



IRAN  
TRIBUNAL

## International People's Tribunal

Before :  
Judge Johann Kriegler, Presiding  
Judge John Dugard SC  
Judge Margaret Ratner Kunstler  
Judge Michael Mansfield QC  
Judge Makau Mutua  
Judge Patricia Sellers

Judgment of : 5 February 2013

PROSECUTOR

-v-

ISLAMIC REPUBLIC OF IRAN

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JUDGEMENT

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Prosecutors :  
Professor Dr Payam Akhavan  
Professor John Cooper QC  
Professor Sir Geoffrey Nice QC  
Ms Mojdeh Shahriari  
Mr Kaveh Shahrooz  
Dr Nancy Hormachea  
Ms Gissou Nia

Rapporteur : Mr Hamid Sabi

# **Iran Tribunal**

An International People's Tribunal

## **JUDGMENT**

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-V-

ISLAMIC REPUBLIC OF IRAN

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(A Case Concerning the Gross Violations of Human Rights  
And Commission of Crimes Against Humanity  
By the Islamic Government of Iran)

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This is the final and reasoned judgment of the Iran Tribunal consisting of Judge Johann Kriegler (Presiding), Professor Patricia Sellers, Margaret Ratner Kunstler, Professor Makau Mutua, Professor Michael Mansfield QC and Professor John Dugard. SC. This judgment follows the interim judgment that was issued on 27 October 2012 by this tribunal following a three-day hearing at the Peace Palace, in The Hague.

## Chapter I

### Introduction

1. In June 1981, less than 18 months after the establishment of the Islamic Republic of Iran, it faced its biggest challenge. Thousands of demonstrators, mostly young activists, took to the streets, demonstrating against the excesses and brutality of the regime. The leaders of the Islamic Republic did not hesitate to quell the uprising and opposition utilizing repression and brutality. Thousands were arrested. Hundreds were executed in the space of a few days; while the others were subjected to the most cruel and inhumane treatment, including physical and mental torture.
2. The reign of terror continued and thousands were executed throughout the 1980s. This culminated in 1988 with the issuance of a *fatwa* by the leader of the Islamic Republic of Iran, Ruhollah Mousavi Khomeini, ordering the execution, with “revolutionary rage and rancour”, of all political prisoners who “remained steadfast in their position”. The *fatwa* established commissions (which were commonly known as “death commissions”) in each of the provinces. The commissions were instructed not to “hesitate or show any doubt or concern with details” because “to hesitate in the judicial process of revolutionary Islam is to ignore the pure and holy blood of the martyrs”.
3. Thousands of prisoners were secretly executed during the summer of 1988. Their bodies were dumped in mass graves, which in some places were covered over with tarmac. It took months before the families were notified of the deaths of their loved ones.
4. The executions and the brutality were kept as a secret for a long period of time. Only this year, and in response to this Tribunal has the Islamic Republic of Iran acknowledged that mass executions occurred, justifying the killings as “permissible under international law and the Geneva Convention”.

5. Survivors of the Islamic regime's prisons along with the relatives of those executed have campaigned for many years to make the Islamic Republic of Iran be held accountable for its conduct.
6. Inside Iran, it has been forbidden to raise what happened in the 1980s. When Ayatollah Montazeri (nominated as the successor of Khomeini) raised his objections publicly in 1988, he was stripped of all his titles and was placed under house arrest until his death two years ago.

### Campaign for the Iran Tribunal

7. Those survivors and relatives of the victims of the Islamic Republic's reign of terror who managed to emigrate out of Iran continued their campaign for redress and accountability. They made representations to the Human Rights Commission of the United Nations and its special rapporteur for Iran, Reynaldo Galindo Pohl, and later his successor, Maurice Copithorne, without success. Other national and international institutions also failed to take up this matter. Ultimately the survivors and relatives of victims decided to move ahead with a new bold strategy. In 2007 they established the Campaign for Iran Tribunal, a non-political, all-inclusive grassroots campaign to show Iranian people and the world at large what happened in Iranian prisons in the 1980s.

### The International Legal Steering Committee

8. In February 2011, the Campaign established an international legal steering committee (the "Steering Committee")<sup>1</sup> headed by Professor John Cooper QC. The Steering Committee was mandated with the role of establishing the Iran Tribunal and determining its members and the procedure.

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<sup>1</sup> The members of the Steering Committee are: Prof. John Cooper QC, Sir Geoffrey Nice QC, Prof. Éric David, Prof. Richard Falk, Prof. Payam Akhavan, Prof. Kader Asmal (d. 2011), Dr Nancy Hormachea, Dr Hedayat Matine Daftary and Mr Hamid Sabi.

9. The Steering Committee decided that the process of the Iran Tribunal would be in two stages:
  - a) The Truth Commission, composed of international human rights figures, to act as a court of enquiry, to receive the evidence of witnesses and to prepare a report of its findings; and
  - b) A Tribunal composed of international jurists, to determine the responsibility of the violations of the human rights of its citizens in accordance with international law.

### The Truth Commission

10. The Steering Committee invited a number of prominent international figures to act as commissioners for the Truth Commission. The commission was chaired by Professor Maurice Copithorne and included Professor Éric David, Professor Daniel Turp, Ms Anne Burley, Professor William Schabas and Mrs Louise Asmal.
11. Through suggestions made by the campaign, the Steering Committee nominated one hundred witnesses to give evidence to the Truth Commission and the Tribunal. These were selected from a list of hundreds of members of the campaign who had direct knowledge of the events, either as survivors from the prisons or as relatives of the victims.
12. The Truth Commission held its session in June 2012 (18-22 June) at Amnesty International's Human Rights Action Centre in London. Some 75 witnesses appeared before the Commission either in person or through Skype and gave testimony of the harrowing events that had occurred in Iran's prisons and of the manner of the executions of many victims of the Islamic regime.
13. The report of the Commission was published on 28 July 2012 with all its attachments (including witness statements and summary of the oral testimonies). It runs to 419 pages, of which the main body of the report is the first sixty-six

pages. The report is attached to this judgment and forms an integral part hereof as Exhibit A.

#### Establishment of the Iran Tribunal

14. Following the completion of the Truth Commission mission, six international jurists, approached by the Steering Committee agreed to join the Tribunal, namely Judge Johann Kriegler, Professor Patricia Sellers, Professor Makau Mutua, Margaret Ratner Kunstler, Professor Michael Mansfield QC and Professor John Dugard SC agreed to serve on the panel. Judge Kriegler was appointed as the presiding judge of the Tribunal.
15. The Tribunal held its sessions in The Hague Academy of International Law of the Peace Palace, between 25-27 October 2012. The Tribunal heard the evidence of 19 witnesses, of whom three (Professor Maurice Copithorne, Anne Burley and Dr Matine Daftary) were expert witnesses. One witness (Nima Sarvastani) screened his filmed interview with a gravedigger from Shiraz. Fifteen witnesses described their imprisonment. All witnesses submitted written statements in advance, which assisted the Tribunal immensely in completing its work in such a short period of time. A copy of the witness statements is attached hereto as Exhibit B. The proceedings of the Tribunal were bilingual, in Farsi and English. The Tribunal was assisted by two able interpreters, who simultaneously interpreted all the Farsi statements into English and vice versa.
16. The Tribunal was further assisted by a capable and professional team of prosecutors, headed by Professor Payam Akhavan and assisted by Professor Sir Geoffrey Nice QC, Professor John Cooper QC, Ms Mojdeh Shahriari, Mr Kaveh Shahrooz, Dr Nancy Hormachea and Ms Gissou Nia. The Tribunal commends the professionalism and diligence of the prosecution team.

### Absence of the Islamic Republic of Iran from the Proceedings

17. By means of a letter dated 12 September 2012, John Cooper QC, in his capacity as the Chairman of the Steering Committee and on behalf of the Steering Committee, invited the Islamic Republic of Iran to participate in the proceedings of the Iran Tribunal. A copy of the said letter is attached as Exhibit C to this Judgment. The letter was sent to the Ambassador of the Islamic Republic of Iran in The Hague and attached to it were three copies of the Truth Commission's Report. The letter invited the Islamic Republic of Iran to participate and respond to the conclusions of the Truth Commission in connection to the violations of human rights, which "included but are not limited to - a) imprisonment without a fair trial; b) arbitrary executions; c) torture of prisoners; d) rape of prisoners, and e) persecution on political and religious grounds amounting to intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the groups".
18. Finally, the letter stated:

“We wish to offer an opportunity for the Islamic Republic of Iran to appear before the Tribunal in order to present its arguments and defend itself. The aim of this Tribunal is to establish the truth without rancour. Your participation would enormously contribute to achieving this aim”.
19. The Islamic Republic of Iran chose not to respond or even acknowledge this letter and the existence of this Tribunal. The Tribunal notes the decision of the Islamic Republic of Iran not to appear at these hearings. The Tribunal will address the consequences of this decision of the Islamic Republic of Iran in this Judgment (see *infra* paragraph 167).

## The Proceedings

20. The Tribunal was mandated to decide on its own rules of procedure. Given the inability of the Tribunal to administer a binding oath, the Tribunal decided not to require the witnesses to be sworn but to invite each witness to confirm the accuracy of the statement that he/she had submitted to the Tribunal.
21. The prosecution was invited to lead the witnesses through their written statements and the members of the Tribunal posed questions to the witnesses, which were invariably responded to with total honesty and clarity.
22. The Tribunal was impressed and moved by the sincerity of the witnesses and commends their courage in exposing these facts to the Tribunal. The Tribunal notes that some of the witnesses had to experience and overcome the emotional and psychological impact of retelling their stories, which had been buried for a long period of time, and thanked each and every one of the witnesses for their contribution to this historic process.
23. The entire proceedings were transcribed and a copy of the transcript is attached hereto as Exhibit D.
24. The prosecution team presented their case with legal and factual opening statements. Professor Payam Akhavan gave the legal opening argument, and Professor John Cooper QC, presented the factual one. The prosecution team then concluded their case with Sir Geoffrey Nice QC, summarising the factual case and Professor Payam Akhavan submitting the closing legal arguments to the Tribunal. The Tribunal thanks the prosecution team again for its efforts and contributions.
25. The proceedings of the Iran Tribunal were adjourned at 2:00 pm on Saturday 27 October 2012 and the members of the panel retired to the judges' room for deliberation and produced the interim judgment, which was issued at 5:00 pm on Saturday 27 October 2012.



26. The hearings were open to the public and members of the press. The Tribunal's proceedings were broadcast live on the internet and satellite television channels.

## Chapter II

### Jurisdiction/Mandate

27. The Tribunal's jurisdiction is the jurisdiction given to it by the Campaign and the Legal Steering Committee on behalf of those who have suffered horrific pain and injuries, both mental and physical as a result of the crimes alleged. The Tribunal was to exercise its jurisdiction by rendering a judgment based on the evidence presented. The integrity and independence of the Tribunal guaranteed the fairness and objectiveness of its final judgment.
28. The Prosecution charged the Islamic Republic of Iran with crimes against humanity. It was therefore the Tribunal's mandate determine:
- a) Whether the alleged violations of human rights had occurred;
  - b) Whether these violations constitute crimes against humanity; and,
  - c) Whether as a matter of international law the Islamic Republic of Iran has breached its international human rights obligations towards its citizens.
29. The Campaign and the Steering Committee limited the duration of the enquiry to the events in the 1980s. This limitation was also imposed on the Truth Commission and has been adopted by the Tribunal for the purpose of its investigations.

