



**COUNCIL OF EUROPE**  
**EUROPEAN COURT OF HUMAN RIGHTS**

**APPLICATION N° 40270/08**

**R. B. G. and Others**

**Applicants,**

**v.**

**TURKEY**

**Respondent.**

**APPLICATION N° 36009/08**

**M. B. and Others**

**Applicants,**

**v.**

**TURKEY**

**Respondent.**

**WRITTEN OBSERVATIONS**  
**OF THE EUROPEAN CENTRE FOR LAW AND JUSTICE**

**Filed on**  
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The European Centre for Law and Justice (ECLJ) is an international non-for-profit law firm focusing on the protection of human rights and religious freedom in Europe and worldwide. The ECLJ is involved in numerous cases before national and international jurisdictions and Human Rights protection systems. The ECLJ has a special consultative status with ECOSOC and is accredited to the European Parliament.

In these observations, the ECLJ submits a factual presentation of the plight of Muslims who have converted to Christianity in Iran, termed “apostasy,” and does not address the specific facts of this case or its Applicants. ECLJ first presents an overview of Iran’s current constitutional and statutory provisions for religious freedom; these observations detail the provisions and ramifications of Iran’s new Penal Code Article 225, regulating apostasy. ECLJ’s observations next discuss a number of recent cases involving Iranian “apostates” decided by national jurisdictions. Finally, ECLJ presents recent reports of persecution against “apostates” in Iran.

## I. Current Constitutional and Statutory Provisions in Iran

The Constitution of the Islamic Republic of Iran<sup>1</sup> recognizes Islam as the official religion<sup>2</sup> and requires that all laws and regulations conform to Islamic principles.<sup>3</sup> Concerning freedom of thought, conscience and religion, article 23 of the Constitution provides that the “investigation of individuals’ beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief.”<sup>4</sup> This provision must be interpreted in accordance with Islamic principles applying to non-Muslims: “[T]he government . . . 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.”<sup>5</sup> This principle applies only to “all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.”<sup>6</sup> Under Islamic law, apostasy is equivalent to treason, which is punishable by death.<sup>7</sup>

Until now, there had been no written law relating explicitly to apostasy.<sup>8</sup> Even absent apostasy regulations from the Penal Code, death sentences can be issued for apostasy under judicial interpretations of the *Shari’a* law<sup>9</sup> and *fatwas*.<sup>10</sup> Some sources have reported that no converts to Christianity have actually been judicially convicted of apostasy since Mehdi Dibaj was convicted and sentenced to death in 1994.<sup>11</sup> However, this

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<sup>1</sup> Const. of the Islamic Republic of Iran, available at <http://www.iranchamber.com/government/laws/constitution.php>.

<sup>2</sup> Const. of the Islamic Republic of Iran, *supra* note 1, at ch. I, art. 12.

<sup>3</sup> Const. of the Islamic Republic of Iran, ch. I, art. 4, “All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons of the Guardian Council are judges in this matter”.

<sup>4</sup> Const. of the Islamic Republic of Iran, *supra* note 1, at ch. III, art. 23.

<sup>5</sup> Const. of the Islamic Republic of Iran, *supra* note 1, ch. I, art. 14 (emphasis added). See also U.S. Dep’t of State, *International Religious Freedom Report 2007 Iran* (2007) [hereinafter *2007, International Religious Freedom Report*], available at <http://www.state.gov/g/drl/rls/irf/2007/90210.htm>; Barnabas Aid, *Iranian Parliament Provisionally Approves Death Penalty for Leaving Islam* (Oct. 2, 2008), <http://www.barnabasfund.org/?m=7%23227&a=608>.

<sup>6</sup> Const. of the Islamic Republic of Iran, *supra* note 1, at ch. I, art. 14.

<sup>7</sup> *2007, International Religious Freedom Report*, *supra* note 5, sec. II, Legal/Policy Framework; Barnabas Aid, *supra* note 5 (“Apostasy from Islam is viewed by most Muslims as equivalent to treason”).

<sup>8</sup> Global Exploits Ministries, *Islam in the News Sept. ’08, Iran-Ratification of the apostasy bill*, Sept. 12, 2008 (on file with author), <http://www.globalexploits.org/pages.asp?pageid=76403>.

<sup>9</sup> U.S. Dep’t of State, *International Religious Freedom Report 2008 Iran*, sec. II, Legal/Policy Framework (2008) [hereinafter *2008 International Religious Freedom Report*], available at <http://www.state.gov/g/drl/rls/irf/2008/108482.htm>.

<sup>10</sup> Barnabas Aid, *supra*.

