

United Nations Commissions of Inquiry and the Case for Iran

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I. Introduction

This document traces the history of human rights violations in Iran over the last several decades, with an eye toward recommending processes by which the United Nations and other relevant actors can address these abuses. During the lead-up to the 2013 election, Iranian President Hassan Rouhani stated that he would work toward “upholding justice across the country and civil rights,”¹ enhancing “diplomatic interaction and cooperation with all countries in the region to remove the clouds of misunderstanding and rivalry,” and revising “many policies and practices that have been undertaken by the current government.”² Such remarks indicate a new willingness on the part of the Iranian government to engage with the international community. The present moment is thus conducive to advocacy for mechanisms that, through establishing accountability for Iran’s longstanding pattern of human rights violations, will bolster the Rouhani government’s efforts to uphold its human rights obligations.

Since the 1979 revolution, Iranian state forces have committed offenses against civilians with impunity. While the late 1980s marked the high point of such violations, with thousands executed, abuses have continued to the present day. Governance structures created by the 1979 revolutionary constitution, such as the Revolutionary Courts, the Council of Guardians, and the Supreme Leader, have proved formidable in preventing reform-minded presidents from making any significant lasting changes. Although evidence suggests that state violence has included crimes against humanity³ as well as gross and systematic violations of human rights,⁴ the Iranian government has yet to face any consequences for its actions and has repeatedly denied United Nations (UN) special procedures access to the country. UN Commissions of Inquiry investigate government abuses that constitute violations of international human rights and humanitarian law. These mechanisms are geared towards addressing the types of human rights abuses committed by the Islamic Republic. Such an inquiry will help Iran lay the foundations for an open and just society.

II. Recommendations

Focusing on the lack of accountability for Iranian government violations over the past three decades, this paper examines the possibility of a Commission of Inquiry geared towards remedying ongoing impunity for human rights violations in Iran. The Human Rights Council’s recent creation of a Commission to examine longstanding abuses in North Korea serves as an important model for a future inquiry in Iran. As demonstrated by continued impunity for offenses committed by the Iranian government, a Commission

¹ BBC News, *Iran Election: Hassan Rouhani in His Own Words*, June 15, 2013, <http://www.bbc.com/news/world-middle-east-22921680>.

² Asharq Al-Awsat, *In Conversation with Hassan Rouhani*, June 15, 2013, <http://www.aawsat.net/2013/06/article55305525>.

³ See section IV.B.1 *infra*. Under customary international law (CIL), a determination that abuses constitute crimes against humanity requires a demonstration that they were committed against a civilian population and were either systematic *or* widespread.

⁴ See section IV.B.2 *infra*. The expression “gross and systematic” violations describes more generalized violence against civilians, destruction of infrastructure (particularly when committed in a discriminatory manner), and violations such as arbitrary detention, enforced disappearances, and torture.

is needed to ensure that serious violations of international law no longer go uninvestigated and unpunished. The lengthy history of such violations in Iran only underscores the urgency of such a mechanism. The Human Rights Council should, therefore, follow the North Korean precedent and establish a Commission that investigates prolonged patterns of violence in the Islamic Republic.

On the domestic front, the Rouhani government should evince its resolve to break with the extremism of past governments by engaging with UN special procedures and, in particular, allowing the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran (Special Rapporteur) access to the country. Greater engagement with this UN special procedure could lead to the establishment of a Commission of Inquiry or, at the very least, facilitate dialogue about human rights issues. Alternatively, in light of the Rouhani government's repudiation of previous governments' policies, a domestic inquiry or, failing an official investigation, public acknowledgement of longstanding violations would serve as a meaningful first step toward a society based on the rule of law.

III. The Islamic Republic's History of Impunity

As William Faulkner famously stated, "The past is never dead. It's not even past." The violence that followed the 2009 election paralleled the repression of the Islamic Republic's founding decades. The numerous similarities between the 1980s and the post-election repression illustrate the importance of contextualizing this most recent spurt of violence. The 1980s, for example, saw authorities resort to religious and ethnic persecution in times of unrest; the crackdown in 2009 was likewise characterized by the targeting of minority groups. In a crackdown that resembled the mass executions that took place in 1988, Iranian authorities targeted 2009 dissidents for the crime of being a *mohareb*—an enemy of God—sending many such detainees to the very same prisons that served as sites of state violence in the late 1980s.⁵ Even the televised show trials and coerced public confessions of the 1980s were mimicked in 2009.⁶ Two months after the election, Iranian state television ran footage of the mass trial of over 100 reformists, a scene eerily reminiscent of the early era of the revolution.

The similarities enumerated above should not be surprising, as many of those in power in 2009 were involved in the atrocities of the 1980s, and many of those same people hold positions of power to this day, such as Mohammad Moghisei, Hossein Ali Nayyeri, Ebrahim Raisi, Esmail Shushtari, and Ali Mobasher.⁷ Although the country elected a new president in the summer of 2013, authority in government structures has not, in reality, changed hands. Perpetrators of human rights abuses continue to enjoy impunity. There have been more than 30 General Assembly, Human Rights Commission, and Human Rights Council resolutions addressing Iran's human rights violations spanning the years from 1985 to 2013. These resolutions often appear interchangeable: The documents utilize the same language, condemn the same list of

⁵ See The Boroumand Foundation, *The Massacre of Political Prisoners in Iran, 1988, Report of an Inquiry*, April 2011, p. 117.

⁶ *Id.*

⁷ *Id.*, pp. 114-115.

crimes, and call upon the Islamic Republic to implement the same reforms. The 2009 General Assembly resolution on Iran, for example, expresses concern about “the use of torture and other cruel, inhuman or degrading treatment or punishment” and resolves to “continue its examination of the situation of human rights” in Iran during the following session. Its 1985 counterpart likewise laments violations of “the right to freedom from torture or cruel, inhuman or degrading treatment or punishment, deciding to “continue its examination of the situation of human rights” in Iran at its next meeting. Over the decades, with successive Iranian governments consistently ignoring the UN’s exhortations, pledges to discuss the “situation” at a subsequent meeting have piled up.

The following section traces the history of state human rights violations since the 1979 revolution and highlights the continuing pattern of impunity in Iran.

A. The Revolution to 2009

1. The Revolution

The 1979 revolution marked the end of Mohammad Reza Shah Pahlavi’s secular-nationalist regime. Backed by Western powers such as the United States, the Shah had occupied the Iranian throne since 1941 and built a centralized state reliant on oil revenues.⁸ Throughout the Shah’s reign, many sectors of society expressed discontent over the Shah’s corruption, suppression of political dissent, and abandonment of traditional Islamic values.⁹ In September 1978, the killing of more than a hundred protesters by the Shah’s imperial guards galvanized revolutionaries.¹⁰ By February 1979, the Shah, abandoned by his Western allies, was forced to step down. The various groups responsible for the Shah’s downfall subsequently vied for power, including Marxists, democratic socialists, and other leftists. Ayatollah Khomeini and his vision of an Islamic theocratic republic soon achieved supremacy.¹¹

The Islamic Republic of Iran’s constitution, adopted in December 1979, affords religious, conservative, extremist leadership nearly unlimited authority. Although the document creates popularly elected bodies such as the presidency and the Majles (parliament), it also situates the Supreme Leader, ostensibly an Islamic scholar of the highest rank, at the top of the political pyramid.¹² Correspondingly, the Council of Guardians, twelve senior clerics appointed by the Supreme Leader, oversees all laws passed by the Majles.¹³ The Head of the Judiciary, also appointed by the Supreme Leader, chooses chief judges tasked with enforcing the law.¹⁴

⁸ *The Massacre of Political Prisoners in Iran, 1988*, p. 16.

⁹ *Id.*

¹⁰ *Id.*, p. 18.

¹¹ Justice for Iran, *Crime and Impunity; Sexual Torture of Women in Islamic Republic Prisons* (2012), pp. 39-40.

¹² *Id.*

¹³ *Id.*, p. 7.

¹⁴ *Id.*

2. Human Rights Violations in the 1980s

Although leftist groups and other political organizations opposed to Khomeini operated freely in the period immediately following the revolution, the new government quickly began taking brutal action to stamp out dissent.¹⁵ Despite the international community's awareness of such abuses, Ayatollah Ruhollah Khomeini's forces faced no intervention. This section will trace human rights violations committed by the regime during the 1980s, an escalating pattern of offenses that reached a climax with the 1988 prison massacre.