### Chapter III

#### Merits

30. The Tribunal's burden in evaluating the merits of this case has been substantially simplified by the enquiry conducted by the Truth Commission and the precise and detailed report prepared by the Commission.

#### The Truth Commission's Report

31. The Prosecution offered the Truth Commission's report as the basis of its factual case. Professor John Cooper QC opened the prosecution's factual case with the historical background of the case, after the Islamic Revolution of 1979: he noted the liquidation of the Pahlavi regime following the establishment of the Islamic Republic, the beginning of the Iran-Iraq War in 1980 and finally the moment when the regime "turn[ed] its guns on the very political groups alongside which it had fought in the revolution"<sup>2</sup>. He dated this turning point to the mass demonstrations of 20 June 1981, the effective starting date of this Tribunal's mandate of inquiry.
32. Professor Cooper urged the Tribunal to endorse the findings of the Truth Commission Report, which he submitted as evidence. He drew the Tribunal's attention to Part E, which corroborates the main body of the Report by way of a comprehensive list of references to the appended witness statements.
33. Professor Cooper summarised the six sections of the Truth Commission Report, as follows:
- a) Chapter I discusses the arbitrary arrest of political dissidents, including forced disappearances, and the absence of due process; detention without trial; the various forms of physical and psychological torture employed, including *bastinado* and *ghapani*, whereby a suspect is suspended by his arms from the

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<sup>2</sup> Ref Exhibit D, Day 1, page 20.

ceiling; cruel, inhuman and degrading treatment, including overcrowding and denial of medical assistance; and show trials, in which suspects were blindfolded for prosecutions lasting a couple of minutes on average and denied access to any legal counsel;

- b) Chapter II covers the execution of prisoners: most pre-1988 executions were performed by firing squads but there were also hangings and deaths under torture; in 1988, pursuant to a *fatwa* issued by Ayatollah Khomeini, over 4,000 prisoners were hanged over a few months after being questioned on their faith by the newly established “Death Commissions”;
- c) Chapter III provides specific facts about the 32 prisons mentioned in the Report, including the abuses that were committed there;
- d) Chapter IV concerns the experiences of different demographic groups in prison, including women, children (both as prisoners in their own rights, and incarcerated with their mothers) and a wide range of political groups; it also discusses the legacy of abuse, including physical injury and psychological trauma;
- e) Chapter V details the suffering of the families of political prisoners, including physical assault; the denial of visitation rights; the violent disruption of mourning ceremonies; and demands that the families pay for the bullets used to shoot their loved ones, in exchange for the release of the bodies;
- f) Chapter VI delivers a list of perpetrators mentioned by the witnesses, including, where clarified by additional evidence submitted by Mr Babak Emad, the perpetrators’ current status and occupations<sup>3</sup>.

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<sup>3</sup> *Ibid*, pages 21-27.

34. Professor Cooper drew the Tribunal's attention to the "enduring legacies of this abuse", both physical and psychological, on survivors and relatives of executed prisoners.
35. At conclusion, Professor Cooper commended the Truth Commission's report to the Tribunal and moved that the same be adopted by the Tribunal without reservation.
36. The Prosecution then introduced its 19 witnesses. Three were expert witnesses: Professor Maurice Copithorne, chairman of the Truth Commission and former UN special rapporteur on the human rights situation in Iran; Ms Anne Burley, member of the Truth Commission and former researcher for Amnesty International in Iran; and Dr Hedayat Matine-Daftary, former vice president of the Iranian Bar Council. The prosecution's remaining witnesses were fact witnesses, whose testimonies were to corroborate the witnesses from the Truth Commission and reinforce the integrity of their statements.
37. The Prosecution declared that its aims was "to prove that responsibility for these grave, widespread and systematic violations of human rights lies with the highest echelons of the Islamic Republic of Iran, on whose express orders they were carried out"<sup>4</sup>.
38. The Tribunal heard evidence from Professor Maurice Copithorne, chairman of the Iran Tribunal's Truth Commission. Professor Copithorne confirmed that the Truth Commissioners had concluded that the human rights abuses of the 1980s were "devised, instigated and executed by a single, central authority"; that as such, the regime of the Islamic Republic of Iran was the only authority responsible for the commission of those acts; and that the Truth Commissioners were unanimous in their adoption of the Report in July 2012.

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<sup>4</sup> *Ibid*, page 27.

39. Professor Copithorne also testified about his experience as the United Nations Special Rapporteur on the human rights situation in Iran from 1995 to 2002, during which time he was consistently refused entry into Iran after his first visit. He testified that as Special Rapporteur, he had heard only “very general comments” about the abuses of the 1980s, for which the evidence available to the Truth Commission was “much more complete” than the resources made available to him as an envoy of the United Nations.
40. Professor Copithorne testified that in his experience, political pressures had meant that efforts for an official investigation into the abuses of the 1980s “would not get through the full membership of the Human Rights Commission”. He explained that it is rare for every country on the Commission to have the same objective, such that he saw no indication that a majority of states would support such an initiative. Professor Copithorne ended his testimony by recommending that the United Nations establish a formal commission of inquiry into the abuses of human rights in Iran in the 1980s.<sup>5</sup>
41. The Prosecution’s last witness was Ms Anne Burley, another member of the Truth Commission. Ms Burley had worked as a researcher for Amnesty International from 1968 until 2002, in which capacity she investigated many countries for violations of human rights. She was responsible for Amnesty’s Iran desk from 1972 until 1984, during which time she led Amnesty missions to Iran in November 1978 and April 1979 and met with government ministers, including Prime Minister Bakhtiar, to express Amnesty’s concerns about Iran’s failure to conform to international fair trial standards and about reports of torture and ill-treatment of prisoners.
42. Ms Burley confirmed that her report for Amnesty International, dated 1 February 1980, had revealed that the Islamic revolutionary courts established in the immediate aftermath of the Islamic Revolution “frequently” passed death

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<sup>5</sup> Exhibit D, Day 1, pages 33-34.

sentences and that detainees were not protected “against threats to or violations of the physical security and integrity”. She noted that although Ayatollah Khomeini had made statements to the effect that these “excesses” would not continue but that “things continued to get worse” despite concerns from certain members of the clergy about the “arbitrary nature of the so-called justice”.

43. Ms Burley confirmed that the findings of the Truth Commission were accurate and that the Commissioners’ conclusion (that violations of human rights were “devised, instigated and executed... by a single central authority”) applied equally to the evidence she had heard being presented to the Tribunal.
44. Ms Burley testified that human rights abuses committed by the Islamic Republic bore some continuity with the earlier regime, noting that *bastinado* was “very systematic” under the Shah. However, she noted that under the Islamic regime “many more” people were killed and that violations were “much more arbitrary... [insofar as] anyone could find themselves arrested, ill treated and executed” without knowing “when they put themselves at risk”. She observed that post-revolutionary human rights violations were at first performed in an “anarchic” setting by independent revolutionary committees but that this became “more clearly the responsibility of the central government” over time.<sup>6</sup>
45. The Tribunal hereby accepts the Truth Commission Report as credible evidence and considers it to constitute the Tribunal’s own fact-finding mission. As the interim judgement stated: “*The evidence speaks for itself. It constitutes overwhelming proof that systemic and systematic abuses of human rights were committed by and on behalf of the Islamic Republic of Iran*”.

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<sup>6</sup> Exhibit D, Day 3, Anne Burley

## Treatment of Ethnic and Religious Minorities

46. Iran is a vast country embracing many ethnic groups. It also hosts a multitude of believers in different religious faiths. There are Arabs, Kurds, Turkmens, Azeris, Baluchis etc., who have lived in different regions for many centuries as Iranians.
47. The Tribunal was shocked and dismayed to hear the accounts of brutal attacks on these communities by the regime of the Islamic Republic of Iran, notwithstanding the long history of peaceful co-existence among them.

### i. Bahá'ís

48. Iran was the birthplace of the Bahá'í faith in the 19<sup>th</sup> century. Bahá'ís form one of the largest religious minorities in Iran with an estimated 600,000 followers.
49. Ruhiyyi Jahanpour, a member of the Bahá'í faith in Iran, gave a moving statement to the Tribunal<sup>7</sup>.
50. Mrs Jahanpour confirmed Dr Matine Daftary's statement<sup>8</sup>, corroborating that: followers of the Bahá'í faith had no protection under the constitutional law of Iran; their marriages were not recognised, such that consequently their children were deemed illegitimate); they were denied employment; they were expelled from schools and universities; they were not allowed burial rites; their places of worship were attacked and ruined; and their properties were confiscated<sup>9</sup>.
51. At the time of the Revolution Mrs Jahanpour was a schoolteacher. However, soon after, she was dismissed because of her faith and on instructions from Ayatollah Khomeini.<sup>10</sup> Mrs Jahanpour was arrested twice, the first time in February 1982. She was charged with being a Bahá'í<sup>11</sup>.

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<sup>7</sup> Exhibit B, pages 58-60, Exhibit D, Day 2, pages 38-52.

<sup>8</sup> See *infra*, paragraph

<sup>9</sup> Exhibit D, Day 2, pages 39-40.

<sup>10</sup> *Ibid*, page 40.

<sup>11</sup> *Ibid*, page 43, lines 12-13.

52. Mrs Jahanpour graphically recounted her harrowing experience of the prison, the names of cellmates and other Bahá'ís who were executed solely for belonging to the Bahá'í faith. The judge informed her that the objective was the extermination of the Bahá'í people: “If we kill all the Bahá'ís collectively the whole world is going to protest, but we are going to take you [for execution] one by one... so the international community will not object”.<sup>12</sup>
53. Mrs Jahanpour also gave a description of the Bahá'í holy places of worship that were destroyed during the early dates of the establishment of the Islamic Republic.

ii. Arab-Iranians

54. There is a large Arab population in the South of Iran. They are mostly of the Shi'ite faith but in recent years, increasing numbers of Arab Iranians have converted to Sunni Islam.
55. Jalil Sharhani<sup>13</sup> was 13 years old when he witnessed the brutal arrest of his father in October 1980. His brother and his uncle had been arrested earlier in day around 11:00am. By lunchtime his brother and uncle, together with 15 other members of the same Arab tribe were publicly executed in front of the Governor's House in Ahvaz.<sup>14</sup> His father was executed a few months later.
56. The religious judge, Khalkhali<sup>15</sup>, responsible for the trial and execution of the 17 individuals, said in response to a complaint by one of the prisoners that his right to counsel and a fair trial had not been respected, “If you are innocent, then you will go to paradise”.<sup>16</sup>
57. In response to the Tribunal's questions, the witness confirmed that not all Arabs were persecuted for their ethnic origin and that some even supported the Government. However, those who were activists for Arab rights were severely and brutally punished.

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<sup>12</sup> *Ibid*, page 44.

<sup>13</sup> Exhibit B, pages 46-48, Exhibit D, Day 2, pages 14-20.

<sup>14</sup> Exhibit D, Day 2, page 16.

<sup>15</sup> Exhibit A, Chapter VI, §6.6.2

<sup>16</sup> *Ibid*.



