proscriptions of the notice of conviction which could be either incarceration or the payment of a fine.** However, if the crime involved a person who can be identified as a victim, then the victim, or his/her family can "forgive" the person who was convicted. In those circumstances, the person convicted then pays an agreed upon monetary compensation

to the person injured or to his/her family. The lawyer said that this effectively means that some persons can buy their way out of serving their sentences.

A forfeiture document, according to the lawyer, is “a judgement of the revolutionary court to lose your assets” and he indicated that it “happens all the time.” He explained that it is a “form of guarantee.” The forfeiture document is used in, but is not limited to, circumstances involving bond/bail and it is often used to secure the assets of “people who are deemed to be anti-revolutionary.” In cases where a person has been arrested, another person can “put up assets” as a promise that the first person will appear in court. If the accused fails to appear, then the assets are “forfeited.” These assets can also include the “body” of the second person, such that if the accused flees then the second person is taken into custody.

The lawyer also stated that the above documents would not be difficult to forge but, at the same time, it would not be difficult to check their veracity with court records in Iran. For example, he stated that **convictions are now commonly kept in computer records that are accessible throughout the country** (Researcher’s emphases) (Immigration and Refugee Board of Canada 1999, *IRN31309.E – Iran: Circumstances in which the following court documents are issued, the consequences for the person named in the document, and whether United States Immigration and Naturalization Services and/or the Canadian consulate in Los Angeles have any knowledge of the production of false copies: court summons, forfeiture document (when a person forfeits bail for failing to appear at trial) and notice of conviction (issued by the Islamic Revolutionary Court)*, 12 March – Attachment 2).

In addition, an IRB response from 10 June 2003 provides the following information received from the law firm of Dr. Parviz Savrai and Associates in Tehran, which outlines a document called “[i]njunction for the acceptance of security,” issued when “a person who offers his/her own property or money to bail out a person being detained in Iran.” However, it is noted that “[t]here is not a particular document to be issued, if the person on bail does not respond to a court summons”:

In [the] case [of] a person who offers his/her own property or money to bail out a person being detained in Iran, the Iranian authorities will issue a document under the title of “Injunction for the acceptance of security.” ... The contents of this document are as follows: Date; Case Number; “Injunction for the acceptance of security”; ... Pledger’s Name and Surname, Pledger’s Father’s Name, Pledger’s Identification Card Number, Pledger’s Address, Pledger’s Telephone Number; Court; Branch Number; Nature of Charge; Property, money or bank guarantee to bail; “The defendant came before me (the Judge) and signed this undertaking of bail and accepted that failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security. **He acknowledged receipt of a notice setting out the accused person concerning the conditions of his or her bail and the consequences of his or her failure to comply with those conditions.**”

Injunction: The Judge writes as follows: “I satisfied myself before releasing the defendant that he/she and the surety/sureties understood the nature and extent of the obligations of the defendant under the conditions of his/her bail and the consequences of his/her failure to comply with them.” Signature of Accused ... Judge’s signature.

...There is not a particular document to be issued, if the person on bail does not respond to a court summons (Researcher’s emphasis) (Immigration and Refugee Board of Canada 2003, *IRN41630.FE – Iran: Document issued by the authorities to a person who offers his/her own property or money to bail out a person being detained; document given to the former if the person on bail did not respond to a court summons*, 10 June – Attachment 3).

