

Is Grassroots Justice a Viable Alternative to Impunity? The Case of the Iran People's Tribunal

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ABSTRACT

What happens when the institutions responsible for doing justice fail the victims of mass-atrocities? While global justice is now a popular demand, it remains a fledgling venture, at the margins of power realities. Significant gaps remain, especially in situations where the International Criminal Court does not have jurisdiction to intervene. It is in these contexts of impunity that the proponents of justice are forced to either abandon hope, or to explore creative, informal alternatives that are not dependent on the narrow political whims and fortunes of decision-makers. A notable instance of such accountability entrepreneurship is the grassroots initiative that became known as the Iran People's Tribunal ("Iran Tribunal"), inspired by the mourning Mothers of Khavaran, demanding truth and justice for the mass-execution of their children following the 1979 Islamic revolution. This article, written by the Prosecutor of the Tribunal, explores this unprecedented victim-driven initiative and its implications on global accountability, conceptions of power, and the discourse of healing and reconciliation in the wake of mass-atrocities.

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I. THE MOTHERS OF KHAVARAN

What happens when the institutions responsible for doing justice fail the victims of mass-atrocities? The emergence of the contemporary global justice system is a significant advancement over the culture of impunity that prevailed for so long. The proliferation of trials—whether before international or national criminal jurisdictions—and transitional justice mechanisms—ranging from truth commissions to traditional rituals—have gradually transformed the accountability paradigm into an inescapable feature of contemporary political discourse. Of course, while global justice is now a popular demand, it still remains a fledgling venture, at the margins of power realities. Furthermore, significant gaps remain, especially in situations where even the politically neglected and weak International Criminal Court (ICC) does not have jurisdiction to intervene. It is in these contexts of impunity that the proponents of justice are forced to either abandon hope, or to explore creative, informal alternatives that are not dependent on the narrow political whims and fortunes of those in formal positions of authority.

A notable instance of such accountability entrepreneurship is the Iran People's Tribunal (Iran Tribunal), a grassroots initiative that may be loosely described as an unofficial but credible truth commission in exile. It was inspired by the irresistible demands for justice by the so-called Mothers of Khavaran, mourning the loss of their children in the mass-executions following the first decade of the 1979 "Islamic" revolution in Iran. A remarkable expression of legal pluralism, it was an occupation of a normative *lacuna* by a sizeable victim community, taking justice into their own hands, but through equitable empowerment rather than violent vigilantism. I had the privilege of serving as the Prosecutor of the Tribunal, and now write this account in my capacity as both a participant and an observer. Notwithstanding years of experience with elite justice before international criminal tribunals at The Hague, this unprecedented victim-driven initiative has profoundly shaped my understanding of how those who have suffered irredeemable loss perceive the intimate meaning of justice.

The Mothers of Khavaran, like other iconic groups in the history of human rights struggles—such as the Mothers of the Plaza de Mayo in Argentina, or the Mothers of Srebrenica in Bosnia—emerged from the primal wound of mothers mourning the unjust killing of their children. They derived their name from a large plot of land adjacent to the Khavaran highway in municipal district 15, southeast of Tehran, along the desolate route from the bustling capital city to the *Dasht-e-Kavir* desert. It was here that in 1988 the bodies of thousands of young men and women were unceremoniously dumped in unmarked mass-graves. They were the victims of systematic secret executions of leftist political prisoners. When news spread about this location, the mothers made their way to the burial site to retrieve and mourn the remains

of their children. The spontaneous gathering of this community of anguish gradually morphed into a group demanding truth and justice for these abominable crimes. The authorities had referred to this mass-grave as “the abode of the damned” (*la’anat abad*) from the early days of the revolution when executed members of the Bahá’í religious minority and others deemed to be “anti-Islamic” were buried here. The mothers renamed it as the “Khavaran” burial site, and called themselves “the Mothers of Khavaran.” The historical and political context of their struggle, and the ultimate establishment of the Iran Tribunal, is a story of remarkable resilience and determination; an instance of speaking truth to power that has broken a long silence, and opened an unprecedented space for accountability in contemporary Iran.

II. IRAN’S “BLOODY DECADE”

In 1978, Ayatollah Khomeini, the emerging leader of the Iranian revolution, then exiled in Paris, called for the overthrow of the Imperial Government of the Shah. Some intellectuals imagined this charismatic figure as the Iranian incarnation of Mahatma Gandhi. Michelle Foucault, for instance, enthusiastically described Khomeini’s utopian religious ideology as “this thing whose possibility we have forgotten since the Renaissance and the great crisis of Christianity, a *political spirituality*.”¹ Upon his triumphant return to Tehran in February 1979, he was greeted by millions of jubilant Iranians dreaming of a democratic future. Within days of these celebrations, however, Khomeini established the notorious Islamic Revolutionary Courts and began the first of many summary executions, aimed at eliminating opponents and consolidating his absolute power. The first of these summary trials were held at the Refah elementary school for girls in Tehran, where he had set up both his home and headquarters. Khomeini dismissed fair trials as a “Western sickness.”² He famously said that “criminals should not be tried; they should be killed.”³

Based on vague Shari’a law charges such as “insulting Islam,” “sowing corruption on earth” (*mufsede-fel-arz*), or “warring against God” (*muharib*), the accused were found to be guilty and sentenced to death after summary trials with little or no evidence. Their capital punishment was promptly carried out on the roof of the girls’ elementary school at the hands of the Islamic cleric Sadeq Khalkhali, Khomeini’s sadistic chief-executioner who quickly earned a reputation as Iran’s “hanging judge.” The early victims of this killing spree were senior officials of the Imperial Government, as well

1. See JANET AFARY & KEVIN B. ANDERSON, *FOUCAULT AND THE IRANIAN REVOLUTION: GENDER AND THE SEDUCTIONS OF ISLAMISM* 203–09 (2005).
2. BERNARD LEWIS, *ISLAM IN HISTORY: IDEAS, PEOPLE, AND EVENTS IN THE MIDDLE EAST* 394 (2d ed., 2001).
3. *Id.*

as religious and ethnic minorities such as the Bahá'ís and Kurds, branded as traitors and infidels. As Khomeini's totalitarian vision of rule by the Islamic jurist (*velayat-e-faqih*) was translated into reality, the executions quickly ensnared an ever-widening circle of groups deemed to be a threat. Following popular protests in June 1981 against his ruthless consolidation of power, the victims of repression expanded to erstwhile revolutionary allies from the National Front—the secular opposition party founded by Mohammed Mosadeg, the legendary Prime Minister from 1951–1953 who was overthrown in the Anglo-American inspired *coup d'état* known as Operation Ajax—as well as leftist groups such as the Islamic Marxist Mojahedin-e-Khalq, the secular Marxist Tudeh, and Fadayan-e-Khalq. Khomeini did not even spare rival Islamists such as followers of Ayatollah Shariatmadari, who in the orthodox tradition of Shi'a "political quietism" called for the separation of state and religion. As the political violence spread, "the toll taken among those who had participated in the revolution was far greater than that among the royalists. This revolution—like others—had devoured its own children."⁴ This was the DNA of political violence clothed in pseudo-religious legitimacy that would come to define the Islamic Republic in the years that followed, and which persists to this day.

