

# The Massacre of Political Prisoners in Iran, 1988

REPORT OF AN INQUIRY CONDUCTED  
BY GEOFFREY ROBERTSON QC

## **Executive Summary**

Late in July 1988, as the war with Iraq was ending in a truculent truce, prisons in Iran crammed with government opponents suddenly went into lockdown. All family visits were cancelled, televisions and radios switched off and newspapers discontinued; prisoners were kept in their cells, disallowed exercise or trips to the infirmary. The only permitted visitation was from a delegation, turbaned and bearded, which came in black government BMWs or by helicopter to outlying jails: a religious judge, a public prosecutor, and an intelligence chief. Before them were paraded, briefly and individually, almost every prisoner (and there were thousands of them) who had been jailed for adherence to the *Mojahedin Khalq* Organisation – the MKO. This was a movement which had taken its politics from Karl Marx, its theology from Islam, and its guerrilla tactics from Che Guevara: it had fought the Shah and supported the Revolution that brought Ayatollah Khomeini to power, but later broke with his theocratic state and took up arms against it, in support (or so it now says) of democracy. The delegation had but one question for these young men and women (most of them detained since 1981 merely for taking part in street protests or possession of ‘political’ reading material), and although they did not know it, on the answer their life would depend. Those who by that answer evinced any continuing affiliation with the *Mojahedin* were blindfolded and ordered to join a conga-line that led straight to the gallows. They were hung from cranes, four at a time, or in groups of six from ropes hanging from the front of the stage in an assembly hall; some were taken to army barracks at night, directed to make their wills and then shot by firing squad. Their bodies were doused with disinfectant, packed in refrigerated trucks and buried by night in mass graves. Months later their families, desperate for information about their children or their partners, would be handed a plastic bag with their few possessions. They would be refused any information about the location of the graves and ordered never to mourn them in public. By mid-August 1988, thousands of prisoners had been killed in this manner by the state – without trial, without appeal and utterly without mercy.

The regime did not stop at this extermination of *Mojahedin* supporters. The killings were suspended for a fortnight’s religious holiday, but began again when the “Death Committee” (as prisoners would later call the delegation) summoned members of other left-wing groups whose ideology was regarded as incompatible with the theocratic state constructed by Imam Ruhollah Khomeini after the 1979 revolution. These groups included the communist *Tudeh* party, aligned with Moscow, the Marxist/Leninist *Fadaiyan Khalq* (which had split into majority and minority factions), *Peykar* (orthodox Marxist/Leninist), Trotskyites, Maoists, and any remaining liberals who had supported the Republic’s first short-lived president, Bani-Sadr. Their interviews were longer, trickier and the chance of survival (albeit in most cases after torture) somewhat higher. This time the issue was not their political affiliation, but their religion and their willingness to follow the state’s version of Islam: in short, whether they were apostates.

This time there was a kind of brief trial, ending with a sentence of death for those atheists and agnostics whose parents were practising Muslims, whilst women in that category and others from secular families were instead ordered to be whipped five times a day until they agreed to pray, or else died from the lash. So there followed, in late August, September and October a second wave of executions, genocidal in intention (because the victims were selected on religious criteria) although more confused and arbitrary in implementation, with torture as an alternative sentence. This second wave of killings was accompanied by the same secrecy that had attended the extermination of the *Mojahedin* – families were not informed for several weeks and sometimes months, and were not told where their sons and husbands had been secretly buried. There was a news blackout over all these prison executions: the regime controlled all media.

Nevertheless, mass murder will out. Reports of an increase in political executions in Iran appeared in *The Financial Times* and *The New York Times* in mid-August 1988 and on 2 September 1988 Amnesty International put out an *Urgent Action* telegram evincing its deep concern that “hundreds of political prisoners may have been executed”.<sup>1</sup> There was no conception of the scale of the massacres, but in September, the Human Rights Commission’s Special Representative for Iran, the El-Salvador Professor Reynaldo Pohl, was deluged with oral and written complaints about a “wave of executions”. He raised this with Iran’s permanent representative at the UN, at a meeting on 29 September 1988, only to be told that the “killings” were merely those which had occurred on the battlefield after the *Mojahedin*’s small Iraq-based army had attempted to invade Iran in mid-July (this quickly-defeated incursion was known as the “Mersad Operation” to the Iranian state, and as “Operation Eternal Light” to the *Mojahedin*). Iran’s position was complete denial, with a refusal to answer Pohl’s questions on the grounds that his information had been provided to him from *Mojahedin* sources and was therefore unreliable propaganda.<sup>2</sup> Pohl nonetheless published in October credible allegations that 860 bodies of political prisoners had been dumped in a mass grave in a Tehran cemetery between 14 to 16 August 1988. (This interim report may have prompted the speaker of the Parliament, Ali Akbar Hashemi Rafsanjani, to admit unguardedly in February 1989 that “the number of political prisoners executed in the last few months was less than one thousand”<sup>3</sup> – a number he appeared to think was commendably low.) Prime Minister Mir Hossein Mousavi (who twenty years later would be the defeated candidate in the 2009 Presidential elections) was asked in December 1988 by an Austrian television reporter what he had to say about the allegations made by the western media concerning the *Mojahedin* killings: incautiously, he tried to defend them with the dishonest response that “they [i.e. the MKO prisoners] had plans to perpetrate killings and massacres. We had to crush the conspiracy... in that respect we have no mercy”. In February 1989 Khomeini delivered an “historical message” about his former left-wing supporters: “We are not sorry that they are not with us. They never were with us. The revolution does not owe anything to anyone.” He inveighed against “the