Another IRB response dated 20 June 2006 provides information received from a British law firm specialising in Iranian law, which advised that “[i]n most circumstances the office of the court issues court documents, such as summons and other relevant notices. Arrest warrants have to be signed by the judge. Also, any judgment of the court resulting in the conviction of the accused should also be signed by the judge himself...The notices are served through the service department of the Ministry of Justice and through a bailiff.” In addition, the response outlines ‘warning to seal’ documents, which can be issued for private homes and personal property and allow for “the ‘sealing of a person’s assets,’ which occurs as part of either a pre- or post-judgment order from the courts”:

“Warning to seal” document

Information to update that on the “warning to seal” document contained in the Response to Information Request IRN31310 could not be found among the sources consulted by the Research Directorate. Therefore, the source of the following information dates back to 4 and 10 March 1999 telephone interviews with a lawyer from the New York liaison office of a Tehran law firm. The lawyer stated that a number of factors could lead to the “sealing” of a business, such as non-adherence to government regulations on the part of the business, or involvement in a civil suit by the business or its owner(s) (Law Offices of Alexander Aghayan 4 and 10 Mar. 1999). When a business is sealed the police place a ribbon across its entrance, barring operations until the underlying issue is resolved (ibid.). The lawyer emphasized that the business is “physically sealed” and that an unauthorized breaking of that seal is against the law (ibid.). The person whose business is sealed may challenge the sealing and has “the right to argue before the court” in a civil suit (ibid.). Moreover, if the case is won in a civil suit, then the person whose business was sealed has the right to claim financial damages from the party who initiated the sealing (ibid.).

When a business is sealed, a document, which names the affected business and specifies the reasons for the sealing, is served on the owner and/or the business itself (ibid.). The lawyer stated that this document is the same throughout the country since the legal process of sealing falls under national jurisdiction (ibid.). The lawyer also indicated that the sealing of a business is somewhat similar to cases of bankruptcy or non-payment of rent in North America, insofar as once a business is sealed the reasons for that sealing are posted on its premises (ibid.). Furthermore, the lawyer stated that the document would not be difficult to forge yet, at the same time, nor would it be difficult to check its authenticity with court records in Iran (ibid.).

Circumstances under which a private home is “sealed”

Information to update that on the circumstances under which a private home is “sealed” contained in the Response to Information Request IRN32441 could not be found among the sources consulted by the Research Directorate. Therefore, the source of the following information dates back to 26 August 1999 telephone interview with the lawyer from the New York liaison office of a Tehran law firm. The lawyer that **the statements he made regarding the “warning to seal” document applied as well to the sealing of private homes and personal property (ibid. 26 Aug. 1999). The lawyer referred to such sealings as the “sealing of a person’s assets,” which occurs as part of either a pre- or post-judgment order from the courts (ibid.). The lawyer explained that an official of the courts (bailiff) goes on site, accompanied by a local police officer, to physically seal the premises by placing a ribbon across the property and to post a notice indicating the premises have been legally sealed (ibid.).** The lawyer added that this procedure is the same for civil and criminal cases and that a person who breaks the seal without authorization is subject to arrest (ibid.) (Researcher’s emphases) (Immigration and Refugee Board of Canada 2006, *IRN101299.E – Iran: Arrest warrants and other court documents; trial in absentia in*

criminal cases; punishment for persons charged with helping anti-revolutionaries; procedure when someone acts as surety; which competent authority or court has legal jurisdiction to issue a death sentence to a convicted criminal; circumstances under which a “warning to seal” document is issued and the consequences for the person named in the document; circumstances under which a private home is “sealed”; whether it is pursuant to a court order and, if so, legal documents issued to the person concerned or availability of these documents through legal representatives; impact of a sealing on the resident (2004 – 2006), 20 June – Attachment 4).

2. If the person did not return to court would the family house have usually been confiscated by the authorities 9 months later?

No specific information could be found among the sources consulted regarding the length of time between a person on bail not appearing in court and the confiscation or forfeiture of property or other surety.

However, the IRB response dated 10 June 2003 cited above outlines bail regulations under the Law of Criminal Procedure of Iran, particularly highlighting Article 140, which states that “failure of the person released on bail to surrender himself at the appointed time, results in forfeiture of the security;” and Article 143, which states that “the accused or the surety has the right, within ten days after service of the process, to protest to the Appeal Court against the forfeiture of the security.” The response further provides the following information:

The conditions governing bail are contained in the ... Law of Criminal Procedure of Iran (Articles 132-147). According to the Law of Criminal Procedure of Iran, [b]ail is the release of one, charged with an offense or crime by insuring his future attendance in court or other judicial authorities and compelling him to remain within the jurisdiction of [the] court. Generally, bail may be in the forms of money, property or the financial suretyship of any recognized person in society.

