

IRAN

Dhabihullah Mahrami: Prisoner of Conscience

October 1996

AI INDEX: MDE 13/34/96

DISTR: SC/CC/CO/GR

SUMMARY

Dhabihullah Mahrami, a Baha'i aged about 50, is currently detained in a prison in Yazd, central Iran, facing charges of apostasy which can carry the death penalty. Amnesty International believes him to be a prisoner of conscience, held solely on account of his religious beliefs, and is calling for his immediate and unconditional release.

In early 1996 he was convicted of apostasy by a Revolutionary Court in Yazd, and sentenced to death. Following an appeal to the Supreme Court by his lawyer, the death sentence was overturned, apparently for reasons including that the Revolutionary Court was not the competent court. However he remains in prison awaiting a new trial.

Conversion to another religion is an internationally recognized right, laid down in Article 18 of the International Covenant of Civil and Political Rights, to which Iran is a State Party.

This report summarizes a document (2973 words), IRAN: Dhabihullah Mahrami: Prisoner of Conscience (AI Index: MDE 13/34/96) issued by Amnesty International in October 1996. Anyone wishing further details or to take action on this issue should consult the full document below.

IRAN

Dhabihullah Mahrami: Prisoner of Conscience

Dhabihullah Mahrami, aged about 50, is currently detained in a prison in Yazd, central Iran, facing charges of apostasy which can carry the death penalty [For previous reports of death sentences for apostasy, see: *Iran: Arrest and Execution of a Christian Pastor*, AI Index MDE 13/18/90 and *Iran: Executions of prisoners continue unabated*, AI Index MDE 13/18/92, p.5 and *Iran: Official secrecy hides continuing repression*, AI Index MDE 13/02/95, p.10.]. Amnesty International believes him to be a prisoner of conscience, held solely on account of his religious beliefs, and is calling for his immediate and unconditional release.

Dhabihullah Mahrami was born in 1946 into a Baha'i family in Yazd, where he worked as an employee of the Ministry of Agriculture. On 16 August 1995 he appeared before the Islamic Revolutionary Court in Yazd, following a summons issued on 24 July 1995 by that court. In that session, he was questioned about his current religious beliefs, in light of an announcement carried by the newspaper *Keyhan* in August 1983 stating that Dhabihullah Mahrami had become a Muslim, and about a document he signed in 1985 in the Department of Agriculture which stated that his religion was Islam. In the court session, he affirmed that he was a Baha'i. That court session was followed by three others in which he was requested to repent and accept Islam. When he refused to do so, he was charged with "national apostasy" ["National apostasy" was defined by the late Grand Ayatollah Khomeini, the former Leader of the Islamic Republic of Iran, as referring to "a person whose father and mother were infidels when his seed was being gelled and he has expressed infidelity after puberty, and became an original infidel, then he embraced Islam and later returned to infidelity; such as a person who was originally a Christian and became a Muslim and then returned to Christianity"]. He was then instructed to select a defence lawyer, after which a further court session took place on 2 January 1996 which resulted in his conviction of apostasy and his being sentenced to death [Relevant extracts of the Revolutionary Courts verdict may be found in Appendix A].

According to paragraph 19 of the 1994 law concerning the Establishment of Public and Revolutionary Courts, court verdicts resulting in the death sentence may be appealed to the Supreme Court. Dhabihullah Mahrami's lawyer submitted such an appeal to the Supreme Court. On 7 March 1996 Amnesty International received a letter from the Iranian Embassy in London (please see Appendix B) which stated that the Supreme Court had quashed the death sentence against Dhabihullah Mahrami and referred the case back to a lower court for reconsideration [One of the reasons for the Supreme Court decision, according to Iranian officials, was the lack of competence of the original court to investigate this subject. Article 5 of the 1994 Law Establishing Public and Revolutionary Courts defines the competence of Revolutionary Courts as follows:

"Revolutionary courts as may be required in number shall be formed in each provincial capital and in the districts, as determined by the Head of the Judiciary, and under the administrative supervision and legal authority of the judicial district, to investigate the following offences:

- 1.Any crime against the domestic or foreign security of the Islamic Republic of Iran and corruption on earth.
- 2.Any act amounting to an affront against the Founder of the Islamic Republic of Iran and/or the Leader.
- 3.Any conspiracy or plot against the Islamic Republic of Iran or any armed uprising, terrorism or demolition of public buildings or installations with the aim of confronting the Islamic government of the country.
- 4.Spying for foreigners.
- 5.Drug trafficking or related crimes.
- 6.Suits filed under Article 49 of the Constitution [which relates to the confiscation of illicitly obtained wealth."].