<sup>11</sup> Compass Direct News, *Iran: Death Penalty Proposed for ‘Apostates’*, Feb. 8, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5231>. International pressure resulted in that sentence being dropped and in Dibaj’s release. *Id.* See also *2008 International Religious Freedom Report*, *supra* note 9, at sec. II, Legal/Policy Framework (no reports during the reporting period).

absence of recent punishment does not mean that there was no execution of converts, within or outside the judicial system. For example, Mehdi Dibaj and other Protestant pastors have been brutally murdered outside of the court system.<sup>12</sup> The death penalty can also be ordered under more ambiguous charges, such as “attempts against the security of the state,” or “outrage against high-ranking officials.”<sup>13</sup> According to the U.S. Department of State, “many persons supposedly executed for criminal offenses, such as narcotics trafficking, were political dissidents.”<sup>14</sup>

Torturers are “rarely, if ever held to account for their crimes.”<sup>15</sup> Currently, Article 226 of Iran’s Islamic Criminal Law requires only that those who murder apostates prove that the victim deserved to die as their defense:

Committing murder will result in retaliation provided the murdered person did not deserve to die in accordance with Islamic Jurisprudence and if the murdered deserved to die, the murderer should prove the deservedness of the murdered person [to die] in the court in accordance with [Islamic] criteria.<sup>16</sup>

Notably, with respect to murders of those belonging to one particular religious minority, the Baha’is, the United States State Department found that “there were no pending prosecutions during the [2008] reporting period.”<sup>17</sup> Official United States reports show that Iranian “[g]overnment actions continued to support elements of society that created a threatening atmosphere for some religious minorities.”<sup>18</sup> Included among law enforcement bodies, the U.S. State Department reported that the “Basij and various informal groups known as the ‘Ansar-e Hizballah’ (Helpers of the Party of God) were aligned with extreme conservative members of the leadership and acted as vigilantes.”<sup>19</sup> Additionally, “the government did not initiate any investigations into reports of torture or punish those believed to be responsible.”<sup>20</sup> Even more egregious, “the government and its agents committed arbitrary or unlawful killings.”<sup>21</sup> Frank Nikbakht, an Iranian democracy activist who escaped Iran in 1982, described how non-Muslims are treated in Iran; killers of non-Muslims are “immune to prosecution, since according to the new criminal codes [after the 1979 revolution], the victims did not deserve to live or function within the ‘Islamic’ society in the first place. Hundreds of non-Muslims were thus executed or just killed and assassinated according to the new laws and imposed social norms.”<sup>22</sup>

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<sup>12</sup> Compass Direct News, *Iran: Death Penalty Proposed for ‘Apostates’*, *supra* note 11.

<sup>13</sup> U.S. Dep’t of State, *2008 Human Rights Report: Iran* (Feb. 25, 2009), sec. 1.a. [hereinafter *2008 U.S. Dep’t State HRR*], available at <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119115.htm>.

<sup>14</sup> *Id.*

<sup>15</sup> Amnesty International, *Iran—Amnesty International Report 2008*, sec. Torture and other ill treatment [hereinafter *AI 2008 Report –Iran*], available at <http://www.amnesty.org/en/region/iran/report-2008>. Amnesty International describes “Torture or other ill-treatment” as including flogging and amputation; other forms of punishment and ill treatment described included, “beatings, suspension from a height, insults, threats of rape, sexual abuse, electric shocks, prolonged sleep deprivation, being forced to stand in uncomfortable positions for long periods and prolonged solitary confinement.” Amnesty International, *Iran: Human Rights in the spotlight on the 30<sup>th</sup> Anniversary of the Islamic Revolution*, Publ’n No. MDE 13/010/2009 (Feb. 2009), available at <http://www.amnesty.org/en/library/asset/MDE13/010/2009/en/03d99921-f378-11dd-b339-21ceadf1e5ba/mde130102009eng.html>.

<sup>16</sup> Majmua-hi Qava’nini Jaza’l [Code of Criminal Laws] [1991], article 226 (Iran) (Iranian Law Network trans.) (alteration in original), available at [http://www.iran-law.com/IMG/pdf/Iran\\_Criminal\\_Code\\_in\\_English.pdf](http://www.iran-law.com/IMG/pdf/Iran_Criminal_Code_in_English.pdf) (last visited April 6, 2009). “Retaliation”, as defined by Article 219 of Iran’s Penal Code, permits the killing of the person sentenced to retaliation, with the permission of the “heir of the slain person.” *Id.*

<sup>17</sup> *2008 International Religious Freedom Report*, *supra* note 9, at sec. Abuses of Religious Freedom.

<sup>18</sup> *2008 International Religious Freedom Report*, *supra* note 9, at sec. Introduction.

<sup>19</sup> *2008 U.S. Dep’t State HRR*, *supra* note 13, at sec. 1.d.

<sup>20</sup> *Id.* at sec. 1.c.

<sup>21</sup> *Id.* at sec. 1.a.

<sup>22</sup> Jamie Glazov, *Iran’s Killing Fields*, FrontPageMagazine.com (March 5, 2008) (on file with author), <http://www.frontpagemag.com/Articles/Read.aspx?GUID=406E097A-9A42-480E-A2E6-C0D2C34353D1>.