Under Article 132 of the Law of Criminal Procedure of Iran, [b]ail may be in the forms of the following:

1. Injunction binding the accused to appear, on the honour of the accused.
2. Injunction binding the accused to appear, provided that the accused undertakes to pay an amount of money, if he or she fails to appear in court when ordered to do so or upon breach of a material condition of release: A written undertaking, executed by the defendant, that the defendant designated in such instrument will, while at liberty as a result of an order fixing bail and of the execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event he fails to do so, the signer of the bond will pay the court the amount of money specified in the order fixing bail.
3. The surety or sureties who procure the release of a person under arrest, by becoming responsible for his appearance at the time and place designated. Those persons who become sureties for the appearance of the defendant in court will pay the court the amount of money specified in the order fixing bail, if the defendant fails to appear in court when ordered to do so or upon breach of a material condition of release.
4. Secured bail bond: A bail bond for which the defendant or the surety is fully liable upon failure of the defendant to appear in court when ordered to do so or upon breach of a material condition of release, but which is secured by any deposit of or lien upon property or money.

The security may be cash, the papers giving title to property, or [a] bank guarantee. According to Article 140 of the Law of Criminal Procedure of Iran, failure of the person released on bail to surrender himself at the appointed time, results in forfeiture of the security.

However, under Article 143 of the Law of Criminal Procedure of Iran, the accused or the surety has the right, within ten days after service of the process, to protest to the Appeal Court against the forfeiture of the security. In accordance with Article 144 of the Law of Criminal Procedure of Iran, when the sentence becomes final at the end of [the] trial, or if the accused is found not guilty, the guarantee will be given back.

...Normally an accused is granted bail unless it is likely that he will abscond, or interfere with witnesses, or unless he is accused of a serious crime and is likely to [repeat] it, if released; e.g., it is usually refused when the accused is charged with murder. At the time of trial, the court may decide to detain a person previously released on bail. A suspect who has been convicted previously or in whose case removal of proof of guilt is impossible may not be released on bail. Under the Law of Criminal Procedure of Iran, the accused has the right to protest to the Appeal Court against the arrest warrant (temporary detention award).

...It should be noted that Judges have wide discretionary powers as to whether or not bail should be granted, and for what sum. In other words, authority to release a suspect on bond belongs to the judge. The monetary value of the security known also as the bail, or, more accurately, the bail bond is set by the court having jurisdiction over the prisoner.

However, Article 134 of the Law of Criminal Procedure of Iran specifies that the judges making [an] order in this regard, should take into account the degree of the crime committed, the degree of the punishment of the crime or the offense, reasonable grounds for believing that accused to be arrested has committed a crime or crimes, or it is likely that the accused will abscond, past records of the accused, accused's age, etc. Finally, if bail is granted to a person under the Law of Criminal Procedure of Iran, the judge must record a statement of reasons for making the order. (Dr. Parviz Sarvai and Associates 12 June 2003) (*Immigration and Refugee Board of Canada 2003, IRN41630.FE – Iran: Document issued by the authorities to a person who offers his/her own property or money to bail out a person being detained; document given to the former if the person on bail did not respond to a court summons*, 10 June – Attachment 3).

The full text of the Law of Criminal Procedure of Iran could not be found among the sources consulted.

In addition, Amnesty International mentions the Public Courts and Revolutionary Tribunals Procedural Law in an assessment of Iran's legal system; however the full text of this document could not be found (Amnesty International 2001, *Iran: A legal system that fails to protect freedom of expression and association*, 21 December <http://www.amnesty.org/en/library/asset/MDE13/045/2001/en/73a8bc2a-d8ae-11dd-ad8c-f3d4445c118e/mde130452001en.html> - Accessed 27 July 2009 – Attachment 5).