In the unstable first years of the Islamic Republic's existence, the post-revolutionary government attempted to maintain control through violence. By March 1980, it is estimated that as many as 700 individuals had already been executed.¹⁶ These victims, mostly Kurdish dissidents, Shah supporters, leftist activists, Arabs, or drug dealers, were reportedly denied both lawyers and fair trials.¹⁷ In conjunction with such repressive methods, the regime began enforcing stringent regulations against women (including laws requiring females to wear the *hijab*), controlling all media output, and closing universities.¹⁸ The Revolutionary Guards, a branch of Iran's military dedicated to upholding Islamic rule, took the lead in this campaign of intimidation. Revolutionary Courts, authorized to try "any offense against internal or external security," sanctioned the arrests and detention of political opponents.¹⁹

Although, as noted above, the Khomeini government committed many human rights violations in its seminal years, these abuses escalated in the summer of 1981, soon after the commencement of the Iran-Iraq war. On June 18, Mojahedin-e Khala (MKO), a prominent Islamic-leftist organization that aligned itself with Saddam Hussein, proclaimed that it would subsequently use force in its struggle against the Khomeini regime.²⁰ On June 20, after hundreds of thousands of MKO supporters took to the streets for a country-wide protest, security forces engaged in a brutal and swift crackdown.²¹ Reports estimate that by June 23, 400 demonstrators had been arrested and 25 executed.²² In the following years, many thousands more were detained and reportedly tortured for confessions. Furthermore, in overseeing the significant female population behind bars, guards allegedly employed various methods of sexual abuse: the rape of virgin girls before execution, sexual torture, and verbal harassment.²³

As Iran's prisons grew ever more crowded, UN bodies issued resolutions expressing concern at reported human rights violations. A 1984 Commission on Human

¹⁵ See *Crime and Impunity; Sexual Torture of Women in Islamic Republic Prisons*, pp. 41-42.

¹⁶ *Id.*, p. 45.

¹⁷ *The Massacre of Political Prisoners in Iran*, p. 23.

¹⁸ See *Crime and Impunity; Sexual Torture of Women in Islamic Republic Prisons*, pp. 41-42.

¹⁹ Human Rights Watch. *Stifling Dissent: The Human Rights Consequences of Inter-Factional Struggle in Iran*, May 2011, p. 18.

²⁰ *Crime and Impunity; Sexual Torture of Women in Islamic Republic Prisons*, p. 53.

²¹ *Id.*

²² *The Massacre of Political Prisoners in Iran*, p. 24.

²³ See *Crime and Impunity; Sexual Torture of Women in Islamic Republic Prisons*, pp. 191-196.

Rights (CHR) resolution, for example, noted evidence of “summary and arbitrary executions, torture, detention without trial, religious intolerance, and persecution.”²⁴ A 1985 General Assembly (GA) resolution likewise referred to “gross violations of human rights” such as summary and arbitrary executions, torture, cruel, inhuman and degrading treatment, and arbitrary arrests and detentions.²⁵ Although these resolutions urged further examination of the situation, no concrete action ensued, and Khomeini’s regime was not held accountable for its alleged crimes. It is estimated that, from the June 20 MKO protest to 1984, as many as 12,000 individuals were executed.²⁶ In 1985, the regime improved conditions within prisons and released a number of prisoners.²⁷ The following few years of reforms, however, provided only a brief respite from governmental abuses.

3. The 1988 Massacre

Although the post-revolutionary era in Iran has been characterized by human rights abuses, what is colloquially known as the “1988 prison massacre” stands out for the scope of its violence. In 1987, detainees throughout Iran began to observe changes in prison policy.²⁸ In some facilities, authorities distributed questionnaires and conducted interrogations about prisoners’ religious and political views, separating and reorganizing incarcerated populations based on their answers.²⁹ On July 25, 1988, following Iran’s announcement of a ceasefire in the Iran-Iraq war, MKO launched an armed attack from the Iraq border. After MKO’s rapid defeat, prisons across the country entered a state of emergency: Families were prevented from visiting, the media was denied access, and intensive interrogations commenced.³⁰ A *fatwa* issued by Khomeini created three-man “death committees,” composed of a religious judge, a public prosecutor, and an intelligence chief.³¹ These commissions evaluated which prisoners warranted torture or execution.³²

In the first months of the massacre, the regime focused its efforts on MKO members. The commissions, which engaged in cursory, clandestine questioning, tried such detainees for *moharebeh* (enmity against God), citing MKO’s supposedly heretical political ideology.³³ Prisoners—most of whom had been jailed for political offenses—were usually executed on the same day, and many of those spared execution were subjected to torture.³⁴ In late August, the commissions started interrogating members of

²⁴ UN Commission on Human Rights, Resolution 1984/54, *Situation of Human Rights in Iran*, March 14, 1984.

²⁵ UN General Assembly, *Resolution on the Situation of Human Rights in the Islamic Republic of Iran*, December 13, 1985, A/RES/40/141.

²⁶ Iran Tribunal-International People’s Tribunal Judgment, February 2013, p. 28.

²⁷ *Crime and Impunity; Sexual Torture of Women in Islamic Republic Prisons*, pp. 56-57.

²⁸ Iran Human Rights Documentation Center, *Speaking for the Dead: Survivor Accounts of Iran’s 1988 Massacre*, 2010, p. 1.

²⁹ *Id.*

³⁰ *See The Massacre of Political Prisoners in Iran*, p. 101.

³¹ *See id.*, p. 1.

³² *Id.*

³³ *The Massacre of Political Prisoners in Iran*, p. 26.

³⁴ Iran Human Rights Documentation Center, *Deadly Fatwa: Iran’s 1988 Prison Massacre*, 2009, p. 1.

other opposition organizations.³⁵ While the questions were different, centering on apostasy and prisoners' beliefs about Islam, the proceedings followed the same unlawful pattern, and the state killed waves of detainees.³⁶

It is estimated that more than 5,000 individuals perished over the course of the several-month massacre, which lasted until late 1988.³⁷ Although the Iranian government has never been held responsible for these atrocities, many human rights organizations and scholars have concluded that the prison massacre, in addition to violating the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, fulfills the legal standard for crimes against humanity: that offenses be widespread or systematic and be directed against a civilian population.³⁸ As the torture and executions occurred in prisons throughout Iran, the violations were widespread. Furthermore, as these crimes were committed pursuant to a *fatwa* issued by the Supreme Leader and carried out in a methodical fashion by the three-man commissions, they were systematic. The 1987 synchronized interrogation and reorganization of prisoner populations also serve as evidence that a policy was in place.

In 2013, an unofficial international criminal tribunal, organized by human rights advocates, survivors, and the family members of victims, came to a similar conclusion. Calling for perpetrators to be brought to justice, judges and scholars sitting on the court found that the Khomeini regime had committed crimes against humanity in the form of murder, torture, persecution, sexual abuse, and degrading and inhumane treatment.³⁹ The UN (having received reports from non-governmental organizations and the Commission on Human Rights' Special Representative for Iran, Reynaldo Pohl) was made aware of such violations soon after they occurred but never took punitive action or initiated further investigation.⁴⁰ The 1988 General Assembly resolution, for example, referred to a "renewed wave of executions," expressed concern about the same "grave human rights violations" enumerated in the aforementioned 1985 document, and ultimately decided to keep the situation "under consideration" for re-examination at the next session.⁴¹ The following year's resolution, however, did not mention the executions, nor did its 1990 counterpart. Pohl's calls for action likewise did not yield concrete results.⁴² Perhaps emboldened by the UN's silence on the prison massacre, the Islamic Republic continues to deny that the executions ever took place.⁴³

4. Religious and Ethnic Persecution

In addition to committing crimes against political dissidents, the Iranian regime engaged in religious and ethnic persecution throughout the 1980s. The substantial ethnic

³⁵ See *The Massacre of Political Prisoners in Iran*, p. 111.

³⁶ See *id.*, pp. 61, 80.

³⁷ See *Iran Tribunal Judgment*, p. 49.

³⁸ See *The Massacre of Political Prisoners in Iran*, pp. 111-112.

³⁹ See *Iran Tribunal Judgment*, pp. 48-51.

⁴⁰ See *The Massacre of Political Prisoners in Iran*, p. 3.

⁴¹ UN General Assembly, *Resolution on the Situation of Human Rights in the Islamic Republic of Iran*, December 8 1988, A/RES/43/137.

⁴² See *The Massacre of Political Prisoners in Iran*, p. 2.

⁴³ *Deadly Fatwa: Iran's 1988 Prison Massacre*, p. 1.

minority population in Iran includes Kurds, Arabs, Azaris, Baluchis, Lurs, and Turkmen. Most of these groups are Sunni Muslims and are, therefore, religious minorities as well. Iran, a majority Shia country, is also home to smaller religious groups, such as Christians, Baha'is, Zoroastrians, and Jews. Although the Iranian constitution protects fundamental rights, constitutional safeguards have failed to prevent the regime from persecuting minorities. The government's treatment of the Kurds and Baha'is provides an illustrative case study of the hostility and violence that many minority groups in Iran face.

The Kurds are an isolated population, both politically and geographically.⁴⁴ Concentrated in remote areas of Northwestern Iran, they initially supported the revolution and were happy to see the Shah's regime come to an end.⁴⁵ After the Kurds sought more autonomy within the fledgling Islamic Republic, however, Khomeini issued an order directing the military and Revolutionary Guards to eliminate the Kurdish resistance movement.⁴⁶ For several weeks in late 1979, Khomeini's forces launched a brutal crackdown against the armed Kurdish insurgency, with civilians bearing the brunt of the violence. Destroying and taking over Kurdish towns, government troops arrested men, women, and boys without warrants or formal charges.⁴⁷ Revolutionary Court judges proceeded to hold brief trials, convicting prisoners of offenses such as being a "corrupter on earth and at war with God and his prophet" and supporting Kurdish political parties.⁴⁸ Media sources reported that up to 80 people were executed in three weeks.⁴⁹

The UN Sub-Commission on Human Rights denounced the massacres at the time and various human rights organizations have since characterized the Kurdish crackdown as a serious violation of international law.⁵⁰ However, the Islamic Republic never investigated or prosecuted anyone for these crimes. Unfortunately, the events of 1979 were but a preview of the Islamic Republic's onslaught against the Kurds. Executions and fighting continued in Kurdish areas after 1979 and eventually developed into a full-blown war.⁵¹ Although formal hostilities have ended, the government has persisted in suppressing Kurdish Iranian voices: arresting and detaining Kurds, discouraging Kurdish efforts to practice Sunni Islam, and opposing the use of the Kurdish language in schools and the media.⁵²

As mentioned above, such repression is by no means limited to the Kurds. Baha'is, for example, have likewise seen persecution in the post-revolutionary era, including extra-judicial killing, torture, imprisonment, house raids, employment and

⁴⁴ Human Rights Watch. *Iran, Religious and Ethnic Minorities: Discrimination in Law and Practice (Summary)*, September 1997, http://www.hrw.org/legacy/reports/1997/iran/Iran-01.htm#P54_3676.