The Christian community is closely monitored by government to uncover apostates. Although recognized religious minorities are not required to register with the Government, evangelical Christian groups were required to “compile and submit membership lists for their congregations.”<sup>23</sup> Any new membership will certainly raise red flags. Evangelical Christians are among the persecuted:

Christians, particularly evangelicals, continued to be subject to harassment and close surveillance. During the reporting period, the Government vigilantly enforced its prohibition on proselytizing by closely monitoring the activities of evangelical Christians, discouraging Muslims from entering church premises, closing the churches, and arresting Christian converts. Members of evangelical congregations were required to carry membership cards . . . [and] were subjected to identity checks by authorities posted outside congregation centers. . . . [Moreover,] church officials were ordered to inform the Ministry of Information and Islamic Guidance before admitting new members.<sup>24</sup>

## II. The New Penal Code<sup>25</sup>

On September 9, 2008 the Iranian Islamic Consultative Assembly approved a new Penal Code by a vote of 196 to 7.<sup>26</sup> Article 225 of the new Penal Code regulates apostasy; subsections 1 and 2 of Article 225 state that any Muslim who “clearly announces” his “intention” to leave Islam “declares blasphemy” and becomes an apostate.<sup>27</sup> According to reports, the Guardian Council (composed of six Islamic theologians and six jurists<sup>28</sup>) is currently reviewing the draft.<sup>29</sup> If the Guardian Council finds the legislation incompatible with Islam or the Constitution,<sup>30</sup> it has the power to veto the bill and send it back to the Assembly for review.<sup>31</sup> If the Council finds the legislation compatible with Islam, it will be deemed enforceable.

The international community is deeply concerned about the implications of the new Penal Code. The European Union issued a declaration, under its Common Foreign and Security Policy stating its concern about the legislation.<sup>32</sup> It explained that in the past, Iranian authorities have handed down and carried out the death penalty in apostasy cases, but have never set it down in law.<sup>33</sup> The EU maintains that the new legislation also violates Iran’s commitments under the international human rights conventions to which Iran is party.

On December 18, 2008, in a resolution on the “Situation of human rights in the Islamic Republic of Iran,” the United Nations General Assembly expressed “its deep concern at serious human rights violations in the Islamic Republic of Iran relating to, inter alia[,] . . . [s]evere limitations and restrictions on freedom of

<sup>23</sup> 2008 *International Religious Freedom Report*, *supra* note 9, at sec. II, Restrictions on Religious Freedom.

<sup>24</sup> 2008 *International Religious Freedom Report*, *supra* note 9, at sec. II, Abuses of Religious Freedom.

<sup>25</sup> Barnabas Quotidianus, *EU condemns Iran’s draft penal code*, Feb. 26, 2008, <http://www.leithjb.net/blog/2008/02/26/eu-condemns-irans-draft-penal-code/>; Assyrian Int’l News Agency, *Iran Draft Law Proposes Death Penalty for Religious Conversion*, February 5, 2008, <http://www.aina.org/news/20080204194122.htm> (Persian text of draft Penal Code is available on this website).

<sup>26</sup> Compass Direct News, *Iran: ‘Apostasy’ Bill Appeals Likely to Become Law*, September 23, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5599>.

<sup>27</sup> Barnabas Quotidianus, *EU condemns Iran’s draft penal code*, *supra* note 25.

<sup>28</sup> Const. Of The Islamic Republic Of Iran, *supra* note 1, at ch.VI, art. 91.

<sup>29</sup> Bill Sherman, *Pastor Fighting Faith Killings*, January 2, 2009,

[http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20090102\\_18\\_A9\\_TheRev230515&allcom=1](http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20090102_18_A9_TheRev230515&allcom=1).

<sup>30</sup> Const. of the Islamic Republic of Iran, ch. VI, art. 94, *supra* note 1.

<sup>31</sup> *Id.*

<sup>32</sup> Slovenian Presidency of the EU 2008, *Declaration by the Presidency on Behalf of the EU Concerning the Consideration of a Draft Penal Code in Iran*, Feb. 25, 2008,

[http://www.eu2008.si/en/News\\_and\\_Documents/CFSP\\_Statements/February/0225MZZiran.html](http://www.eu2008.si/en/News_and_Documents/CFSP_Statements/February/0225MZZiran.html).

<sup>33</sup> *Id.*

religion and belief, including the provision in the proposed draft penal code that sets out a mandatory death sentence for apostasy[.]”<sup>34</sup>

### ***Innate and Parental Apostates***

Article 225-4 states that an “Innate Apostate is one whose parent (at least one) was a Muslim at the time of conception, and who declares him/herself a Muslim after the age of maturity, and leaves Islam afterwards.” Thus, innate apostates are those who leave Islam at the age of maturity, after having been raised with at least one Muslim parent. Article 225-5 states that a “Parental Apostate is one whose parents (both) had been non-Muslims at the time of conception, and who has become a Muslim after the age of maturity, and later leaves Islam and returns to blasphemy.” Thus, parental apostates are those who grew up in non-Muslim homes, converted to Islam as adults, and then later recant and decide to leave Islam. One can reasonably infer from Article 225-4 that, if a person is born to a Muslim parent, he cannot leave Islam even though he may never declare himself a Muslim. One does not become an apostate because he did *not* declare himself a Muslim in the first place. Any potential confusion is remedied under Article 225-6, which renders such person a parental apostate: “If someone has at least one Muslim parent at the time of conception but after the age of maturity, without pretending to be a Muslim, chooses blasphemy is considered a Parental Apostate.” Thus, without any personal declaration, one born to a Muslim parent will be deemed an apostate merely by choosing a religion other than Islam.

### ***Mandatory Death Penalty for Male Apostates and Punishment for Female Apostates***

Article 225-7 of the new Penal Code also sets a mandatory death penalty for male innate apostates. However, Article 225-8 creates an exception for the parental apostates. While they are also punishable by death, they have a three-day period after the final sentencing in which they can recant. They are to be “guided to the right path and encouraged to recant [their] belief and if [they] refuse[], the death penalty would be carried out.” Article 225-9 gives parental apostates even more time “whenever there appears to be a possibility of recanting.” For female apostates, Article 225-10 requires life imprisonment, regardless of whether they are innate or parental apostates. However, a woman accused of apostasy is given a chance to recant her faith and profess Islam. If she recants after being given “guidance to the right path,” she can be released immediately.