An article regarding the arrest of a union board president in Iran explains that “[w]hen someone who is released on bail does not appear in court after being summoned, first the surety, the person who agrees to be responsible for the obligation, will be summoned to court. The surety may be forced to pay the bail money” (‘News Release: Two other Union Board Members Briefly Arrested! Osanloo Still in Evin Prison!’ 2006, International Alliance in Support of Workers in Iran (IASWI) website, 3 December <http://www.workers-iran.org/VAHED/news%20release,%20two%20others%20arrested,%20dec%203,%202006.htm> – Accessed 23 July 2009 – Attachment 6).

The IRB response dated 20 June 2006 mentioned earlier further describes the processes of providing surety in order to be released on bail, particularly indicating that “[In cases where a] person who has been bailed [through a surety] does not appear on the due date ... the surety will be summoned to deliver the accused, failing which the cash amount required for bail will be seized from his assets. In other cases, the property or the asset that has been pledged to the court will be confiscated.” However, no indication of the timeframe within which this occurs is given. The document also provides information on trial in absentia:

[Surety]

There are different methods of obtaining a bail. Bail can be obtained through a surety, through providing security or through a cash deposit. Under Islamic law, for minor offences, the accused can be released on his own bail.

In the case of surety, the person standing a surety has to appear before the office of the court and sign a formal declaration that he will be personally responsible for delivering the accused to the court whenever the court summons him to do so. In other cases, arrangements will be made through the office of the court with a special fund in the Ministry of Justice to provide a deposit of cash or bank guarantee. In the case of providing as security a title deed or the like, the original document of ownership should be deposited with the office of the court and no transaction can be carried out in respect of the property that has been offered as security.

[In cases where a] person who has been bailed [through a surety] does not appear on the due date ... the surety will be summoned to deliver the accused, failing which the cash amount required for bail will be seized from his assets. In other cases, the property or the asset that has been pledged to the court will be confiscated.

...[Trial in absentia]

In accordance with Article 217 of the Criminal Procedure Code, in cases involving crimes of public order (as opposed to religious crimes), if the accused and/or his representative is absent from the entire proceedings, then the court can issue its sentence in absentia, which of course will be subject to appeal once it is properly served on the accused. There is no restriction as to the type of sentence that may be issued and therefore it includes death sentences issued in absentia. There is no express provision in this respect, but Note 2 of ... Article 217 would only allow the court to proceed in the absence of the accused if the court is of the opinion that there is no basis for the conviction of the accused and arriving at that decision does not require interrogation of the accused. Otherwise, the presence of the accused is necessary for completion of the proceedings and issuance of the final verdict (4 May 2006) (Immigration and Refugee Board of Canada 2006, *IRN101299.E – Iran: Arrest warrants and other court documents; trial in absentia in criminal cases; punishment for persons charged with helping anti-revolutionaries; procedure when someone acts as surety; which competent authority or court has legal jurisdiction to issue a death sentence to a convicted criminal; circumstances under which a “warning to seal” document is issued and the consequences for the person named in the document; circumstances under which a private home is “sealed”; whether it is pursuant to a court order and, if so, legal documents issued to the person concerned or availability of these documents through legal representatives; impact of a sealing on the resident (2004 – 2006)*, 20 June – Attachment 4).

The article by the International Commission of Jurists cited earlier similarly claims that “[w]here the accused fails to appear, he can be tried in this absence;” and that a “trial is not to last more than a week.” The article provides the following general information on the procedures of the Revolutionary Courts:

The indictment must be communicated in writing to the accused or his lawyer at least three days before the trial. The accused can appoint his lawyer. The trial is not to last more than a week, and at least 15 hours must be allowed to the accused and his lawyer to present his defence.