In September 1980, amidst the escalating power struggle within Iran, Iraq invaded the southern province of Khuzistan across the Arvand River, otherwise known as the Shatt-al-Arab. Saddam Hussein was motivated both by territorial ambitions and the fear that the Khomeinist revolution would be exported to Iraq's majority Shi'a population. As thousands of young Iranian men were mobilized to the front lines, the war was exploited to intensify internal political repression in Iran. The Mojahedin-e-Khalq ultimately joined forces with Iraq's Baathist government to help overthrow the Islamic Republic. By 1982, the military tide turned against Iraq, and a cease-fire was possible. But Khomeini's ambition was to seize the opportunity to capture the Shi'a religious centres of Najaf and Karbala, and expand the Islamic revolution into Iraq. In the years that followed, the Iran-Iraq conflict became known for its horrific trench warfare and human wave attacks, reminiscent of the First World War. Over time, the catastrophic economic and human costs became increasingly untenable. The regional situation also became complicated by United States and Gulf Arab support to Iraq to avoid an Iranian victory. This included the famous December 1983 meeting in Baghdad between President Saddam Hussein and President Ronald Reagan's Special Envoy Donald Rumsfeld, reassuring Iraq of continued military and political support. By July 1988, eight years into a war characterized by chemical weapons, child soldiers, the bombing of cities, the genocide of Iraqi Kurds,

4. ERVAND ABRAHAMIAN, *A HISTORY OF MODERN IRAN* 181 (2008).

and an estimated toll of 1 million deaths and injuries, an entire generation had become physically and psychologically scarred. Khomeini was finally forced to drink from what he described as the “poisoned chalice,” and to accept the cease-fire demanded by UN Security Council Resolution 598.⁵ Two days later, the Iraqi forces, acting in concert with the Mojahedin, made a last-ditch attempt to invade Iran but were quickly defeated. By August 1988, the cease-fire had taken hold.

III. KHOMEINI’S 1988 DEADLY FATWA

It was in this context, in the same month as the humiliating July 1988 cease-fire and final military attack, that Khomeini issued an infamous *fatwa*⁶ calling for the execution of all “religious hypocrites” (*monafeqin*). This referred to political prisoners affiliated with the Mojahedin, because they were deemed to be “wayward” Muslims. Most of those in prison, however, had been punished for minor offenses, such as distributing political pamphlets, and had nothing to do with the war. Furthermore, most had already served their sentences. A second *fatwa* was issued for the execution of “apostates” (*murtad*), referring to political prisoners belonging to other leftist groups such as the Tudeh and Fadayan that, unlike the Mojahedin, were secular in their political orientation. Special commissions were quickly established throughout Iran to select unrepentant political prisoners for the revenge killings; they became known as the “Death Commission.” Khomeini urged them to be merciless and show “revolutionary rage and rancor toward the enemies of Islam.”⁷ They were instructed not to “hesitate or show any doubt or concerns” about executing those that “remained steadfast” in their beliefs and refused to pledge allegiance to the Islamic revolution.⁸ This premeditated act of mass-murder was the consummation of the religious demonization and systematic violence that defined the Islamic Republic from its outset. It would come to symbolize the apogee of the appalling human rights abuses that characterized the first decade of the revolution.

5. *Id.*

6. See generally IRAN HUMAN RIGHTS DOCUMENTATION CENTRE, DEADLY FATWA: IRAN’S 1988 PRISON MASSACRE (2009) [hereinafter DEADLY FATWA], available at <http://www.iranhrdc.org/english/publications/reports/3158-deadly-fatwa-iran-s-1988-prison-massacre.html#2>; see also Kaveh Shahrooz, *With Revolutionary Rage and Rancor: A Preliminary Report on the 1988 Massacre of Iran’s Political Prisoners*, 20 HARV. HUM. RTS. J. 227 (2007); GEOFFREY ROBINSON, ABDORRAHMAN BOROUHAND FOUNDATION, THE MASSACRE OF POLITICAL PRISONERS IN IRAN, 1988: REPORT OF AN INQUIRY CONDUCTED BY GEOFFREY ROBERTSON QC (2011), available at http://www.iranrights.org/attachments/library/doc_118.pdf.

7. DEADLY FATWA, *supra* note 6, at 8.

8. *Id.*

The commissions proceeded post-haste to implement the orders of the “Imam” in an atmosphere of secrecy. In a matter of a few days, after inquisition-style hearings of just a few minutes to ascertain the prisoner’s political and religious beliefs, an estimated several thousand executions took place. Other than firing squads, methods of killing included group hangings, often using cranes or forklifts. The lifeless bodies were then transported in trucks, often under cover of night, to secret burial locations and dumped in mass-graves. Family members were only informed of the executions some days later, and many were never informed. The Islamic Republic of Iran publicly denied the executions. Those that discovered the location of mass-graves were even forbidden to mourn their loved ones, and subjected to beatings and imprisonment. Such was the scale of this injustice, that those protesting against the executions in 1988 included the eminent religious figure Ayatollah Montazeri, who was the heir presumptive to Khomeini. His opposition to the mass-killings was condemned and he was promptly dethroned from his position of influence. Instead, upon Khomeini’s death in 1989, a less senior and more docile cleric, Ali Khamenei, was selected as Khomeini’s successor, and the new “Supreme Leader.” Ayatollah Montazeri died under house arrest in 2009, but his memoirs and conversations with Iranian officials left one of the most compelling inside accounts of the 1988 executions.

IV. CULTURE OF IMPUNITY

In an obscene inversion of morality, the leading members of the Death Commissions were rewarded for their blind obedience and promoted to the highest public offices in government. For instance, Hossein Ali Nayeri became the Deputy Chief Justice of the Supreme Court, a position he occupies to this day. Another notable example is Mostafa Pourmohammadi who became the Minister of Justice under the “moderate” government of President Hassan Rouhani in 2013. Furthermore, the current Supreme Leader, Ayatollah Khamenei, and his imprisoned reformist foe, Mir-Hussein Mousavi, leader of the momentous 2009 post-election protests known as the “Green Movement,” were President and Prime Minister respectively at the time. Another important political figure, Akbar Hashemi Rafsanjani, was Speaker of the Parliament and became President the following year, in 1989. For long, the failure to even recognize the truth of this mass-murder, let alone to bring the perpetrators to justice, has symbolized the culture of impunity that has resulted in the profound violence and corruption in the contemporary Iranian government. Without accountability, or at the very least an official apology, the prospect of a peaceful democratic transformation, and building a culture of human rights in Iran, is seriously undermined.

Given the climate of secrecy and policy of denial, it is difficult to accurately estimate the number of victims during the 1988 executions. By all

accounts, they were in the thousands. Statistical abstractions, however, fail to capture the enormous toll that this act of political violence took on the psyche of the Iranian people. For every victim, there is a name; for every victim, there is a mother and father, a brother and sister, a spouse and a friend, a schoolmate, and work colleague—a wide circle of intimate human relations that is forever destroyed. In this way, the traumatic impact of the violence spread and afflicted a significant proportion of the population. The repression of the truth, the unwillingness to even acknowledge wrongdoing, exacerbates these wounds and prolongs the potential transformation of a country reeling under gross abuses of power. Reckoning with the past, however, is also about surfacing the promise that lies just underneath this grim political reality; namely, an intelligent youthful cosmopolitan population and vibrant civil society with tremendous future potential. In effect, breaking with the past is about creating a new culture of respect for human dignity, based on accountability and moral leadership; a new definition of power.

V. GRASSROOTS JUSTICE

When I first came into contact with the Mothers of Khavaran, they sought advice about bringing their case before the International Criminal Court. It was a humbling moment when I had to explain to them that the Court had no jurisdiction, whether because Iran never ratified its statute, or because its temporal reach only extends to crimes committed after its entry into force in 2002. Furthermore, the prospect of the Security Council establishing an *ad hoc* tribunal such as those established for the former Yugoslavia and Rwanda in 1993–1994 was slim to none. Amidst geopolitical calculations and rivalries, focused on the nuclear question, oil supplies, balance of power, terrorism—based on short-sighted conceptions of regional security—there was no political willingness to even consider such an option. Of course, the Iranian judiciary, and the Revolutionary Courts in particular, would obviously not provide a remedy, because they themselves were one of the principal instruments of repression. But to leave these long-suffering bereaved mothers empty-handed in their quest for justice was intolerable. It was in this context of impunity and despair that the idea of the Iran People's Tribunal was first born.

