



# Condemned By Law:

Assassination of Political Dissidents Abroad



## **Iran Human Rights Documentation Center**

The Iran Human Rights Documentation Center (IHRDC) is an independent and nonpartisan scholarly undertaking to establish a comprehensive and objective historical record of the human rights situation in the Islamic Republic of Iran since the 1979 revolution. This evolving historical record includes the collection and analysis of a broad range of documents and testimonies in an archive that is accessible to the public for research and educational purposes. Based on the principle that accounting for past abuses is essential for future social progress and democratic transformation, the IHRDC encourages an informed dialogue on the human rights situation in Iran. The IHRDC collaborates with a wide range of scholars and experts in human rights documentation and various other disciplines and projects.

### **IHRDC Mission**

To investigate and document human rights abuses in Iran;

To raise international awareness of human rights violations in Iran and bring pressure to bear on the Iranian government to end these abuses;

To raise local awareness of human rights violations and international human rights standards inside Iran;

To establish an online archive of human rights documents that can one day be used to develop and support a reckoning process in Iran.

### **Iran Human Rights Documentation Center**

129 Church Street

New Haven, Connecticut 06510, USA

Tel: +1-(203)-772-2218

Fax: +1-(203)-772-1782

Email: [info@iranhrdc.org](mailto:info@iranhrdc.org)

Web: <http://www.iranhrdc.org>

### **Photographs:**

The front cover photograph was taken at the court proceeding of Soltan Shekar on March 7, 2007 and published on the website of Journalist Club, available at <http://www.yjcphotos.ir/fullstory.asp?id=4477>.

The photograph of Mohsen Rezaee, former Chief Commander of the Islamic Revolutionary Guards Corps, is taken from Iran News Agency, available at <http://www.irannewsagency.com/index.php?news=456>.

The photograph of Dr. Abdorrahman Boroumand was provided by his family.

# Condemned By Law:

## Assassination of Political Dissidents Abroad

Iran Human Rights Documentation  
Center

November 2008



## TABLE OF CONTENT

|                                                                                                   |           |
|---------------------------------------------------------------------------------------------------|-----------|
| <b>1. EXECUTIVE SUMMARY .....</b>                                                                 | <b>2</b>  |
| <b>2. PREFACE.....</b>                                                                            | <b>3</b>  |
| <b>3. STATUS OF ASSASSINATIONS UNDER INTERNATIONAL LAW .....</b>                                  | <b>5</b>  |
| 3.1. LEGAL NORMS PROHIBITING ASSASSINATIONS.....                                                  | 6         |
| 3.2. INTERNATIONAL LAW APPLICABLE TO ASSASSINATIONS.....                                          | 8         |
| <b>4. RELEVANT INSTRUMENTS OF INTERNATIONAL LAW PROHIBITING ASSASSINATIONS .....</b>              | <b>11</b> |
| 4.1. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR).....                            | 11        |
| 4.1.1. <i>Duty to Protect Life</i> .....                                                          | 12        |
| 4.1.2. <i>Duty to Provide Due Process Pursuant to a “Fair Hearing”</i> .....                      | 14        |
| 4.1.3. <i>Duty to Investigate, Punish or Otherwise Provide Remedies to the Aggrieved</i><br>..... | 18        |
| 4.2. OTHER GUARANTEED RIGHTS.....                                                                 | 20        |
| <b>5. LEGAL VENUES AND REMEDIES .....</b>                                                         | <b>20</b> |
| 5.1. JURISDICTIONAL ISSUES .....                                                                  | 21        |
| 5.2. CRIMINAL PROSECUTIONS IN DOMESTIC COURTS .....                                               | 23        |
| 5.3. CIVIL REMEDIES IN DOMESTIC COURTS .....                                                      | 25        |
| 5.4. CRIMES AGAINST HUMANITY .....                                                                | 28        |
| <b>6. CONCLUSION .....</b>                                                                        | <b>33</b> |
| <b>7. METHODOLOGY .....</b>                                                                       | <b>34</b> |

# 1. Executive Summary

Since 1979, high-level officials of the Islamic Republic of Iran, particularly those associated with the Ministry of Intelligence and Revolutionary Guards, have been linked to the assassinations of at least 162 of the regime's political opponents around the world. The regime has vigorously and systematically pursued its state-sponsored campaign of terror in contravention of a host of domestic and international laws promoting peace and security and protecting the most fundamental of human rights: the right to life.