58. Mr Sharhani, however, confirmed that both his father and uncle were illiterate farmers; they had no political activity and could not even speak Persian. They were executed simply for belonging to the Shahrani tribe.
59. Mr Sharhani testified that he and members of his family were Shi'ites and had no religious difference with the regime.
60. Mr Sharhani was further persecuted by the regime and was also barred from entering university although he had passed the written entrance examination.<sup>17</sup>

iii. Kurdish Iranians

61. Iran, like most countries in the area, has a long history of suppression of the Kurdish people, who occupy Iranian Kurdistan in the West of the country. The situation became even worse after the Revolution of 1979, with various Kurdish organisations opposing the Islamic Republic of Iran.
62. The Truth Commission heard the evidence of ten Kurdish witnesses<sup>18</sup> and the Tribunal heard the evidence of Malakeh Mostafa Soltani.<sup>19</sup> Mrs Soltani gave detailed evidence as to the execution of four of her brothers. Mrs Soltani explained how two of her brothers were arrested in 1979 and although the family was given assurances of their release, they received the mutilated bodies of her brothers: "...these bodies were butchered... Amin's head was put on my lap... My skirt was full of blood and part of brain had just spread on my skirt..."<sup>20</sup>
63. The Tribunal further recalls the evidence given by the witnesses to the Truth Commission detailing the brutal treatment of the Kurdish people from the early days of the establishment of the Islamic Republic. These included the bombardment of the Kurdistan cities; execution of Kurdish activists at Sanandaj Airport; rape, torture and persecution of Kurds to suppress any opposition to the regime and its policies.<sup>18</sup>

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<sup>17</sup> *Ibid*, page 18.

<sup>18</sup> Exhibit A. W5, 6, 8, 12, 22, 24, 26, 27, 63 and 72.

<sup>19</sup> Exhibit B, pages 27-30, Exhibit D, Day 1, pages 48-61.

<sup>20</sup> Exhibit D, Day 1, page 51.

## Treatment of Women

64. As the Truth Commission found<sup>21</sup> men and women were broadly subjected to the same forms of torture and held in the same conditions. However, “sexual abuse of women [in particular] was widespread”.
65. The witnesses appearing before the Tribunal further confirmed and re-affirmed evidence of sexual violence against women.<sup>22</sup> The Prosecution also submitted to the Tribunal a copy of the book written by Justice for Iran under the title of “Crime and Impunity: Sexual Torture of Women in Islamic Republic Prisons”.
66. “Crime and Impunity” reflects substantive research into the treatment of women during the 1980s. Some 77 female political prisoners who had survived the events were interviewed for it; the authors of the book used various other sources and data. The Tribunal admits this report into the records and relies on its findings.
67. The report discloses the following sexual crimes against women:
- a) Rape before execution: many female prisoners were raped prior to being executed. Apparently the perpetrators believed that executing virgin girls was not permitted under Islamic law and the woman would go to heaven if executed as a virgin. Therefore the Revolutionary Guards pretended to have married these girls (but did so illegally).<sup>23</sup> The authors of Crime and Impunity have produced a number of interviews and reports confirming the rape of the prisoners before execution. Some of the relatives confirmed having discovered evidence of rape in the body of victims; one victim had written on the sole of her feet that she had been raped; the other wrote it on her clothes. There had been a number of incidents where the interrogators and Revolutionary Guards perpetrating the rapes offered to pay the marriage consideration (normally a token box of crystal sugar or sweets), which caused the family of the victim serious and irreparable psychological torture. Apparently the decision to rape women was on the reliance of a *fatwa* issued by Ayatollah Montazeri (at the time the nominated successor of Khomeini for the

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<sup>21</sup> Exhibit A, Section 4.1, page 43, *ibid*.

<sup>22</sup> Add references.

<sup>23</sup> Marriage under Islamic law requires the consent of women. These weddings on the eve of execution of the female party could not have possibly been with the consent of the victim.

position of leadership of the Islamic Republic of Iran) that forbade the execution of virgins. Montazeri later challenged this attribution, maintaining that he was misquoted;<sup>24</sup>

- b) Forced marriages : a number of women prisoners were forced to repent and marry their interrogators or Islamic Revolutionary Guards in order to avoid execution or harsh prison terms and/or continuing torture;<sup>25</sup>
- c) Rape as an instrument of torture : a number of witnesses testified that they had been raped by their interrogator or on his order in order to break their resistance and force them to confess the secrets of the group that they were withholding from the authorities;<sup>26</sup>
- d) Other sexual torture and indecent treatment: the women prisoners were exposed to many forms of sexual harassment. Many witnesses testified that prison officials on many occasions had mentioned that they had full control over the women's bodies and souls and they could do whatever they liked to them. The prisoners were constantly insulted by being routinely called "whores".<sup>27</sup> They were sexually and physically demeaned and harassed.

#### Treatment of Other Political Prisoners

68. The witnesses appearing before the tribunal and the Truth Commission were from a wide spectrum of political organisations.<sup>28</sup> The political affiliations of the witnesses varied from religious groupings to Marxist groups. The Tribunal did not find it relevant to investigate the political affiliation of the witnesses beyond what is contained in the witness statements. The Tribunal further noted that some civilians without political affiliation were executed nonetheless.<sup>29</sup>

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<sup>24</sup> Crime and Impunity, pages 61-94.

<sup>25</sup> *Ibid*, pages 95-112.

<sup>26</sup> *Ibid*, pages 113-132. See also the evidence of Azar Alekanan to the Truth Commission (Exhibit A, Witness 27, page 210).

<sup>27</sup> *Crime and Impunity* page 144.

<sup>28</sup> See also section 4.5 of the Truth Commission Report.

<sup>29</sup> Exhibit D, Day 1, Maleke Mostafa Solltani.

69. As Sir Geoffrey Nice QC mentioned in his closing submissions, the witness statements at the Tribunal corroborated each other and the evidence provided by witnesses at the Truth Commission “in the patterns of abuse and in the fine detail”<sup>30</sup>.
70. Witnesses’ evidence on arbitrary arrests was fully consistent with, and further elaborated, earlier testimonies<sup>31</sup>: many political dissidents were arrested in house raids, during which arresting agents arrived on occasion in plainclothes<sup>32</sup>; dissidents were not told what they were being arrested for<sup>33</sup>. Multiple witnesses gave evidence on their extended detention without trial<sup>34</sup>, during which time they were interrogated and tortured<sup>35</sup>. Witnesses confirmed that prisoners were beaten or whipped to extract “confessions” during their interrogations<sup>36</sup>.
71. The Tribunal heard convincing evidence of physical torture<sup>37</sup>, consistent with and adding new details to the testimony before the Truth Commission; prisoners were whipped until they fell unconscious<sup>38</sup>; they were forced to stand still for days on end<sup>39</sup>; they were bastinadoed, on occasion in the presence of and on the direct instruction of *shari’ah* judges<sup>40</sup>; they were suspended from the ceiling in the *ghapani* position<sup>41</sup>. Prisoners had boiling water poured on their “sensitive parts”<sup>42</sup>; their hair was torn out in clumps<sup>43</sup>; their teeth were smashed<sup>44</sup>. One witness claimed there were “50 or 60 types of torture”, including sleep deprivation<sup>45</sup>. Prisoners were beaten, sometimes with martial arts techniques or with the butts of

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<sup>30</sup> Exhibit D, Day 3, page 62.

<sup>31</sup> Exhibit A, Chapter I, §1.

<sup>32</sup> Exhibit D, Day 1, Shohreh Ghanbari; Day 2, Jalil Shahrani.

<sup>33</sup> Exhibit D, Day 1, Shohreh Ghanbari.

<sup>34</sup> Exhibit A, Chapter I, §1.2.1.

<sup>35</sup> Exhibit D, Day 1, Mohammad Reza Ashough.

<sup>36</sup> Exhibit D, Day 1, Mohammad Reza Ashough; cf. Exhibit A, Chapter I, §1.2.3.

<sup>37</sup> Exhibit A, Chapter I, §1.2.4.

<sup>38</sup> Exhibit D, Day 1, Mohammad Reza Ashough.

<sup>39</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>40</sup> Exhibit D, Day 1, Chowra Makaremi.

<sup>41</sup> Exhibit D, Day 3, Iraj Mesdaghi; cf. Exhibit A, Chapter I §1.2.4.4.

<sup>42</sup> Exhibit D, Day 1, Chowra Makaremi.

<sup>43</sup> Exhibit D, Day 1, Chowra Makaremi.

<sup>44</sup> Exhibit D, Day 1, Chowra Makaremi.

<sup>45</sup> Exhibit D, Day 1, Mohammad Reza Ashough MA.

the guards' guns<sup>46</sup>. The Tribunal heard corroboration of the “football” form of torture<sup>47</sup>, whereby guards threw the prisoners between them and took turns in beating them<sup>48</sup>. Prisoners were beaten with knives and chains<sup>49</sup>.

72. Witnesses confirmed the Truth Commission's findings that “torture left all victims with horrific injuries”<sup>50</sup>. Torture broke prisoners' bones<sup>51</sup> and caused them to lose parts of their bodies<sup>52</sup>. Iraj Mesdaghi described how prisoners whose kidneys had malfunctioned as a consequence of *bastinado*, causing them to urinate blood<sup>53</sup>, were placed on dialysis so that they could be kept alive for further torture<sup>54</sup>; prisoners were then tortured by interrogators and nurses in the infirmary<sup>55</sup>.
73. The Tribunal heard extensive evidence about methods of psychological torture elaborated in the Report<sup>56</sup>, including: solitary confinement<sup>57</sup>; threats of death and bodily mutilation<sup>58</sup>, mock executions<sup>59</sup>; and the deliberate torture of prisoners in other prisoners' presence<sup>60</sup>. Prisoners were left for days in the “death corridor” of Gohardasht Prison, where they watched fellow inmates being taken to their deaths; on the completion of the executions, guards distributed sweets to these prisoners in order to humiliate them<sup>61</sup>. Prison officials tried to “destroy [prisoners'] humanity” by punishing any cooperation or acts of sympathy between them<sup>62</sup>. Prisoners were shown the rooms where their friends had been killed in order to place further pressure on them to cooperate with the authorities<sup>63</sup>.

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<sup>46</sup> Exhibit D, Day 3, Sadegh Nahoomi.

<sup>47</sup> Exhibit A, Chapter I, §1.2.3.4.1.

<sup>48</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>49</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>50</sup> Exhibit A, Chapter IV, §4.3.1.

<sup>51</sup> Exhibit D, Day 3, Naval Mohsen.

<sup>52</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>53</sup> Exhibit D, Day 1, Shohreh Ghanbari.

<sup>54</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>55</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>56</sup> Exhibit A, Chapter I, §1.2.5.

<sup>57</sup> Exhibit D, Day 1, Mehdi Ashough.

<sup>58</sup> Exhibit D, Day 1, Mohammad Reza Ashough; Day 2, Ruhiyyih Jahanpour.

<sup>59</sup> Exhibit D, Day 1, Chowra Makaremi.

<sup>60</sup> Exhibit D, Day 1, Shohreh Ghanbari.

<sup>61</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>62</sup> Exhibit D, Day 2, Ahmad Mousavi.

<sup>63</sup> Exhibit D, Day 3, Iraj Mesdaghi.