The creation of people's tribunals is nothing new. But the case of the Iran Tribunal was unprecedented for several reasons. The survivors and their families were initially inspired by what is probably the best-known people's tribunal; namely, the International War Crimes Tribunal established in 1966 by British philosopher Bertrand Russell and hosted by French philosopher Jean-Paul Sartre. Its purpose was to expose and condemn the United States intervention in the Vietnam War. In the years that followed, the "Russell

Tribunal” became a standing institution that held hearings *inter alia* for Chile (1974–1976), Iraq (2004), and Palestine (2009–2012). The leitmotif of these hearings was to fight against US “imperialism.” It was mostly initiated by and composed of Western leftist intellectuals whose primary target was Western foreign policy. It was not driven by or aimed at those directly affected by the violence. Furthermore, there was a considerable degree of awareness of the events in the countries concerned, even if there were competing political and moral interpretations. By contrast, the Islamic Republic of Iran was a government that portrayed itself as “anti-imperialist” and even found sympathy in certain Western leftist circles. This was a cruel irony given that the victims of the mass-executions were overwhelmingly leftist political prisoners. Furthermore, instead of Western foreign policy, the primary target of an awareness campaign in regard to the 1988 mass-executions was Iranian public opinion, given the policy of denial that had concealed the truth for so many years. The challenge was to expose the reality of these atrocities to millions of people in an authoritarian system characterized by intense propaganda and heavy censorship. Instead of political theatre and popular slogans, this required a credible and objective process of fact-finding and legal analysis by qualified jurists—the merging of an informal institution with unimpeachable legitimacy in the eyes of the world. Of course, the most important distinguishing feature of this initiative was that it came from the grassroots, the Mothers of Khavaran, rather than Western intellectual élites and activists a world away.

VI. THE CAMPAIGN FOR IRAN TRIBUNAL

It was against this backdrop that in 2007 two exiled political activists—Mr. Babak Emad and Mr. Yadollah Biglari—initially organized a small group of survivors and families of victims at a picnic in Sweden. Their movement became known as the “Campaign for Iran Tribunal.” Its objective was justice for what it called “The Bloody Decade,” referring to the first decade of the 1979 revolution. At first, in 2008, they approached the Russell Tribunal for assistance. They were disappointed however, because “the Russell Tribunal officials did not reach a unanimous decision to create a special chamber in order to address and investigate the massacre of the political prisoners in Iran in 1980s.”⁹ Perhaps with the focus on the US invasion of Iraq and Israel’s policies in Palestine, condemnation of abuses by one of the United States principal foes was not politically opportune, especially in light of the hawkish policies of US President George W. Bush. What made this political

9. See Iran Tribunal, *About Iran Tribunal*, available at <http://irantribunal.com/index.php/en/about-us/373-about-iran-tribunal>.

logic difficult, however, was that the victims of Iran's anti-imperialist rulers were themselves anti-US leftists of various persuasions. The rejection of this case by the Russell Tribunal was a blow to the activists and some even withdrew from the Campaign. This turn of events may have been auspicious however, because it forced them to look elsewhere and ultimately establish a credible judicial process with eminent jurists rather than a political spectacle with anti-US activists. The remaining members of the Campaign reconsidered their options. They decided that:

Due to the campaign's limited means and the lack of sufficient and necessary resources, in order to successfully complete this project by reaching the set of goals, four conditions were essential: 1. Impetus unperturbed by the enormity and extent of this project and tasks at hand; 2. Dedication and personal sacrifice; 3. Commitment to form and establish an extensive and pervasive movement, while concentrating efforts on founding and running of the Tribunal, and 4. Total independence and autonomy from any political or governmental affiliation, in addition to total financial independence from any government or government-assisted monetary organization or international institutions.¹⁰

In order to move forward with this vision, it was concluded that the Tribunal must be a credible and independent judicial procedure so that its legitimacy would have the desired impact on public opinion in exposing the truth of the events of the 1980s:

One of the most crucial requirements for the continuation of the work of the people's campaign was creation of a legal team, consisting of proficient and experienced lawyers—experts in the field of international law. In doing so the campaign had to select a group of distinguished Iranian lawyers, who not only possessed the expertise and knowledge of universal principles and concepts of international law, but also possessed prior knowledge of the massacre of the political prisoners in Iran and were willing to contribute to the efforts of the project on pro bono basis.¹¹

VII. DESIGNING A PEOPLE'S TRIBUNAL

It was at this stage that I was approached by the Campaign, given my experience as an exiled Iranian and former UN prosecutor at The Hague, together with Mr. Kaveh Shahrooz, a fellow Canadian-Iranian lawyer who had lost his uncle in the 1988 mass-executions. Following consultations, it was decided that the Tribunal should be organized as a two-stage process, one focused on fact-finding, and the other on legal characterization and conclusions. It was

10. *Id.*

11. *Id.*

also important to strike a balance between establishing a public forum for popular, cathartic participation by a victim community longing to vindicate their suffering, and a more forensic and analytical legal procedure aimed at objective determination of facts and law. It was therefore decided to adopt a hybrid procedure. The first stage would be a “Truth Commission,” in which a fairly large number of witnesses could freely tell their stories without the exacting constraints of legal questioning in judicial proceedings. The second stage would be a more formal hearing with witness examination and legal pleadings before the “Tribunal” with a view to arriving at a Judgment establishing the facts and drawing appropriate conclusions under international law. Given the massive number of potential witnesses and the very limited resources at the disposal of the Tribunal, efforts were made to give an opportunity for testimony by a fairly representative list of witnesses spanning diverse political, ethnic, and religious identities. In regard to financial resources, it was decided that all funds would be voluntary donations from the community of survivors and the victims’ families, notwithstanding that most were refugees with very limited means. In particular, there was a decision not to accept any funds from governmental sources that could be used by the Islamic Republic of Iran to discredit the Tribunal as a politically biased “foreign conspiracy.” Furthermore, despite offers of professional fees to the lawyers and judges for the many hours of work that would be required, it was decided that all would serve the Tribunal on a *pro bono* basis, in order to alleviate the financial burden of this struggling community.

There was a determination to ensure that the Tribunal would be a non-politicized and credible judicial inquiry. Accordingly, in 2010, the Campaign approached a wider group of prominent lawyers to establish a Steering Committee—headed by a reputable British barrister, John Cooper QC—that would be responsible for the independence and practical realization of the Tribunal. The Committee, in turn, approached prominent international jurists from around the world to compose the membership of both the Truth Commission and the Tribunal. There was considerable emphasis on transparency and independence, not least because the legitimacy of this undertaking could not be simply derived by its formal status as a state-sanctioned judicial institution. Although its moral validity was based on the voice of victims, its legal validity required meticulous attention to compelling evidence and legal reasoning in an impartial hearing.

VIII. THE TRUTH COMMISSION (FIRST PHASE)

After several months of meetings, deliberations, fund-raising, planning, and outreach to the victim community, the first stage of the Truth Commission was held on 18–22 June 2012. The venue was the Amnesty International

Human Rights Action Centre in London. Mr. Maurice Copithorne, a distinguished international lawyer and former Canadian diplomat who served as UN Special Rapporteur on the Human Rights Situation in Iran from 1995 to 2002, was selected as the President. The other Commissioners consisted of Ms. Louise Asmal (South Africa), Professor Éric David (Belgium), Ms. Anne Burley (United Kingdom), Professor Daniel Turp (Canada), and Professor William Schabas (Canada).