Witnesses and experts and the accused can be summoned by the tribunal and compelled to attend. Where the accused fails to appear, he can be tried in this absence. After the reading of the indictment and the hearing of the defence, the tribunal proceeds to 'any inquiry it considers necessary to establish the legal guilt of the accused'. Any gap in the evidence will be referred back to the prosecutor. When the evidence is complete the tribunal, 'after deliberation in conformity with principles of Islam', gives its verdict. This may be a majority verdict if the President forms part of the majority. Otherwise, two Islamic judges must be added to the tribunal, and then the judgment of the tribunal is final.

It is expressly stated that the verdicts are not subject to appeal or review (International Commission of Jurists 1980, 'Islamic Revolutionary Tribunals' Rules of Procedure', *The Review*, No. 25, December, pp. 20-23, Iran Rights website <http://www.iranrights.org/english/document-85.php> – Accessed 27 July 2009 – Attachment 1).

List of Sources Consulted

Internet Sources:

Government Information & Reports

US Department of State <http://www.state.gov/>

Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/>

UK Home Office <http://www.homeoffice.gov.uk/>

United Nations

UNHCR Refworld <http://www.unhcr.org/refworld/>

Non-Government Organisations

European Country of Origin Information Network <http://www.ecoi.net/>

Amnesty International <http://www.amnesty.org/>

International News & Politics

The Economist <http://www.economist.com/>

Topic Specific Links

Iran Rights <http://www.iranrights.org/>

International Alliance in Support of Workers in Iran (IASWI) <http://www.workers-iran.org/>

World Legal Information Institute <http://www.worldlii.org/>

Search Engines

Google <http://www.google.com.au/>

Copernic <http://www.copernic.com/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT-RRT Library Catalogue

List of Attachments

1. International Commission of Jurists 1980, 'Islamic Revolutionary Tribunals' Rules of Procedure', *The Review*, No. 25, December, pp. 20-23, Iran Rights website <http://www.iranrights.org/english/document-85.php> – Accessed 27 July 2009.
2. Immigration and Refugee Board of Canada 1999, *IRN31309.E – Iran: Circumstances in which the following court documents are issued, the consequences for the person named in the document, and whether United States Immigration and Naturalization Services and/or the Canadian consulate in Los Angeles have any knowledge of the production of false copies: court summons, forfeiture document (when a person forfeits bail for failing to appear at trial) and notice of conviction (issued by the Islamic Revolutionary Court)*, 12 March. (REFINFO)
3. Immigration and Refugee Board of Canada 2003, *IRN41630.FE – Iran: Document issued by the authorities to a person who offers his/her own property or money to bail out a person being detained; document given to the former if the person on bail did not respond to a court summons*, 10 June. (REFINFO)
4. Immigration and Refugee Board of Canada 2006, *IRN101299.E – Iran: Arrest warrants and other court documents; trial in absentia in criminal cases; punishment for persons charged with helping anti-revolutionaries; procedure when someone acts as surety; which competent authority or court has legal jurisdiction to issue a death sentence to a convicted criminal; circumstances under which a “warning to seal” document is issued and the consequences for the person named in the document; circumstances under which a private home is “sealed”; whether it is pursuant to a court order and, if so, legal documents issued to the person concerned or availability of these documents through legal representatives; impact of a sealing on the resident (2004 – 2006)*, 20 June. (REFINFO)
5. Amnesty International 2001, *Iran: A legal system that fails to protect freedom of expression and association*, 21 December <http://www.amnesty.org/en/library/asset/MDE13/045/2001/en/73a8bc2a-d8ae-11dd-ad8c-f3d4445c118e/mde130452001en.html> - Accessed 27 July 2009.
6. 'News Release: Two other Union Board Members Briefly Arrested! Osanloo Still in Evin Prison!' 2006, International Alliance in Support of Workers in Iran (IASWI) website, 3 December <http://www.workers-iran.org/VAHED/news%20release,%20two%20others%20arrested,%20dec%203,%202006.htm> – Accessed 23 July 2009.