74. Witnesses elaborated on the “grave” (or “coffin”)<sup>64</sup>: prisoners were forced to sit in silence, blindfolded and facing a wall for extended periods; they were subjected to being forced to listen to repetitive recordings of religious recitations and beaten if they moved or made any sound (including coughing or sneezing). They were surrounded by boarding and confined to a very tight space. This process “was used to take [prisoners’] humanity away”, such that “many people... lost their mind”. Another witness called the “grave” a “*tavvab* (‘collaborator’) making factory”, by which the warden tried first to “destroy their [the prisoners’] characters” and then to convert them into supporters of the regime. Shokufeh Sakhi added that prisoners were able to communicate via Morse code while in the “grave” and that only through sustained conscious effort could she retain her sanity and her sense of identity<sup>65</sup>.
75. The Tribunal heard detailed evidence of cruel, inhuman and degrading treatment<sup>66</sup>, consistent with the Truth Commission’s findings, including: extreme prison overcrowding (consistent with the dimensions stated in the Report), to the point that prisoners had to stand up for extended periods in their cells<sup>67</sup>; poor sanitary conditions, including the withholding of soap provided by prisoners’ families, which made contagious skin diseases common<sup>68</sup>. The witnesses expanded on what is contained in the Report, adding that: prisoners were spat on by the families and children of prison guards<sup>69</sup>; Bahá’í women were forced to convert to Islam and pressured to marry Revolutionary Guards<sup>70</sup>; and on one occasion, prison officials sent a consumptive woman into the political prisoners’ ward, with the result that half the prisoners fell ill<sup>71</sup>. Iraj Mesdaghi elaborated that prisoners were pressured into participating in televised confessions<sup>72</sup> by being promised an expedited execution, as the only way to avoid further torture<sup>73</sup>.

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<sup>64</sup> Exhibit A, Chapter I, §1.2.4.7.

<sup>65</sup> Exhibit D, Day 1, Shohreh Ghanbari; Day 2, Shokufeh Sakhi; Day 3, Iraj Mesdaghi.

<sup>66</sup> Exhibit A, Chapter I, §1.2.6.

<sup>67</sup> Exhibit D, Day 1, Mehdi Ashough; Day 2, Nader Bokae; Day 3, Iraj Mesdaghi.

<sup>68</sup> Exhibit D, Day 1, Mohammad Reza Ashough.

<sup>69</sup> Exhibit D, Day 1, Shohreh Ghanbari.

<sup>70</sup> Exhibit D, Day 2, Ruhiyyih Jahanpour.

<sup>71</sup> Exhibit D, Day 1, Shohreh Ghanbari.

<sup>72</sup> Exhibit A, Chapter I, §1.2.6.4.

<sup>73</sup> Exhibit D, Day 3, Iraj Mesdaghi.

76. Witnesses corroborated the sham nature of the trials to which political dissidents were subjected for their political crimes<sup>74</sup>: no prisoner was ever given access to any legal counsel and trials lasted mere minutes at most<sup>75</sup>; one prisoner's sentence was doubled when she appealed it<sup>76</sup>. Charges were predominantly political and included: sympathising with opposition groups, distributing opposition literature and making financial contributions to said groups. In certain cases, there does not appear to have been any trial whatsoever: certain killings were entirely extrajudicial<sup>77</sup>. One witness stated that punishments increased in proportion to the prisoners' resistance, such that those who sought to defend themselves were singled out for execution<sup>78</sup>.
77. The Tribunal heard further evidence about the "Death Commissions" used in 1988 to interrogate prisoners on their faith and condemn them to death, as per the Supreme Leader's *fatwa*<sup>79</sup>: hearings lasted a matter of minutes at most; prisoners were asked whether they would be willing to fight against Iraq or step on a landmine for Iran, and they were sentenced to death on refusing<sup>80</sup>; others were asked whether they still sympathised with opposition groups and what they thought of the new regime<sup>81</sup>; those who professed Marxist beliefs were invariably executed<sup>82</sup>.
78. Witnesses confirmed the use of sexual violence against women<sup>83</sup> (*supra*, paras. 64-67)<sup>84</sup>. Pregnant women were tortured<sup>85</sup>.
79. Witnesses provided details about the Islamic Republic's use of prisoners-turned-collaborators (*tavvabeen*)<sup>86</sup> against other prisoners. Non-political prisoners, such

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<sup>74</sup> Exhibit A, Chapter I, §1.3.

<sup>75</sup> Exhibit D, Day 1, Shohreh Ghanbari; Day 3, Sadegh Nahoomi.

<sup>76</sup> Exhibit D, Day 1, Chowra Makaremi.

<sup>77</sup> Exhibit D, Day 1, Maleke Mostafa Soltani.

<sup>78</sup> Exhibit D, Day 1, Mohammad Reza Ashough.

<sup>79</sup> Exhibit A, Chapter II, §2.2.4.

<sup>80</sup> Exhibit D, Day 1, Mohammad Reza Ashough.

<sup>81</sup> Exhibit D, Day 1, Chowra Makaremi.

<sup>82</sup> Exhibit D, Day 2, Mehdi Aslani.

<sup>83</sup> Exhibit A, Chapter I, §1.4.2.

<sup>84</sup> Exhibit A, Chapter IV, §4.1.

<sup>85</sup> Exhibit D, Day 1, Chowra Makaremi.

as drug dealers, were sent to spy on political prisoners and report their thoughts back to the authorities<sup>87</sup>. The Tribunal heard harrowing evidence from a witness who had been pressured into collaborating with prison authorities by shooting other prisoners as a member of a firing squad. He described this pressure as “psychological rape”, adding: “I was not myself, I was a puppet... It was not me who did this.”<sup>88</sup>

80. The Tribunal heard extensive evidence of executions performed as punishment for political charges, ordered without any basis in law and in the absence of any semblance of due process<sup>89</sup>: some executions were carried out in a space of minutes, hours or days after the arrests<sup>90</sup>; busloads of prisoners were transported for execution; the use of firing squads was ubiquitous and victims were finished off with *coups de grâce* if they survived the initial volleys. Disabled prisoners were taken to their executions on stretchers<sup>91</sup>.
81. On a number of occasions, different witnesses testified about the same killings: for example, Shokufeh Sakhi<sup>92</sup> and Azizeh Shahmoradi<sup>93</sup> both testified that Fatemeh Modaressi, a Tudeh Party member, was executed in prison. Witnesses at both stages of proceedings mentioned the massacre at Sanandaj Airport<sup>94</sup>.
82. The Tribunal heard further evidence that the killings of 1988, pursuant to Ayatollah Khomeini’s *fatwa*, were “organised and premeditated”: the massacres were preceded by the dissemination of questionnaires in the wards, asking prisoners whether they still held their previous political beliefs and whether they accepted the regime; prison authorities had begun reclassifying political prisoners over a year in advance, such that by the time of the killings, prisoners were already segregated by political affiliation<sup>95</sup>. Witnesses corroborated the Report’s findings

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<sup>86</sup> Exhibit A, Chapter I, §1.4.3.

<sup>87</sup> Exhibit D, Day 1, Mohammad Reza Ashough.

<sup>88</sup> Exhibit D, Day 2, Mehdi Memarpour.

<sup>89</sup> Exhibit A, Chapter II, §2.1.

<sup>90</sup> Exhibit D, Day 1, Maleke Mostafa Soltani; Day 2, Jalil Shahrani .

<sup>91</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>92</sup> Exhibit D, Day 2, Shokufeh Sakhi.

<sup>93</sup> Exhibit A, Witness 49.

<sup>94</sup> Exhibit D, Day 1, Maleke Mostafa Soltani.

<sup>95</sup> Exhibit D, Day 2, Amir Atiabi; Ahmad Mousavi.



that in certain wards virtually all prisoners were exterminated<sup>96</sup>; that in 1988 the preferred method of torture was hanging (as opposed to firing squad)<sup>97</sup>; and that prisons went into lockdown immediately prior to the mass executions<sup>98</sup>.

83. Witnesses gave evidence about the prisons listed in the Truth Commission Report and provided further details on the human rights abuses committed within their walls<sup>99</sup>. They corroborated the Report's statement that "many arrestees were first held in temporary detention facilities"<sup>100</sup>, in large part because the main prisons were already full to capacity<sup>101</sup>. They also corroborated the Truth Commission's findings that it was common for prisoners to be moved around the country from prison to prison<sup>102</sup>. Iraj Mesdaghi provided detailed evidence on the sections of Evin and Gohardasht prisons and their uses, explaining on his maps where executions and mock trials had taken place<sup>103</sup>.
84. The Tribunal heard further evidence about the imprisonment and torture of minors<sup>104</sup>; children as young as 11 were executed<sup>105</sup>; others were pressured to participate in the firing squads by delivering *coups de grâce*<sup>106</sup>.
85. The Tribunal was vividly reminded of the enduring legacies of the abuse to which its witnesses had been subjected<sup>107</sup>. One witness confided in the Tribunal: "We suffered so much as a family... Still our wounds have not been healed... [and they] will never heal". Another stated: "It is something that never leaves you", noting the heaviness of the memory of "all the people who could not come out of it standing on their own feet... turned into zombies"<sup>108</sup>.

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<sup>96</sup> Exhibit D, Day 2, Ahmad Mousavi.

<sup>97</sup> Exhibit D, Day 2, Mehdi Aslani.

<sup>98</sup> Exhibit D, Day 2, Nader Bokae.

<sup>99</sup> Exhibit A, Chapter III.

<sup>100</sup> Exhibit A, Chapter III, §3.4.1.

<sup>101</sup> Exhibit D, Day 2, Mehdi Memarpour.

<sup>102</sup> Exhibit D, Day 2, Ahmad Mousavi.

<sup>103</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>104</sup> Exhibit D, Day 3, Sadegh Nahoomi; Iraj Mesdaghi; cf. Exhibit A, Chapter IV, §4.2.

<sup>105</sup> Exhibit D, Day 1, Mohammad Reza Ashough; Day 2, Ruhiyyih Jahanpour.

<sup>106</sup> Exhibit D, Day 3, Iraj Mesdaghi.

<sup>107</sup> Exhibit A, Chapter IV, §4.3.

<sup>108</sup> Exhibit D, Day 2, Shokufeh Sakhi.

86. Witnesses confirmed that torture and cruel treatment drove prisoners to suicide<sup>109</sup>: Amir Atiabi<sup>110</sup>, Rahman Darkeshideh<sup>111</sup> and Nader Bokae<sup>112</sup> all testified that the prisoner Jalil Shahbazi committed suicide, by cutting himself with broken glass.
87. The Tribunal was presented with substantial evidence of the suffering of victims' families<sup>113</sup>: they faced persistent obstruction by regime officials when they tried to collect their loved ones' bodies, which on occasion still bled profusely<sup>114</sup>; they were kept in the dark about the whereabouts of their arrested relatives<sup>115</sup>.
88. Nima Sarvestani provided a video interview with Ayatollah Montazeri, in which the former Deputy Supreme Leader of Iran stated that the massacres of 1988 were on the instruction of the Supreme Leader and were carried out "without any reason". Mr Sarvestani also showed a video of an interview with the gravedigger of Shiraz, who explained that he received many deliveries of dozens of bodies of executed political prisoners. He said adding that he was informed in advance of the bodies' arrival; ultimately, the graves of political prisoners were so numerous that they stretched beyond sight<sup>116</sup>.
89. Finally, witnesses provided evidence on perpetrators. They mentioned new names and also corroborated details about specific perpetrators mentioned in the Truth Commission Report, including but not limited to<sup>117</sup>:
- a. Sadegh Khalkhali: Responsible for multiple "collective executions" in Kurdistan<sup>118</sup>. Witnesses at both stages of proceedings testified that Khalkhali told victims sentenced to death, who demanded a fair trial, that if they were innocent, they would go to heaven anyway, but if they were guilty, they would go to hell<sup>119</sup>;

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<sup>109</sup> Exhibit A, Chapter IV, §4.4.