Approximately eighty witnesses from diverse backgrounds were selected to testify. There was also a diverse and significant audience, including both those physically present at the hearing and those watching through Internet live-streaming or satellite television broadcasts. Given the objective of exposing the truth before both the Iranian people and a wider global audience, there was a vigorous outreach and media campaign that successfully enlisted coverage by major outlets such as BBC, Voice of America, Al-Jazeera, *The Economist*, and *The New York Times*, as well as every significant Persian language media that broadcasted into Iran from abroad, given that local media in Iran was subject to strict censorship. The challenge was not only to provide a public forum for the voices of the victims, but also to effectively capture the popular imagination in order to confront the long-standing policy of denial by the Iranian government.

The gathering of so many exiled Iranians who had been harmed by these atrocities was itself a momentous occasion. The survivors of the prisons and the family members of the victims had set up exhibitions outside the hearing room, with photographs, poetry, flowers, candles, and even personal objects belonging to those that had been executed. There were items of clothing, childhood souvenirs, hastily written last wills and testaments on scraps of paper, each providing an intimate glimpse of these past horrors that continued to afflict those that had gathered in London on that day. There was an atmosphere of eager anticipation to realize this long-awaited opportunity. But there was also dread at the horrors that would emerge from the witness testimony. It was clear that the stories would be shocking, traumatic, and that some witnesses may even break down or collapse from emotional exhaustion. Volunteer minders tried to comfort them and prepare them psychologically as best as they could. Nonetheless, the volunteers themselves were from the victim community as well. They included several dedicated young students, some of whom had lost their parents in the executions.

The auditorium itself was full with approximately 200 people. What was most noticeable, however, was the composition of the audience. Other than those in leftist political circles that were obviously in attendance, there was a broad representation of other political groups and persuasions, such as monarchists, nationalists, and also Islamic reformists, identified with the so-called "Green Movement" that had staged unprecedented post-election street protests throughout Iran in 2009. There was also a broad representa-

tion of Iran's diverse religious and ethnic groups, embracing Muslims, Jews, Zoroastrians, Christians, and Bahá'ís, as well as Persians, Kurds, Azeris, Lurs, Baluch, and Arabs. It seemed the hearings had attracted at least the curiosity, if not the sympathy, of diverse groups that would otherwise not have gathered under the same roof; unfortunately, contemporary Iran is characterized by many political, ethnic, and religious divisions, reflecting the cumulative toll of decades of religious and ideological politicization and violence.

Amidst a sombre atmosphere of expectation, the Truth Commission opened its hearing with several statements and messages. Most notable among these was the 17 June 2012 message from the Mothers of Khavaran, in whose name the Tribunal had been established. Given its importance in understanding the aspirations of the victims, it is reproduced in full as follows:

Over the past four and a half years, we, Mothers of the Khavaran, have closely followed the progress of formation of the People's Tribunal which is set to review the execution of our loved ones. These historic proceedings are the realization of our heartfelt desires and the desire of every family whose loved ones were unjustly executed in Iranian prisons. The Islamic Republic, watched our beloved children from the first days of the revolution, and subsequent to their arrest and torture, executed them. The Islamic Republic of Iran initiated this massacre in the 1980s, and in 1988 carried out the ultimate mass executions of our captured children, who had somehow survived the executions that had begun some years earlier. A generation they [sic] played a role in the realization and victory of the revolution was thus eliminated and buried in unknown and unmarked mass graves.

Since the 1980s we have been in search of truth of find out why, for what reason and under what charges, were our beloved children killed. We waited for 30 years for an answer from the authorities of the Islamic Republic of Iran. Not only they did not offer any answers, nor did they ever admit to their heinous crime, instead, throughout the years the [sic] coerced us, detained us, and stopped us from visiting Khavaran. The authorities went even so far as depriving us from holding memorials commemorating the loss of our loved daughters and sons. We know our story is the sad story of all mothers, spouses, fathers, sisters, brothers and children, who similarly lost their loved ones in mass killings in prisons throughout Iran.

We, the Mothers of the Khavaran, while celebrating the commencement of these historic Proceedings, consider it a significant step towards the exposure of crimes that the world has ignored for thirty years. This is a historic achievement for us, the families, and the people of Iran, who consider the formation of this Tribunal a significant advancement towards liberation of the people of Iran.¹²

12. See Iran Tribunal, *Message of a Group of Mothers of the Khavaran to the Tribunal*, available at <http://www.irantribunal.com/index.php/en/home/90-sessions/truth-commission/302-message-mothers-khavaran>.

Another noteworthy statement was a prerecorded video message from the Nobel Peace Prize Laureate Bishop Desmond Tutu, who expressed his solidarity with the victims of what he called “a catastrophe for the entire humanity.”¹³ He drew parallels to the post-apartheid South African Truth and Reconciliation Commission, noting that without the truth, time alone cannot heal such deep wounds.

As the first of some eighty witnesses took the stand, the Commission’s counsel, Mr. Hamid Sabi, put general questions to them. They were asked to indicate some personal information such as their name and place of birth, and then they began to tell their shocking stories. Most testified in person and publicly, while some, fearing retribution in Iran, testified by Skype with their identity concealed. The audience was mesmerized by the intensity of the horror and pain they described. One after the other, they attempted to describe the unspeakable, and just when we imagined that it could not get worse, someone revealed yet greater depths of human depravity. But the audience was equally inspired if not amazed by the courage and tenacity of those who had suffered in silence for so long but never gave up their pursuit of justice. Now, the victims finally had the opportunity to unburden themselves before the Truth Commission, in what would prove for many to be a transformative experience. As the Commissioners listened carefully, a steady stream of women and men from all walks of life and all regions of Iran, ranging from dedicated political activists to ordinary people that had simply lost their siblings, or children, or parents, told their astonishing stories, which seemed like scenes from hell. There was an outpouring of emotions, ranging from compassion for the bereaved to anger and incredulity at the mindless cruelty of the perpetrators. One woman testified how while still an adolescent, she clawed at the soil with her own hands to find the dismembered body of her brother at the Khavaran cemetery; another described how her husband had comforted a lonely fourteen-year-old boy crying for his mother just before they were both hanged.

IX. THE TESTIMONY OF MOTHER ESMAT

Even amidst this draining, exhausting litany of horrors, a particularly memorable testimony was that of Witness No. 37: Ms. Esmat Vatanparast, otherwise known as “Mother Esmat.” This elderly woman was a refugee in Sweden, originally from Jahrom, close to the city of Shiraz, in South-Central Iran. Because her father was the regional governor, an ambitious parliamentary candidate, Mohammad Ali Besharati, had ordered the murder of her entire

13. See Iran Tribunal, *Truth Commission’s Closing Report*, available at <http://www.irantribunal.com/index.php/en/90-sessions/truth-commission/55-truth-commission-closing-report>.

family to secure electoral victory.¹⁴ His wish was dutifully carried out by Ayatollahi, an allied Islamic cleric, who called on his followers from the pulpit of the mosque to find and massacre all members of the Vatanparast family.¹⁵ Soon after, “[s]everal family members were then summarily executed, including by crucifixion, defenestration, skinning alive, being cut into pieces with shears, and being dragged along the asphalt behind a moving van.”¹⁶ It was recounted that “[a]fter inhabitants of Jahrom smelt a foul odour coming out of a canal, seventeen dead children were shortly found in the water.”¹⁷ As a reward for his efforts, Mohammad Ali Besharati went on to become a member of the Iranian Parliament, then Deputy-Foreign Minister (under Foreign Minister Akbar Velayati), and ultimately the Interior Minister between 1993–1997 during which time he appointed future President Mahmoud Ahmadinejad as Governor of Ardabil Province.