liberals” who had criticised him for “enforcing God’s sentence” against the *Mojahedin*, whom he described by using the Persian word *Monafeqin* (“the hypocrites”) and he warned against feeling pity for “enemies of God and opponents of the regime”. He went on, “as long as I exist I will not allow the regime to fall into the hands of liberals. I will not allow the hypocrites of Islam to eliminate the helpless people.”<sup>4</sup> Although the Iranian stance at the UN was to deny all allegations about prison executions, these veiled but menacing under-statements by its leaders, for home consumption, can in retrospect be interpreted as a defiant justification for mass murder.



It is important to appreciate that the UN was well aware of the massacres (if not that its victims were numbered in thousands) shortly after they had commenced and before they had concluded. Its Human Rights Commission had appointed an El Salvador law professor and diplomat, Reynaldo Galindo Pohl, in 1986 as its Special Representative to report regularly upon the situation in this country, with particular concern to investigate the credible reports of executions and torture of political prisoners and the brutal repression of those who followed the Baha’i faith.<sup>5</sup> His first report, in 1987, confirmed the widespread use of *bastinado* and other torture techniques (medical examinations of escaped and released political prisoners had put this beyond doubt) but did no more than call on the Iranian government to set up a human rights commission to reply to what he described as “allegations” of mistreatment and summary executions, and to allow him into the country. The government declined to address any of the allegations and instead diverted the Professor by raising academic questions about the compatibility of Sharia law with international human rights law, and historical quibbles about whether there had been sufficient input from Islamic jurists in the drafting of the Universal Declaration of Human Rights. Pohl was more than happy to ponder these questions at length in his report in 1988: he made no effort to calculate the number of political prisoners in Iranian jails, who had by this stage run into many thousands, and he dropped his request to visit prisons (despite his awareness of information that “some prisoners were in danger of execution”). He merely suggested that “the government may wish to initiate an urgent investigation of these complaints in order to take measures of redress”.<sup>6</sup> The measures of redress the government wished to take, namely the murder of all prisoners associated with the opposition, began in late July 1988 and lasted until November.

On 26 August 1988 Pohl received information that 200 *Mojahedin* prisoners had been hanged in the assembly hall at Evin prison. But not until 28 September (“having received information about a wave of executions that was allegedly taking place since the month of July 1988”) did he write to Iran’s Permanent Representative inviting the government’s comments. He did, however, make an interim report

to the General Assembly on 14 October 1988, in which he clearly set out information that “a large number of prisoners, members of opposition groups, were executed during the months of July, August and early September”<sup>7</sup> and reported that on 5 August the Chief Justice of Iran (Ayatollah Mousavi Ardebili) had announced that the judiciary was under pressure from public opinion to execute all members of the *Mojahedin* without exception and without trial, and had added a threat that more members of that organisation and “other groups” of oppositionists would be executed.<sup>8</sup> The UN Special Rapporteur on Summary Executions had already telegraphed the Iranian Minister for Foreign Affairs to the effect that the state was breaching Article 14 of the International Covenant on Civil and Political Rights by executing prisoners after “extremely summary, informal and irregular proceedings, failure to inform defendants of specific accusations against them, lack of legal counsel, absence of any instance of appeal and with irregularities that contravene international standards of fair trial”.<sup>9</sup> It is therefore quite clear that notwithstanding Professor Pohl’s failure to take any urgent action during the massacre period, the General Assembly was provided on 13 October 1988 with evidence of mass murder in Iranian prisons. It did absolutely nothing, and nor did the Security Council.

Thereafter, credible and persistent reports of the “wave of killings” continued to reach Pohl. In his next report in January 1989, he appended a list of the names of over 1,000 alleged victims and noted that his sources indicated that there had been several thousand, mostly from the *Mojahedin* but also from other left-wing groups. Many of the victims “had been serving prison sentences for several years, while others are former prisoners who were arrested and then executed... people witnessed large numbers of bodies being buried in shallow graves”.<sup>10</sup> Mr Pohl concluded:

The global denial [by the Iranian Government] of the wave of executions which allegedly took place from July to September of last year... is not sufficient to dismiss the allegations as unfounded... the allegations received from several sources, including non-governmental organisations, and reported in the media, referred to summary executions in places that were not affected by military operations...<sup>11</sup>

Notwithstanding this knowledge, Professor Pohl became lost in admiration for the ceasefire (he records “immense satisfaction and deep appreciation” to the Iranian government), which he is sure “will soon turn its positive attention to human rights problems” and will investigate abuses of power. With astonishing naivety, he assumed in this crucial report that the Iranian government would investigate its own abuses, despite meetings with the Iranian representatives to the UN who, with utter dishonesty, had assured him that all the *Mojahedin* deaths had occurred on the battlefield.<sup>12</sup>

No truthful information from the Iranian government was ever supplied to the UN Special Representative about the 1988 massacres. Mr Pohl is partly to blame: although his mandate was renewed by the Human Rights Commission, he made no real investigation of the massacre allegations, and at this stage (one year after the killings) the regime had not even permitted him to visit the country.