Dhabihullah Mahrami reportedly remains detained in Yazd, possibly in the Central Prison, and it is not clear whether or not he and his family have been officially informed of the Supreme Courts decision.

The situation of the Bahai's in Iran

Since the establishment of the Islamic Republic of Iran in 1979, the Baha'i community there has been systematically harassed and persecuted. The Baha'i faith is not one of the religions recognised under the Constitution [Article 13 of the Constitution states: "Zoroastrians, Jewish and Christian Iranians are the only recognised religious minorities who, within the limits of the law are free to perform their religious rites and ceremonies and to act according to their own canon in matters of personal affairs and religious education".]. At least 201 have been executed, most during the 1980s and apparently in connection with their religious beliefs. Bahai's are not permitted to meet, to hold religious ceremonies or to practice their religion communally. Baha'i buildings, sites and centres have been confiscated and closed; private and business property of individual Baha'is has been confiscated, and Bahais have been dismissed from government posts and schools. The Baha'i community in Iran also claims to suffer discrimination in the judicial system, including pressures on defence lawyers not to accept Baha'i clients, although the authorities deny this, claiming that justice is administered in accordance with the legally prescribed rules [See paragraphs 67 and 68 of the report of the UN Special Rapporteur on the question of religious intolerance submitted to the 52nd session of the UN Commission, UN Economic and Social Council document reference: E/CN.4/1996/95/Add.2]. The Baha'i community in Iran profess their allegiance to the state and deny that they are involved in any subversive acts against the government, which they state would be antithetical to the precepts of their religion. They state that allegations of espionage made against the community stem solely from the fact that the Baha'i World Centre is in Israel.

However, the Iranian authorities continue to deny that the Baha'i community follows any recognized religion, and treat them with hostility and suspicion, often accusing them of espionage [Two Bahai'is, Bihnam Mithaqi and Kayvan Khalajabadi, are currently under sentence of death after conviction on charges apparently relating to their activities within the Baha'i community. Their death sentences were reportedly confirmed by the Supreme Court in February 1996.]. Such claims were repeated recently when Ayatollah Yazdi, the Head of the Judiciary, said in an interview with the Islamic Republic News Agency (reported by Reuters and Agence France Press on 14 May 1996) that religious minorities in Iran enjoyed freedom of faith but that "the Baha'i sect is not a religion, but a web of espionage activities".

Such official statements are all the more worrying in the light of the approval by the Islamic Consultative Assembly (Iran's Parliament) in early May 1996 of an amendment to the Penal Code, bringing espionage into the remit of the *moharebeh* (enmity against God) clause, and specifying a mandatory death sentence [There is no precise definition of the *moharebeh* clause which has been applied very widely since the first version of the Law of Hodoud and Qesas was adopted in 1982. Article 190 of the current Penal Code stipulates four possible penalties for those convicted under this clause: crucifixion (for three consecutive days and nights in a manner which should not cause death); the death penalty; banishment; or amputation. Article 191 states that the judge has discretion over choosing which one of these penalties to apply. However, the draft law on espionage stipulates that the death penalty must be applied to those convicted of espionage.]. Thousands of political prisoners are believed to have been executed under this clause since 1979. It is feared that this amendment could lead to more death sentences being passed against Bahais in the future if the government continues to accuse the community of espionage. Amnesty International urged the Islamic Consultative Assembly in February 1996 not to expand the scope of the death penalty.

Legislation

Various articles of the Iranian Constitution refer to the rights of Iranian citizens, as follows:

"Article 19: All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights ..."

"Article 20: All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria."

"Article 22: The dignity, life, property, rights, residence and occupation of the individual are inviolate,

except in cases sanctioned by law."

"Article 23: The investigation of individuals beliefs is forbidden, and no-one may be molested or taken to task simply for holding a certain belief."

From these articles, it appears that there is a fundamental contradiction in the constitutional protection of individual rights in Iran, as the qualifying phrase "in conformity with Islamic criteria" in Article 20 appears to allow the possibility of discriminatory treatment in some cases, contravening international standards.

The legal position of converts from Islam in Iran is unclear, stemming from contradictions in the Iranian legal framework. There is no article in codified Iranian legislation which criminalizes apostasy and therefore it prescribes no penalty for apostasy. Article 2 of the Islamic Penal Code states:

"Any action or omission for which a punishment is prescribed in law (*qanoon*) shall be considered to be a crime."

Article 166 of the Constitution states that: "The verdicts of courts must be well reasoned and documented with reference to the articles and principles of the law in accordance with which they are delivered.", and Article 167 of the Constitution goes on to state:

"The judge is bound to endeavour to judge each case on the basis of codified law."