Mother Esmat was a frail woman with a shy disposition and simple mannerism. She spoke softly, hesitatingly at first, almost apologetic that she was imposing on the Commission’s time. When asked about the family members she had lost, she began naming them one by one, specifying the relation of each. It was a long list of immediate family members including her children. In her numbness, she was composed and measured. But when she said: “my sister had only one child. . . he was eleven,” she finally broke down, tears streaming from her eyes. She was referring to her eleven-year old nephew, Javad Rahmani, who was hanged in July 1988.¹⁸ As she wept quietly, there was a poignant silence in the room. I looked at the audience, and everyone was weeping together with her. Her words had opened the collective wound of the Iranian nation. For one moment, everyone forgot their differences. Everyone embraced a shared humanity, expressed in the unspeakable grief of a woman who was robbed of all her loved ones with such appalling cruelty. At that moment, from a searing compassion for a woman who symbolized the mother of every child, there emerged a collective epiphany; the recognition of past pain can heal festering wounds, and open us to the possibilities of the future. Mother Esmat’s catharsis, her heartbreaking but graceful exposition of the truth, captured the surprising, healing power of merely sharing a story, of putting an end to suffering in silence. It was remarkable to see her relief after she had finished her testimony; her elation that the Commission, the audience, the Iranian people, and the world, had listened to her woes with such patience and empathy.

14. See IRAN TRUTH COMMISSION, *THE IRAN TRIBUNAL: ON THE ABUSE AND MASS KILLINGS OF POLITICAL PRISONERS IN IRAN, 1981–1988*, § 6.6.3, at 48 (2012), available at <http://irantribunal.com/images/PDF/Commission%20Report-Website.pdf>.

15. *Id.* § 6.6.4.

16. *Id.* § 2.3.1.2, at 31.

17. *Id.* § 2.3.1.4.

18. *Id.* at 214–15.

X. THE TRIBUNAL (SECOND PHASE)

In the weeks that followed, the Findings of the Truth Commission were published¹⁹ in preparation for the second stage of the “Tribunal,” scheduled for 25–27 October 2012 at The Hague. This hearing would be the conclusion of the process and required a certain solemnity and discipline commensurate with a proper judicial procedure. The physical location itself was highly significant. The Campaign succeeded in renting the building of The Hague Academy of International Law, immediately adjacent to the historic Peace Palace, which houses the International Court of Justice. In keeping with a high quality in its work, the Tribunal had selected as its distinguished President, Justice Johann Kriegler, the Justice of the first post-apartheid Constitutional Court of South Africa, from his appointment by President Nelson Mandela in 1994 until his retirement in 2003. His qualifications and integrity were beyond reproach. The other reputable members of the Tribunal consisted of Professor John Dugard SC (South Africa), Ms. Margaret Ratner Kunstler (United States), Mr. Michael Mansfield QC (United Kingdom), Professor Makau Mutua (Kenya), and Ms. Patricia Sellers (United States).

I had the privilege of leading the prosecution team alongside prominent lawyers, including Sir Geoffrey Nice QC, a former colleague from the International Criminal Tribunal for the former Yugoslavia, who was the prosecutor in the historic trial of Serbian President Slobodan Milošević. The other team members consisted of Mr. John Cooper QC, Dr. Nancy Hormachea, Ms. Gissou Nia, Ms. Mojdeh Shahriari, and Mr. Kaveh Shahrooz. The Islamic Republic of Iran was invited to defend itself through a letter transmitted by the Tribunal to the Iranian Embassy in The Hague, together with a copy of the Truth Commission’s Report. The letter stressed that:

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.²⁰

Not surprisingly, there was no response forthcoming from the Iranian government. So the Tribunal proceeded with a default judgment, as would be the case in civil proceedings before any other court where the defendant refuses to attend.

The hearing was modelled after a case on state responsibility rather than a criminal trial, which would have required the presence of a defendant and highly specific evidence on his individual responsibility. A criminal trial *in absentia* was deemed unsuitable for this initial attempt at exposing the truth,

19. *Id.* at III.

20. See Iran Tribunal, Prosecutor v. Islamic Republic of Iran, ¶ 18 (3 Feb. 2013), available at <http://www.irantribunal.com/images/PDF/Iran%20Tribunal%20Judgment.pdf>.

which required examination of a broader context rather than focusing on the guilt of specific persons. Nonetheless, the names of some important figures, such as the Death Commission members, was recorded in the testimony and reflected in the Judgment. Thus, the hearing mostly resembled a proceeding before the International Court of Justice rather than the International Criminal Court. It was focused on state rather than individual responsibility. This was the best way of reflecting the broader historical context and factual patterns of the “Bloody Decade”—which would not be as easily done if the focus was on individual defendants and their particular role in the state apparatus of mass-murder. It was also a way of avoiding the sense that without a defendant in the dock it would be impossible to achieve some measure of “justice.”

In ensuring a credible judicial process, there was an exacting standard for both the evidence and the legal submissions. In all, there were almost 100 witnesses between the Commission and the Tribunal; approximately eighty direct witnesses before the Commission, and an additional twenty direct witnesses as well as expert witnesses before the Tribunal. There were also exhibits such as detailed maps of prisons, photographs of victims and perpetrators, filmed interviews, prison memoirs, human rights reports, and other probative evidence. There were also well-conceived and detailed legal arguments. The Prosecution submission was that the practice of widespread and systematic crimes against political prisoners in the 1980s was a state policy that constituted “crimes against humanity” within the definition of that term under international law.²¹ Following three days of intense testimony under examination by prosecutors, as well as questions posed by the judges, the Tribunal retired to prepare its interim judgment. For the participants in the process, it was as if we were finally approaching the finishing line after an emotional marathon that had left all the participants utterly exhausted, yet inspired by the astonishing resilience of those who suffered the unspeakable, yet refused to give up, refused to remain silent, and never surrendered their right to justice.

After deliberating for three hours, the Tribunal walked back into the spacious and stately hall of the Academy at approximately 5 pm to deliver its interim judgement. The International Court of Justice towered in the background, a reminder of the aspiration of countless victims that look to such institutions for justice. It was typically gloomy weather in The Hague, though some rays of light penetrated the clouds. The 200 or so members of the audience rose to their feet in deference to the judges as they entered the hall. The women and men, young and old, some with their children, all stood in silence and held up photographs of their loved ones, both with love and defiance. After years of waiting and mourning, their moment had come to experience at least partial redemption, to receive some measure

21. *Id.* ¶ 113.

of justice for these abominations. Justice Kriegler read the interim judgment of the Tribunal: “*The evidence speaks for itself. It constitutes overwhelming proof that systematic abuses of human rights were committed by and on behalf of the Islamic Republic of Iran.*”²²

The declaration of the Tribunal was certainly not a surprise. But it had come after a momentous process of witness testimony, broadcast around the world for millions who heard the voice of the victims for the first time, and the veracity of the evidence had been confirmed and characterized in terms of its legal consequences, by an eminent and impartial panel of international jurists. The Tribunal had “establish[ed] incredible events by credible evidence” to quote the words of Justice Jackson in regard to Nazi crimes at the Nuremberg trial.²³ Following a prolonged silence, as the words and their significance began to sink in, there was overwhelming applause in the hall. In order to close this final session, the organizers offered flowers to the Tribunal members as a token of heartfelt appreciation for their diligent volunteer work. Perhaps here the Tribunal departed from formal judicial culture. Notwithstanding the professionalism and independence of the judges, there was a palpable sense of solidarity, and a mutual understanding that we had all witnessed an unforgettable and transformative experience that would stay with us forever. It was the courage and determination of the victims that had brought us together. Through their voices, we had witnessed an odyssey that carried us from the darkest abyss of grief to the greatest heights of humanity. As the Tribunal judges stood to leave the hall, the whole audience erupted in unison, chanting the same songs of hope that their loved ones had chanted in prison, in their final moments.