By the time of Pohl's 1990 report, the government's campaign of assassinating its critics had achieved its terrorist purpose and the murder in Switzerland of Mr Kazem Rajavi, representative of The National Council of Resistance (led by the *Mojahedin*) at the UN, and of other dissidents in Europe had chilled criticism and deterred potential witnesses. So had the outrageous death sentence *fatwa* which Supreme Leader Khomeini had pronounced on author Salman Rushdie in February 1989. The government felt sufficiently confident of Mr Pohl to allow him a 6 day visit, with 5 days of meetings with its officials and a half day visit to Evin prison, where he was welcomed with a band concert (a tactic used by the Nazis for foreign visitors at Terezin and Auschwitz)<sup>13</sup> but denied access to the prisoners he requested to see.<sup>14</sup> They paraded before him instead some alleged inmates – they may not have been prisoners at all – who told him that “their treatment was satisfactory and the food superb”<sup>15</sup> and some stooges from state-backed women's organisations who explained that “women enjoyed freedom in absolute terms and without any limitations”.<sup>16</sup>

It is clear that the UN Human Rights Commission and the General Assembly had some evidence of the massacres shortly after they commenced, but no effective investigation was undertaken at that time or subsequently. Astonishingly, Professor Pohl's reports from 1991 onwards do not even mention them (although they note that execution of political prisoners without fair trial continues).<sup>17</sup> By this time, the reports are more concerned with Iran's overseas assassination campaign against its opposition leaders (the Shah's last Prime Minister, Shapour Bakhtiar, was killed in France, and other dissidents died in a hail of bullets in Germany, Switzerland and Turkey) and with the murder of Salman Rushdie's translators following the bloodthirsty call by the new (and current) Supreme Leader, Seyed Ali Khamenei, for Muslims throughout the world to carry out the *fatwa* on all connected with the publication of *The Satanic Verses*. There can be little doubt that the Islamic Republic was emboldened to flout international law so outrageously as a result of the way in which it was able to avoid accountability, or even criticism, at the UN, for the brutal extermination of thousands of its prisoners. Why was it permitted to get away with the worst violation of prisoners' rights since the death marches of allied prisoners conducted by the Japanese at the end of the Second World War? This was, of course, 1988 – five years before international tribunals were established to punish crimes against humanity in the former Yugoslavia and Rwanda. In March of that year Saddam Hussein had gassed the Kurds at Halabja, and had suffered no UN reprisals. The end of

the Iran/Iraq war later in August 1988 produced a political climate in which other diplomats and UN officials wanted to give both countries the benefit of any doubt. But what they gave Iran was impunity, and the message that goes with it: if you can get away with murdering thousands of your prisoners, you can get away with other breaches of international law, like assassinating your enemies in other countries and even, eventually, with building nuclear arsenals. In 1988, the Islamic Republic of Iran learned the easy way, from the failure of the UN and its Commissions and its member states to investigate mass murders in Iranian prisons, that international law had no teeth for biting, or even for gnashing.

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There are, of course, non-legal mechanisms available at the United Nations – it has “Special Rapporteurs” on extra judicial killings and on torture who might be prevailed upon to pick up the baton dropped by Professor Pohl and to conduct a proper investigation. Iran might be required to co-operate by the Human Rights Council, which purports to guard the ICCPR and has replaced the Human Rights Commission which so dismally failed to call Iran to account in 1988. It has to be said that the UN human rights mechanisms are highly politicised as well as being underfunded, and tend to be reserved for inquiries into recent atrocities (for example, the Alston Inquiry into the Kenyan election violence and the Goldstone Inquiry into the Gaza war).

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My opinion on the facts and the international law issues to which they give rise may be shortly stated. Iran in 1988 was a nation of 40 million people (it now has 73 million), with prisons in over 100 cities. At least 20 of those prisons held political prisoners incarcerated for membership of groups opposed to the Islamic Republic. On 20 July 1988 Ayatollah Khomeini, the Supreme Leader, reluctantly “drunk the cup of poison” and accepted the UN ceasefire in the war with Iraq. One week later a small force of *Mojahedin* with Iraqi air cover mounted an attack over the border. After an initial success, they were routed on 29 July 1988. The previous day, Khomeini had issued a *fatwa* ordering a death sentence for all imprisoned *Mojahedin*, and this was put into immediate operation through three-man “Death Committees” who confirmed the identity and “steadfastness” of *Mojahedin* prisoners prior to sending them for execution. By mid-August, up to 5,000 of them had been killed. There was a lull in executions for ten days, but on 26 August a second wave broke, entailing brief trials of all “leftist” prisoners for the religious crime of apostasy. Those men from Muslim families who declined to say Islamic prayers were sent for execution, whilst female non-believers were tortured until they agreed to pray, and this torture was inflicted, more severely, on men who did not come from a devout Muslim family. The prison massacres stopped by November, when relatives began to be notified, in a cruelly slow and bureaucratic way, of the fact of a

child or spouse's death, but they were refused any information about the place of burial and were forbidden to mourn. This prohibition is still enforced today.