From this, it would appear that since there is no codified penalty for apostasy, it should not be considered as a crime in Iran. This would also appear to be the view of at least some Iranian governmental representatives who met the UN Special Rapporteur on the question of religious intolerance during his visit to Iran in December 1995. Paragraph 21 of his report states these officials asserted to him that

"under the Civil Code, conversion was not a crime and that no one had been punished for converting, as shown by the case of Pastor Dibaj, a converted Muslim who was sentenced to death for apostasy, but whose sentence was reviewed". [Rev. Mehdi Dibaj was arrested in 1984 and sentenced to death in December 1993 for apostasy apparently for converting from Islam to Christianity some 45 years earlier. Although the charges were not dropped, he was released in January 1994 after international appeals on his behalf, including by Amnesty International members. He was later found dead in suspicious circumstances. Three women, self-confessed members of the Peoples Mojahedin Organization of Iran (PMOI), have been convicted of his murder, and that of another Christian priest. The PMOI have denied that these three women were its members and that they had any involvement in these deaths. Amnesty International has sought details of the evidence against these three women from the Iranian Government, so far without success. The organization continues to believe that the truth of the matter will only emerge if a full and impartial investigation is conducted into these killings, the methods and findings of which should be made public.]

However, Article 167 then continues:

"In case of the absence of any such law, he has to deliver his judgment on the basis of authoritative Islamic sources and authentic *fatawa* (edicts made by religious jurists). He, on the pretext of the silence of, or deficiency of, law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgment."

These two precepts appear to contradict each other.

However, it is clear that the Islamic judicial system considers religious edicts, particularly those of eminent religious jurists such as the late Ayatollah Khomeini, to be a parallel source of law to acts of parliament. For example, Ayatollah Yazdi, the Head of the Judiciary is reported to have said at Friday Prayers in June 1992:

"The laws which are the criteria for action are taken from various Islamic Treatises and the *Tahrir-ol-Vasileh* written by the Leader of the Nation, Imam Khomeini."

In the *Tahrir-ol-Vasileh*, Ayatollah Khomeini defined the penalty for national apostasy as follows:

"A national apostate will be caused to repent and in case of refusing to repent will be executed. And it is preferable to give a three-day reprieve and to execute him on the fourth day if he refused."

Therefore, despite the lack of a codified penalty for apostasy in Iran, converts from Islam risk prosecution and the death penalty [Another Baha'i, Ramidan'ali Dhulfaqari, was reportedly sentenced to death for apostasy in late 1993 in Rafsanjan. He was reportedly released from prison on 6 January 1994, but the charge of apostasy is said to remain outstanding.].

The right to a fair trial in Iran is also compromised by the 1994 Act Establishing Public and Revolutionary Courts, in which the responsibility of the Public Prosecutor was transferred to the judge, apparently on the grounds that this would make the system more "Islamic" and would expedite the hearing of cases [See *Amnesty International- Iran: Violations of Human Rights 1987-1990*, pp 31-32 which refers to the proposals later adopted in the 1994 Act.]. This compromises the independence of the judiciary, in violation of Article 10 of the United Nations Guidelines on the Role of Prosecutors, which states that:

"The office of prosecutors shall be strictly separated from judicial functions"

and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) which provides for the right to be tried before an independent and impartial tribunal.

International Standards

Freedom to hold or adopt the religion of one's choice is provided for by Article 18 of the ICCPR, to which Iran is a State Party, which states:

"1. Everyone 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.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

The inconsistency of Iranian legislation and practice with international standards with respect to people alleged to have converted from Islam to another religion has recently been highlighted by the UN Special Rapporteur on the question of religious intolerance, who visited Iran in December 1995, in his report submitted to the 52nd session of the UN Commission on Human Rights. According to that report, during his visit, Government representatives stated that, under the Iranian Constitution, non-Muslims enjoy the same rights as any other citizen, [See Article 22 and Article 23 of the Constitution (above). Article 14 also states that: "In accordance with the sacred verse ... the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights." This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran] that under the Civil Code, conversion was not a crime, and that no one had been punished for converting. They also said that although Article 18 of the Universal Declaration of Human Rights expressly recognized conversion, Islamic countries had expressed reservations about it and that Article 18 of the ICCPR did not refer to conversion.

The Special Rapporteur for his part drew attention to general comment 22(48) on "freedom 'to have or to adopt' a religion or belief", made by the UN Human Rights Committee on 20 July 1993, which expressly recognized that Article 18 of the ICCPR entailed the right to replace one's current religion or belief with another or to adopt atheistic views, and that the ICCPR bars coercion which would impair this right, including the use or threat of physical force or penal sanctions to compel believers or non-believers to adhere to religious beliefs. In his conclusions and recommendations, he reaffirmed the

need to respect this internationally recognized human rights standard, and said that the conversion of Muslims to another religion should in no way result in "pressures, bans or restrictions ... on the converts".