XI. THE FINAL JUDGMENT

The full and final Judgment of the Tribunal was delivered sometime later on 5 February 2013.²⁴ The following highlights of the factual and legal findings provide a glimpse of the “Bloody Decade” and the legal conclusions derived therefrom. In regard to the merits, the Tribunal noted that:

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:

22. *Id.* ¶ 45.

23. See Justice Robert H. Jackson, *Justice Jackson’s Report to the President on Atrocities and War Crimes*, § III ¶ 4 (7 June 1945), available at http://avalon.law.yale.edu/imt/imt_jack01.asp.

24. Iran Tribunal, *Prosecutor v. Islamic Republic of Iran*, 1 (3 Feb. 2013), available at <http://www.irantribunal.com/images/PDF/Iran%20Tribunal%20Judgment.pdf>.

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.” He dated this turning point to the mass demonstrations of 20 June 1981, the effective starting date of this Tribunal’s mandate of inquiry.²⁵

The Tribunal turned next to the treatment of ethnic and religious minorities, and considered the case of persecutions against the Bahá’í, Arab, and Kurdish minorities of Iran. In regard to the execution of Bahá’ís, the Tribunal noted that:

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.”²⁶

In regard to the execution of Arabs, the Tribunal noted that:

The religious judge, Khalkhali, 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.”²⁷

In regard to the execution of Kurds, the Tribunal noted that:

The Truth Commission heard the evidence of ten Kurdish witnesses and the Tribunal heard the evidence of Malakeh Mostafa Soltani. 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 [sic] had just spread on my skirt.”²⁸

The Tribunal also considered the treatment of women in Iran’s prisons. In particular, it referred to a comprehensive report written by Justice for Iran—a nongovernmental organization (NGO) based in London—under the title of “Crime and Impunity: Sexual Torture of Women in Islamic Republic Prisons.”²⁹ Among the crimes of sexual violence against women, one particularly shocking act was “rape before execution”:

25. *Id.* ¶ 31.

26. *Id.* ¶ 52.

27. *Id.* ¶ 56.

28. *Id.* ¶ 62.

29. *Id.* ¶ 65.

[M]any 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). 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.³⁰

In regard to physical torture of political prisoners:

Witnesses confirmed the Truth Commission's findings that "torture left all victims with horrific injuries." Torture broke prisoners' bones and caused them to lose parts of their bodies. Iraj Mesdaghi described how prisoners whose kidneys had malfunctioned as a consequence of *bastinado*, causing them to urinate blood, were placed on dialysis so that they could be kept alive for further torture; prisoners were then tortured by interrogators and nurses in the infirmary.³¹

The Tribunal noted that even "[p]regnant women were tortured."³² In regard to psychological torture:

Witnesses elaborated on the "grave" (or "coffin"): 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.³³

A particularly compelling testimony was that of a man that had been turned into a *tavvab* or "collaborator" while still in his adolescence:

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."³⁴

30. *Id.* ¶ 67.

31. *Id.* ¶ 72.

32. *Id.* ¶ 78.

33. *Id.* ¶ 74.

34. *Id.* ¶ 79.

In regard to the 1988 mass-executions:

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*: 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; others were asked whether they still sympathised with opposition groups and what they thought of the new regime; those who professed Marxist beliefs were invariably executed.³⁵

It noted furthermore that:

[B]usloads 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.³⁶

Elaborating on the policy of persecution underlying these executions:

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. Witnesses corroborated the Report’s findings that in certain wards virtually all prisoners were exterminated; that in 1988 the preferred method of torture was hanging (as opposed to firing squad); and that prisons went into lockdown immediately prior to the mass executions.³⁷

. . .

The Tribunal heard further evidence about the imprisonment and torture of minors; children as young as 11 were executed; others were pressured to participate in the firing squads by delivering *coups de grâce*.³⁸

In regard to the lasting effect of abuse on the survivors:

The Tribunal was vividly reminded of the enduring legacies of the abuse to which its witnesses had been subjected. 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.”³⁹

35. *Id.* ¶ 77.

36. *Id.* ¶ 80.

37. *Id.* ¶ 82.

38. *Id.* ¶ 84.

39. *Id.* ¶ 85.

The testimony and footage of a documentary filmmaker was also highly significant:

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.⁴⁰

In regard to the overall pattern of the evidence:

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.⁴¹

...

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.”⁴²

Accordingly, in regard to the merits, the Tribunal made the following conclusions on the facts:

1. 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;
2. 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”;
3. The violations were widespread and systematic and were committed against the civilian population in furtherance of the state policy; and

40. *Id.* ¶ 88.

41. *Id.* ¶ 93.

42. *Id.* ¶ 94.

4. 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.⁴³

Next, the Tribunal turned to the applicable law. In regard to the Revolutionary Courts, it concluded that:

[T]he 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.⁴⁴

It further underscored the culture of impunity, stating that it cannot be remedied by the very same judicial institutions that are implicated in the mass-executions:

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.⁴⁵

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.⁴⁶

Emphasizing the enduring legacy of these crimes on the contemporary situation in Iran, the Tribunal noted that:

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 situation which can aptly be described as the “banality of evil.” A situation that regrettably has continued even today, some 25 years later.⁴⁷

43. *Id.* ¶ 95.

44. *Id.* ¶ 108.

45. *Id.* ¶ 109.

46. *Id.* ¶ 110.

47. *Id.* ¶ 111.

An important aspect of the Judgment was the observation that:

[D]omestic 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.⁴⁸

This was recognized as early as the Nuremberg *Justice Trial* in which the United States Military Tribunal held that:

It is, therefore, clear that the intent of the statute on crimes against humanity is to punish for persecutions and the like, whether in accord with or in violation of the domestic laws of the country where perpetrated, to wit: Germany. The intent was to provide that compliance with German law should be no defense.⁴⁹

This is especially pertinent considering that the executions were pursuant to hearings before Revolutionary Courts applying their particular interpretation of Shari'a law, which is clearly not an excuse or defense to crimes against humanity under international law.

On the qualification of these acts as crimes against humanity, and their attribution to the Islamic Republic of Iran, the Tribunal concluded as follows:

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.⁵⁰

...

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.⁵¹

48. *Id.* ¶ 147.

49. See *United States of America v. Alstötter et al. (The Justice Case)* 3 T.W.C. 1 (1948), 6 L.R.T.W.C. 1 (1948), 14 Ann. Dig. 278 (1948), at 973.

50. Iran Tribunal, *Prosecutor v. Islamic Republic of Iran*, ¶ 154 (3 Feb. 2013), available at <http://www.irantribunal.com/images/PDF/Iran%20Tribunal%20Judgment.pdf>.

51. *Id.* ¶ 165.

Finally, “The Verdict” of the Tribunal, unanimously adopted, is as follows:

- (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

JOHANN KRIEGLER President Iran Tribunal⁵²

XII. THE POWER OF GRASSROOTS JUSTICE

Does grassroots justice make a difference? Or is it no more than a desperate *cri de coeur* by those confronted by impossible odds? The measure of success, though difficult to ascertain accurately, is the effect of such an undertaking on both victims and perpetrators, as well as bystanders. In this regard, the conclusion of the Iran Tribunal was not so much a case of “symbolic justice” or a “show trial” as it was about a different and arguably deeper form of justice. It was not only an alternative to impunity, but also an alternative to the disempowerment and despondence of victims for whom the mere exposition of the truth in a credible and legitimate forum was a significant first step on the path to redeem their lost humanity. It was also a measure of healing for an Iranian nation suffering under decades of totalitarian violence and imposed silence; a traumatized nation in desperate need of a collective therapeutic process. As a legal practitioner and international jurist, the Tribunal had challenged my fixation on justice dispensed by formal institutions like the International Criminal Court. There is something comfortable about the formalistic retreat into the antiseptic confines of legal pleadings that reduce the enormity of radical evil to manageable procedures and conclusive outcomes such as guilt or innocence. But the inverted morality of mass-murder requires something more far-reaching. The “habitual lawfulness” that is at the root of a viable legal system and the widespread internalization of social mores that ultimately sustains state institutions are not present in the context of a policy of mass-violence. In revolutionary Iran, the torture and summary