<sup>110</sup> Exhibit D, Day 2, Amir Atiabi.

<sup>111</sup> Exhibit A, Witness 23.

<sup>112</sup> Exhibit D, Day 2, Nader Bokae.

<sup>113</sup> Exhibit A, Chapter V.

<sup>114</sup> Exhibit D, Day 1, Maleke Mostafa Soltani.

<sup>115</sup> Exhibit D, Day 1, Chowra Makaremi.

<sup>116</sup> Exhibit D, Day 2, Nima Sarvestani.

<sup>117</sup> Exhibit A, Chapter VI.

<sup>118</sup> Exhibit D, Day 1, Maleke Mostafa Soltani.

<sup>119</sup> Exhibit D, Day 1, Maleke Mostafa Soltani.

- b. Haj Davood Rahmani: Identified as the head of Ghezelhesar Prison by witnesses at both stages<sup>120</sup>. Shohreh Ghanbari testified that Rahmani “was trying to convert prisoners to Islam”<sup>121</sup>. Two witnesses testified that Rahmani had initiated the use of the “grave” in Ghezelhesar Prison<sup>122</sup>. Ahmad Mousavi added that Rahmani forced prisoners to stand blindfolded facing a wall for up to 72 hours without sleeping and that he punished prisoners for yawning<sup>123</sup>;
- c. Other perpetrators mentioned at both stages of proceedings included: Hossein Ali Nayyeri, Mostafa Pour-Mohammadi, Morteza Eshragi, Saeed Hossein Mortazavi<sup>124</sup>, Mohammad Moghissei (“Nasserian”), Davood Lashkari<sup>125</sup>, Ali Mobasher<sup>126</sup>, Ayatollah Mohammad Mehdi Gilani<sup>127</sup>, Khalil Torabpour<sup>128</sup>, Mousavi Tabrizi<sup>129</sup> and Asadollah Lajevardi<sup>130</sup>.

### Tribunal’s Conclusion on Merits

90. After three days of proceedings, Sir Geoffrey Nice QC closed the factual case for the prosecution. He contended that the people of Iran had been “let down by the international community and its lawyers” and praised the determination of the witnesses and victims to “create a record of evidence that can enjoy some authority and that can be measured against the law”. The prosecution invited the judges to assess the evidence, which bore “all the hallmarks of reliability”<sup>131</sup>.
91. Sir Geoffrey Nice argued that the Prosecution had satisfied its two burdens of proof in establishing the guilt of the Islamic Republic of Iran for crimes against humanity in the years 1981-88: that “serious violations of human rights were

<sup>120</sup> Exhibit D, Day 2, Shokufeh Sakhi; cf. Exhibit A, Chapter VI, §6.2.7.

<sup>121</sup> Exhibit D, Day 1, Shohreh Ghanbari.

<sup>122</sup> Exhibit D, Day 1, Shohreh Ghanbari; Day 2, Ahmad Mousavi.

<sup>123</sup> Exhibit D, Day 2, Ahmad Mousavi.

<sup>124</sup> Exhibit D, Day 2, Shokufeh Sakhi.

<sup>125</sup> Exhibit D, Day 2, Mehdi Aslani.

<sup>126</sup> Exhibit D, Day 2, Nader Bokae; Day 3, Iraj Mesdaghi.

<sup>127</sup> Exhibit D, Day 3, Naval Mohsen.

<sup>128</sup> Exhibit D, Day 1, Chowra Makaremi.

<sup>129</sup> Exhibit D, Day 1, Maleke Mostafa Soltani.

<sup>130</sup> Exhibit D, Day 3, Iraj Mesdaghi; Naval Mohsen.

<sup>131</sup> Exhibit D, Day 3, page 60.

committed in Iran in these years”; and that these violations were “widespread and systematic”, and inflicted “pursuant to or in furtherance of” State policy<sup>132</sup>.

92. The Prosecution charged the Islamic Republic of Iran with five forms of “gross human rights abuses”, these being: (i) murder, including of over 5,000 political prisoners in 1988 and over 12,000 political prisoners between 1981 to 1984; (ii) torture, both physical and psychological; (iii) persecution, against political dissidents and ethnic and religious minorities; (iv) sexual abuse, of both men and women; and, (v) unlawful imprisonment, including detention without trial, use of kangaroo courts, and subjection to cruel, inhuman and degrading treatment. The prosecution commented on the cruel treatment to which prisoners’ families were subjected, which has left a “legacy of abuse [that] is extensive and inevitably persists to the present day”<sup>133</sup>.
93. The Prosecution made extensive reference to the evidence presented to the Tribunal in live testimony and in the Truth Commission Report. Sir Geoffrey Nice demonstrated how witness statements corroborated each other, “in the patterns of abuse and in the fine detail”, by speaking of the same events and in a number of cases of the fates of particular prisoners. The Prosecution invoked recurring patterns in over thirty prisons dotted across Iran as “part of a deliberate and systematic campaign” unleashed by the Iranian State, “carried out by state organs, within the walls of state institutions and on the direct instructions of state officials”. The Prosecution highlighted the contribution of the Tribunal’s expert witnesses in establishing state responsibility<sup>134</sup>.
94. Sir Geoffrey Nice closed his submission by calling on the Islamic Republic of Iran to “recognise that the international community recognises the existence of human rights that exist for every human being” and that “the record of this Tribunal will stand as a public record of their condemnation”.

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<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*, pages 60-62.

<sup>134</sup> *Ibid.*, page 62.

95. The Tribunal Concludes:

- a. There is overwhelming evidence in support of the allegation that substantial and widespread violations of human rights occurred in Iranian prisons between 1981 and 1988;
- b. The violations were committed by state officials, judges, prosecutors, prison officials, torturers and interrogators “within the walls of state institutions and on direct instruction of state officials”;
- c. The violations were widespread and systematic and were committed against the civilian population in furtherance of the state policy; and
- d. As concluded by the Truth Commission, these violations of human rights were devised, instigated and executed (or caused to be executed) by a single central authority and as such the Islamic Republic of Iran is the only authority responsible for these acts.

## Chapter IV

### Applicable Law

96. Having considered the evidence offered to this Tribunal, it is now appropriate to discuss the law relating to the offences charged.

#### i. Iranian Law

97. The Tribunal does not consider itself bound by the domestic laws of Iran but considers those laws to be relevant in considering the crimes that have been committed.

98. Iran has a relatively long history of parliamentary rule and codified legal system. The Constitutional Revolution of 1906 forced the monarchy to acquiesce to the establishment of a parliament and its supremacy over all the nation's affairs.

99. A proper and largely secular court system was established following the French system. The parliament legislated a civil code (based on Sharia law), penal code, and civil procedure code (based on the French system). There were abuses of the system that led to the further uprisings in 1978/79 and the collapse of the monarchy in February 1979 when the Islamic Republic was established.

100. The Prosecution introduced Dr Hedayat Matine-Daftary as an expert witness, a former vice president of the Iranian Bar Association.<sup>135</sup>

101. Dr Matine-Daftary in his statement explained how the Islamic Republic from its first days of establishment took steps that were designed to “eradicate the results of a seventy-year modern and secular trend of legislative evolution”<sup>136</sup> by purging many “qualified judges of secular judiciary,”<sup>137</sup> by recruiting “students and teachers from religious seminaries with only a brief judicial ‘in-service’ training as judges,”<sup>138</sup> and by mounting an attack on the independent Bar Association, purging

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<sup>135</sup> See Dr Matine-Daftary's Statement, Exhibit B, pp.5-26. Also Exhibit D, Day 1, pp.36-48.

<sup>136</sup> Exhibit B, Day 1, pp.6.

<sup>137</sup> *Ibid*, pp. 19.

<sup>138</sup> *Ibid*, pp. 20.

its “unsavoury” members and arresting and imprisoning members of the Bar Council.<sup>139</sup>

102. The new Constitution of the Islamic Republic (approved November 1979) changed the ground norm of the Iranian legal system by establishing Islamic law as supreme and overriding norm of Iranian law. The Constitution grants unlimited and unchecked powers to the leader as the ultimate interpreter of god-given laws, whose commands could override any rule of the legal system.<sup>140</sup>
103. While the constitution provides certain guarantees such as freedom of assembly (Article 27), freedom of expression (Article 23), presumption of innocence (Article 37), the right to counsel (Article 35), and prohibition of torture (Article 38), the exercise of these rights, except for the prohibition of torture, are subject to the limits set by ordinary laws and legislation as well as precepts of Islam. The Constitution, however, does not guarantee freedom of religion, equality before the law and equality of genders.
104. Limited concessions granted under the constitution were rapidly eroded by edicts of the supreme leader and the introduction of “vague but serious charges of ‘warring against God’ and ‘corruption on earth’”<sup>141</sup> undermined the “universally accepted penal principles” of “*nulla poena sine lege*”.<sup>142</sup>
105. Khomeini’s *fatwa* condemning opposition groups was used by the judges as “collective judgements”<sup>143</sup> which allowed the judges to condemn any member of such opposition group to death without any further investigation.
106. As noted by the Truth Commission,<sup>144</sup> Iran is a founding member of the United Nations; it voted in favour of the Universal Declaration of Human Rights, and has ratified the International Covenant on Civil and Political Rights in 1975 without any reservation. The Tribunal therefore concludes that the standards provided under the International Covenant now forms part of Iran’s domestic law.

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<sup>139</sup> *Ibid*, pp.21-25.

<sup>140</sup> *Ibid*, pp.7.

<sup>141</sup> *Ibid*, pp.9-10.

<sup>142</sup> *Ibid*, pp.9.

<sup>143</sup> Exhibit D, Day 1, pp.39.

<sup>144</sup> Exhibit A, pp.6.