### ***Capital Punishment in Iran***

The United States Department of State reported, relying on international press reports, that Iranian authorities had executed approximately 240 people in 2007 (2008 reporting period) “following unfair trials,” explaining that the trials had been conducted secretly or without due process.<sup>35</sup> Amnesty International, however, reported that 335 people were executed in 2007, including seven children.<sup>36</sup> If this number were not high enough, Amnesty International believes “the true figure was almost certainly higher” for the reporting period.<sup>37</sup> In a more recent report covering 2008, Amnesty International documented 346 executions.<sup>38</sup> Among countries in the Middle East and North Africa, Iran has the highest execution rate,<sup>39</sup> and is second only to China.<sup>40</sup> What is more, Iran is the only country, in 2008, known to have executed juveniles; eight were

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<sup>34</sup> UN GA Resolution 63/191, “Situation of human rights in the Islamic Republic of Iran” adopted by the General Assembly on 18 December 2008, United Nations A/RES/63/191, Art. 2 g, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/482/25/PDF/N0848225.pdf?OpenElement>.

<sup>35</sup> 2008 U.S. Dep’t State HRR, *supra* note 13, at sec. 1.a.

<sup>36</sup> AI 2008 Report –Iran, *supra* note 15, at Introduction and sec., Death Penalty.

<sup>37</sup> *Id.*

<sup>38</sup> Amnesty Int’l, *Death Sentences and Executions in 2008*, Publ’n No. ACT 50/003/2009, 8 (March 2009) [hereinafter *AI 2008 Death Sentences and Executions*], available at <http://www.amnesty.org/en/library/asset/ACT50/003/2009/en/0b789cb1-baa8-4c1b-bc35-58b606309836/act500032009en.pdf>.

<sup>39</sup> *Id.* at 15.

<sup>40</sup> *Id.* at 13.

executed in 2008.<sup>41</sup> Amnesty International also reported that death sentences were issued in Iran, but the number is unknown for 2008.<sup>42</sup>

### III. Recent Case Law Involving Iranian Apostates

Several countries, by granting asylum status, recognize that converts from Islam would face persecution or even death if forced to return to Iran. Some courts specifically recognize that the circumstances for converts in Iran have significantly changed since 2004. One court noted: “Self-evidently, Iran and its region are volatile, not static. . . . At least arguably, the *Shari’a* law presents risks to apostates in Iran that cannot be treated as trivial . . . .”<sup>43</sup>

In November 2008, an immigration tribunal in the United Kingdom noted: “There is no doubt that the general human rights situation in Iran is deteriorating, rather than improving.”<sup>44</sup> The tribunal noted that “Iranian authorities act in an arbitrary and unpredictable manner . . . mak[ing] the task of assessing risk more difficult than it would otherwise be.”<sup>45</sup> The tribunal, however, stressed the importance of “bear[ing] in mind that President Ahmadi-Nejad has been reported as saying that he wants to end the Christian problem;” emphasizing that “there is no doubt . . . that these are intended as messages and are more than opportunistic rhetoric.”<sup>46</sup>

Recently in 2008, the Refugee Review Tribunal in Australia assessed the denial of an Iranian woman’s refugee visa application and remitted the matter for reconsideration where it found she faced “more than a remote chance of persecution because of her conversion” if she returned to Iran.<sup>47</sup> The woman had renounced Islam and developed an interest in Christianity while living in Iran.<sup>48</sup> Feeling stifled and afraid to study the religion in the Iran’s hostile climate,<sup>49</sup> she left for Australia with her children, where she started attending church and became baptized in an official ceremony.<sup>50</sup> The tribunal accepted her conversion from Islam and commitment to Christianity as genuine.<sup>51</sup>

Under Australian refugee law, “an applicant must fear persecution . . . [which] must involve ‘serious harm’ to the applicant, and systematic and discriminatory conduct.”<sup>52</sup> The tribunal found this element to be met, relying on a host of material and recent news stories evidencing the ill-treatment and abuse of Iranian converts from Islam to Christianity.<sup>53</sup> The tribunal especially noted a perceived aggravation of the climate of

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<sup>41</sup> *Id.* at 16.

<sup>42</sup> *Id.* at 26.

<sup>43</sup> *Applicant NABD of 2002 v. Minister for Immigration and Multicultural and Indigenous Affairs*. [2005] HCA 29 (Austl.), available at <http://www.unhcr.org/refworld/docid/42d11c4b4.html>.

<sup>44</sup> *SZ and JM Iran v. Secretary of State for the Home Department*, CG [2008] UKAIT 00082, ¶ 141 (U.K.), available at <http://www.unhcr.org/refworld/docid/491af9092.html> (granting a converts refugee status appeal because returning the Iranian man to Iran would violate Article 3 of ECHR because of the limited access to the Roman Catholic church).

<sup>45</sup> *Id.* ¶ 141.