52. *Id.* ¶ 170.

execution of those arbitrarily deemed to be “enemies of Islam” was hardly deviance from an otherwise civilized norm of respect for human rights. The reinforcement of hatred and violence, from psychological propaganda to physical violence, was and remains integral to the régime’s conception of power. Doing justice under such circumstances must go beyond the punishment of this or that official—though that too is necessary in its own measure—to effect a broader political and cultural transformation. In any event, how is it possible to do adequate justice for such appalling crimes against humanity? After the International Military Tribunal at Nuremberg delivered its judgment in 1946, Hannah Arendt famously remarked that: “The Nazi crimes . . . explode the limits of the law; and that is precisely what constitutes their monstrousness. For these crimes, no punishment is severe enough. . . . This guilt, in contrast to all criminal guilt, oversteps and shatters any and all legal systems.”⁵³ Likewise, the monstrosity of Khomeini’s *fatwa*, and all the other horrors of the “Bloody Decade,” force us to search for a more profound justice that can shed light in a dark abyss of depravity.

While it may be difficult to measure the impact of the Tribunal, it is *par excellence* an instance of speaking truth to power, of breaking an imposed silence. Without enforcement powers, a People’s Tribunal cannot arrest perpetrators or sentence them to imprisonment. It cannot order compensation for those who have been wronged, nor shut down revolutionary courts. But it can provide a powerful platform to expose millions to the voices of the victims, to fight against a long-standing policy of denial that is itself a continuation of the original violence visited upon those whose lives have been extinguished. What is more, élite human rights advocates and international jurists, and equally political “realists” and foreign policy pundits, can too easily dismiss the power of grassroots justice. Beyond political deals and cosmetic changes, a meaningful transformation requires a powerful antidote to the normalization of abuse. This is where the story of Mother Esmat becomes a reflection of the intimate reality of human rights violations; a reality that touches the masses in a way that abstract intellectual discourse and empty political slogans cannot. When she recounted her woes, including the execution of her eleven-year-old nephew, Javad Rahmani, the humanizing impulse at the core of justice was internalized by all those that felt the power of her words. Nobody asked about her nephew’s religion or ideology in an otherwise divisive political space. Nobody thought that hearing her story was futile. Not even the Islamic Republic’s propagandists and masters of demonology could credibly smear Mother Esmat by labeling her an “American spy” or “Zionist agent,” as they are wont to do with anyone

53. Hannah Arendt & Karl Jaspers, *Letter to Karl Jaspers*, in HANNAH ARENDT/KARL JASPERS: CORRESPONDENCE 1926–1969, at 51, 54 (Lotte Kohler & Hans Saner eds., Robert Kimber & Rita Kimber trans. 1992).

who utters an inconvenient truth in Iran. The primal wound of a mourning mother is the last refuge of our shared humanity; it is the last hope that we can awaken to the fact that those who gave us life did not bring us into this world for extinguishing the life of others.

Despite all these seemingly ephemeral effects, the impact of the Iran Tribunal went far beyond what most of us had imagined at the outset. In particular, it became an unprecedented catalyst for accountability that finally broke the policy of denial and helped create a new political space for human rights in contemporary Iranian consciousness. It is telling that after millions watched the testimony from the Truth Commission phase, whether over internet live-streams or via the extensive global media coverage, the Islamic Republic was no longer able to remain silent, because the issue would not so easily go away. One of the best indications of impact is the propaganda that was crafted in response to this challenge to the regime's legitimacy. On 21 October 2013, following the final Judgement of the Tribunal, one of the government mouthpieces, the "Borhan" website, published a remarkable commentary (apparently initially published some time earlier) by a certain Mr. Siyyid Mohammad Mehdi Payambari, identified as head of the Human Rights Committee of the Rahbord Institute (a strategic think-tank). It was entitled "What is behind the 'Iran Tribunal' show trial?"⁵⁴ It is safe to presume that in an authoritarian state with little to no freedom of the press, such articles are not a random reflection of the intellectual curiosity or journalistic initiative of the author. To the contrary, such articles express a perceived need to rehabilitate the regime when confronted with a sufficiently serious challenge to its legitimacy. The article condemns the Iran Tribunal as "made to order theatre"—supposedly in contrast with the impartial "justice" delivered by the Islamic Revolutionary Courts! It praises Khomeini's order for the mass-execution of *monafeqin* ("religious hypocrites") as a "life-saving *fatwa*" that resulted in "poking out the eye of the conspiracy known as the Mojahedin-e-Khalq organization." There is no mention of the many other groups that were also executed, nor of the fact that even those political prisoners who belonged to the Mojahedin were mostly arrested for minor offenses such as distribution of pamphlets and had already served their sentences. Most importantly, there is no recognition that summary executions are wrong no matter the circumstances. The conditioning of human rights on whether a person's political or religious beliefs are acceptable to the government is itself the clearest manifestation of a worldview built on a fanatical, absolutist ideology.

What is most remarkable about this article, however, is the author's attempt to invoke international humanitarian law to justify the mass-executions!

54. A copy of the original article in Persian is on file with the author. All translations into English are those of the author. [How impressive.]

The argument is that because the Mojahedin had become a military organization at war with Iran, and because political prisoners were somehow communicating and collaborating with this war effort, they became enemy combatants under the laws of war. The astonishing conclusion is that:

According to the principle of international criminal law (enemy character) in case there is evidence of contact by persons inside a prison with military forces during a war, all the rules applicable to a state of war applies to these persons. This includes self-defence, execution without a trial [sic!] or execution by a military tribunal.

The fact that this argument comes from the Human Rights Committee of a NGO (almost certainly under control of the government) is itself an exceptional Orwellian feat of the “war is peace; peace is war” variety, expressed in this instance as the “human rights is murder; murder is human rights” paradox.

The article goes on to quote an Iranian official who complains that when the invitation was issued by the Tribunal to attend the hearings at The Hague, there was insufficient information about the organizers, the witnesses, and the sources of funding, as if the government would have otherwise made an appearance. Referring to the “enemy character” justification for summary executions by the Rahbordi Institute’s Human Rights Committee in an earlier publication, the Tribunal noted that this response to the Truth Commission testimony, as manifestly absurd and morally repulsive as it may be, is probably the first recognition by the government of the 1988 massacres:

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.”⁵⁵

This in itself was a significant success for the Iran Tribunal Campaign, because the widespread coverage of the hearings had pressured the government sufficiently to invoke this rather desperate legal argument, thereby admitting for the first time that the 1988 executions did in fact take place. Furthermore, the recirculation of this rather blunt admission of mass-murder without a trial may have been a reaction to the spectacular failure of an even more intriguing propaganda piece.

On 15 December 2012, the “Baztab” website, another mouthpiece of the regime, had issued a more nuanced and sophisticated article, remarkably entitled: “How did Ayatollah Khamenei prevent the execution of thousands of Marxists and Tudeh?”⁵⁶ In contrast to “Borhan’s” aggressive justification,

55. Iran Tribunal, *Prosecutor v. Islamic Republic of Iran*, ¶ 4 (3 Feb. 2013), available at <http://www.irantribunal.com/images/PDF/Iran%20Tribunal%20Judgment.pdf>.