- Since 1979, the Islamic Republic of Iran has consistently ignored its obligations under the International Covenant on Civil and Political Rights (ICCPR) and its own Constitution by systematically eliminating political dissidents abroad. The regime's campaign of assassinations violates the most fundamental guarantee under the Covenant: the right to life.
- The regime's extrajudicial killing of political dissidents abroad constitutes a violation of its ICCPR duties to provide due process pursuant to a "fair hearing." Iran's state-sponsored campaign of foreign assassinations also amounts to a breach of the Covenant's guarantee to investigate, punish or otherwise provide remedies to the aggrieved.
- Individuals involved in the widespread or systematic campaign of assassinations directed at political dissidents abroad may have committed international crimes, including war crimes and crimes against humanity, pursuant to international treaty and customary law.
- A person of particular interest is Hojjatolislam Ali Fallahian, who served as the Minister of Intelligence from 1989 to 1997 and has already been implicated and indicted in connection with the assassinations of several dissidents abroad. Evidence indicates that Fallahian's personal involvement and individual responsibility for the murders were far more pervasive than his current indictment record would indicate.
- Given the central role of the Special Affairs Committee and the Ministry of Intelligence in the assassination of dissidents abroad, responsibility could also be imputed to many high ranking members of these two agencies. This is especially true of the permanent members of the Special Affairs Committee, which included the Supreme Leader, the President of the Republic, the Speaker of the *Majlis*, the Minister of Intelligence and the head of the Judiciary.

The Islamic Republic, and any individuals involved in the ordering, instigating, planning, aiding and abetting, or commission of these extrajudicial killings must be held to account for their actions. To the extent that the regime's extrajudicial killings constituted serious violations of human rights law or international humanitarian law, it is incumbent upon all member states of the international community to prosecute the perpetrators of these crimes.

## 2. Preface

This legal report complements two earlier IHRDC publications documenting Iran's state-sponsored campaign of political assassinations abroad: *Murder at Mykonos: Anatomy of a Political Assassination* (2007), and *No Safe Haven: Iran's Global Assassination Campaign* (2008). The two prior reports meticulously present facts surrounding the preparation, planning and commission of assassinations of political opponents of the Islamic Republic of Iran during a twenty-seven year period following the triumph of the Islamic Revolution in 1979. These reports reveal the operation of a sophisticated intelligence and security network designed to pursue and eliminate the regime's critics wherever they sought refuge.

The regime's campaign can be traced to nearly twenty countries around the world, from neighboring Pakistan and Iraq, to far-flung locations such as France, the Philippines and the United States. Victims specifically addressed in the two previous reports are but a sampling of the more than one hundred and sixty dissidents who dared challenge the clerical establishment's grip on the country. The regime's campaign of global assassinations is, therefore, essentially an extension of its consolidation of power within the country's borders. It is an exercise in operational and psychological intimidation – a message to all dissidents seeking refuge abroad that the regime's long reach is not limited by national boundaries.

The international community has slowly begun to hold the Islamic Republic accountable for its acts of violence on foreign soil. Since 1979, at least twenty officials, agents or proxies of the Islamic Republic have been tried and convicted of involvement in the orchestrated killings of Iranian dissidents and others abroad. Arguably, the two most significant prosecutions to date were the indictments surrounding the bombing of a Jewish cultural center in Buenos Aires in 1994, and the 1993-97 trial surrounding the assassinations, detailed in *Murder at Mykonos*, of several members of a Iranian-Kurdish dissident group in Berlin, Germany. In an unprecedented move, Argentinean and German prosecutors indicted high ranking officials of the regime, including former Ministry of Intelligence head Ali Fallahian, former President Hojjatoleslam Akbar Hashemi Rafsanjani, and former Foreign Minister Ali Akbar Velayati on criminal charges connected to the killings of these civilians.