⁴⁵ Iran Human Rights Documentation Center, *Haunted Memories; the Islamic Republic's Executions of Kurds in 1979*, September 2011, p.1.

⁴⁶ *See id.*

⁴⁷ *Haunted Memories; the Islamic Republic's Executions of Kurds in 1979*, p.1.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*, p. 43.

⁵¹ *Id.*, p. 2.

⁵² *Id.*

education discrimination, and seizure of property.⁵³ Islamic Republic authorities have characterized Baha'is as a "heretical sect."⁵⁴ Between 1979 and 1987, more than 200 Baha'is were executed on the basis of their faith alone, usually after arbitrary and summary trials in a Revolutionary Court.⁵⁵ As with Sunni Islam, the Iranian government has attempted to suffocate the Baha'i religion; since 1983, the regime has prohibited Baha'i assemblies and has made participation in Baha'i activities, such as festivals and private worship, a prosecutable offense.⁵⁶ A 1991 memorandum from the Supreme Revolutionary Cultural Council explicitly ordained an official policy of persecution, with the highest echelons of the Iranian government authorizing actions so that Baha'i "progress and development shall be blocked."⁵⁷ UN General Assembly and Human Rights Commission resolutions have repeatedly expressed concern about the situation of the Baha'is,⁵⁸ and human rights organizations have likewise deemed the government's treatment of Baha'is to be in contravention of the International Covenant on Civil and Political Rights and international criminal law.⁵⁹ However, the Iranian government has continued to persecute the Baha'is and other minority groups.⁶⁰

5. 1997 to the 2009 Elections

After the atrocities of the 1980s, the 1990s saw relatively moderate Iranian governments come into power. With repressive post-revolutionary institutions immutably strong within the constitutional framework, however, this moderating tendency receded in the face of a conservative backlash, culminating in the outbreak of violence following the 2009 elections.

The end of the Iran-Iraq war in 1988, Khomeini's death the following year, and popular dissatisfaction with the regime's oppressive policies created an opening for a more centrist, secular government to assume control.⁶¹ Ali-Akbar Hashemi Rafsanjani was elected to the presidency in 1993 and helped implement economic reforms geared toward opening Iran up to foreign investment and normalizing relations with other countries.⁶² Although hardline conservatives opposed Rafsanjani, his successor, Mohammed Khatami, ran on an even more progressive platform. With the expansion of universities in the early 1990s and increasing student involvement in democratic politics, Khatami, emphasizing the rule of law and the protection of civil liberties, won the 1997

⁵³ Iran Human Rights Documentation Center, *Crimes Against Humanity: the Islamic Republic's Attacks on the Baha'is*, November 2008, p. 7.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Iran, Religious and Ethnic Minorities: Discrimination in Law and Practice.*

⁵⁷ Nazila Ghanea-Hercock, *Human Rights, the UN, and Baha'is in Iran*, 2002, p. 135.

⁵⁸ UN General Assembly, *Resolution on the Situation of Human Rights in the Islamic Republic of Iran*, December 19, 2001.

⁵⁹ See *Crimes Against Humanity: the Islamic Republic's Attacks on the Baha'is*, pp. 2-3, 8.

⁶⁰ *Id.*, pp. 8-9.

⁶¹ Ahmad Ashraf and Ali Banuazizi, *Intellectuals in Post-Revolutionary Iran: Iran's Tortured Path Towards "Islamic Liberalism,"* INTERNATIONAL JOURNAL OF POLITICS, CULTURE AND SOCIETY (2001).

⁶² *Id.*

election in a landslide victory.⁶³ In his initial years in office, Khatami loosened restrictions on the media and continued to plead the case of human rights.⁶⁴ His efforts, however, were offset by a conservative onslaught, including a series of political assassinations of Iranian dissident intellectuals.

With institutions such as the Council of Guardians, the Revolutionary Courts, the Revolutionary Guard, and the Supreme Leader enshrined in the constitutional structure created by Khomeini's revolution, Khatami was unable to substantively advance his vision of a more moderate Iran.⁶⁵ In July 1999, conservative judges ordered the closure of a pro-reform newspaper, igniting peaceful protests at Tehran University. Government forces and paramilitary proceeded to storm the dormitories and assault students, killing at least four and injuring and arresting hundreds.⁶⁶ Although the incident sparked large demonstrations throughout the country, security forces and the courts acted rapidly to stifle further attempts at freedom of expression. Starting in April of 2000, the conservative judiciary—in particular, the Revolutionary Courts—shut down more than 40 pro-reform newspapers and magazines, citing their “denigration of Islam and the religious elements of the Islamic revolution” and prosecuting journalists, editors and publishers for their press activities.⁶⁷

The Revolutionary Courts contravened legal norms such as the right of access to counsel.⁶⁸ They proved instrumental to the targeting of intellectuals and political activists, resulting in increased indefinite and incommunicado detention.⁶⁹ With no independent watchdog media, prison officials, operating with the judiciary, were free to abuse and torture detainees. The early 2000s saw a significant worsening of conditions in such facilities and longer periods of solitary confinement.⁷⁰ Extralegal state forces, including semi-official militias and vigilante groups—what Iranians call “parallel institutions”—assumed ever increasing authority. These groups rolled back other Khatami reforms, such as the relaxing of regulations on women.⁷¹ By the time Mahmoud Ahmadinejad took office in 2005, the moderates and progressives had largely been sidelined within the state. Ahmadinejad's administration furthered the efforts of the conservative vanguard, increasing executions, arrests, and detentions and waging a

⁶³ *See id.*

⁶⁴ Human Rights Watch. *Press Backgrounder on Human Rights in Iran*, 1998, <http://www.hrw.org/reports/1998/09/17/press-backgrounder-human-rights-iran>.

⁶⁵ Human Rights Watch, *Stifling Dissent: The Human Rights Consequences of Inter-Factional Struggle in Iran*, May 2001, p. 2.

⁶⁶ *Id.*, p. 9.

⁶⁷ International Journal of Culture, Politics, and Society. *Iran's Torturous Path Towards "Islamic Liberalism,"* p. 52.

⁶⁸ *Stifling Dissent: The Human Rights Consequences of Inter-Factional Struggle in Iran*, p. 18.

⁶⁹ *Id.*

⁷⁰ *See* Human Rights Watch, *Like the Dead in Their Coffins: Torture, Detention, and the Crushing of Dissent in Iran*, p. 2.

⁷¹ *See id.*, pp. 14-15.

systematic campaign against women's rights.⁷² This volatile and violent political climate set the stage for the events of the 2009 election.

B. Violations 2009 – Present

On June 12, 2009, Ahmadinejad stood for re-election against three other candidates. During the campaign period, the incumbent government had deployed its forces to control the media and harass political opponents.⁷³ Amidst the resentment and mistrust provoked by these actions, the election-day announcement that Ahmadinejad had won the popular vote was met with widespread skepticism.⁷⁴ After opposition candidates alleged election-rigging and Ahmadinejad vehemently denied such accusations, hundreds of thousands of Iranians took to the streets.⁷⁵ As the peaceful protests spread across the country, the police and militia launched a brutal crackdown. Beating, clubbing, and occasionally shooting demonstrators, security forces arrested thousands in the first week.⁷⁶ In addition to shutting down public demonstrations, authorities raided student dormitories and detained reformist writers and political activists.⁷⁷ Just a month after the election, an estimated 4,000 individuals had been arrested in Tehran alone.⁷⁸ With thousands incarcerated throughout the country, prisoners were subjected to torture and often coerced into confessions.⁷⁹ Undeterred by state violence, however, the former candidates and their supporters turned to the Internet, condemning the post-election human rights violations and calling upon the government to bring perpetrators to justice.⁸⁰ Although the demonstrations had largely been quashed by 2011, government harassment, violence, and contravention of international human rights law, as discussed below, persisted to the very end of Ahmadinejad's regime in 2013 and continue today.

These abuses, ranging from harassment of political activists to extrajudicial killings, represent grave violations of international human rights law. Since 2009, the Iranian government has continued to target populations that it perceives as a threat. In addition to protestors and political activists, other groups also face systematic mistreatment by the government and the forces that support it.

- The government has escalated its discrimination against and ill-treatment of individuals based on their ethnicity.⁸¹ Kurds, Arabs, Azeri Turks, Baluch, and Turkmen are systematically deprived of their rights.