<sup>46</sup> *Id.*

<sup>47</sup> RRT Case No. 0800670 [2008] RRTA 147 ¶¶ 56, 62 (Austl.), available at <http://www.unhcr.org/refworld/docid/4897264a2.html>.

<sup>48</sup> *Id.* ¶ 53.

<sup>49</sup> *Id.* ¶ 24, 36. “It was very difficult to find information about Christianity in Iran due to heavy censorship and it was not possible to partake in Christian activities as conversion was punishable by death.” *Id.* ¶ 24.

<sup>50</sup> *Id.* ¶ 55.

<sup>51</sup> *Id.* ¶ 56.

<sup>52</sup> *Id.* ¶ 14 (citations omitted).

<sup>53</sup> *Id.* ¶¶ 42-52.

hostility toward Christian converts in Iran, as harassment of certain church groups had reportedly increased in the wake of the nation's 2004 elections.<sup>54</sup>

Although it considered the possibility of the applicant's relocation, the tribunal found that "given the attitude towards apostates, which is consistent throughout Iran, she would be unable to relocate in order to avoid the risk of harm."<sup>55</sup> The tribunal concluded that the woman was "a person to whom Australia has protection obligations under the Refugees Convention," and should accordingly be granted a protection visa, along with her dependent children.<sup>56</sup>

In July 2008, an Australian immigration tribunal granted an Iranian husband and wife's application for a protected visa under the Refugees Convention.<sup>57</sup> The tribunal found that the applicants had "a well-founded fear of . . . persecution in Iran" for their conversion to Christianity.<sup>58</sup> Before fleeing Iran, the applicants were the targets of severe harassment for their religious beliefs. Living in a predominantly Christian area in Iran, the Pasdaran (or Islamic Revolutionary Guard Corps)<sup>59</sup> and the Komiteh<sup>60</sup> repeatedly forced their way into the family home, each time threatening the applicants and removing from the home any property (a bible, a picture and video about the story of Jesus) that proved the applicants had converted to Christianity.<sup>61</sup> The applicants were ordered to answer questions by the Komiteh—when accused of being a Christian, the wife denied her faith fearing that admitting her conversion would result in her death.<sup>62</sup> During one of many interrogations by the Komiteh the wife was beaten with a stick and told that "worse things" would happen to her if she continued meeting with Christians or encouraging her children to become Christians.<sup>63</sup> The physical injuries from the brutal interrogation required medical treatment. The severe harassment by Iranian authorities resulted not only in physical injuries to the applicants but severe psychological trauma.<sup>64</sup> Accepting that the "domestic political climate in Iran has shifted" since 2004, the tribunal recognized the applicants' well-founded fear of religious persecution in Iran.<sup>65</sup> Therefore, the tribunal granted the applicants protection under the Refugees Convention.<sup>66</sup>

In addition to these cases, several countries—including Canada, Ireland, New Zealand, and the United Kingdom—have recognized the grave situation in Iran for converts from Islam and accordingly they have granted the converts' appeals from denials of refugee status.<sup>67</sup> Considering the recent codification of apostasy

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<sup>54</sup> *Id.* ¶ 44.

<sup>55</sup> *Id.* ¶ 59.

<sup>56</sup> *Id.* ¶¶ 59, 62.

<sup>57</sup> *RRT Case No. 0802231*, [2008] RRTA 275 (Austl.), available at <http://www.unhcr.org/refworld/docid/48d8e9d52.html>.

<sup>58</sup> *Id.* ¶ 131-32.

<sup>59</sup> "The Pasdaran (or Islamic Revolutionary Guard Corps), was set up 'to guard the Revolution and to assist the ruling clerics in the day-to-day enforcement of the government's Islamic codes and morality.'" *Id.* ¶ 115.

<sup>60</sup> "Komitehs (morals police, armed neighborhood committees) sprang up during the revolution and are described as 'aggressive irregulars.'" *Id.* ¶ 116.

<sup>61</sup> *Id.* ¶¶ 31, 38, 41, 48. During one arrest by the Komiteh, the Komiteh threatened harming the couple's children if he did not relocate the family to a non-Christian neighborhood.

<sup>62</sup> *Id.* ¶ 45.

<sup>63</sup> *Id.* ¶ 34.

<sup>64</sup> *Id.* ¶¶ 36, 47, 50.

<sup>65</sup> *Id.* ¶ 130.

<sup>66</sup> *Id.* ¶ 133.

<sup>67</sup> *E.g., Applicant NABD of 2002 v. Minister for Immigration and Multicultural and Indigenous Affairs*, [2005] HCA 29 (Austl.), available at <http://www.unhcr.org/refworld/docid/42d11c4b4.html> (granting judicial review of asylum application denial where an Iranian national feared being executed by authorities in Iran due to his conversion from Islam to Christianity); *Mostafa Ejtehadian v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 158, ¶ 17 (Can.), available at <http://www.unhcr.org/refworld/docid/48eb5f912.html> (allowing application for judicial review of denial of asylum applications for a husband, wife, and son, Christian converts who fled from Iran to Canada because "the documentary evidence show[ed] that conversion from Islam to Christianity (apostasy) is a very serious crime, punishable by death. . . . [The evidence] show[ed] that people are arrested, beaten, tortured and even murdered because they converted to Christianity"); *Ghasemian c. Canada (Ministre de la citoyenneté et de l'immigration)*, 2003 CF 1266, (2003), [2004] 2 R.C.F. D-13 (Can.), available at

as a capital crime, lacking only final approval as discussed *supra*, converts from Islam are far more likely to face severe persecution in Iran than ever before.