To date, none of these high ranking officials has been brought to justice. Nonetheless, the *Mykonos* trial conducted in the aftermath of the Berlin assassinations exposed the Islamic Republic's *modus operandi* and subjected the regime's high ranking officials and criminal masterminds to judicial scrutiny for the first time. The trial revealed the intimate involvement of various organs of the Islamic Republic in the widespread and systematic assassination of dissidents abroad. Eye witness testimony and evidence compiled by various intelligence agencies around the world exposed a chain of command linking Supreme Leaders Ayatollah Khomeini and successor Ayatollah Khamenei to the agents charged with the actual commission of the killings abroad. At the heart of this operation were members of the Special Affairs Counsel, appointed by the Supreme Leader to spearhead the campaign to stifle political opposition abroad, and the regime's security and intelligence ministries, the Ministry of Intelligence and the Revolutionary Guard's *Quds* Force, an elite commando unit. Agents employed by the Ministry of Intelligence and the *Quds* Force were charged with the overall planning and implementation of the assassinations. In addition to employing Iranian agents, the regime also relied upon the assistance of its proxies and mercenaries such as *Hezbollah* in Lebanon. For this reason, the *Mykonos* trial provided an invaluable logistical and conceptual legal model for those seeking to expose the regime and its officials for its campaign of targeted killings committed abroad.

The regime's transgressions do not merely violate the criminal laws of the jurisdictions in which the assassinations took place – they also implicate an array of international legal norms and obligations. Viewed within this context, this report aims to supplement the two previous reports in order to construct a powerful and comprehensive indictment, based on the rule of law, of the regime's state-sponsored campaign of assassinations abroad.



### 3. Status of Assassinations under International Law

Assassinations have historically been defined as politically motivated killings of heads of state, ministers or high ranking officials of nations or international organizations.<sup>1</sup> At their very core, however, assassinations involve the unlawful targeting and extrajudicial killing of any individual for political purposes.<sup>2</sup> More specifically, assassinations may be characterized as the unlawful targeting and politically motivated killings of individuals perpetrated in violation of the strict requirements of the right to self-defense, and in the absence of judicial due process.<sup>3</sup> As such, assassinations violate the most fundamental and sacred human right – the right to life – and their commission is strictly prohibited pursuant to both domestic criminal laws and international law.<sup>4</sup> This prohibition applies regardless of the label used to characterize or justify the killings.<sup>5</sup>

Although there is a surprising paucity of international treaties or conventions specifically defining or regulating “assassinations,”<sup>6</sup> a host of existing international and domestic instruments expressly or impliedly prohibit the practice. Examination of these norms reveals that notwithstanding the lack of conventions specifically regulating “assassinations,” there is strong international consensus condemning the targeting and extrajudicial killing of individuals for political purposes.<sup>7</sup> It is no surprise, therefore, that the regime’s campaign of targeted killings of political dissidents from 1979 to 1996 violates a host of international and domestic norms, ranging from domestic criminal laws to international human rights laws protecting the right to life.

---

<sup>1</sup> See Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, entered into force Feb. 20, 1977, 1035 U.N.T.S. 167 [hereinafter New York Convention]; Patricia Zengel, *Assassination and the Law of Armed Conflict*, 43 MERCER L. REV. 615 (1992).

<sup>2</sup> Michael N. Schmitt, *State-Sponsored Assassination in International and Domestic Law*, 17 YALE J. INT’L L. 609, 625 (1992).

<sup>3</sup> See, e.g., Major Tyler J. Harder, *Time to Repeal the Assassination Ban of Executive Order 12,333: A Small Step in Clarifying Current Law*, 172 MIL. L. REV. 1, 5 (2003) (“[a]lthough there are many definitions of assassination, most definitions contain three common ingredients: an intentional killing, a specifically targeted individual, and a political purpose”).

<sup>4</sup> See *infra* §§ 3-4.