⁷² Human Rights Watch, *Iran: Rights Crisis Escalates - Faces and Cases from Ahmadinejad's Crackdown*, September 2008.

⁷³ Human Rights Watch, *The Islamic Republic*, p. 31, February 2010, p. 1.

⁷⁴ *Id.*

⁷⁵ *Id.*, p. 4.

⁷⁶ *Id.*, p. 2.

⁷⁷ *Id.*

⁷⁸ Justice for Iran, *Crime and Impunity*, p. 13.

⁷⁹ *The Islamic Republic at 31*, pp. 2-3.

⁸⁰ *Id.*, p. 3.

⁸¹ Amnesty International, *We Are Ordered to Crush You: Expanding Repression of Dissent in Iran*, February 28, 2012, p. 47.

- Religious discrimination is enshrined in the Iranian constitution, which recognizes only Zoroastrian, Jewish, and Christian Iranians as religious minorities who are free to practice their faiths within the limits of the law.⁸² Since 2009, Iran’s ongoing persecution of the Baha’i, in particular, has continued with impunity.⁸³ Other religious minorities, including Sunni Muslims, Dervishes, and Christians, have reported persecution on account of their religious beliefs and practices.⁸⁴ Christians from Protestant and evangelical churches have allegedly faced increased persecution in Iran since the 2009 election.⁸⁵
- As a result of the unrest that followed the 2009 election, the Iranian government also increased its repressive treatment of university students, as “campuses were seen as one of the main hubs of dissent.” Peaceful demonstrations on National Student Day were forcibly dispersed and dozens of students were arrested and imprisoned.⁸⁶ This targeting of students has continued in the years since the immediate post-election period.⁸⁷

The Iranian government’s abuses can be broken down into five categories, all of which map onto the standards applicable to gross and systematic human rights violations and crimes against humanity. They include extrajudicial and arbitrary executions; torture; inhumane conditions in detention; arbitrary detention; and forms of discrimination and mistreatment that constitute systematic violations of human rights law.

1. Extrajudicial and Arbitrary Executions

In the aftermath of the 2009 elections, the Iranian government has been responsible for the extrajudicial and arbitrary executions of a number of its citizens. Following the demonstrations in June, authorities carried out disappearances of protestors, holding the bodies of demonstrators killed in the post-election violence for weeks at a time, preventing family from learning the cause of death, and forbidding funerals.⁸⁸ Reports of deaths emerged as early as Saturday, June 13, the day after the disputed election; protestor Sohrab Arabi’s death was recorded by the coroner on June

⁸² Iranian Constitution. See also International Federation for Human Rights, *The Hidden Side of Iran: Discrimination against Ethnic and Religious Minorities*, October 2010, p.9 (“The president and head of the Judiciary can only be Shi’a Muslims. Judges can only be Muslims, and members of Parliament can only be Muslims. The three recognized minority religions are allocated five members of Parliament, but they cannot stand for election and be elected by other Iranians.”)

⁸³ International Federation for Human Rights, *Iran: Suppression of Freedom, Prison, Torture, Execution... A State Policy of Repression*, November 2011, pp. 31-33.

⁸⁴ See generally *The Hidden Side of Iran*.

⁸⁵ Amnesty International, *Iranian Christian Pastor Accused of “Apostasy” Must Be Released*, September 30, 2011.

⁸⁶ Amnesty International, *A Lesson in Exclusion – Iran’s Harsh Treatment of Student Activists*, September 2013, <https://www.iranrights.org/english/document-2459.php>

⁸⁷ As recently as September 2013, Amnesty International has campaigned for the release of student prisoners of conscience, including some who were imprisoned during the 2009 crackdown after “being convicted of vaguely-worded national security charges.” See *id.*

⁸⁸ Iran Human Rights Documentation Center, *Violent Aftermath: The 2009 Election and Suppression of Dissent in Iran, February 2010*, p. 60.

19, but his family did not receive his body until July 11.⁸⁹ Similarly, on June 16, the Governor of Tehran Province confirmed the deaths of only seven individuals, leaving at least four unaccounted for.⁹⁰

A second wave of attacks on peaceful protestors occurred during the fall and winter of 2009 in response to major demonstrations held on November 4 (the anniversary of the takeover of the US embassy in 1979), December 7 (National Student Day), and December 27, in conjunction with the Shia religious holiday of Ashura.⁹¹ Among the abuses reported from that period were attacks by security forces that resulted in the deaths of at least eight protestors.⁹²

In 2010, a prominent Kurdish activist was hanged, along with three other Kurds, for his political activities. Veteran political observers claimed that “the hangings signaled an effort by the government to cow Iranians in advance of the first anniversary marking the large-scale civil unrest that followed the disputed June 12, 2009, presidential election.”⁹³ For the Kurdish community, however, “the hangings of these individuals were part of a pattern of discrimination by the IRI [Islamic Republic of Iran] that has continued unabated since well before June 2009.”⁹⁴ As of April 2012, there were an estimated 14 Kurds on death row in Iran, some of whose family and friends have maintained that the detained individuals are merely peaceful activists wrongfully accused of involvement with armed groups or of conducting violent acts themselves.⁹⁵

Furthermore, defenders of ethnic minority rights are subjected to judicial harassment as a result of their activities, and some activists have been executed for this advocacy.⁹⁶ Since 2009, the government has continued to target Ahwazi Arab protestors, killing at least three during and after demonstrations in April 2011.⁹⁷ And in January 2014, human rights groups reported that in “the last two years, on at least two occasions, executions of Arab political and cultural activists were carried out in unknown locations, without the knowledge of either the lawyers or the families of the executed.”⁹⁸

2. Torture

Although the Iranian Constitution technically prohibits torture, Iran has not ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading

⁸⁹ *Violent Aftermath*, p. 60.

⁹⁰ *Id.*

⁹¹ *The Islamic Republic at 31*, p. 3

⁹² *Id.*

⁹³ Iran Human Rights Documentation Center, *On the Margins: Arrest, Imprisonment, and Execution of Kurdish Activists in Iran Today*, April 2012, p. 1.

⁹⁴ *Id.*

⁹⁵ *Id.*, p. 4.

⁹⁶ *We Are Ordered to Crush You*, p. 47.

⁹⁷ *Id.*, pp. 51-52.

⁹⁸ *Secret Executions of Ahwazi Arabs in Iran Must Be Stopped: Joint Statement by 13 Human Rights Organizations*, January 20, 2014, <http://iranhr.net/2014/01/secret-executions-of-ahwazi-arabs-in-iran-must-be-stopped/>

Treatment or Punishment, and there have been numerous reports of torture in government detention facilities since 2009.⁹⁹

Following the 2009 elections, United Nations experts voiced concern over reports that the government was torturing detainees to obtain confessions.¹⁰⁰ In appeals to the government during this time, the Special Rapporteur on Torture referred to various torture methods that were allegedly being used, especially on minorities, journalists, human rights lawyers, and political activists; the methods included sleep deprivation, beatings, and stress positions.¹⁰¹ A subsequent study of torture in Iran following the 2009 elections found that “torture was a key tool of repression used by the Iranian authorities.”¹⁰²

Ethnic minorities, in particular, have reported torture at the hands of government actors. Kurdish detainees on death row were reportedly subjected to coercion and torture in interrogations.¹⁰³ Ahwazi Arabs who have been arrested also reported torture and ill-treatment while in detention.¹⁰⁴ In February 2012, three UN experts issued a statement expressing grave concern about the alleged torture and death of two Ahwazi Arab activists detained by the Iranian state.¹⁰⁵

More recent reports continue to express concern regarding the frequent use on detainees of torture and other inhumane punishments, including flogging, stoning, amputation, and capital punishment.¹⁰⁶ A report by special procedures from February 2012 singled out Evin Prison, a large prison complex where authorities held prominent political figures and activists.¹⁰⁷ The report detailed the practice at the prison of holding political prisoners in prolonged solitary confinement and noted reports of the widespread use of torture. A February 2013 report by the Special Rapporteur on the situation of human rights in Iran documented at least 60 cases of alleged torture, both physical and psychological.

⁹⁹ See *Report of the Secretary-General on the Situation of Human Rights in the Islamic Republic of Iran*, September 23, 2009, A/64/357, p. 9, and *Report of the Secretary-General on the Situation of Human Rights in the Islamic Republic of Iran*, August 22, 2012, A/67/327, pp. 3-4.

¹⁰⁰ UN Office of the High Commissioner for Human Rights, *Iran: Detainees Subjected to Torture and Ill-treatment to Extract Confessions, Warn UN Experts*, August 13, 2009, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=36&LangID=E>.

¹⁰¹ Secretary-General September 2009 Report.

¹⁰² Freedom from Torture, “*We Will Make You Regret Everything: Torture in Iran since the 2009 Elections*,” March 2013, p. 8.

¹⁰³ Iran Human Rights Documentation Center, *On the Margins: Arrest, Imprisonment, and Execution of Kurdish Activists in Iran Today*, April 2012, p. 4.

¹⁰⁴ *We Are Ordered to Crush You*, p. 52.

¹⁰⁵ Secretary-General August 2012 Report, ¶6.

¹⁰⁶ See, e.g., Secretary-General August 2012 Report, ¶4-7; Special Rapporteur September 2012 Report, ¶53-56; Special Rapporteur February 2013 Report, ¶25-33.