#### IV. Recent Cases Involving Persecution of Apostates

Below are recent accounts of government persecution of Iranian converts to Christianity. While the statuses of the cases vary, charges are still pending against most of these Iranians, notwithstanding their release from prison. Such charges could carry the death penalty should this draft bill become law. International Religious Freedom Reports from the U.S. Department of State confirmed that “several Christians [have been] arrested, although there were no reasons given for the arrests.” The Iranian Ministry of Intelligence is said to be responsible for most of these arrests and for the torture of Christians in several cities.<sup>68</sup>

##### *Jamal Ghalishorani and Hamik Khachikian*<sup>69</sup>

On January 21, 2009, Iranian authorities arrested two Christian converts from Islam, Jamal Ghalishorani, 49 and his wife Nadereh Jamali, and an Armenian Christian, Hamik Khachikian, in Tehran. Ghalishorani converted to Christianity thirty years ago, and his wife converted fifteen years ago. The couple has a thirteen-year-old daughter. Khachikian has two children, ages 16 and 11. The authorities have not told the captives’ families of their whereabouts or the charges. The police also confiscated books and computers from the families’ homes. According to the Compass Direct News, there have been more arrests of Christians in the past several months. On the same day, the Iranian authorities arrested at least ten people in Tehran.

##### *Twelve Christian Converts*<sup>70</sup>

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<http://www.unhcr.org/refworld/docid/48abd59d0.html> (finding reversible error where the Immigration Refugee Board failed to consider whether an Iranian applicant, a woman who converted to Christianity after she fled to Canada, would be viewed as an apostate by the Iranian authorities, given that “the crime of apostasy is severely punished in Iran”); *Refugee Appeal No. 70283*. No. 70283 (N.Z.), available at <http://www.unhcr.org/refworld/docid/477cfb830.html> (granting refugee status for Iranian converts to Christianity whose family had imprisoned the wife for her conversion, threatened to kill the husband for his conversion, and notified a family member in the Komiteh who had a reputation for summarily executing violators of Islamic law); *Refugee Appeal No. 300/92 RE MSM*. NO. 300/92 (N.Z.), available at <http://www.unhcr.org/refworld/docid/3ae6b73f4.html> (granting refugee status to a Hare Krishna convert from Iran where applicant had a credible belief that he would face “severe retribution and punishment” if his underground religious beliefs were discovered in Iran because other followers had been arrested and imprisoned, which prompted his flight from Iran); *SH (Baha’is) Iran v. Secretary of State for the Home Department*, CG [2006] UKAIT 00041 (U.K.), available at <http://www.unhcr.org/refworld/docid/46836a9e0.html> (allowing appeal from asylum denial on human rights grounds where an Iranian national in the U.K. feared persecution in Iran because of his Baha’i faith); *FS and Others (Iran - Christian Converts) Iran v. Secretary of State for the Home Department*, CG [2004] UKIAT 00303 (U.K. and N. Ir.), available at <http://www.unhcr.org/refworld/docid/42c934fb4.html> (granting appeal of asylum denial for two of three applicants where the two converts, one a pastor and one a single woman, were at real risk of persecution for their religion if returned to Iran); *Shirazi v. Secretary of State for the Home Department*, [2003] EWCA Civ 1562 (U.K.), available at <http://www.unhcr.org/refworld/docid/47c2aa9c2.html> (allowing appeal of a denied asylum application where an Iranian Muslim had become an apostate by conversion and the lower tribunal did not give adequate consideration to recent decisions and reports that pointed to the threat of harm to apostates in Iran); *Razeghi, Re Judicial Review* [2002] NIQB 66 ¶¶ 18, 29 (U.K.), available at <http://www.unhcr.org/refworld/docid/48abd5680.html> (proposing to remit case where lower tribunal wrongly focused on the “implausibility” of the applicant’s religious beliefs where the parties stipulated that “the Muslim penalty for apostasy . . . is well known to be severe in Iranian practice”).

<sup>68</sup> 2007 *International Religious Freedom Report*, *supra* note 5.

<sup>69</sup> Compass Direct News, *Iran: Three Christians Arrested from Homes in Tehran*, January 23, 2009, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5776>.

<sup>70</sup> This story is taken from the following sources (some of the names had been misspelled in various articles, but are likely the same persons): Compass Direct News, *Iran: Police Arrest 12 Christian Converts*, May 21, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5386>; Compass Direct News, *Iran: Three Converts Ordered To Stop ‘Christian Activities,’* March 31, 2009, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5860>; Compass Direct News, *Iran: Two Christian Prisoners Released on Bail*, June 3, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5404>.

At 5 a.m., May 11, 2008, officials arrested two couples at the Shiraz International Airport before boarding their flight. Homayon Shokohie Gholamzadeh, 48, and his wife Fariba Nazemiyan Pur, 40, along with Amir Hussein Bab Anari, 25, and his wife Fatemeh Shenasa, 25, were immediately taken to jail after arrest. They “were subjected to hours of interrogation” and questioned only “about their faith and house church activities.” Although the wives were released later that day, Anari was not released until May 14, and Gholamzadeh is still being detained.