I find that the state of Iran has committed four exceptionally serious breaches of *jus cogens* rules of international law which entail both state responsibility and individual accountability for war crimes and crimes against humanity, *viz*

- 1) The arbitrary killing of thousands of male and female prisoners pursuant to a *fatwa* that held them collectively responsible for the *Mojahedin* invasion, notwithstanding that they had been in prison and *hors de combat* for years, serving fixed term sentences for relatively minor offences. This was not the execution of a lawful sentence, because there was no trial, no charge and no criminal act other than adhering to a particular ideological group. It was dishonest of Iranian leaders to pretend that the executed prisoners had all been given death sentences and had refused an opportunity to reform: this was a lie. So too was the suggestion that they had rioted or that they were all "terrorists and spies". None of those whom I interviewed had been charged with terrorism offences or with espionage, and most had been in prison since 1981-3. The immediate trigger for the massacre was tit-for-tat retaliation for the "Eternal Light" invasion and the pain of agreeing to a ceasefire, but the medieval defence of "reprisal" has long been abolished. The right to life, guaranteed by customary international law, by treaties to which Iran is a party and by the Geneva Conventions, was quite deliberately and barbarically breached, and all who bear international law responsibility for this mass murder should be prosecuted. An obligation to prosecute may also arise from the Genocide Convention, since the reason why MKO members were condemned as *moharebs* ("warriors against God") and exterminated was that they had adopted a version of Islam which differed from that upheld by the State.
- 2) The second wave of apostate killings was also a breach of the right to life, as well as the right to religious freedom. The male prisoners who were executed were given some kind of trial, but it was wholly deficient in compliance with legal safeguards and massively unfair. They were offered no time or facilities to prepare their defence and were taken by surprise by questions, the implications of which they did not understand. They were executed for a crime of conscience in that their only offence was to refuse to adopt the religious beliefs, prayers and rituals of the state. There is force in the argument that in this sense they comprised a distinct group exterminated not because of their left wing political leanings but because of their beliefs about religion: they were in consequence victims of genocide. Apostasy in any event is not a crime for which the death penalty is permissible in international law – a position taken by most states a few months later when Khomeini purported to pass that sentence on Salman Rushdie. They were not, as the government

later alleged, spies or terrorists or prison rioters. They were executed for no better reason than to rid a theocratic state of ideological enemies in post-war circumstances that could not possibly give rise to a defence of necessity or to any other defence.

- 3) The beatings inflicted on leftist women and on other men who were regarded as capable of religious compliance satisfied the definition of torture, which is absolutely prohibited even if it is consonant with national law. The beatings by electric cable on the soles of the feet, five times a day for weeks on end, together in many cases with beatings on the body, were calculated to and did cause excruciating pain and extensive suffering as well as humiliation and degradation. The mental anguish was heightened by the fact that the beatings were inflicted not for the purpose of punishment, but to make the prisoners adopt a religion that they had rejected, and thus surrender their freedom of conscience. Again, no defence of necessity can possibly arise: the only object of the beatings was to break their will and their spirit and to make them more amenable to the state's version of Islamic governance.
- 4) Finally, the rights to know where close relatives have been buried and to mourn their deaths, have been and still are being denied by the state. These rights are implied from the right to life and (more logically) from the right of innocent families not to be treated inhumanely or cruelly. There is no possible justification, today, for denying information about burial locations or for prohibiting gatherings of mourners: there is no evidence to suggest that these gatherings would cause public disorder or breaches of the peace. What is being denied, two decades after the deaths, is the right of parents, spouses and siblings to manifest their feelings of devotion in respect of the memory of a family member: this is a denial of their rights to respect for home and family life (an aspect of privacy) as well as a denial of the right to manifest religious beliefs. It also amounts to discrimination, since no other class or category of the bereaved has been denied the opportunity to mourn. The refusal to identify mass graves implicitly involves a refusal to prevent DNA testing (which has proven reliable in war crimes investigations as a means of identifying the remains in mass graves) and, in consequence, the prevention of a proper burial.

So far as the state of Iran is concerned, these breaches of its treaty and customary law responsibilities have no criminal consequence. States cannot be subjected to a penal sanction. But these breaches do give rise to two obligations: the state must cease the wrongful conduct and must make full reparation for the injury caused by its act.<sup>18</sup> Reparation should include damages where appropriate, which will be compensatory but not punitive.<sup>19</sup> The beneficiaries of holding Iran to these obligations would be relatives of the deceased, but action by them or by another state on their behalf would obviously have to be taken in a forum outside Iran. The difficulty will be in finding such a forum: the International Court of Justice might be activated by a UN organ or by a member state, but Iran would refuse to cede jurisdiction to it.

That would not matter if the General Assembly or another UN organ were to seek an advisory opinion (e.g. on whether the prison killings amounted to genocide or to a crime against humanity): in such a case, the consent of Iran would not be required – the reason why Israel could not stop the ICJ from deciding the issue of the Palestinian wall. The prospect of a claims tribunal, or any other form of arbitration or negotiation under UN auspices, depends upon *real politik*. It may, for example, be urged that any concession to Iran in respect of its nuclear facilities should be contingent upon its atoning for past human rights abuses by providing information and compensation to survivors and relatives of those it has unlawfully massacred, and in opening mass graves so that DNA testing may establish and identify the remains.