56. A copy of the original article in Persian is on file with the author. All translations into English are those of the author.

this article attempts to portray the current Supreme Leader, Khamenei, the President of Iran in 1988 as noted above, as a human rights champion and man of conscience, who tried to save lives! Again, after twenty-five years of denial, the article refers as a matter of fact to the twenty-fifth anniversary of the “summer of 1988” and attributes the following account to an anonymous “informed source”:

After issuing the order for the establishment of the three-member trial in 1988 for members of the Mojahedin-e-Khalq (*monafeqin*), the persons who had received this order from the Imam [i.e. Khomeini] succeeded in receiving a similar order in regard to members of other leftist and Marxist groups including the militants of the Fadayan-e-Khalq, the Tudeh party, etc.

It goes on to suggest that when Khomeini became aware of this second order—as if he had not issued the *fatwa* himself—he stopped the order and referred the matter to the recently established Expediency Council for a final decision. It then claims that the Council was convened under the authority of the then-President and current Supreme Leader, Ali Khamenei, who vigorously opposed and ultimately stopped the executions:

At this meeting which was held in Ayatollah Khamenei’s office, after consideration of the matter he explicitly and vehemently opposed this plan and in explicit and pointed words expressed his opposition and on this basis Ayatollah Khamenei with the support of the then Speaker of the Islamic Consultative Assembly [i.e. Parliament] [Akbar Hashemi Rafsanjani] and other members sharing this view, annulled the order for execution of leftist prisoners who numbered in the thousands.

This unprecedented article caused quite a storm in Iranian human rights and civil society circles, resulting in extensive media coverage. There was not only a recognition that executions did in fact take place, but also a perceived need to re-fashion Khamenei as the new defender and humanitarian savior of leftist political prisoners. In the eyes of the Campaign, for those who had waited twenty-five years to witness the end of denial, it was a huge victory. Indeed, such was the public reaction to the exceptional creativity of Iran’s spin doctors, that within days of its appearance, the article suddenly disappeared from the “Baztab” website, never to be seen again. The voice of the survivors was clearly not without effect. But the best was yet to come.

In January 2016, one of the most famous Mothers of Khavaran, known as Mother Behkish, who lost five of her children in the 1988 mass-executions and campaigned tirelessly for justice, passed away. It was seemingly the end of an era, as this generation of courageous activists gradually disappeared. Following the unprecedented exposure of the truth by the Iran Tribunal in 2012, some thought that the story of the atrocities would soon be forgotten. Just a few months after Mother Behkish’s passing however, there would be yet another remarkable development. On 9 August 2016, coinciding with

the twenty-eighth anniversary of the mass-executions, the son of Ayatollah Montazeri disclosed an astonishing audio recording from 15 August 1988 in which his dissident father is heard admonishing the members of the “Death Commission” who had attempted to gain his political support for Khomeini’s *fatwa*. Those in attendance included Judge Hossein Ali Nayeri, Tehran Prosecutor Morteza Eshraghi, Deputy Prosecutor General Ebrahim Raeesi and the Intelligence Ministry’s representative in Evin Prison Mostafa Pourmohammadi,⁵⁷ who as previously mentioned was appointed by President Rouhani in 2013 as the Minister of Justice. Montazeri is heard telling them that “the biggest crime in the Islamic Republic, for which the history will condemn us, has been committed at your hands, and they’ll write your names as criminals in the history.”⁵⁸ Following the Iran Tribunal’s sensitization of the Iranian public to the facts of the 1988 mass-executions, the release of this audio recording caused an unprecedented storm of controversy. In a scene that would have been unimaginable to the Mothers of Khavaran when the Iran Tribunal campaign first began, the Minister of Justice and former Death Commission member, Mostafa Pourmohammadi, appeared on Iranian state television to admit and defend the mass-executions as “the will of god.” He was unrepentant, but still accountable to the Iranian people. Obviously, public awareness of the truth and widespread condemnation of these atrocities had compelled the Islamic Republic to engage in a damage containment propaganda exercise. It is not clear where these currents will lead to, but it is abundantly clear that there is now an unprecedented call for accountability among the Iranian people, with some in the political establishment even calling for a formal apology; a reality that would have been unimaginable for the likes of Mother Behkish.

XIII. HEALING PAST WOUNDS, BUILDING THE FUTURE

For those of us in the Hague-centric world of international criminal tribunals, it is easy to overlook what access to justice means for those on the periphery of formal institutions. The ICC is often unavailable where it is needed most, and where it is available, it has scant resources to address the multitude of crimes against humanity around the world. In this context, the Iran Tribunal is a remarkable example of grassroots justice as an alterna-

57. International Campaign for Human Rights in Iran, *Iran’s Intelligence Ministry Tries to Hide Evidence of Massacre of Thousands of Political Prisoners in 1988* (12 Aug. 2016), available at <https://www.iranhumanrights.org/2016/08/ahmad-montazeri/>.

58. Saeed Kamali Dehghan, *Audio File Revives Calls for Inquiry Into Massacre of Iran Political Prisoners*, GUARDIAN, 11 Aug. 2016, available at <https://www.theguardian.com/world/iran-blog/2016/aug/11/hossein-ali-montazeri-audio-file-calls-for-inquiry-1988-massacre-iran-political-prisoners>.

tive to impunity. It is both a lasting record and a first step in exposing the historical truth of the “Bloody Decade” of the 1980s; a first step that has already produced remarkable results. It has helped open an unprecedented space for accountability by popularizing the intimate reality of suffering in the wake of mass-atrocities. It has demonstrated the power of ordinary people, of defiance against inhumanity in the face of overwhelming odds. It has contributed to the gradual transformation of the politics of violence and impunity into a culture of human rights, where dignity is not rationed according to the religious and political beliefs of Iranian citizens, but equally the inalienable right of all. It captures the ethos of “Iran for all Iranians,” which is the rallying cry of those that demand democracy and the rule of law. Iran is in some respects a traumatized nation, carrying deep wounds and repressed memories; this reality has conditioned its citizens to casually accept the highest per capita rate of executions in the world, systematic torture and imprisonment of dissidents, religious and ethnic persecution, and other forms of violence as a normal state of affairs. Healing past wounds, speaking truth to power, holding leaders accountable for crimes against humanity, is about achieving national reconciliation and building a better future, liberated from hatred and violence.

The question of accountability for gross abuses is especially pertinent at a time when the agreement on Iran’s nuclear program, and questions of regional security in Syria, Iraq, and elsewhere, have subordinated human rights issues into an irritant for statesmen focused on greater geopolitical calculations and commercial profits. War and sanctions may not be the solution, but neither is imposed amnesia and appeasement. Political “realists” take pleasure in dismissing the concerns of human rights “idealists” as irrelevant to what really matters, if not counterproductive in furthering the goals of diplomacy. Of course, the supposedly brilliant strategies of supporting hyper-corrupt authoritarian leaders in the middle-east to achieve energy security and lucrative commercial deals, or of encouraging a convenient war here and there to achieve a “balance of power” or simply to increase weapon sales, or even deliberately unleashing jihadist fury where it seems to be a useful instrument of power—these are the catastrophic policies that have helped bring the region to where it is today, ripped apart by sectarian violence in the service of abusive élites and totalitarian ideologies at whose altar so many innocent lives have been sacrificed.

A different vision of the future, whether in Iran or the wider Middle East, requires a different conception of power; a different image of leadership. The Mothers of Khavaran, the heroic Campaign for Iran Tribunal, the discourse of healing, dignity, and reconciliation, the surfacing of truth from the deep recesses of a repressed past in pursuit of accountability, is that different conception of power, that different image of leadership, that liberates both the torture victim and the torturer from the prison of hatred, and makes the impossible seem possible.

For many years, the Mothers of Khavaran have gone to that wretched cemetery, to mourn their children with flowers, prayers, poems, and tears. Perhaps the day will come when the leader of a democratic Iran, herself a mother, will go to that same desolate site of grieving, apologize to those who have lost their loved ones, and on behalf of the Iranian people, place flowers on their symbolic grave.