<sup>5</sup> The changing landscape of international relations since the tragic events of September 11, 2001 has elicited considerable debate regarding the legality of targeted killings under international law. See generally Schmitt, *supra* note 2. The debate primarily focuses on the criteria used to distinguish murder and extrajudicial killings, which are strictly prohibited under international law, from targeted killings allegedly executed for reasons of self-defense. See *id.* The “war on terrorism” has seemingly blurred the lines between acceptable and prohibited conduct, prompting some member states in the international community to characterize state-sponsored assassination as the lawful killings of (or preemptive strikes on) terrorists and/or combatants. See *id.* Despite these academic debates, an examination of customary norms suggests that outside a handful of examples satisfying the strict requirements of the right to self-defense, assassinations amount to extrajudicial killings strictly proscribed by international law. See, e.g., William C. Banks and Peter Raven-Hansen, *Targeted Killing and Assassination: The U.S. Legal Framework*, 37 U. RICHMOND L. REV. 667 (2003); Robert F. Turner, *It’s Not Really “Assassination”: Legal and Moral Implications of Internationally Targeting Terrorists and Aggressor-State Regime Elites*, 37 U. RICHMOND L. REV. 787 (2003).

<sup>6</sup> The word *assassination* does not appear in the United Nations Charter, the Geneva Conventions, Hague Conventions, international case law or the Statute of the International Criminal Court. See Jason D. Söderblum, *Time to Kill? State Sponsored Assassination and International Law*, WORLD INTERNATIONAL COMMITTEE OF EXPERTS, Feb. 12, 2004, available at <http://world-ice.com/Articles/Assassinations.pdf> (last visited Oct. 31, 2008).

<sup>7</sup> See, e.g., Jeffrey F. Addicott, *Proposal for a New Executive Order on Assassination*, 37 U. RICH. L. REV. 751, 760-61 (2003).

### 3.1. Legal Norms Prohibiting Assassinations

The term “assassination” is rarely defined or specifically discussed in international legal instruments.<sup>8</sup> Aside from the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (New York Convention) and the Charter of the Organization of African Unity, there are no treaties or conventions regulating the practice of assassinations.<sup>9</sup> Yet there are several international instruments and norms that prohibit conduct that qualifies as assassination. Examples of such instruments include the International Covenant on Civil and Political Rights and the Geneva Conventions, all of which expressly outlaw the extrajudicial targeting and killing of individuals.<sup>10</sup> Other examples include the myriad international documents and agreements relating to the use of violence and aggression, which reveal the international community’s forceful rejection of extrajudicial killings as a tool of diplomacy.<sup>11</sup>

Extradition treaties provide additional evidence of international norms prohibiting the commission of assassinations.<sup>12</sup> Extradition treaties do not inherently criminalize acts – they rely on bilateral or multilateral cooperation leading to the capture, arrest and return of alleged criminals to the jurisdiction in which they committed their offenses.<sup>13</sup> Most extradition treaties include “assassination” under the definition of murder, which is a universally extraditable offense.<sup>14</sup> Other bilateral treaties deal with assassinations as a separate extraditable offense.<sup>15</sup> Notably, many extradition treaties include *attentat*<sup>16</sup> clauses that preclude member states from

---

<sup>8</sup> See *supra* note 6 and accompanying text.

<sup>9</sup> See New York Convention, *supra* note 1; Charter of the Organization of African Unity art. 3(5), May 25, 1963, 479 U.N.T.S. 39.

<sup>10</sup> International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV].

<sup>11</sup> See, e.g., International Convention Against the Taking of Hostages, Dec. 19, 1979, G.A. Res. 34/146, U.N. GAOR, 34<sup>th</sup> Sess., Supp. No. 46, at 245, U.N. Doc. A/34/46 (1979); Resolution on Measures to Prevent International Terrorism, Dec. 9, 1985, U.N. Doc. A/Res./40/61 (1985); European Convention on the Suppression on Terrorism, Feb. 10, 1971, 27 U.S.T. 3949. Additionally, Article 2(4) of the UN Charter requires all member states to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” U.N. Charter art. 2, para. 4. In fact, the International Court of Justice has ruled that the non-aggression principle espoused in Article 2(4) has risen to the level of a *jus cogens*, or a peremptory norm of international law from which no derogation can take place. M. Cherif Bassiouni, *International Crimes: Jus Cogens and Obligatio Erga Omnes*, 59 Law & Contemp. Probs. 63, 71 (1996); see also Case Concerning Military and Paramilitary Activities in and Against Nicaragua v. U.S., 1986 I.C.J. 14 (holding that the United States violated Article 2(4) of the U.N. Charter by recruiting, training, arming and financing paramilitary actions in and against Nicaragua) [hereinafter *Nicaragua v. U.S.*]. Moreover, several U.N. Security Council resolutions have either impliedly or expressly characterized targeted killings conducted by the security forces of one nation against the territory of another as a violation of Article 2(4). See, e.g., S.C. Res. 568, U.N. Doc. S/Res/568 (June 21, 1985) (condemning South Africa’s use of commandos to assassinate African National Congress members in Botswana); S.C. Res. 573 U.N. Doc. S/Res/573 (Oct. 4, 1985) (condemning Israel’s use of overwhelming aerial force in the attempted assassination of Yassir Arafat in Tunisia); S.C. Res. 611, U.N. Doc. S/Res/611 (Apr. 25, 1988) (condemning Israel’s use of commandos in the assassination of a high profile member of *Fatah*); S.C. Res. 1054, U.N. Doc. S/Res/1054 (Apr. 26, 1996) (condemning Sudan’s sheltering of militants in the failed assassination of Egyptian President Hosni Mubarak).