The individuals against whom there is a *prima facie* case for prosecution for crimes against humanity, torture, genocide and war crimes, are those in the chain of command, from Supreme Leader to hangman. At the middle level, the members of the Death Committee are well known, as are the senior prison officials who organised and authorised the executions, and no doubt those Revolutionary Guards who acted as hangmen, firing squad members and gravediggers can also be identified. There is however, a good deal of opacity at the higher level: it is unclear to me, for example, which leaders were involved in advising Imam Khomeini to issue the *fatwa* on 28 July 1988 and which officials were involved in transmitting that decree to the prison governors and arranging the logistics of the first wave of executions. Different ministries would have had to give approvals and directions, most importantly the Ministry of Information whose officials conducted interrogations, set questionnaires and kept tabs on every prisoner. There is evidence that, at some prisons, warders were supplanted by Revolutionary Guards who carried out the killings. When relatives were eventually notified, they were not in most cases informed by the prison authorities, but by Revolutionary Guards. There is a real mystery over the authority for the “second wave” of leftist/apostate executions, which were out with the terms of the 28 July *fatwa*: was there another secret *fatwa*, as Montazeri suggests, in the first weeks of September, or was this a decision taken by the political leadership under pressure from hardliners in Qom and communicated through the Supreme Court to the Death Committees? These questions must be answered before there can be any authoritative identification of all those criminally complicit in the massacres.

That said, the identification of some of those who directed the victims to the slaughterhouse in Tehran prisons is very plain. The *fatwa* was directed to **Hossein Ali (Jafar) Nayyeri**,<sup>20</sup> a religious judge at the time and currently Deputy Chief Justice of the Supreme Court. He was identified as presiding over Death Committees in Tehran prisons by many survivors permitted to take their blindfolds off when attending the committee, because he had presided over their earlier cases or was well-known from television

appearances. He admitted to Montazeri on 13 August that he had already executed 750 prisoners in Tehran. Also named in the *fatwa* is **Morteza Eshraqi**, the Tehran Prosecutor and now a judge on the country's Supreme Court.<sup>21</sup> Another prosecutor who took his place on occasion was his deputy, **Ebrahim Raisi**, who went on to become the Head of the General Inspection Organisation and is now the Deputy Head of the Judiciary.<sup>22</sup> The Intelligence Ministry Representative on the Tehran committee and Deputy to the Minister of Intelligence was **Mostafa Pourmohammadi**<sup>23</sup> who in 2005 was appointed as Minister of the Interior.<sup>24</sup> He is currently the Head of the General Inspection Organisation. **Mohammadi Gilani**, the outspoken Ayatollah who headed the Guardian Council and supervised Tehran's religious judges was awarded the Medal of Justice in 2009 by President Ahmadinejad for his service to justice in Iran.

These men all worked under the general supervision of **Chief Justice Ayatollah Mousavi Ardebili** whose blood-curdling Friday sermons as early as 4 August evidence his intentions all too plainly.<sup>25</sup> He certainly received the *fatwa* direct from the Supreme Leader on 28 July and immediately raised questions about its interpretation and implementation and he must have transmitted that interpretation to all members of the Death Committees. As head of the judicial system he presumably appointed the religious judges who headed the Death Committees in the provinces. **Ayatollah Mousavi Ardebili** is currently an influential religious leader in Qom who is competent to issue *fatwas*. Another influential political jurist, who succeeded Mousavi Ardebili in 1989, was **Mohammad Yazdi**. He later became the Head of the Judiciary and is currently deputy-chairman of the Assembly of Experts (which appoints the Supreme Leader) and is a member of the Guardian Council.

All these individuals appear to have been directly responsible for approving the death and torture sentences that they must or should have known to have been contrary to international law. On the well-known principle established by the Nuremberg case of *US v Joseph Altstoeter and others* (the "Justice Case" dramatised in the film *Judgment at Nuremberg*) judges who contribute to crimes committed in the guise of legal process cannot themselves escape prosecution: as the Nuremberg prosecution put it, "men of law can no more escape... responsibility by virtue of their judicial robes, than the General by his uniform". Those defendants were convicted for "administering legislation which they must be held to have known was in violation of international law".<sup>26</sup>

In considering the complicity of professionals in crimes against humanity, there is no good reason to exclude diplomats who, knowing the truth, nonetheless lie about them to UN bodies to whom they owe a duty of frankness. Iran's UN ambassador, **Jafar Mahallati**, consistently denied the massacres and claimed the allegations were propaganda; so did the Geneva representative **Sirous Nasseri** in his

meetings with the UN Special Representative.<sup>27</sup> **Mahallati** is said to be living in the US, where he may be liable to civil action for aiding and abetting torture under the Alien Tort Claim Act. **Nasseri**, a businessman who lives in Europe, might be liable to prosecution on the same basis under the laws of some European countries.