107. The witnesses invariably confirmed to both the Truth Commission and the Tribunal that the victims had no access to defence counsel and no remedy before Iranian courts for any redress.
108. The Tribunal therefore concludes that the dismantling of the Iranian judicial system and supplanting it by a group of devout but untrained, inexperienced and loyal clerics appointed as judges in the early stages following the 1979 Revolution was a key to implementing the brutal and illegal extermination of all opposition groups as well as members of religious and ethnic minorities challenging the regime.
109. The Tribunal notes that although the perpetrators of these crimes have violated the rules of Iranian law and constitutional guarantees (with all its limitation) as well as the standards set under the International Convention on Civil and Political Rights, none of the perpetrators has been prosecuted by the Islamic Republic; to the contrary, they have been generally rewarded with high positions in successive governments<sup>145</sup>.
110. Failure of the Islamic Republic of Iran to comply with its international obligation to investigate these atrocities and bring the perpetrators to justice is a breach of international law. The Tribunal would have called upon the Islamic Republic to remedy this breach by investigating, under supervision of an independent international commission, the commission of these crimes and bring the perpetrators to justice. However bearing in mind that the judiciary and other organs and individuals in the highest echelons of the Islamic Republic have been complicit in perpetrating these crimes and actively participated and in many instances perpetrated these heinous crimes, the Tribunal finds such a call a futile gesture. The Tribunal holds the Islamic Republic of Iran accountable for these atrocities.
111. It is the unaccountability of the rulers as well as judges, prosecutors, torturers, and all those who have committed these crimes that has perpetuated total disregard for human rights and rule of law; committing these crimes has become the norm - a

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<sup>145</sup> *Ibid*, pp. 409-419.



situation which can aptly be described as the “banality of evil”.<sup>146</sup> A situation that regrettably has continued even today, some 25 years later.

ii. Customary International Law in 1980s

112. For the purposes of a finding of responsibility and liability for acts perpetrated by the Islamic Republic of Iran, the Tribunal’s temporal jurisdiction in these proceedings (as determined by the Campaign and the Legal Steering Committee) is limited from the beginning of the year 1980 until the end of 1989.
113. During the course of this trial, the prosecution alleged that the Islamic Republic of Iran is guilty of crimes against humanity<sup>147</sup>, and numerous witnesses and documents were tendered as evidence in these proceedings to support such a finding.<sup>148</sup>
114. Crimes against humanity are now clearly defined and codified by article 7 of the Rome Statute - the Statute of the International Criminal Court which entered into force in 2002<sup>149</sup>. However prior to a discussion of the requirements for a finding of crimes against humanity and its elements, the question that needs to be addressed by this Tribunal is whether or not crimes against humanity were a part of customary international law at the time the crimes alleged in these proceedings were committed, such that the Islamic republic of Iran could be convicted of crimes against humanity.

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<sup>146</sup> The term used by Hannah Arendt in the title of her 1963 work “Eichmann in Jerusalem: A Report on the Banality of Evil”.

<sup>147</sup> Exhibit D, Day 1, pages 10-15.

<sup>148</sup> Exhibit D, Day 3, pages 58-63.

<sup>149</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a84.html> [last accessed 6 January 2013]

115. By 1980, the beginning of temporal jurisdiction in these proceedings, it had been firmly established through treaties, covenants and agreements that crimes against humanity were acts that give rise to state responsibility and individual criminal liability.<sup>150</sup> UN General Assembly resolutions contained strong language that declares these crimes to be violations of international law.<sup>151</sup> In respect to formalised legal proceedings, in the years leading up to 1980 and throughout the subsequent decade, international tribunals and domestic courts had found numerous individuals guilty of crimes against humanity.<sup>152</sup>
116. Crimes against humanity encompass serious attacks on human dignity or a grave humiliation or degradation of human beings. These crimes are among the most serious crimes of concern to the international community as a whole, because all of humanity is hurt by attacks of this nature against a civilian population.<sup>153</sup> As a result, customary international law, stemming all the way back to the mention of specific acts as “contrary to the laws of humanity” in the St. Petersburg Declaration of 1868, an international treaty banning the use of explosive

<sup>150</sup> See e.g. Affirmation of the Principles of International Law recognized by the Charter of the Nuremberg Court, G.A. Res. 95 (I), 11 December 1946, available at: [http://untreaty.un.org/cod/avl/ha/ga\\_95-i/ga\\_95-i.html](http://untreaty.un.org/cod/avl/ha/ga_95-i/ga_95-i.html) [last accessed 6 January 2013]; Report of the International Law Commission on its Second Session, 5 June to 29 July 1950, Official Records of the General Assembly, Fifth session, Supplement No. 12 (A/1316), available at: [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_34.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_34.pdf) [last accessed 6 January 2013]; Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 A (III), approved and proposed for signature and ratification or accession on 9 December 1948, entry into force on 12 January 1951, in accordance with article XIII, available at: <http://www2.ohchr.org/english/law/genocide.htm> [last accessed 6 January 2013]; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. Res. 2391 (XXIII), adopted and opened for signature, ratification and accession on 26 November 1968, entry into force on 11 November 1970, in accordance with article VIII, available at: <http://www2.ohchr.org/english/law/warcrimes.htm> [last accessed 6 January 2013]; Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, adopted by General Assembly resolution 3074 (XXVIII), 3 December 1973, available at: <http://www2.ohchr.org/english/law/guilty.htm> [last accessed 6 January 2013].

<sup>151</sup> See e.g. Affirmation of the Principles of International Law recognized by the Charter of the Nuremberg Court, G.A. Res. 95 (I), 11 December 1946, available at: [http://untreaty.un.org/cod/avl/ha/ga\\_95-i/ga\\_95-i.html](http://untreaty.un.org/cod/avl/ha/ga_95-i/ga_95-i.html) [last accessed 6 January 2013]; Report of the International Law Commission on its Second Session, 5 June to 29 July 1950, Official Records of the General Assembly, Fifth session, Supplement No. 12 (A/1316), available at: [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_34.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_34.pdf) [last accessed 6 January 2013]; Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 A (III), approved and proposed for signature and ratification or accession on 9 December 1948, entry into force on 12 January 1951, in accordance with article XIII, available at: <http://www2.ohchr.org/english/law/genocide.htm> [last accessed 6 January 2013].

<sup>152</sup> This includes the convictions of Nazi leaders at the International Military Tribunal in Nuremberg, see *Trial of the Major War Criminals before the International Military Tribunal*, (Nuremberg), 14 November 1945 – 1 October 1946; see also, *Attorney General of Israel v. Eichmann*, Israel Supreme Court (1962); See also *Tokyo Judgment: the International Military Tribunal for the Far East (I.M.T.f.e.)*, 29 April 1946-12 November 1948.

<sup>153</sup> For a discussion of the severity of crimes against humanity, see e.g. paragraph 1 to the Introduction to the Crimes Against Humanity in the Elements of the Crimes.

projectiles in war<sup>154</sup> has long condemned these acts and demanded their prosecution.

117. Although the definition of crimes against humanity was not comprehensively codified in one place until the advent of the Rome Statute and its entry into force on 1 July 2002, by 1980 a consistent body of customary international law had formed that defined crimes against humanity and called for the prosecution of such acts.
118. The UN General Assembly resolutions in the 1970s repeatedly affirmed that it is a “recognized principle of international law” that a State has the duty to arrest, try, and punish people guilty of international crimes.<sup>155</sup> These and earlier resolutions emphasized the importance of information-sharing agreements between States and assistance in capturing persons suspected of crimes against humanity.<sup>156</sup>
119. The definition of crimes against humanity has evolved since this concept first received international legal recognition in the St. Petersburg Declaration of 1868, which limited the use of explosive or incendiary projectiles as “contrary to the laws of humanity”. More than three decades later, at the First Hague Peace Conference in 1899, the Martens Clause was unanimously adopted as part of the Preamble to the Hague Convention II - Laws and Customs of War on Land, which provides, in pertinent part: “Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that, in cases not included in the Regulations adopted by them, populations and belligerents remain

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<sup>154</sup> See Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868. Available at: <http://www.icrc.org/ihl.nsf/INTRO/130>

<sup>155</sup> See e.g. Question of the Punishment of War Criminals and of Persons who Have Committed Crimes Against Humanity, G.A. Res. 2712 (XXV), 14 December 1970; Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, adopted by General Assembly resolution 3074 (XXVIII), 3 December 1973, available at: <http://www2.ohchr.org/english/law/guilty.htm> [last accessed 6 January 2013].

<sup>156</sup> See e.g. Declaration on Territorial Asylum, G.A. Res. 2312 (XXII), 22 U.N. GAOR Supp. (No. 16) at 81, U.N. Doc. A/6716 (1967), available at: <http://www1.umn.edu/humanrts/instree/v4dta.htm> [last accessed 6 January 2013], which provides in Article 1(2) that “the right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against humanity”; see also, Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, adopted by General Assembly resolution 3074 (XXVIII), 3 December 1973, available at: <http://www2.ohchr.org/english/law/guilty.htm> [last accessed 6 January 2013], in which the U.N. General Assembly said: “... States shall assist each other in detecting, arresting, and bringing to trial persons suspected of having committed such crimes [against humanity] and, if they are found guilty, in punishing them... “.

under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the *laws of humanity* and the requirements of the public conscience.” The Martens Clause appears in a slightly modified form in the Hague Convention IV - Law and Customs of War on Land from 1907 and was included in subsequent humanitarian law treaties, including the additional protocols of 1977 to the Geneva Conventions. Prior to 1980 several national and international courts also cited to the Martens Clause when making their judgments, and indeed did not refer to the “laws of humanity” as a new or novel right.<sup>157</sup>

120. The first indication of the crimes which would be included in the definition of crimes against humanity was given in the Declaration of the Allied Powers France, Great Britain and Russia on May 24, 1915 denouncing the massacres by the Ottoman Empire of Armenians in Turkey. The Declaration was a response to the report of the American Ambassador to the Ottoman Empire, Henry Morgenthau Senior, concerning the massacre of thousands of Armenians in the city of Van and surrounding regions. It stated that the massacres were “crimes against humanity and civilization for which all the members of the Turkish Government will be held responsible together with its agents implicated in the massacres”.
121. As to what acts would constitute crimes against humanity, the 1919 Versailles Peace Conference Commission made it clear that these crimes included murders and massacres, systematic terrorism, putting hostages to death, torture of civilians, deliberate starvation of civilians, rape, abduction of girls and women for the purposes of enforced prostitution, deportation of civilians, internment of civilians under inhuman conditions, forced labour of civilians in connection with the military operations of the enemy, imposition of collective penalties and deliberate bombardment of undefended places and hospitals.<sup>158</sup>

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<sup>157</sup> See e.g. decision of the Supreme Court of Norway on February 27, 1946 in appeal proceedings against Karl-Hans Hermann Klinge; decision of the US military tribunal III in Nuremberg on February 10, 1948 in the case United States v. Krupp; decision of the Netherlands court of cassation on January 12, 1949 in the procedure against Hanns Rauter, general commissioner for safety organization in the Netherlands from 1940 to 1945.

<sup>158</sup> Macmillan, Margaret. *Peacemakers: The Paris Peace Conference of 1919 and Its Attempt to End War* (2002), also published as *Paris 1919: Six Months That Changed the World* (2003).

122. While in the end result the provisions of a treaty calling on the Turkish government to hand over the persons responsible for these crimes were never implemented, crimes against humanity re-emerged and were formally introduced into international law following the conclusion of World War II. On August 8, 1945, the United States of America, the United Kingdom, France, and the Soviet Union, adopted the Charter of the International Military Tribunal for the prosecution of Nazi leaders.
123. The Tribunal sat at the city of Nuremberg, in occupied Germany and rendered its Judgment on October 1, 1946. Crimes against humanity were an important legal category that covered the mass-murder and persecution of Jews and other civilians by the Nazi regime. Article 6(c) of the Charter, which courts often use as the starting point for contemporary international criminal law, defined crimes against humanity as:
- “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”
124. Article 6(c) became the basis for the current definition in international law with certain modifications. This legal concept was revolutionary in 1945 because it criminalised a State’s mistreatment of its own citizens irrespective of the domestic law of that country. This was unprecedented.
125. The first Nuremberg judgment confirmed that the Charter was a current statement of international law and asserted that customary law could form the basis for defining crimes against humanity. In 1946, as an expression of customary law, the UN General Assembly adopted the Nuremberg Principles, including the Charter’s definition. In 1950, the International Law Commission did the same.<sup>159</sup>

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<sup>159</sup> For history, see, for example: <http://untreaty.un.org/cod/avl/ha/da/da.html>

126. Since then, customary international law has evolved from the Nuremberg definition, dropping its requirement of a nexus between crimes against humanity and an armed conflict but otherwise remaining largely the same.
127. Following the Nuremberg trials, the task of prosecuting crimes against humanity fell on national courts. Between 1948 and 1980, domestic courts tried individuals for crimes against humanity, including Adolf Eichmann, convicted in 1962, in Israel. In and around 1988, the year in which many of the crimes adjudicated before this Tribunal are alleged to have occurred, the trials of several other individuals charged with crimes against humanity were pending or in progress including, Klaus Barbie, convicted in 1988, in France; Paul Touvier, (charged in 1973, convicted in 1994), in France; and Imre Finta, (charged in 1988, convicted in 1994) in Canada.
128. In *Eichmann*, the Supreme Court of Israel found Eichmann guilty of crimes against humanity, defining the crimes using the Nuremberg Charter and other laws but acknowledging that crimes against humanity “must be seen today as acts that have always been forbidden by customary international law - acts which are of a ‘universal’ criminal character and entail individual criminal responsibility.”<sup>160</sup>
129. After World War II, the international community continued creating treaties and resolutions that reaffirmed its dedication to punishing those responsible for crimes against humanity, whether committed in times of war or peace. In 1968, the UN General Assembly adopted and opened for ratification the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, which declared crimes against humanity “among the gravest crimes in international law.”