¹⁰⁷ UN Human Rights Council, *Communications Report of Special Procedures to the Human Rights Council*, February 23, 2012, A/HRC/19/44.

3. Inhumane Conditions in Detention

The government took many of the thousands of protestors arrested during the summer 2009 post-election demonstrations to Kahrizak Detention Center in southeastern Tehran, a facility reported to maintain filthy conditions and brutal treatment of its detainees,¹⁰⁸ including severe beatings and sexual abuse.¹⁰⁹ Similar offenses allegedly occurred at other police stations, prisons, and detention centers, including Evin Prison. Some of these leaders reportedly gave confessions that appear to have been coerced, incriminating themselves and others of vaguely worded political offenses.¹¹⁰

Many reports of journalists in detention detail cruel conditions, including physical abuse and the frequent use of solitary confinement and isolation from friends and family.¹¹¹ Other journalists are being subjected to inhumane and disproportionate punishments, including death sentences for Internet bloggers accused of *moharabeh* (enmity against God), *fisad-fil-arz* (corruption on earth), collaboration with foreign governments, insulting court leaders, and maintaining pro-opposition websites.”¹¹² Reports also document physical abuse imposed on human rights and defense lawyers in detention.¹¹³

Several women reported being raped while in detention following the 2009 post-election protests, although the exact number is unknown.¹¹⁴ At least one report claims that although some of these women testified before a committee commissioned by two of the presidential candidates and also provided testimony to international human rights organizations, the allegations were not investigated or prosecuted.¹¹⁵ In February 2013, the Special Rapporteur interviewed two female journalists who reported experiencing sexual harassment while in detention.¹¹⁶ Other women report physical abuse during interrogation and threats of death for continued activism.¹¹⁷

4. Arbitrary Detention

Official government statements released in 2009 claimed that more than 5,000 individuals were arrested during the mass post-election demonstrations that summer, but

¹⁰⁸ *The Islamic Republic at 31*, p. 3.

¹⁰⁹ *One Year Later*, p. 13.

¹¹⁰ *The Islamic Republic at 31*, p. 3.

¹¹¹ Special Rapporteur September 2011 Report, ¶ 24, 29, 32, 33, 34.

¹¹² Reporters Without Borders, *Journalists and Media Hounded from All Quarters*, May 10, 2012; UN General Assembly, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, September 13, 2012, A/67/369.

¹¹³ Special Rapporteur September 2011 Report, ¶ 48; Human Rights Watch 2011 Country Summary; Amnesty International, “Iran must overturn jail sentence of prominent lawyer and human rights defender.” June 13, 2012; *Suppression of Freedom*, p 38-39; Amnesty International, *Sakineh Mohammadi Ashtiani’s Fate Unclear While Lawyer Javid Houtan Kiyani Languishes in Jail*, July 24, 2012; *Why They Left*, p. 30.

¹¹⁴ *Suppression of Freedom*, p. 26; Special Rapporteur February 2013 Report, ¶16.

¹¹⁵ *Suppression of Freedom*, p. 26.

¹¹⁶ Special Rapporteur February 2013 Report, ¶16.

¹¹⁷ Amnesty International, *Iran: Journalists under Siege*, April 30, 2010; *Suppression of Freedom*, p. 10.

the real figure is almost certainly higher.¹¹⁸ In the second wave of attacks on peaceful protestors that occurred during the fall and winter of 2009, more than 1,000 people were arrested, according to official figures.¹¹⁹

Student activists have been targets of arbitrary arrest in the years following the election.¹²⁰ In particular, members of student groups such as the Office of the Consolidation of Unity (Daftar-e Tahkim-e Vahdat, OCU), and the Graduates' Association (Advar-e Tahkim-e Vahdat) have been targeted; both groups are characterized by their promotion of human rights and political reform.¹²¹ Furthermore, annual peaceful demonstrations on National Student Day have been forcibly dispersed, with dozens of students arrested and imprisoned.¹²²

Many journalists who did not flee the country after the 2009 elections were subject to arbitrary arrests, prison sentences, and travel and writing bans. More than 30 journalists and bloggers were arrested in the months following the announcement of the election results.¹²³ Reports suggest that journalists were targeted for working for publications that supported or "could have been perceived as supporting" unsuccessful 2009 presidential candidates or for being critical or supposedly critical of the regime.¹²⁴ This pattern of detaining journalists for their journalistic activities continued after 2009. According to the Special Rapporteur, Iran detained more journalists than did any other country in 2011.¹²⁵ At the end of the year, at least 43 journalists and bloggers were in prison for journalistic activities.¹²⁶ As of August 2012, the number was 44. Iran continues to imprison among the highest number of journalists in the world.¹²⁷

The Iranian government also targeted members of human rights non-governmental organizations (NGOs) for arrest and detention, leveling national security charges against human rights NGOs in late 2009 and early 2010.¹²⁸ From December 2009 through March 2010, the government arrested members of a Tehran-based human rights monitoring organization, the Committee of Human Rights Reporters (CHRR).¹²⁹ On March 13, 2010, Tehran's Prosecutor's Office announced that the individuals arrested were part of a network of government opposition groups that was implementing an anti-government project code-named "Iran Proxy."¹³⁰ (Because of this supposed code name, the charges, arrests, and detentions have been referred to as the Iran Proxy Affair). The

¹¹⁸ Amnesty International, *From Protest to Prison: Iran One Year after the Election*, June 2010, p. 5.

¹¹⁹ *Id.*

¹²⁰ *Supra* n. 87.

¹²¹ *From Protest to Prison*, p. 10.

¹²² Amnesty International, *A Lesson in Exclusion – Iran's Harsh Treatment of Student Activists*, September 2013, <https://www.iranrights.org/english/document-2459.php>

¹²³ Human Rights Watch, *2009 World Report: Iran Country Summary*, January 2010.

¹²⁴ Amnesty International, *Iran: Journalists under Siege*; Secretary-General September 2011 Report, ¶30; Special Rapporteur September 2011 Report, ¶31; *Suppression of Freedom*, p. 46.

¹²⁵ Special Rapporteur September 2012 Report, ¶18.

¹²⁶ *Suppression of Freedom*, p. 41.

¹²⁷ *Why They Left*, p. 29.

¹²⁸ Human Rights Watch. *Why They Left: Stories of Iranian Activists in Exile*, December 2012, pp. 19-20.

¹²⁹ *Id.*

¹³⁰ *Id.*, p. 20.

Prosecutor's Office specifically named CHRR, the Center for Defense of Human Rights (CDHR), and Human Rights Activists in Iran (HRA) as part of this network.¹³¹ Some of those arrested have been tried on national security charges, and several are currently serving prison terms. Others are awaiting summons or have left the country.¹³²

A report by the Special Rapporteur estimates that 32 lawyers have been prosecuted by the Iranian government since 2009 and that at least 9 lawyers were detained as of September 2012, with prison sentences ranging from six months to eighteen years and often including bans on the future practice of law.¹³³ The charges lawyers face include "propaganda against the regime," "creating public anxiety," "committing security crimes," "giving interviews to foreign media," "acting against national security," "anti-regime propaganda by giving interviews," and "propagating lies."¹³⁴ Human rights lawyer Shirin Ebadi estimated that 42 lawyers faced government prosecution between 2009 and August 2011.¹³⁵ The Iranian League for the Defense of Human Rights has named 48 lawyers who have been subjected to persecution as a consequence of practicing their profession.¹³⁶ Numerous reports document the arbitrary arrests of human rights lawyers in 2009 and continuing to the present.¹³⁷

In addition, in the lead-up to the 2009 election, authorities arrested and detained several women's rights activists.¹³⁸ Iranian authorities especially targeted women associated with the One Million Signatures Campaign, also known as the Campaign for Equality (the Campaign), a project launched in 2006 to collect signatures in support of a petition opposing gender-biased laws.¹³⁹ In the first of a series of mass show trials in August 2009, the indictment alleged that the women's rights movement was a leader in the "velvet coup."¹⁴⁰ A Revolutionary Court summoned several members of the Campaign in late 2009 on charges related to their activism and issued travel bans for some. More than 50 Campaign members were detained for their Campaign activities.¹⁴¹ Since the events surrounding the 2009 elections, abuses against women's rights activists

¹³¹ *Id.*

¹³² *Id.*, p. 21.

¹³³ Special Rapporteur September 2012 Report, ¶51.

¹³⁴ *Id.*

¹³⁵ *Why They Left*, p. 29.

¹³⁶ *Suppression of Freedom*, p. 38.

¹³⁷ Human Rights Watch, *Iran: Stop arresting, intimidating rights lawyers*, July 26, 2009; Amnesty International, *Iran must free detained human rights lawyer*, September 12, 2011; *Why They Left*, p. 30; Amnesty International, *Iran: End arrests of defense lawyers*, November 16, 2010.

¹³⁸ Iran Human Rights Documentation Center, *Silencing the Women's Rights Movement in Iran*, August 2010, pp. 13-15.

¹³⁹ *Why They Left*, pp. 23-24; *Silencing the Women's Rights Movement*, p. 14.