Other individuals who feature in the witness statements as key figures in the interrogations and executions are senior prison officials, most zealously **Naserian** (real name **Mohammed Moghisei**), then the governor of Gohardasht and his Head of Security **Davoud Lashkari** (real name **Taghi Adeli**). Eyewitnesses tell grisly stories of both men enthusiastically supervising the death sentences and the tortures. They are described as bringing prisoners before the Death Committees and sometimes making critical remarks about them to the judges and are accused in a few cases of putting prisoners they disliked in the wrong queue for execution. **Naserian** is accused by several witnesses of actually hanging prisoners and participating in their torture. He is currently serving as Head of Branch 28 of the Revolutionary Courts in Tehran, which is responsible for sending those arrested during the 2009 demonstrations to prison. Similar allegations are made against **Sayed Hossein Mortazavi**, the Deputy Governor of Evin prison, who is said to have personally supervised the executions there and the Ministry of Intelligence official known as **Zamani** (real name **Mehdi Vaezi**) who collected much of the intelligence upon which the Death Committees acted. If these allegations are proved – and the consistency and credibility of the witnesses who make them does amount to a *prima facie* case – then they are accountable on the same legal basis as prison guards at Omarska and at Nazi camps, convicted by the ICTY and the Nuremberg tribunals respectively.

There have been a number of high echelon figures accused by *Mojahedin* organisations of advising and supervising the implementation of the *fatwa*, although the evidence is sketchy. **Ahmad Khomeini**, the powerful but now deceased son of the Supreme Leader, wrote out the *fatwa* and was responsible for its delivery. **Mohammadi Reyshahri**, the Minister of Intelligence, must have played a role, at least to appoint his ministry's representatives on the Death Committees (until late 2009 he was the Supreme Leader's representative for the pilgrimage to Mecca). His autobiography makes no reference to these events despite his obvious knowledge of them. So too would **Mohammad Moussavi Khoeniha**, the General Prosecutor of Iran, responsible for appointing his Death Committee representatives. He has turned reformer and is now known as a spiritual advisor of the reform movement.

**Ali Khamenei**, as President of the Republic, had been closely involved in advising acceptance of the UN ceasefire resolution, and must be presumed to have played the same advisory role a week or so later

in respect of the *fatwa*. His statements in December 1988 can be read as enthusiastic support for its implementation, and in that month he refused permission for Professor Pohl, the UNHRC Special Representative, to enter Iran to investigate. As Iran's current Head of State (he is now Supreme Leader) he would of course have immunity from prosecution in any court other than in one set up by the Security Council.

**Ali Akhbar Hashemi Rafsanjani** was the 'inner circle' member whom the Supreme Leader came to rely upon most.<sup>28</sup> He was Acting Commander and Chief of the Armed Forces and another key advisor of the ceasefire: he would have been responsible for the Revolutionary Guard detachments sent to the prisons and would have authorised the firing squads which in some provinces conducted the executions. He also led the Friday sermons in Tehran around this time, in which he led crowds in chanting slogans such as "Death to the *Monafeqin* prisoners". In December 1988 he too defended the executions, whilst pretending that "less than a thousand" prisoners had died. He is now Head of the Expediency Council and the Assembly of Experts, and these positions may not be sufficiently ministerial to attract the immunity approved by the ICJ in *DRC v Congo*. Command responsibility might fall on **Mohsen Rafiqdust** who was Commander of the Revolutionary Guard at the time. He is now a frequently travelling businessman who comes on occasion to the UK.

There is more doubt over the role of **Mir Hossein Mousavi** who was Prime Minister at the time and in consequence held some ministerial responsibility for the prison system. He joined the leadership chorus in December 1988 which sought to justify or ameliorate the massacres, speaking to Austrian television as if he had insider knowledge of them. Some students were heard to chant "Eighty-Eight" at his 2009 election meetings but he has not given any account of his role at the time or his reaction to it today.<sup>29</sup> Mousavi responded to student questions about the massacres during his election campaign by stating that the executive branch had nothing to do with "trials". His struggle, since being denied Presidency after the disputed election in June 2009, has won international admiration, but he cannot expect true respect unless and until he gives a full account of his conduct from July to November 1988, as the Prime Minister on whose watch barbarism became state policy. Now that Montazeri, the man of undeniable courage, can no longer testify in person, Mousavi must stand in his shoes to explain exactly what was done by senior officials around Khomeini, who implemented his *fatwa* and then covered up the crime.

The situation in Iran today illustrates the consequences of impunity for crimes against humanity that have never been properly investigated or acknowledged. Some of the perpetrators and their acolytes remain in powerful positions in the judiciary and the state, whose Supreme Leader Ali Khamenei has in

the past year called upon the Revolutionary Guards to use violence against peaceful protests with the support of Ayatollah Mesbah Yazdi, who threatens that “[a]nybody resisting against the ruling system will be broken”.<sup>30</sup> Those staged television show trials of the 1980s, with televised “confessions” by leftist prisoners wracked by torture and fear for their families, re-emerged in 2009, this time featuring ‘Green Movement’ reformists confessing to participation in an international conspiracy devised by the US and the British Embassy in collaboration with the BBC, Twitter, Facebook, George Soros, Human Rights Watch and Amnesty International. Once again, dissidents are being prosecuted for being *moharebs* (“warriors against God”) and some are being sentenced to death.<sup>31</sup> Evin prison, scene of mass murder in 1988, remains a brutal environment for blindfolded prisoners picked up for no more serious offence than attending student demonstrations or contacting NGOs concerned about human rights.<sup>32</sup> There have been many casualties over the past year, and many ironic reminders of 1988, the year of impunity. Hundreds of protestors, including Ayatollah Khomeini’s granddaughter, have been detained. Mir Hossein Mousavi’s own cousin was shot and killed by Revolutionary Guards. One of Grand Ayatollah Montazeri’s very last acts was to call on Iranians to accord three days of mourning to Neda Agha-Soltan, the young woman student shot dead by forces loyal to Ahmadinejad; and to support other victims of the repressive state which he helped to create, but then came to condemn.