<sup>12</sup> SAMUEL THAYER SPEAR, THE LAW OF EXTRADITION: INTERNATIONAL AND INTER-STATE 193 (1983).

<sup>13</sup> RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 475 (1987).

<sup>14</sup> Harvard Research in International Law, Draft Convention on Extradition, with Comment, 29 AM. J. INT’L L. 15 (Supp.1935).

<sup>15</sup> See *id.*

<sup>16</sup> Schmitt, *supra* note 2, at 622. An *attentat* clause is a clause in an extradition treaty that excludes “an outrage against the head of a foreign Government constituting either murder, premeditated murder or poisoning” from the political offence exception that generally excuses nations from extraditing those suspected of political crimes. BOLESŁAW A.

rejecting extradition requests based on the political offense exception.<sup>17</sup> The prevalence of *attentat* clauses in extradition treaties illustrates the degree to which assassinations are universally condemned by the international community.<sup>18</sup>

A survey of domestic legislation also reveals a long-standing prohibition on assassinations.<sup>19</sup> Courts in the United Kingdom (U.K.) and the United States (U.S.) have shown particular sensitivity to the practice of state-sponsored assassinations.<sup>20</sup> Courts in the U.K. have consistently convicted and upheld harsh criminal sentences applied to conspirators of assassination plots.<sup>21</sup> United States courts have adopted a similar view. Some of these rulings were issued pursuant to federal and state criminal laws specifically prohibiting the planning and execution of assassinations, murders and other acts of political violence on U.S. territory.<sup>22</sup> Others were based on various civil laws<sup>23</sup> holding foreign officials and states liable for damages resulting from the assassination of government officials committed on foreign soil.<sup>24</sup> These decisions have not been limited to the targeting and unlawful killing of government officials alone. For example, after the 1980 assassination of political dissident Ali Akbar Tabatabai in Maryland, USA, Tabatabai's assassin, Daoud Salahuddin, was charged by U.S. authorities with murder and unlawful flight after escaping to Iran.<sup>25</sup> Though the U.S. has not been able to try Salahuddin himself, several of his accomplices were charged with, *inter alia*, driving the getaway car and disposing of the murder weapon.<sup>26</sup> More recently, a U.S. district court awarded \$12 million in compensatory damages to the family of murdered dissident Dr. Shapour Bakhtiar.<sup>27</sup> The civil suit was filed

---

BOCZEK, INTERNATIONAL LAW: A DICTIONARY 63 (2005); *see, e.g.*, Extradition Treaty, U.S.-Fin. art. 7(2) & (3), Schedule, signed June 11, 1976, T.I.A.S. No. 9626, 31 U.S.T. 944 (mandating extraditions in the case of murder of an internationally protected person). The clause was created in response to Belgium's refusal to extradite Napoleon III's would-be assassin to France. BOCZEK, *supra* at 63; *see also* Ban Saul, *The Legal Response of the League of Nations to Terrorism*, 4 J. INT'L CRIM. JUST. 78 (2006), at 85-86.

<sup>17</sup> Schmitt, *supra* note 2, at 622. The political offense exception permits countries to refuse extradition if the offense involved can be justified as political resistance in the face of oppression. *See, e.g.*, Extradition Treaty, U.S.-Brazil, art. V(6), signed Jan. 13, 1961, T.I.A.S. No. 5691, 15 U.S.T. 2093.