Two hours after these arrests, police “invaded the home of Hamdid Allaedin Hussein, 58, arresting him and his three adult children, Fatemah, 28[;] Muhammed Ali, 27[;] and Moj[i]taba, 21.” The authorities confiscated the family’s books, CDs, computers, and printers. Hussein, Fatemah, and Muhammed Ali were released later during the day, but Mojtaba remained in prison until June. Two days later, the police also arrested Matin-Azad and Arash Basirat, former Muslims involved in a separate house church. Mojtaba Hussein was set free in June 2008 after posting bail of \$20,000. As reported however, he remains under house arrest and constant surveillance. He was charged with “activities against [the] holy religion [Islam],” the same charge attributed to Hamoyon Shokohie Gholamzadeh. The others were charged with “activities against the country.” While all were released, they could be recalled into court at any time since the pending charges were left open. The Iranian authorities were especially interested in information regarding the spread of illegal house churches.

On March 10, 2009, sentences for some of these men had been ordered. “Seyed Allaedin Hussein, Homayoon Shokouhi, and Seyed Amir Hussein Bob-Annari” were given “an eight-month suspended prison sentence with a five-year probation.” The judge found the three guilty of “anti-government movements,” referring to two Christian satellite television stations capable of bypassing government information barriers. The charges relating to the TV stations came six months after arrest and are believed to have been added to make the arrests appear more important. These sentences come on the heels of “more than 50 documented arrests of Christians in 2008 alone . . . .” Additionally, on March 19, 2009, an Assyrian Pentecostal church in Tehran was ordered closed for offering a Farsi-language service where converts from Islam attended.

### ***Matin-Azad and Basirat***<sup>71</sup>

Two Iranian Christian pastors, Mahmoud Matin Azad, 52, and Arash Basirat, 44, were arrested on May 15, 2008, on suspicion of apostasy. Basirat—a diabetic—was in critical condition due to lack of medical treatment as of July 2008. Before both men were placed in a cell together on July 15, 2008, they were kept in solitary confinement at a secret police detention center. In late July, Matin-Azad had received legal counsel, but it is not clear whether Basirat received such counsel. Under the new apostasy bill, both pastors will receive mandatory death sentences. Although very reluctant, the court set the bail at \$100,000 in late August 2008.

While the original charge against the two men was “propaganda against the Islamic Republic of Iran,” that charge was dropped and replaced with the more serious charge of apostasy. On September 25, 2008, the men were acquitted by Branch 5 of the Fars Criminal Court in Shiraz, south of Tehran. Amnesty International obtained a court document that stated, “Both had denied that they had converted to Christianity and said that

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<sup>71</sup> This story has been taken from the following sources:

Compass Direct News, *Iran: Court Finds Way to Acquit Christians of “Apostasy,”* Oct. 30, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5664>; Compass Direct News, *Iran: Christians Charged With “Apostasy,”* Sept. 10, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5574>; Compass Direct News, *Iran: Jailed Christian in Critical Condition,* July 30, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5494>; Compass Direct News, *Iran: Ex-Muslims Detained for “Apostasy,”* July 9, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5470>.

they remain Muslim, and accordingly the court found no further evidence to the contrary.” Both men deny this statement, claiming that they never said they were Muslim and that the judge acquitted them to avoid handing down a death sentence. Many believe that Iranian president Ahmadinejad put pressure on the judge to release the men to help his own approval ratings. Given Mehdi Dibaj’s fate in 1994—who was released but later brutally murdered—there is substantial grounds for concern for Matin-Azad’s and Basirat’s safety.

#### ***Thirteen Muslim Converts to Christianity***<sup>72</sup>

On May 15, 2008, police arrested thirteen converts to Christianity who were meeting in a park in Shiraz. The police “confiscated [their] cell phones,” then “‘temporarily’ released [the individuals]”; they remain under house arrest. The police have questioned them “about alleged political activity and Christian faith,” and they have been told that there is “an ongoing court case against them.” Although the police questioning suggested “that they are suspected of apostasy and political crimes against the government,” the converts do not know the specific charges that have been brought against them.

#### ***Twelve Iranian Christians***<sup>73</sup>

Police arrested twelve Iranian Christians on July 12, 2008 at the Kerman airport in south-central Iran. The group was attempting to travel to Armenia through Tehran when arrested. “Although [they] were freed the same night . . . their houses were searched and . . . police confiscated all Christian materials.”

#### ***Sixteen Iranian Christians***<sup>74</sup>

On July 17, 2008, secret police raided a house church service in Isfahan and arrested sixteen Christians, including six women and two children under the age of eighteen. “Police beat the elderly couple hosting the meeting so severely that they were taken to the Sharieti Hospital” for their injuries. At the time of this report, the Christians who were arrested were being held in an “undisclosed location.”

#### ***Ramtin Soodmand***<sup>75</sup>

Ramtin Soodman—son of the Iranian pastor Hossein Soodman who was executed in 1990 for his conversion to Christianity (the last Iranian “apostate” executed by the government)—was arrested and imprisoned on August 21, 2008. Soodman received a call from a friend who claimed that intelligence officers wanted to meet with him. Upon reaching Mashhad for the meeting, he was imprisoned. Soodmand was accused of “religious activity and proselytizing,” but was officially charged with “promoting anti-government propaganda.” According to family members, the court repeatedly changed the bail amount before settling on \$22,000, which the family put up in the form of a deed to a house. He was released on October 22, 2008. Soodmand believes he has been singled out due to his martyred father. It is unclear whether Soodmand faced emotional and/or physical harm while imprisoned. Because of his imprisonment, however, Soodmand has curtailed his house church activities out of fear of surveillance.