The government of Iran was confident enough to table a massively dishonest “periodic review” report to the Human Rights Council in November 2009,<sup>33</sup> on the strength of which it sought election to the Council, a result which would have seriously damaged the Council’s credibility had its candidacy not been withdrawn. The sanctions that have been applied to Iran in recent years have all been in response to its determination to develop nuclear power – a right that is in principle hard to deny, since many other nations use nuclear power for peaceful purposes, and some – Israel, India and Pakistan, for example – have already developed nuclear weapons.<sup>34</sup> Further sanctions are under discussion, although some proposed by the US (for example, on unrefined petroleum products) would hurt ordinary citizens whilst others (on communication technology) would actually have the result of inhibiting the organisation and reporting of protests. Europe (which does 24% of Iran’s trade) has been slow to show support for these measures. There have been recent calls for ‘targeted’ sanctions on members of the elite, especially on the Revolutionary Guards, whose leaders have been enriched by a grateful government and allowed to take shares worth millions of dollars in privatised industries,<sup>35</sup> but who have no direct role in nuclear policy-making.

It would be more sensible to impose sanctions for the crimes against humanity that occurred in 1988, so long as they go uninvestigated and unpunished, than it would to impose them for alleged moves

towards uranium enrichment. Given the evidence of international crimes, including one which the 1948 Genocide Convention imposes a duty to investigate and punish without limit of time, the Security Council would be perfectly entitled under its Chapter VII powers to establish an international court with a prosecutor who can quickly collect the incriminatory evidence and obtain access to the relevant state witnesses and records. After all, the most reasonable objection to Iran developing nuclear power for peaceful purposes is the fact that it is a regime that has already granted itself impunity for mass murder, and may do so again.

International law obliges all states to acknowledge and comply with their obligations under a human rights law which is fundamental and universal. It abominates systematic torture and summary executions – but that is what happened in the prisons of Iran in the middle of 1988. In the annals of post-war horrors the killings compare with the 1995 massacre at Srebrenica in terms of the vulnerability of the victims, and they exceed it when measured by the cold-blooded calculations made at the very pinnacle of state power. As long as the graves of the dead remain unmarked and relatives are forbidden from mourning, Iran will continue to contravene the rule of international law which its leaders so brutally defied in 1988.

GEOFFREY ROBERTSON QC  
DOUGHTY STREET CHAMBERS  
10 MAY 2010

*Footnotes for this executive summary appear below.*

*A bibliography and complete list of notes can be found in the full report, located at:*

**[www.iranrights.org](http://www.iranrights.org)**

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<sup>1</sup> UA235/88, 02/09/1988.

<sup>2</sup> See Reynaldo Galindo Pohl, Interim Report annexed to Note by the Secretary General, ECOSOC Report, “Situation of Human Rights in the Islamic Republic of Iran”, A/43/705, 13 October 1988, 43<sup>rd</sup> Session, Agenda Item 12 (“*Interim 1988 Report*”), Section II.

<sup>3</sup> Iran Yearbook 89/90.

<sup>4</sup> Kayhan, 25 February 1989, 16

<sup>5</sup> The Baha’i Faith was founded in Iran in 1844 and is now its largest non-Muslim religious minority. While reaffirming the core ethical principles common to all religions, the founder of the Baha’i Faith, Baha’u’llah, was also said to have revealed new laws and teachings to lay the foundations of a global civilisation. The central theme of the Baha’i Faith is that humanity is one family and the time has come for its unification into a peaceful global society. After 1979, its adherents were treated as apostates and have been subjected to continual discrimination and repression.

<sup>6</sup> Pohl, *Report on the Situation of Human Rights in Iran*, 25 January 1988, E/CN.4/1988, 24.

<sup>7</sup> Pohl, *Interim 1988 Report*, above note 2.

<sup>8</sup> Reported in *Kayhan*, 6 August 1988, 15.

<sup>9</sup> Pohl Report of 13 October 1988 (above note 8) at paras 15-17.

<sup>10</sup> Pohl Report of 26 January 1989, paras 15-17.

<sup>11</sup> UN Commission on Human Rights: *1989 Report on the situation of human rights in Iran*, Reynaldo Galindo Pohl, published by the United Nations on 26/01/1989. His finding on the ambassador is buried at para 110.

<sup>12</sup> The Iranian diplomats who blindsided Pohl in this period were ambassador Mahallati in New York and Ambassador Sirous Nasseri in Geneva. The latter is now a businessman in Europe and the former resides in the US; they may have a case to answer: see Chapter 11.