<sup>18</sup> *See generally* Christine E. Cervasio, *Extradition and the International Criminal Court: The Future of the Political Offense Doctrine*, 11 PACE INT'L L. REV. 419 (1999).

<sup>19</sup> *See, e.g.*, United States Intelligence Activities § 2.11, Exec. Order 12,333, 46 Fed. Reg. 59,941 (Dec. 4, 1981) ("[n]o person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination"). *See also infra* §§ 5.2-5.3 (providing a survey and summary of various criminal and civil prosecutions aimed at punishing states and individuals responsible for the commission of assassinations on foreign soil).

<sup>20</sup> Schmitt *supra* note 2, at 624-25.

<sup>21</sup> *Id.* In *Crown v. Gill*, a court of appeals in the United Kingdom upheld a harsh sentence applied to conspirators in an assassination plot against Rajiv Gandhi. *R. v. Gill and Ranuana*, [1989] Crim. L.R. 358, 1989 WL 651422 (Feb. 6, 1989). And in *Crown v. Al-Banna*, the court upheld the sentences of three Palestinian National Liberation Movement members convicted of the attempted assassination of an Israeli ambassador to Great Britain. *R. v. Marwan Al-Banna and Others*, (1984) 6 Cr. App. R. (S.) 426. In its ruling, the Court noted: "It should be clearly understood that political murders or attempted political murders of this sort and kindred offenses will be met where appropriate with sentences of this length, namely 30 or 35 years." *Id.* at 430.

<sup>22</sup> *See, e.g.*, Antiterrorism and Effective Death Penalty Act (AEDPA) 28 U.S.C. §§ 2244 et seq. (1996); *see infra* note 200 and accompanying text for further discussion.

<sup>23</sup> These laws include the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 et seq. (1976); Alien Tort Claims Act, 28 U.S.C. § 1350 (1789); and the Torture Victims Protection Act, 28 U.S.C. § 1350 note (1992); *see infra* notes 191 to 210 for further discussion. *See also* *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164 (C.D. Cal. 2005); *Elahi v. Islamic Rep. of Iran*, 124 F. Supp. 2d 97 (D.D.C. 2000); and *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) for application of some of these civil remedies by U.S. courts.

<sup>24</sup> *See, e.g.*, *Letelier v. Republic of Chile*, 488 F.Supp. 655 (D.D.C. 1980); *Liu v. Republic of China*, 892 F.2d 1419 (9<sup>th</sup> Cir. 1989).

<sup>25</sup> IRAN HUMAN RIGHTS DOCUMENTATION CENTER, NO SAFE HAVEN: IRAN'S GLOBAL ASSASSINATION CAMPAIGN 21-22 (2008) [hereinafter NO SAFE HAVEN].

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

<sup>27</sup> *See Bakhtiar v. Islamic Rep. of Iran*, 571 F.Supp.2d 27 (D.D.C. 2008). For a more in-depth discussion of this case, *see infra* note 213 and accompanying text.

against the Islamic Republic based on various federal and state civil statutes ranging from the Foreign Sovereign Immunities Act to California tort law.<sup>28</sup>

A considerable number of domestic prosecutions in Europe have also implicated the Iranian regime for its direct role in the planning and commission of assassinations of political dissidents abroad.<sup>29</sup> Several individuals involved in these assassination plots have been charged, tried and convicted for their responsibility in these murders. In 1994, three men connected to the 1991 assassinations of Dr. Shapour Bakhtiar and Soroush Katibeh were tried in the Paris Criminal Court.<sup>30</sup> One of their killers, Ali Vakili Rad, was sentenced to life imprisonment.<sup>31</sup> Seyyed Massoud Hendi, who had vouched on behalf of the killers on their visa applications to France, was sentenced to ten years' imprisonment for assisting in the murder.<sup>32</sup> In 1996, a French court upheld the sentences of Mojtaba Mashhady and Hossein Yazdenseta for conspiracy to commit terrorist acts in connection with the 1990 assassination of Dr. Cyrus Elahi.<sup>33</sup> After his release in 2000, Mashhady was charged with "complicity in assassination in connection with an individual or collective undertaking with the aim of seriously disturbing the public order by intimidation," though his trial ended with an acquittal for lack of evidence.<sup>34</sup> And in 1997, a German court issued a judgment in the case of five agents linked to the 1992 assassinations of four Kurdish leaders in Berlin.<sup>35</sup> The court also took the landmark step of issuing a warrant for Hojjatolislam Ali Fallahian, who served as the Iranian Minister of Intelligence at the time, in recognition of the fact that he and other high ranking Iranian officials had masterminded and ordered the assassinations.<sup>36</sup> Authorities in Austria and Switzerland have made similar attempts to apprehend and prosecute those responsible for attacks within their jurisdictions, but these efforts have not yet resulted in any convictions.<sup>37</sup>