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<sup>160</sup> *Attorney General of Israel v. Eichmann*, Israel Supreme Court (1962). For full transcripts from Eichmann trial see: <http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/>

130. Genocide and apartheid were classified as crimes against humanity by widely-ratified conventions, demonstrating that the Nuremberg Charter's list of acts constituting crimes was not exhaustive.<sup>161</sup>
131. The fact that the definitions of crimes against humanity differed slightly and evolved between 1945 and 1980 does not lessen their validity. At their core, crimes against humanity comprise serious attacks on human dignity or acts that constitute grave humiliation or degradation of human beings and these crimes are based on central values known to all mankind.
132. While not directly relevant to these proceedings, since the liability in question is that of a State and not of individuals, it is still worth noting that in *Prosecutor v. Tadic*, a case before the International Criminal Tribunal for the former Yugoslavia (ICTY), the trial chamber emphasized the importance of Nuremberg's recognition of customary international law as a basis for individual criminal liability and concluded that punishment under that law is mandatory. It stated, "Since the [London] Charter [in 1943], the customary status of the prohibition against crimes against humanity and the attribution of individual criminal responsibility for their commission have not been seriously questioned."<sup>162</sup>
133. In the aggregate, these precedents strongly confirm that crimes against humanity were clearly established in international law as a matter of customary international law at the time the crimes adjudicated before this Tribunal, from 1980 up until the end of 1989, were committed.

The Tribunal thus considers the applicable law to be customary international law as existed in the 1980s and as it was later codified and incorporated in Article 7 of the Rome Statute as crimes against humanity.

134. In these proceedings, the charges of crimes against humanity are brought against the State - that is, the Islamic Republic of Iran. The International Law Commission's Articles on Responsibility of States for internationally wrongful

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<sup>161</sup> Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 (III), adopted and opened for ratification on Dec. 9, 1948;; International Convention on the Suppression and Punishment of the Crimes of Apartheid, G.A. Res. 3068 (XXVIII), adopted and opened for ratification on Nov. 30, 1973.

<sup>162</sup> Opinion and Judgment, *The Prosecutor v. Dusko Tadic*, Case No. IT-94-1-T, ICTY Trial Chamber, 7 May 1997.

acts provide clear guidance on State responsibility. According to the ILC's Articles on Responsibility of States, there is an internationally wrongful act of a State when conduct consisting of an action or an omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.<sup>163</sup>

This Tribunal holds that the evidence tendered in these hearings supports a finding that crimes were committed by agents of the Islamic Republic, beginning with the Supreme Leader, and ending with the executioners in the prisons, and that these constitute a breach of international law.

135. Although the Rome Statute of the International Criminal Court only establishes individual criminal responsibility for grave international crimes, nevertheless, the Tribunal considers the Statute as being the most recent and widely ratified global treaty defining crimes against humanity, as a relevant codification of existing customary international law.
136. To date, 121 countries are States Parties to the Rome Statute. An additional 32 countries have signed but not ratified the Rome Statute and one of them, the Republic of Côte d'Ivoire, has accepted the ICC's jurisdiction.
137. The Tribunal holds that Article 7 of the Rome Statute reflects customary international law in all aspects that are relevant for these proceedings. While the Islamic Republic of Iran has yet to ratify the Rome Statute, this applies by way of customary law, irrespective of whether Iran has signed any particular treaty or not. The Tribunal considers the elements of the crimes set forth in the Rome Statute for the determination of criminal responsibility in the judgment and all the elements set forth in Article 7 of the Rome Statute apply, save for those that explicitly reference individual criminal responsibility. The Statute also contains progressive

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<sup>163</sup> International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, available at: <http://www.unhcr.org/refworld/docid/3ddb8f804.html> [accessed 29 January 2013]



development of international law, in particular with respect to specific forms of sexual violence other than rape. The Tribunal therefore considers legal standards and definitions of the Rome Statute applicable to this case.

138. For present purposes, the Tribunal simply emphasises the main elements of crimes against humanity. First, crimes against humanity entail the commission of serious violations of human rights, as listed in Article 7, paragraph (1) of the Court's Statute, such as murder, torture, rape and unlawful imprisonment.
139. Second, it must be proved that those crimes were not random or isolated but, rather, that they were widespread or systematic. In other words, the burden on the prosecution is to establish the commission of multiple serious human rights violations committed pursuant to or in furtherance of State policy.
140. While the Statute does not define "a State or organisational policy", the 'Elements of Crimes' offers some clarification. It states that "[i]t is understood that the "policy to commit such an attack" requires that the State or organisation actively promote or encourage such an attack against the civilian population".
141. With respect to the first element, the serious human rights violations under Article 7 include murder under paragraph 1(a), which encompasses arbitrary executions as well as death resulting from torture or other serious mistreatment where death is foreseeable.
142. It includes torture under paragraph (1)(f) which is defined as "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused".
143. It includes rape under paragraph 1(g) or any other form of sexual violence of comparable gravity.
144. It includes under paragraph 1(e) "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" which encompasses imprisonment without a fair trial or imprisonment on grounds of political or religious beliefs.

145. It is also important to point out that it includes under paragraph 1(h) the crime of “persecution” against “any identifiable group or collectivity on political ... [or] ... religious grounds”. Thus, in addition to responsibility for large-scale serious human rights violations, there is additional responsibility where such violations are committed on discriminatory grounds. Article 7, paragraph (2), sub-paragraph (g) of the Court’s Statute further clarifies that “persecution” means “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”.
146. Where Iranian citizens were imprisoned and subject to abuse and executions based on their political or religious beliefs, this amounts to the crime of persecution. As the evidence tendered by the prosecution demonstrates, this applies forcefully to the cases of political prisoners, belonging, in particular, to leftist groups. Additionally, prisoners of conscience such as Kurds<sup>164</sup> and Arabs<sup>165</sup> who were often singled out on grounds of ethnicity or religion, and the case of the Bahá’ís<sup>166</sup>, who were targeted solely because they were deemed to be members of a religious “heresy” or “wayward sect”, were targets of persecution.
147. In respect to these acts, it should be noted that domestic law is not an excuse or defence to crimes against humanity. So while arbitrary executions and discriminatory treatment amounting to the crime of persecution may or may have not been permitted under the laws of the Islamic Republic at the time, this does not shield the perpetrators of such crimes from responsibility under international law.
148. In summary, these are the types of human rights violations that are required to establish crimes against humanity. However, such violations are not by themselves sufficient to satisfy the elements of this grave international crime.
149. The second, and perhaps more important element, is the context within which such crimes were committed. It is this element that elevates ordinary human rights abuses to the scale and gravity of crimes against humanity. It is clear that not

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<sup>164</sup> Exhibit B, pages 27-30, Exhibit D, Day 1, pages 48-61, Maleke Mostafa Soltani; see also Exhibit A. W5, 6, 8, 12, 22, 24, 26, 27, 63 and 72.

<sup>165</sup> Exhibit B, pages 46-48, Exhibit D, Day 2, pages 14-20, Jalil Sharhani.

<sup>166</sup> Exhibit D, Day 2, Ruhiyyih Jahanpour.

every human rights violation constitutes an international crime, let alone the very serious offence of a crime against humanity.

150. Again, the Tribunal turns to Article 7(1) of the Rome Statute that clarifies that violations such as murder and torture are crimes against humanity only when “committed as part of a widespread or systematic attack directed against any civilian population”. Paragraph (2), sub-paragraph (a) further clarifies that this contextual requirement means “a course of conduct involving the multiple commission of acts ... against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”.
151. Some have argued that, in this respect, the Statute’s requirement of State policy may be even more exacting and restrictive than customary law, which does not require formal State policy.
152. Additionally, unlike with charges of war crimes, there is no requirement that crimes against humanity have a nexus with war under customary law during the relevant period in the 1980s. Therefore this Tribunal can find that such crimes against humanity were committed irrespective of whether it was connected with the Iran-Iraq war. The International Criminal Tribunal for the former Yugoslavia, in the *Tadic* interlocutory appeal decision on jurisdiction held at paragraph 141, “It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict. Indeed, customary international law may not require a connection between crimes against humanity and any conflict at all”.<sup>167</sup> While in the *Tadic* decision, the statement that crimes against humanity need not have a nexus with war was declaratory of a pre-existing norm under customary international law.
153. Furthermore, those that are prisoners, especially those that are imprisoned on political or religious grounds, are deemed by international law to be civilians for the purpose of crimes against humanity. Thus, the Tribunal holds that the issue of war is simply not relevant for present purposes.

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<sup>167</sup> Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, *The Prosecutor v. Dusko Tadic*, Case No. IT-94-1-AR72, ICTY Appeals Chamber, 2 October 1995

154. With respect to these two elements, the Tribunal holds that, based on the evidence provided by the Truth Commission Report and the testimony of the 19 witnesses at the hearings in The Hague, serious human rights violations such as arbitrary executions, torture, rape, and false imprisonment were committed, that these violations were committed on political and religious grounds, and that these violations were committed on a widespread and systematic basis, involving the multiple commission of these crimes pursuant to or in furtherance of the State policy of the Islamic Republic of Iran.

### State Responsibility

155. The present case is brought against the Islamic Republic of Iran for its violation of basic human rights of its citizens as well as for the commission of crimes against humanity.
156. The Tribunal is conscious that crimes against humanity as a matter of international law “are committed by men, not abstract entities and only by punishing individuals who commit such crimes can the provisions of international law be enforced”.<sup>168</sup>
157. The Islamic Republic of Iran has a duty not only to prevent the commission of the crimes enumerated in this Judgment, but also to bring to justice the perpetrators of such crimes and further devise measures and safeguards to ensure that these crimes are not repeated and committed in the future.
158. The General Assembly Resolution 3074 entitled “The Principles of International Cooperation in the Detention, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity”, in paragraph (1) declares, *inter alia that*, “....crimes against humanity, wherever they are committed *shall* be subject to investigation and the person against whom there is evidence ... *shall* be subject to tracing, arrest, trial and if found guilty, to punishment”. Paragraph (2) declares that “Every States has the right to try its own nationals for .... Crimes against Humanity”. The Principles voiced in General Assembly Resolutions 2338,

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<sup>168</sup> Judgment of International Military Tribunal, Trial of Major War Criminals, 1947, Official Documents Vol I, page 223.