<sup>13</sup> Ervand Abrahamian, *Tortured Confessions – Prisons and Public Recantations in Modern Iran* (University of California Press 1999), 221.

<sup>14</sup> One prisoner, Monireh Baradaran, in her memoirs *The Simple Truth*, 543-4, tells how she later met Pohl and discovered that he had been introduced to fake ‘prisoners’ in Evin, who had (unsurprisingly) praised their humane treatment. Other witnesses suggest that the Professor had been deceived, although the naivety shown in his reports does suggest that he lacked the experience and instinct to be an effective human rights investigator.

<sup>15</sup> Reynaldo Pohl, *Report on the Situation of Human Rights in the Islamic Republic of Iran*, 6 November 1990, 90-28544-1985-86e(E), para 230.

<sup>16</sup> Pohl Report (1990) (above note 16), para 240.

<sup>17</sup> Professor Pohl seems to lose interest in the massacres: his report on 13 February 1991 makes no reference to them, despite the fact that Amnesty International published its detailed report just two weeks previously. See Pohl, *Report on the Human Rights Situation in Iran*, 13 February 1991. In 1992, Pohl reports that 164 executions of political prisoners have taken place in 1992: see Pohl, *Final Report on the Situation of Human Rights in the Islamic Republic of Iran*, 28 January 1993, E/CN.4/1993/41, para 281. In the course of this year, the Iranian government officials realised that Pohl was obtaining his information on political executions from the local media, which had been reporting the boastful statements of judicial authorities. So they took action to curtail reporting – a leaked government document expressed satisfaction that “all of the sources used by Galindo Pohl to provide documented and irrefutable reports was therefore neutralised”, Note by the Secretary General transmitting the Pohl Report to the General Assembly, 8 November 1993, A/48/526.

<sup>18</sup> *International Law Commissions, Articles on Responsibility of States for International Wrongful Acts* (2001) Articles 1, 30 and 31.

<sup>19</sup> In *Velsquez Rodriguez*, the Inter-American Court of Human Rights held that international law did not recognise the concept of punitive or exemplary damages (Series C No.7 1989). See also *Letelier v Moffitt*, (1992) 88 ILR 727.

<sup>20</sup> Iranian law reports often refer to Hossein Ali (Jafar) Nayyeri.

<sup>21</sup> He also has his own law firm on the corner of Vila and Sepand Avenue, Tehran.

<sup>22</sup> Information provided by Iraj Mesdaghi, 11 March 2010.

<sup>23</sup> During the Khatami period he was forced to resign from the Ministry because he was implicated in the “Chain Murders” (death squad murders of intellectuals and journalists), but he was taken under Khamenei’s protection until he could return to work for Ahmadinejad and became a Cabinet minister.

<sup>24</sup> Human Rights Watch Briefing, *Ministers of Murder: Iran’s New Security Cabinet*, December 2005.

<sup>25</sup> He made a radio broadcast on 6 August 1988 saying “The Judiciary is under great pressure... there are questions about why these people are not executed. They must all be executed. We will no longer have trials or bother with the dossiers of the convicts.” See NCRI, *Crimes Against Humanity*, 56.

<sup>26</sup> See Phillippe Sands *Torture Team – Deception, Cruelty and the Compromise of Law* (Alan Lane, 2008) 30.

<sup>27</sup> See Pohl, January 1989 report and Kaveh Sharooz, ‘With Revolutionary Rage and Rancour: A Preliminary Report on the 1988 Massacre of Iran’s Political Prisoners’ (2007) 20 *Harvard Human Rights Journal* 227, 241. Sharooz points out that another massacre denier at this time was

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Abdullah Nouri, Minister of the Interior, who a decade later became a leader of the reform movement and was jailed by the regime he had so enthusiastically served.

<sup>28</sup> Bager Moin, *Khomeini: Life of the Ayatollah* (1999), 263.

<sup>29</sup> Although, Mousavi's wife, Zahra Rahnavard, has vigorously condemned the *Mojahedin Khalq* as terrorists and traitors at meetings with students after the 2009 demonstrations. See Maziar Bahari, "Who is behind Tehran's Violence?" Newsweek Web Exclusive, 17 June 2009.

<sup>30</sup> 'Meet the Ayatollahs', *New Statesman*, 10 August 2009, 30.

<sup>31</sup> See Catherine Philip, 'Iran executes alleged dissidents "to warn opposition"', *The Times*, 29 January 2010, 9.

<sup>32</sup> See Haleh Esfandiari, *My Prison, My Home: One Woman's Story of Captivity in Iran* (Ecco, 2009). Esfandiari, an Iranian turned American who directed the Middle East Programme at the Woodrow Wilson Centre in Washington DC, was arrested on a visit to her mother in Tehran and incarcerated in Evin for some months in 2007. Her account is important evidence of the mindset of the Intelligence Ministry and its current establishment, which has convinced itself that the 'Green Movement' is really an emanation of a Zionist and Western conspiracy.

<sup>33</sup> Iran National Report, 18 November 2009, A/HRC/WG.6/7/IRN1.

<sup>34</sup> 'Iran: Barricades and the Bomb', *The Economist*, 13 February 2010.

<sup>35</sup> 'US sees opportunity to press Iran on nuclear fuel', *New York Times*, 3 January 2010.