## 3.2. International Law Applicable to Assassinations

Rules regulating the practice of targeted killings of individuals borrow heavily from two international legal regimes: 1) humanitarian law, which applies exclusively in times of international or internal "armed conflict,"<sup>38</sup> and 2) human rights law, concerned with the protection of fundamental rights for everyone at all times.<sup>39</sup> In concert with human rights treaties such as the International Covenant on Civil and Political Rights, the laws of war provide an

---

<sup>28</sup> See generally *Bakhtiar*, 571 F.Supp. 27.

<sup>29</sup> See *infra* § 5.2; see also generally *NO SAFE HAVEN*, *supra* note 25.

<sup>30</sup> See *NO SAFE HAVEN* *supra* note 25, at 46-47.

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

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 35-38.

<sup>34</sup> *Id.* at 33-38 (citation omitted).

<sup>35</sup> IRAN HUMAN RIGHTS DOCUMENTATION CENTER, *MURDER AT MYKONOS: ANATOMY OF A POLITICAL ASSASSINATION* 18-19 (2007) (hereinafter *MURDER AT MYKONOS*).

<sup>36</sup> *Id.* at 17.

<sup>37</sup> See *NO SAFE HAVEN*, *supra* note 25, at 26-30, 31-33. There has been significant criticism by the international community for these failures, which some have blamed on pressure from the Islamic Republic. *Id.*

<sup>38</sup> See, e.g., Geneva Convention IV arts. 3, 147, *supra* note 10; Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, *entered into force* Dec. 7, 1979, 1125 U.N.T.S. 3 [hereinafter Protocol I]; Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, *entered into force* Dec. 7, 1979, 1125 U.N.T.S. 609 [hereinafter Protocol II].

<sup>39</sup> See INTERNATIONAL COMMITTEE OF THE RED CROSS ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, *International Humanitarian Law and International Human Rights Law: Similarities and Differences*, January 2003, available at [www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/57JR8L/\\$File/IHL\\_and\\_IHRL.pdf](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/57JR8L/$File/IHL_and_IHRL.pdf) (last visited Oct. 31, 2008) [hereinafter INTERNATIONAL COMMITTEE OF THE RED CROSS].

uncompromising view favoring protection of the right to life.<sup>40</sup> In fact, the development of legal rules and norms surrounding assassinations owes much to the body of law known as humanitarian law.<sup>41</sup> The Hague and Geneva Conventions represent the codification of the rules of war into treaty law.<sup>42</sup> Many of the rules codified in these conventions reflect customary international law.<sup>43</sup>

Under the humanitarian law regime, the deliberate targeting of civilians always constitutes an unlawful attack.<sup>44</sup> Civilians are accorded the highest level of protection under international law and only lose their “protected” status if they take direct part in hostilities.<sup>45</sup> It is undisputed that the targeting or killing of “protected persons,” even if they are combatants, amounts to a grave breach of the Geneva Convention and a violation of customary international law constituting a “war crime.”<sup>46</sup>

Humanitarian law also recognizes an absolute ban on all “treacherous” or “perfidious” killings.<sup>47</sup> Treacherous killings are particularly invidious when they involve the targeting and killing of civilians. To the extent that a majority of, if not all, assassinations and (attempted assassinations) are committed through the use of treacherous means, they are deemed illegal under humanitarian law.<sup>48</sup> This ban on assassinations has been codified in both the Hague and Geneva Conventions,

<sup>40</sup> See, e.g., Geneva Convention IV, *supra* note 10.