¹⁴⁰ *Silencing the Women's Rights Movement*, p. 17. "Velvet coup" is a reference to the Czech "velvet revolution" in which power was peacefully transferred from the Communist regime to domestic dissidents. The Iranian government co-opted the term to refer to a supposed attempt by dissidents, aided by foreign governments, to overthrow the Iranian regime. See Robert Mackey, New York Times, "Iran's Fear of a 'Velvet Revolution,'" August 27, 2009, http://thelede.blogs.nytimes.com/2009/08/27/irans-fear-of-a-velvet-revolution/?_php=true&_type=blogs&_r=0.

¹⁴¹ Amnesty International, *Iran: Renewed wave of intimidation and harassment of women's rights activists must end*, November 5, 2009.

have continued. Several women's rights activists have been detained and arrested, and some have been sentenced to prison terms of several years for their activism.¹⁴²

Religious minorities have also faced a wave of arbitrary detention. In August 2010, seven Baha'is who had first been detained in 2008 were each sentenced to 20 years imprisonment for crimes such as "propaganda against the Islamic system" and "corruption on earth."¹⁴³ The appeals court later commuted their sentences to 10 years each.¹⁴⁴

5. Discrimination, Harassment, and Other Forms of Systematic Mistreatment

There is also evidence of a lesser category of abuses that, although not rising to the same level of severity as the above-mentioned violations, are systematic and constitute distinct violations of international human rights law.

Many students were banned from continuing their education as a result of disciplinary marks on their files for participation in "suspicious" activities.¹⁴⁵ This targeting of students has continued in the years since the immediate post-election period.¹⁴⁶

A Reporters Without Borders report estimates that the Iranian government has forced at least 76 Iranian journalists into exile in 2009.¹⁴⁷ In his September 2012 report to the General Assembly, the Special Rapporteur asserted that at least 150 journalists have fled Iran since 2009.¹⁴⁸ An Amnesty International press release states that many of the reporters who fled Iran were working for publications that supported or "could have been perceived as supporting" former presidential candidates in the 2009 election.¹⁴⁹

There have been many reports of interrogation and other forms of harassment being used against the relatives of foreign-based journalists. Steven W. Korn, head of Radio Free Europe/Radio Liberty, Arman Mostofi, head of Radio Farda (the Persian arm of Radio Free Europe), and Peter Horrocks, head of global news at the BBC, reported in October 2011 that relatives of Iranian journalists working for their organizations had

¹⁴² Special Rapporteur September 2011 Report, ¶57; UN Human Rights Council, *Report of the Secretary General on the Situation of Human Rights in the Islamic Republic of Iran*, May 23, 2012, A/HRC/19/82, ¶20; Amnesty International, *Amnesty International's submission to the Commission on the Status of Women regarding concerns about the harassment and imprisonment of women, including rights defenders and members of minorities, in Iran*, August 2011, p. 3; *Suppression of Freedom*, p. 10; Amnesty International, *Iran: Iranian women face prison for rights petition*, January 7, 2011; Amnesty International, *Iran: Further information: Iranian women's rights activist arrested*, July 27, 2011; Special Rapporteur February 2013 Report, ¶50; Secretary-General August 2012 Report, ¶18; Secretary-General September 2013 Report, ¶13.

¹⁴³ *The Hidden Side of Iran*, p. 19.

¹⁴⁴ *Id.*, p. 20.

¹⁴⁵ *A Lesson in Exclusion – Iran's Harsh Treatment of Student Activists*.

¹⁴⁶ *Supra* n. 87.

¹⁴⁷ *Why They Left*, p. 28.

¹⁴⁸ Special Rapporteur September 2012 Report, ¶18.

¹⁴⁹ *Iran: Journalists under Siege*.

faced harassment by government officials after BBC broadcast a documentary about Ayatollah Khamenei.¹⁵⁰ In summer 2013, Radio Farda and BBC reported at least 24 occurrences in which their staff's family members were interrogated and threatened, either to persuade their journalist family members to stop reporting or to spy on them; were subject to travel bans; and were threatened with loss of jobs or pensions for non-cooperation.¹⁵¹

The current government of Iran has enacted cultural bans that operate to oppress specific minority populations. In April 2005, a 1999 ostensibly government-issued letter surfaced that suggested the forcible removal and relocation of Arabs.¹⁵² Authorities disputed its authenticity, but the letter played a role in the Ahwazi Arab “intifada,” or uprising, in April 2005, after which the Iranian government banned Arab cultural activities. Ahwazi politicians and representatives have also contended that the government has implemented settlement policies and other measures aimed at the confiscation of land and displacement of the local Arabic-speaking population. Arabs form the largest incarcerated population in the region of Khuzestan, which some see as evidence of a systematic state policy of targeting Arabs.¹⁵³

The government has also restricted the Baha'i community's right to education, expelling university students after authorities established their religious allegiance.¹⁵⁴ In 2011, Christian pastor Yousef Nadarkhani was detained, tried for “apostasy,” which is not a codified crime, and sentenced to the death penalty, only to have the sentence removed after international outcry.¹⁵⁵

Women in Iran continue to face persecution at the hands of government officials for failing to observe morality codes, especially those that involve improper dress. The government has fined and sentenced women to months in prison for appearing in public without a headscarf or being otherwise improperly dressed and have even taken away prison privileges from women not wearing the *chador* in detention.¹⁵⁶ In 2011, authorities reportedly blamed the victims' dress for an attack on 14 women in which they were kidnapped and gang-raped while at a private party. The government also reportedly relied on the same reasoning in declining to prosecute the perpetrators.¹⁵⁷

6. Censorship and Closures of News Publications

¹⁵⁰ Reporters Without Borders, *Islamic Republic Internationalizes Crackdown on Dissent*, June 28, 2012.

¹⁵¹ Special Rapporteur October 2013 Report, ¶11; Secretary-General September 2013 Report, ¶8.

¹⁵² *The Hidden Side of Iran*, p. 13.

¹⁵³ *Id.*

¹⁵⁴ *Id.*, p. 20.

¹⁵⁵ Amnesty International, *Iranian Christian Pastor Accused of “Apostasy” Must be Released*, September 30, 2011. See also *The Hidden Side of Iran*.

¹⁵⁶ *Suppression of Freedom*, p. 38; Secretary-General September 2011 Report, ¶23; Secretary-General May 2012 Report, ¶34; Special Rapporteur September 2011 Report, ¶56. The *chador* is an outer robe worn by many Iranian women in public. The garment covers the woman's head and upper body while leaving the face exposed.

¹⁵⁷ Special Rapporteur September 2011 Report, ¶56.

Government censorship of news publications pervaded the buildup to and the weeks following the 2009 elections. In 2009, the National Security Council warned newspapers against covering human rights violations or social protests, and the Ministry of Culture and Islamic Guidance (The Ministry) censored newspapers before their publication.¹⁵⁸ In the weeks following the June 13, 2009, announcement of election results, the government blocked or significantly interrupted access to the Internet, banned news publications inside Iran from publishing information about the post-election protests, blocked foreign reporters from the streets, and expelled some foreign journalists from the country.¹⁵⁹

Government bans on print and Internet publications' content continued after 2009.¹⁶⁰ Immediately following the 2009 election, newspapers affiliated with the defeated presidential candidates were targeted for closure.¹⁶¹ According to Reporters Without Borders, the government has shut down at least 55 news publications between 2009 and late 2012.¹⁶²

The government has particularly targeted foreign media, criminalizing association with foreign outlets.¹⁶³ For example, the government identified the British Broadcasting Company (BBC) and Voice of America (VOA) in January 2010 as “subversive” organizations with which Iranians may not communicate. The government blocked satellite transmissions of both organizations.¹⁶⁴ Documentary film-makers and others working with the BBC have been arrested on charges of collaborating with “anti-Iranian missions,” “spreading lies,” and “attempting to manipulate public opinion.”¹⁶⁵ As recently as January 2013, authorities arrested 14 journalists because of their “connections to foreign media.”¹⁶⁶

IV. The Case for Iran

A. Precedent for United Nations Action: Commissions of Inquiry

1. Overview of UN Commissions of Inquiry

Currently the United Nations employs one mechanism to directly investigate human rights abuses that affect more than one population and include more than one kind of violation: the Commission of Inquiry.¹⁶⁷ UN Commissions of Inquiry are bodies that

¹⁵⁸ Human Rights Watch, *2009 World Report: Iran Country Summary*.

¹⁵⁹ Amnesty International, *Iran: Journalists Detained as New Restrictions Tighten*, June 26, 2009.

¹⁶⁰ *Why They Left*, pp. 33-34; Secretary-General May 2012 Report, ¶33.

¹⁶¹ Human Rights Watch, *2009 World Report: Iran Country Summary*.

¹⁶² *Why They Left*, p. 28.

¹⁶³ *Iran: Journalists under Siege*

¹⁶⁴ *Id.*

¹⁶⁵ Secretary-General May 2012 Report, ¶33.

¹⁶⁶ Human Rights Watch, *Iran: Free Journalists Swept up in Raids*, January 29, 2013.