#### ***Hamid Pourmand***<sup>76</sup>

The Iranian secret police raided an Assemblies of God church conference in Bandar-i-Bushehr on September 9, 2004 resulting in the arrest of an Iranian Christian, Hamid Pourmand. Pourmand, a 49 year-old lay pastor and former army colonel, was arrested along with 85 other church leaders. Although the others were released within a few days, Pourmand was kept in solitary confinement for five months and then tried before both

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<sup>72</sup> Compass Direct News, *Iran: Ex-Muslims Detained for ‘Apostasy,’* July 9, 2008, <http://compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5470>.

<sup>73</sup> Compass Direct News, *Iran: Jailed Christian in Critical Condition,* July 30, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5494>.

<sup>74</sup> *Id.*

<sup>75</sup> Compass Direct News, *Iran: Son of Martyred Pastor Free on Bail, Awaiting Trial,* Nov. 11, 2008, <http://compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5682>.

<sup>76</sup> Compass Direct News, *Iran: Authorities Quietly Release Convert Christian Prisoner,* Sept. 12, 2006, <http://www.compassdirect.org/en/display.php?page=lead&lang=en&length=long&idelement=4533>.

military and Islamic courts. He was found guilty of “deceiving the Iranian army by concealing his conversion from Islam to Christianity.” While Pourmand’s lawyer provided information verifying that Pourmand’s army superiors knew that Pourmand was a Christian, the court refused to accept the documents. He was sentenced to three years in jail, dishonorably discharged from the army, stripped of his military pension, and then transferred to a criminal prison in Bandar-i-Bushehr where he was tried for both proselytizing and apostasy. However, in a hearing on May 28, 2005, the Islamic court judge acquitted Pourmand of those charges, declaring that he had “done nothing wrong” under Islamic law. Pourmand remained incarcerated in Tehran’s Evin Prison before his release in late July 2006, when the Tehran prison authorities informed him that he would not have to serve the remaining 14 months of his three-year prison sentence.

### ***Tina Rad and Makan Rya***<sup>77</sup>

In June 2008, a newly converted Christian couple was tortured by security police officials in Tehran. Tina Rad was charged with “activities against the holy religions of Islam,” for “reading the Bible with Muslims in her home,” and her husband, Makan Rya, was charged with “activities against national security.” The couple were beaten and then forced to sign statements that they had not changed their religion and would no longer attend a house church. Their daughter’s life was threatened, and they were told that trumped-up charges would result in life imprisonment if they did not stop attending church and maintaining contact with Christians. They were released on bail after four days in jail.

### ***Mohsen Namvar***<sup>78</sup>

Mohsen Namva, 44, is an Iranian Christian who was been arrested three times since 2001. In 2001, Namvar was jailed for distributing Christian literature. After his release, he moved to Tehran to escape persecution but could not find work due to his activities. He supported his family by translating English to Farsi. Then in 2007, he was arrested and tortured after the authorities accused him of baptizing Muslims who became Christians. In 2008, he was held by a branch of *Sepah* (Iranian Revolutionary Guard) from May 31, 2008 until June 26, 2008, and denied all contact with his family. The police demanded \$43,000 in bail, but officers refused to issue a receipt once the family made payment. While imprisoned, Namvar was beaten and denied medical treatment for fever, back pain, high blood pressure, and short-term memory loss. Namvar claims his mistreatment was due to his refusal to give the police information about other Iranian converts to Christianity and house churches. Days after his release last June, Namvar, along with his family, fled across the border to Turkey. In July 2008, Namvar appealed to the United Nations High Commissioner for Refugees in Ankara, Turkey to apply for status as an asylum-seeker. Namvar’s case is to be heard in June 2009.

### ***Issa Motamedi Mojdehi***<sup>79</sup>

One month after Issa Motamedi Mojdehi was arrested on trumped-up drug charges, the Iranian Christian convert was released on July 24, 2006 by the court authorities in Rasht, who declared he was “free for the moment.” He was granted bail on August 24, 2006, after a hearing in which the judge added the charge that Mojdehi’s 8-year old daughter allegedly tried to lead other children to the Christian faith. When he was arrested, Mojdehi was told he must renounce Christianity or face possible execution for his apostasy. While in jail, local officials tried for days to force a confession of illegal drug trafficking by threatening his life, his family’s lives, and the lives of other Christian believers. After meeting with a lawyer, Mojdehi was released and has since relocated his family to an undisclosed location.

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<sup>77</sup> Compass Direct News, *Iran: Convert Couple Arrested, Tortured, Threatened*, June 25, 2008, <http://www.compassdirect.org/en/display.php?page=news&length=long&lang=en&idelement=5448>.

<sup>78</sup> Compass Direct News, *Iran: Tortured Christian Flees*, July 21, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5478>.

<sup>79</sup> Compass Direct News, *Iran: Jailed Convert to Christianity Released*, Sept. 4, 2006, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=4515>.