In addition, Amnesty International considers imposition of the death penalty for "apostasy" to be inconsistent with international standards relating to this most serious of penalties. Article 1 of the UN safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council on 25 May 1984, states:

"In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond **intentional crimes with lethal or other extremely grave consequences.**" (emphasis added)

Amnesty Internationals recommendations

Amnesty International urges the Iranian Government to

- release Dhabihullah Mahrami, and any other prisoner of conscience.
- ensure that he is not, at any stage in the future, sentenced to a prison term or to the death penalty solely for the peaceful expression of his religious beliefs.
- review Iranian legislation to ensure that no one may be sentenced to prison terms or to the death penalty solely on account of the peaceful expression of religious beliefs, including anyone who may have exercised the internationally recognized right to change his or her religion.

APPENDIX A

Part of the verdict of the Revolutionary Court in Yazd on the case of Dhabihullah Mahrami

"Concerning the charges against Mr. Dhabihullah Mahrami, the son of Gholamreza, ie denouncing the blessed religion of Islam and accepting the beliefs of the wayward Baha'i sect (national apostasy), in light of his clear confessions to the fact that he accepted the wayward Baha'i sect at the age of maturity, later accepted Islam for a period of seven years, and then returned to the aforementioned sect; and because of the fact that, despite the most tremendous efforts of this court to guide him and encourage him to repent for having committed the most grievous sin, he remains firm in his baseless beliefs, he has, on three consecutive meetings, while being of sound body and mind and in absolute control, announced his allegiance to the principles of Baha'ism and his belief in the prophethood of Mirza Husayn-Aiy-i-Baha, he has openly denied the most essential [principle] of Islam [Prophet Muhammad being the Seal of the Prophets], and he is not willing to repent for having committed this sin, the following verdict was issued, based on the investigations of the Department of Intelligence of the Province of Yazd, and the damaging consequences of his leaving the true religion of Islam and rejoining the Bahai sect, which, according to indisputable principles accepted by reasonable people, is a clear insult to the beliefs of over one billion Muslims.

By applying the tenth definition of "*Nijasat*" [impurities] to be found in the first volume of *Tahrir ol-Vasileh* in defining an infidel and an apostate, as well as section ten of the book of *Al-Mavarith* (on the topic of inheritance) and sections one and four of *al-Hudud* (on the topic of apostasy) written by the great founder of the Islamic Republic of Iran, His Holiness Imam Khomeini, the accused is sentenced to death because of being an apostate.

Furthermore, based on section one of *al-Mavarith* (on the topic of inheritance) and in light of the fact that he does not have any Muslim heirs, a verdict is issued for the confiscation of all his properties and assets..."

APPENDIX - C Addresses to write to in Iran

List of Government Authorities

1) Leader of the Islamic Republic
His Excellency Ayatollah Sayed 'Ali Khamenei
The Presidency
Palestine Avenue
Azerbaijan Intersection
Tehran, Islamic Republic of Iran
Telegrams: Ayatollah Khamenei, Tehran, Iran
Salutation: Your Excellency

2) His Excellency Hojjatoleslam
Ali Akbar Hashemi Rafsanjani
The Presidency
Palestine Avenue
Azerbaijan Intersection
Tehran
Islamic Republic of Iran
Telegrams: President Rafsanjani, Tehran, Iran
Salutation: Your Excellency

3) His Excellency Ayatollah Mohammad Yazdi
Head of the Judiciary
Ministry of Justice
Park-e Shahr
Tehran
Islamic Republic of Iran
Telegrams: Head of Judiciary, Justice Ministry, Tehran, Iran
Salutation: Your Excellency

4) His Excellency Hojjatoleslam Ali Shushtari
Minister of Justice
Ministry of Justice
Park-e Shahr
Tehran
Islamic Republic of Iran
Telegrams: Justice Minister, Tehran, Iran
Salutation: Your Excellency

5) His Excellency Mohammad Ali Besharati Jahromi
Ministry of the Interior
Dr Fatemi Avenue
Tehran
Islamic Republic of Iran
Telegrams: Interior Minister, Tehran, Iran
Fax: +98 21 655 426 (or 899 547)
Salutation: Your Excellency

6) His Excellency Hojjatoleslam Ali Fallahian
Minister of Information and Security
Ministry of Information and Security
Tehran
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Telegrams: Minister of Information and Security, Tehran, Iran
Salutation: Your Excellency

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