¹⁶⁷ UN special procedures can also conduct country visits and other research, but their mandates are limited thematically (e.g., torture, arbitrary detention, enforced disappearances). Even where there are country-specific special procedures (e.g., the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran), these have not been considered a substitute for a Commission of Inquiry into allegations

conduct in-depth investigations into human rights abuses, including isolated events and ongoing violations.¹⁶⁸ The Commissions conduct fact-finding investigations and analyze the facts within the applicable legal framework.¹⁶⁹ These investigations result in public findings and recommendations that are presented to the United Nations.¹⁷⁰

2. Commissions of Inquiry Established by the Human Rights Council versus the Security Council

Generally speaking, the Security Council has tended to create Commissions of Inquiry in response to alleged crimes against humanity. Moreover, Security Council Commissions have referred to widespread violations of humanitarian law, as opposed to human rights violations. The Security Council resolutions establishing Commissions of Inquiry on Yugoslavia, Rwanda, Burundi, and Darfur, for example, all refer to “widespread violations of humanitarian law.” The Security Council’s Commissions have been impelled by concerns of “maintain[ing] international peace and security”¹⁷¹ during armed conflict. The Security Council resolution establishing the 1979 Commission of Inquiry on the Occupied Arab Territories refers to the “obstruction” of regional peace; the Yugoslavia Commission was concerned with violations of humanitarian law committed by militaries during Yugoslav Wars; the Somalia inquiry condemns premeditated armed attacks against UN personnel; and the Darfur Commission was established under the Security Council’s power to take action to “restore international peace and security.”

Human Rights Council resolutions establishing Commissions, by contrast, refer to “gross and systematic human rights violations.” The United Nations created the Human Rights Council in 2006, and its broad mandate includes investigating all serious human rights violations. This mandate and the human rights focus of the Council make the Human Rights Council, rather than the Security Council or other UN body, the most logical place to call for a Commission of Inquiry on Iran. The Iran situation does not

of crimes against humanity or gross and systematic violations. In several instances, Commissions of Inquiry and country-specific special rapporteurs have been created concurrently, or Commissions of Inquiry have been established for a country where a country-specific mandate already exists. For example, the United Nations established the mandate for the Independent Expert on the situation of human rights in Côte d’Ivoire three months after establishing the Commission of Inquiry to investigate the violence in Côte d’Ivoire following the presidential election of November 28, 2010. The Independent Expert on the situation of human rights in Somalia was created in the same year, 1993, as the Security Council’s Commission of Inquiry concerning Somalia. The Human Rights Council created the mandate for the Special Rapporteur on the situation of human rights in the Syrian Arab Republic in 2011, the same year it implemented a Fact-Finding Mission for Syria. Also, the Human Rights Council instituted the Fact-Finding Mission on the Gaza Conflict in 2009, even though the mandate for the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 had been established in 1993.

¹⁶⁸ Academy of International Humanitarian Law and Human Rights, *The UN Human Rights Council: Commissions of Inquiry Conference Brief*, December 2011, p. 1, <http://www.geneva-academy.ch/docs/news/HR-council-inquiry-conference-brief.pdf>.

¹⁶⁹ *Id.*, p. 2.

¹⁷⁰ *Id.*

¹⁷¹ Repertoire of the Practice of the Security Council, *Commissions and Investigative Bodies*, http://www.un.org/en/sc/repertoire/subsidiary_organ/commissions_and_investigations.shtml

present the violations of humanitarian law or threats to international security that the situations prompting Security Council-authorized Commissions have. Furthermore, given the precedent set by previous Commissions, the Human Rights Council is more likely to investigate human rights violations that may or may not rise to the level of crimes against humanity. This makes a successful call for a Commission of Inquiry on Iran more likely at the Human Rights Council.

3. Previous Commissions of Inquiry

There have been at least eighteen United Nations Commissions and fact-finding missions relating to allegations of human rights abuses.¹⁷² These include eight Commissions established by the Security Council to investigate violations of international human rights and humanitarian law, the eight established by the Human Rights Council since its creation in 2006, and two endorsed or established by the United Nations independently of those two bodies.

Analysis of the events and time period covered by each Commission reveals that the Commissions of Inquiry have covered a wide variety of factual circumstances. The language in Human Rights Council and Security Council resolutions establishing Commissions suggests that to trigger a Commission, violations must be of one of four types: widespread violations; gross, grave, and/or systematic violations; serious violations; or isolated incidents.

Commissions of inquiry have generally, but not always, focused on violations that were either still occurring at the time of establishment or had occurred in the few years prior. The Commissions have generally, but not always, limited their investigations to narrow time frames rather than broad historical periods.

When fact-finding bodies have responded to an intensification of violence or human rights violations, their mandates have covered longer periods: The Commission of Inquiry on the Occupied Arab Territories (1979), for example, investigated more than a decade of Israeli settlement policy. Meanwhile, the more recent Human Rights Council fact-finding mission on the same issue was tasked with the broad mandate “to investigate the implications of the Israeli settlements on [sic] the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.”¹⁷³ In its 2013 report to the General Assembly, the mission provided two and a half pages of historical context dating back to 1967 to explain its findings.¹⁷⁴ Even Commissions that have dealt with narrower time frames take care to provide historical context for the incidents being examined.

¹⁷² For more information, see Allard K. Lowenstein International Human Rights Clinic, *Review of UN Commissions of Inquiry*, December 2013. Available on request.

¹⁷³ UN Human Rights Council, *Report of the Independent International Factfinding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem*, February 7, 2013, A/HRC/22/63.

¹⁷⁴ *Id.*

4. The North Korean Commission as a Model for Iran

To disrupt the Iranian government's thus-far unremitting violation of international human rights law, the United Nations should launch an investigation into offenses committed since the inception of the Islamic Republic. As discussed below, the newly established Commission of Inquiry on North Korea provides a recent precedent for the Human Rights Council to address the decades of human rights abuses committed by the Iranian government.

In March 2013, the Human Rights Council established a Commission of Inquiry into the systematic, widespread and grave violations of human rights in the Democratic People's Republic of Korea with a view to ensuring full accountability for its violations, particularly those that may amount to crimes against humanity.¹⁷⁵ The 2013 resolution establishing the North Korea Commission recalls "all previous resolutions adopted by the Commission on Human Rights, the Human Rights Council, and the General Assembly on the situation of human rights," including resolutions from March 2012, December 2012, and March 2006.¹⁷⁶ It also mentions the Universal Periodic Review of March 2010.¹⁷⁷ It expresses concern at "the persisting deterioration in the human rights situation" and "the continuing reports of systematic, widespread, and grave violations." In a document of questions and answers prepared in advance of the North Korea Commission's oral update in September 2013, the Commission itself explicitly described its work as not being constrained to the time period immediately preceding its creation.¹⁷⁸ In response to a question about accounts "that date back several years" and the lack of more recent testimony reflecting the actual human rights situation in North Korea today, the Commission answered:

[W]hile obviously information about the most recent events is important for our investigation, there are a number of unresolved and sometimes previously unaddressed issues that we are called to consider in our mandate. Responsibility for torture and other serious human rights violations is not time limited. A thorough inquiry into the human rights-related causes of the 1990s famine in the DPRK and the abduction of Japanese, ROK and other nationals are also part of our mandate.¹⁷⁹

Between 1995 and 2014, the UN General Assembly issued 19 resolutions on the "situation of human rights in the Islamic Republic of Iran," each time expressing concern at the serious ongoing human rights violations occurring within the country and calling

¹⁷⁵ UN Human Rights Council, *Resolution on the Situation of Human Rights in the Democratic People's Republic of Korea*, March 21, 2013, A/HRC/RES/22/13.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ UN Human Rights Council, *Updated Questions and Answers on the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, September 2013, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIDPRK/QuestionsAnswers.pdf>.

¹⁷⁹ *Id.*

on the government to end its abuses.¹⁸⁰ The resolution adopted on December 18, 2009, particularly highlighted “the response of the Government of the Islamic Republic of Iran following the presidential election of 12 June 2009 and the concurrent rise in human rights violations” and called on the government to “uphold due process of law rights, to end impunity for human rights violations, and to launch a credible, impartial and independent investigation into the allegations of post-presidential election human rights violations.”¹⁸¹ The subsequent three resolutions reiterated this call, and the most recent, adopted on December 18, 2013, again recommended that the Iranian government “launch a comprehensive accountability process in response to cases of serious human rights violations, including those involving the Iranian judiciary and security agencies, and to end impunity for such violations.”¹⁸² Such recommendations and expressions of concern are echoed in the at least nine Commission of Human Rights resolutions addressing the situation of human rights in Iran as well as the Human Rights Council’s resolutions and the Special Rapporteur’s reports.¹⁸³

Just as the Human Rights Council established a Commission with a broad mandate to investigate past human rights violations in the North Korea case, it should do so with regard to Iran. It should adopt a resolution establishing a Commission to investigate the Iranian government’s ongoing human rights violations. Such an investigation would allow for a full analysis of the abuses in Iran, applying the legal standards for crimes against humanity and gross and systematic violations. The Commission’s mandate should focus particularly on the increase in state violence and repression following the 2009 elections, but it should by no means be limited to this temporal scope. The Council should leave room for the Commission to consider past abuses that have been left unaddressed and current abuses that may not have a direct link to the 2009 elections. To do otherwise would be to continue to turn a blind eye to the government’s longstanding pattern of violations against its civilian population, abuses that have thus far persisted with impunity.