2583, 2712 and 2840 re-enforce States' obligation to prosecute or extradite alleged perpetrators of crimes against humanity.<sup>169</sup>

159. General Comment 31 of the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a signatory without any reservation, confirmed that when the violation of rights secured by Article 1 of the Covenant is “committed as part of a widespread or systematic violation these violations of the Covenant are crimes against humanity”.<sup>170</sup> Article 2(2) requires States to adopt “such legislation or other measures as may be necessary” to give effect to the rights recognized in the Covenant. General Comment 31 further interprets, “the requirement under Article 2, paragraph 2 ... is unqualified and of immediate effect”. It finds that “... administrative mechanisms are particularly required to give effect to the general obligations to investigate allegations of violations promptly, thoroughly, and effectively”. The failure of a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.<sup>171</sup>
160. Further, the Inter-American decision, *Almonacid-Arellano et al -v- Chile*<sup>172</sup> emphasised the prosecution prong of the obligation, holding that, “thorough investigation of ... crimes against humanity, as well as punishment of those responsible .... constitute an important element in the prevention of such crimes”.<sup>173</sup>
161. Furthermore, the interpretation of Article 15(1) concurs that redress of crimes against humanity committed decades ago under previous regimes are not a *per se* bar to prosecution. Judges at the Extraordinary Chamber in the Court of Cambodia upheld Article 15(1) of the ICCPR's which protects retroactive prosecution, when deliberating about the crimes against humanity committed by the Khmer rouge in the 1970s. In 2010, in the Prosecutor -v- Kaing, the Cambodian Court held that :

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<sup>169</sup> Cherif Bassiouni, *Accountability for Violations of International Law and Other Serious Violations of Human Rights* at 391.

<sup>170</sup> General Comment No. 31(80) “The Nature of Legal Obligations Imposed on the State Parties to the Covenant” CCPR/C/21/Rev. 1/Add. 13 26 May 2004, paras. 15 and 18.

<sup>171</sup> *Id.* Paras 14 and 15.

<sup>172</sup> *Almonacid-Arellano et al -v- Chile*, Judgment 26 September 2006.

<sup>173</sup> *Almonacid-Arellano et al*, para 106.

**“Compliance with the principle of legality requires that the offence with which an individual is charged is sufficient foreseeable and the law providing for such liability was sufficiently accessible to the accused at the relevant time. A State practice of tolerating or encouraging certain acts will not operate as a bar to their perpetrators being brought to justice and punished where those acts were criminal under national or international law”.**<sup>174</sup>

162. The International Court of Justice was faced with a similar dilemma in the Case Concerning the Application of the Convention of the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina -v- Serbia and Montenegro)<sup>175</sup> which is of great relevance to the present case.

163. In its celebrated judgment of 26 February 2007, the court was faced with the question whether the State parties to the Convention can be found guilty of the commission of crime of genocide themselves.<sup>176</sup> While the ICJ noted that such an obligation is not expressly imposed by the actual terms of the Convention, it held :

**“That obligation requires the State parties, *inter alia*, to employ the means at their disposal .... to prevent persons or groups not directly under their authority from committing an act of genocide or any of the other acts mentioned in Article III. It would be paradoxical if the States were thus under an obligation to prevent, so far as within their power, commission of genocide by persons over whom they have a certain influence, but were not forbidden to commit such acts through their own organs or persons over whom they have such firmer control that their conduct is attributable to the State concerned under international law. In short the obligation to prevent genocide necessarily implies the prohibition of commission of genocide.”**

164. Dealing with the famous sentence of Justice Jackson in the Nuremburg Judgment that “crimes against international law are committed by men not by abstract entities ...” (Judgment of International Military Tribunal, Trial of Major War Criminals, 1947, Official Documents Vol. I, page 223), in support of the argument that only individuals can breach the obligations set out in Article 3, the court held that the dicta of Justice Jackson was rejected by the International Military Tribunal on the following terms :

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<sup>174</sup> Prosecutor -v- Kaing, Guek Eav alias Duch, Judgment, 26 July 2002, 1 Case No. 001/18-07-2007/ECCC/TC, para 28.

<sup>175</sup> <http://www.icj.cij.org/docket/files/01/13685.pdf> (visited 19 Jan 2013).

<sup>176</sup> *Ibid*, at paragraph 166.

**“That International Law imposes duties and liabilities upon individuals as well as States has long been recognised.” (*Ibid*, page 223).**

While the Tribunal recognises that the decision of the ICJ relates to a convention and State parties to that convention, nevertheless, in broad terms the Court accepts State responsibility in cases of crimes under international law where the State has the obligation to prevent the commission of those crimes by individuals under its control and power.

165. In the present case, the control of the Islamic Republic of Iran over its agents, prosecutors, judges, prison officials, interrogators and other individuals involved in the commission of these crimes cannot be challenged. The Tribunal therefore holds that as a matter of international law, the Islamic Republic of Iran can be held responsible for crimes against humanity, committed at its behest by state officials and within the state establishments and prisons.

## Chapter V

### Reasons for Judgment

166. This judgment builds on a formidable corpus of evidence, which includes the report of the Truth Commission as well as the testimony of witnesses before this Tribunal in The Hague.
167. While the Tribunal (as stated at paragraph 19 above) notes the absence of the Islamic Republic of Iran from these proceedings, nevertheless, the overwhelming factual evidence attested to by the reliable and frank testimony of almost 100 witnesses corroborating each others' evidence, further corroborated by contemporaneous evidence submitted to this Tribunal and further the subject of admissions by the Iranian authorities (including statements by Ayatollah Montazeri) leaves the Tribunal in no doubt that even if the Islamic Republic of Iran has been represented in these proceedings, the compelling evidence proffered in these proceedings could not have been seriously challenged.
168. The Tribunal maintains that the prosecution has established its burden by proving, with competent evidence, that all types of crime enumerated under Article 7 have been committed by the Islamic Republic of Iran as follows:
- i. Murder: Nima Servastani's documentary video showed the graves of executed prisoners stretching out as far as the eye can see; the grave digger of Shiraz reported the delivery of 60 bodies on a single occasion, of victims at most 20 years old. Men were arrested at 10 in the morning and dead by 11; entire families were eliminated whole wards were purged; rows of prisoners were shot by firing squad, still breathing until they were finished off by *coups de grâce*; child prisoners were required to administer these *coups de grâce*; truck loads of bodies were tipped into mass graves, minors were murdered. In no case was an execution ordered in accordance with



due process. In 1988, pursuant to the *fatwa* issued by Khomeini over 5,000 prisoners were killed (most by hanging) over a space of a few months;

- ii. Torture: Torture was routinely carried out in all prisons in Iran. There was not one witness who was not tortured in prison, both physically and mentally; prisoners were hanged from the ceiling by their arms and the soles of their feet were flogged; prisoners were beaten; deprived of sleep; kept in solitary confinement; subjected to mock executions and forced to watch other prisoners being tortured or were tortured in the presence of their children;
- iii. Persecution: Kurds, Arabs, Bahá'ís and political groups were targeted. The Bahá'ís were denied protection; the Constitution deliberately excluded them from a class of protected minorities which meant they could be killed with impunity, their holy sites, including the House of Bab were raised, their homes were set ablaze, their cemeteries were vandalised, their leadership was repeatedly eliminated, they were refused the right to practice their religion and they were dismissed from their employment, they were forced to convert to Islam and divorce their spouses, they were pressurised into marrying revolutionary guards, they were imprisoned under charges of being a Bahá'í and were threatened that they would be eliminated one by one; Kurds and Arab Iranians were systematically persecuted; many were tortured and executed; political opposition was all but eradicated by the brutal repression, torture, unlawful detention and finally execution;
- iv. Sexual Abuse of Prisoners and Other Inhumane Acts: there has been widespread and systematic sexual abuse of women and men in prisons; female prisoners were raped before their execution; they were forced to marry interrogators or revolutionary guards; they were raped or sexually abused to break their resistance and extract confessions;
- v. Degrading and Inhumane Treatment: victims were detained for long periods without trial; prisoners were charged with vague political offences

at hearings lasting on average a couple of minutes, during which they were blindfolded and verbally and physically assaulted; none of the victims was ever given access to any defence counsel of any sort, prison cells were overcrowded, medical assistance was withheld, prisoners were forced to participate in religious indoctrinations, they faced mock executions; families of victims were subjected to cruel treatment; they were forced to pay for the bullets used to shoot their loved ones, they were assaulted when they tried to hold mourning services, gravestones were smashed and mass burial sites were covered with tarmac.

169. The Tribunal further concludes that all elements required for establishing crimes against humanity has also been met in this case:

- i. Widespread; the crimes enumerated in the previous paragraph have been committed in all 32 prisons identified by the witnesses; torture, rape, sexual abuse, and murder were commonplace all the prisoners across the country were exposed to the same treatment; men, women and even minors of a broad spectrum of political affiliation as well as ethnic and religious minorities were subjected to these crimes;
- ii. Systematic: the criminal conduct in all prisons followed the same pattern; prisoners were invariably dumped in temporary detention centres which were over-crowded, without sanitary and hygiene requirements; the prisoners were then subjected to long periods of interrogation accompanied by relentless torture (*bastinado* and *ghapani* being the usual treatment); they were left with their injuries (suffered as a result of extensive torture) without any medical treatment, waiting for hours (and sometimes days) in the corridors of prisons for completion of their interrogation; prisoners were blindfolded throughout the interrogation and sometimes even in their cells; prisoners were punished by solitary confinement or further tortures (including “grave”) for not complying with every order of their wardens; prisoners were taken blindfold to a religious judge, mostly inside the prison compound, for a few minutes trial without the benefit of counsel or any

legal assistance and effectively without right of defence; any appeal or objection would result in the likely lengthening of prison terms; prisoners were sentenced to death for mere political belief or for failing to accept or embrace Islam; female prisoners were raped before execution; sexual abuse for both men and women were widespread and systematic in all prisons;

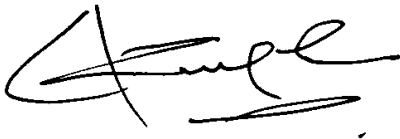
- iii. Civilian population: the crimes were committed against political prisoners and within the compound of the prisons;
- iv. Knowledge of Perpetrators: as the Truth Commission has established these violations “were devised, instigated and executed (or caused to be executed) by a single central authority”; Khomeini’s *fatwa* clearly establishes that the decision to exterminate political prisoners emanated from the highest echelons of the regime and executed with their full knowledge and complicity.

170. Having established the above factual and legal background we hereby unanimously adjudge and declare:

The Verdict

- (I) The Islamic Republic of Iran has committed crimes against humanity in the 1980-1989 periods against its own citizens in violation of applicable international laws;
- (II) The Islamic Republic of Iran bears absolute responsibility for the gross violations of human rights against its citizens under the International Covenant of Civil and Political Rights; and,
- (III) Customary International law holds the Islamic Republic of Iran fully accountable for its systematic and widespread commission of crimes against humanity in Iran in the 1980-1989 period.

Made in The Hague on this fifth day of February 2013

A handwritten signature in black ink, appearing to read 'Kriegler', with a stylized flourish at the end.

JOHANN KRIEGLER

President Iran Tribunal