B. Legal Standards for a Commission of Inquiry

UN-promulgated Commissions of Inquiry have been triggered by allegations of either “crimes against humanity” or “gross and systematic violations.” Generally speaking, the Security Council has created Commissions of Inquiry in response to alleged

¹⁸⁰ See UN General Assembly Resolutions A/RES/49/202, A/RES/50/188, A/RES/51/107, A/RES/52/142, A/RES/53/158, A/RES/54/177, A/RES/55/114, A/RES/56/171, A/RES/58/195, A/RES/59/205, A/RES/60/171, A/RES/61/176, A/RES/62/168, A/RES/63/191, A/RES/64/176, A/RES/65/226, A/RES/66/175, A/RES/67/182, A/RES/68/184.

¹⁸¹ UN General Assembly, *Resolution on the Situation of Human Rights in the Islamic Republic of Iran*, December 18, 2009, A/RES/64/176.

¹⁸² UN General Assembly, *Resolution on the Situation of Human Rights in the Islamic Republic of Iran*, December 18, 2013, A/RES/68/184.

¹⁸³ See UN Commission of Human Rights Resolutions E/CN.4/RES/1993/62, E/CN.4/RES/1994/73, E/CN.4/RES/1995/68, E/CN.4/RES/1996/84, E/CN.4/RES/1997/54, E/CN.4/RES/1998/80, E/CN.4/RES/1999/13, E/CN.4/RES/2000/28, E/CN.4/RES/2001/17.

crimes against humanity, whereas Commissions of Inquiry established by the Human Rights Council have investigated reports of gross and systematic violations. Crimes against humanity and gross and systematic violations possess similar legal elements and are thus often intertwined. Human rights organizations have found that the Iranian government's abuses in the 1980s include crimes against humanity.¹⁸⁴ Application of international legal standards to the post-2009 abuses establishes that these offenses may also rise to the level of crimes against humanity and, at the very least, constitute gross and systematic violations.

1. Crimes against Humanity

Under customary international law (CIL), a determination that abuses constitute crimes against humanity requires a demonstration that they were committed against a civilian population and were, according to the more recent international tribunals, either systematic *or* widespread (the violence cannot be random or isolated from the framework of a broader attack against the civilian population).¹⁸⁵ The term “widespread violations” has generally been applied to mass killings, mass arrests, ethnic cleansing, massacres, and acts of genocide, although this is not an exhaustive list. The word “widespread” refers to the magnitude of the attack or the number of victims, although no specific threshold level for establishing “widespread violations” exists, and courts decide whether the requisite criteria have been met on a case-by-case basis. In turn, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have characterized the “systematic” element as requiring evidence that a pattern or methodical plan existed.¹⁸⁶

The Human Rights Council and Security Council resolutions establishing Commissions on Yugoslavia, Burundi, Rwanda, and Darfur all invoked the standard of “widespread violations” in reference to reports of mass killings, ethnic cleansing, massacres, and acts of genocide. In addition, the Security Council resolutions on Burundi and Rwanda included the adjectives “systematic” and “flagrant” with that description. The concept of “widespread violations” can not only provide a specific terminology for situations that share particular characteristics, but can also inform a Commission’s methodology and goals, as it did for the Commission on Burundi. In its final report, that Commission noted that it was impossible to investigate the thousands of individual incidents that had taken place, explaining that it sought, instead, to establish the nature, scope, and pattern of the crimes based on a representative sample.

Violations such as murder, extermination, enslavement, torture, forcible transfer, imprisonment, persecution, and enforced disappearance are examples of potential crimes against humanity if they are widespread or systematic. For example, if a state-sponsored

¹⁸⁴ See, e.g., the judgment of the International Iran Tribunal, published on Feb. 5, 2013.

¹⁸⁵ The three post-World War II codifications of crimes against humanity, the Nuremberg Charter, the Tokyo Charter, and the Allied Control Council Law No. 10, articulated the core elements of crimes against humanity that form today’s customary international law on the subject.

¹⁸⁶ S/RES/955; Prosecutor v. Dusko Tadić, Case No. IT-94-1-T, Opinion and Judgment ¶ 646 (Int’l Crim. Trib. for the Former Yugoslavia May 7, 1997), available at <http://www.icty.org/x/cases/tadic/tjug/en/tad-tsj70507JT2-e.pdf>.

paramilitary group deported all members of a certain religion from a village as part of an ethnic cleansing campaign, this act would likely constitute a crime against humanity; it is both widespread in terms of numbers and systematic in terms of existing within a pattern or larger plan. The more recent tribunals incorporate the additional requirement that for finding crimes against humanity, the perpetrators must have committed the act with knowledge that it was occurring within the framework of an attack against the civilian population.

A determination of whether the post-election violence in Iran constitutes crimes against humanity depends on whether the evidence suggests that (1) specific civilian populations, such as the Baha'i or women or students or journalists, were targeted; (2) that the perpetrators *intended* to target such population or populations; and (3) that the crimes were of a certain scale or were perpetrated according to a methodical plan or pattern.

2. Gross and Systematic Violations

No official UN definition of the phrase “gross and systematic” exists. However, documents relating to Commissions of Inquiry use the term “widespread violations” to denote crimes against humanity, as discussed above, while the expression “gross and systematic” describes more generalized violence against civilians, destruction of infrastructure (particularly when committed in a discriminatory manner), and violations such as arbitrary detention, enforced disappearances, and torture.¹⁸⁷ Security Council Commissions of Inquiry have examined violations that most resemble crimes against humanity, while the Human Rights Council Commissions have tended to examine violations that are “gross and systematic” but may or may not rise to the level of crimes against humanity.¹⁸⁸

Although gross and systematic violations tend to entail a lower level of violence than crimes against humanity, the legal elements of the two categories, such as violence against a civilian population, large scale, and evidence of a pattern, frequently overlap. Therefore, evidence that crimes against humanity were committed in Iran would likely help prove the existence of gross and systematic violations, and vice versa.

Violations that have fallen into this category in previous Human Rights Council Commissions of Inquiry include (1) arbitrary arrest or detention; (2) extrajudicial killings; (3) enforced disappearances; (4) destruction of infrastructure, particularly when conducted in a discriminatory pattern; and (5) torture.

The Human Rights Council established Commissions on Lebanon, Gaza, Syria, and Libya to investigate incidents of violence against civilians, which the Council described in each relevant resolution as “grave and systematic” or “gross and systematic”

¹⁸⁷ The Security Council resolutions establishing Commissions of Inquiry on Yugoslavia, Rwanda, Burundi, and Darfur all refer to “widespread violations of humanitarian law.” The Human Rights Council resolutions establishing Commissions of Inquiry refer to “gross and systematic human rights violations.”

¹⁸⁸ Resolutions establishing recent inquiries on Syria and North Korea, for example, refer to reports of “gross and systematic violations” but leave open the question of whether these violations rise to the level of crimes against humanity—i.e., “widespread violations.”

violations of human rights. The Commissions on Israeli military operations in Lebanon in 2006 and Gaza in 2008 each had a mandate to address the deaths of civilians and the destruction of infrastructure in those regions, including housing and health care. Similarly, the Commissions on Syria and Libya were to investigate the systematic attacks on those states' respective civilian populations that took place in response to the mass uprisings of 2011 in both countries.

3. Commission of Inquiry Standards Applied to Iran

Without a full Commission of Inquiry that includes fact-finding and legal analysis of human rights abuses in Iran, the above-described legal standards cannot be carefully and meaningfully applied. Nonetheless, the Iranian government's abuses committed from 2009 to the present almost certainly constitute gross and systematic violations. As detailed above, the government committed violent acts against specific civilian groups, including student protestors, civil society members, women, and religious and ethnic minorities, and many reports document a pattern of arbitrary arrest and detention, as well as other forms of persecution and harassment, directed specifically against these groups.

Further, these violations may rise to the level of crimes against humanity. The evidence suggests that specific civilian populations are being targeted. It also suggests that the targeting of this population is intentional. For example, journalists seem to be singled out for their journalistic activity, women's rights activists for their activism, and religious minorities for their religious practice. However, more investigation is needed to ascertain this intention, as well as the scale of the violations and whether they were perpetrated according to a methodical plan or pattern.

VI. Conclusion

The record of human rights abuses in Iran calls for the establishment of a Human Rights Council Commission of Inquiry that would investigate the Iranian government's longstanding violations of the human rights of its civilian population. Two additional proposals would contribute to addressing the pattern of continuing impunity for Iranian governmental violations. First, the government's public acknowledgment of its history of offenses would demonstrate the current regime's genuine commitment to addressing abusive practices. Such acknowledgment might even take the form of a domestic investigation into persistent governmental violations. Second, in order to make good on his promises of "revising policies and practices" undertaken by Ahmadinejad's government and of "upholding justice," President Rouhani's administration should engage with UN special procedures by allowing the Special Rapporteur on the Situation of Human Rights in Iran access to Iran and by meaningfully responding to his reports.

The proposals are only first steps toward remedying enduring impunity in Iran for serious breaches of international law. However, they are steps necessary to address the decades of gross and systematic violations, from 1980 to the present, committed by government actors against specific civilian populations. Although the lengthy history of Iranian abuses may seem too vast and distant for an inquiry today, neither the international community nor the Iranian government should turn a blind eye to the violations identified throughout this report. To do so is to risk exempting such violations

from sanction simply because of their breadth and timespan, factors that should strengthen the call for acknowledgment, not dampen it.