<sup>41</sup> See generally Louis Rene Beres, *The Permissibility of State-Sponsored Assassination During Peace and War*, 5 TEMPLE INT’L & COMP. L.J. 231 (1992); see also INTERNATIONAL COMMITTEE FOR THE RED CROSS ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, *What is International Humanitarian Law?*, July 2004, available at [www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/\\$File/What\\_is\\_IHL.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/$File/What_is_IHL.pdf) (last visited Oct. 31, 2008).

<sup>42</sup> Brian D. Tittmore, *Belligerents in Blue Helmets: Applying International Humanitarian Law to United Nations Peace Operations*, 33 STAN. J. INT’L L. 61, 64-66 (1997).

<sup>43</sup> See, e.g., Michael D. Ramsey, *Torturing Executive Power*, 93 GEO. L.J. 1213, 1245 n.125 (2005).

<sup>44</sup> See, e.g., Geneva Convention IV, *supra* note 10; Protocol I, *supra* note 38; Protocol II, *supra* note 38; see also Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8). Unlawful attacks do not include attacks aimed at military targets that result in the deaths of civilians, as long as those attacks meet the necessity and proportionality requirements. See Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) art. 2(1), Oct. 10, 1980, 1342 U.N.T.S. 162; Hague Regulations, Annex to the Hague Convention (IV) on the Laws and Customs of War on Land art. 25, Oct. 18, 1907, available at <http://www.gisha.org/UserFiles/File/Covensions%20and%20Laws/Hague%20Convention%20IV.pdf> (last visited Oct. 31, 2008).

A corollary principle of discrimination provides that undefended places may not be attacked or bombarded. See G.A. Res. 2675 (XXV) paras. 2, 4-6, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028 (Dec. 9, 1970); Protection of Civilian Populations Against Bombing from the Air in Case of War, League of Nations Unanimous Resolution (Sept. 30, 1938), League of Nations O.J., Special Supp. No. 182, Oct. 1938, at 135.

<sup>45</sup> See, e.g., Geneva Convention IV art. 3, *supra* note 10.

<sup>46</sup> Rome Statute of the International Criminal Court art. 8(2), entered into force July 1, 2002, U.N. Doc. A/CONF.183/9 [hereinafter Rome Statute]. Member states to the Geneva Conventions are obligated to establish jurisdiction and prosecute all war criminals found on their territory. *Id.* Preamble (“[r]ecalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”). In addition, breaches of the principle of distinction (between military and civilian targets) amount to serious violations of customary international law and entitle any member state to exercise universal jurisdiction. See Laura Lopez, *Uncivil Wars: The Challenge of Applying International Humanitarian Law to Internal Armed Conflicts*, 69 N.Y.U. L. REV. 916, 938-40 (1994).

<sup>47</sup> Protocol I, *supra* note 38. According to some, the “essence of treachery is a breach of confidence.” Schmitt, *supra* note 2, at 633

<sup>48</sup> Zengel, *supra* note 1, at 630. The ban has little to do with the status of the victim, and only concerns the means used to kill him/her. See, e.g., Instructions for the Government of Armies of the United States in the Field (Lieber Code), art. 102, April 24, 1863, available at [www.icrc.org/ihl.nsf/73cb71d18dc4372741256739003e6372/a25aa5871a04919bc12563cd002d65c5?OpenDocument](http://www.icrc.org/ihl.nsf/73cb71d18dc4372741256739003e6372/a25aa5871a04919bc12563cd002d65c5?OpenDocument) (last visited Oct. 31, 2008).

and has arguably elevated to the level of customary international law.<sup>49</sup> The existence of a prohibition against perfidious killings, even during times of “armed conflict,” highlights the degree to which international law frowns upon assassinations.

Unlike international humanitarian law, the human rights legal regime is not limited in applicability to violations perpetrated during “armed conflict.”<sup>50</sup> On the contrary, human rights law is concerned with the protection of fundamental rights for everyone, regardless of the victim’s status, the means used to expunge his or her fundamental rights or whether the violations occurred during times of peace or war.<sup>51</sup> More importantly, international human rights laws vitiate claims of sovereignty which traditionally protect member states from monitoring and regulation of their internal affairs.<sup>52</sup>

The integrity of the international human rights regime rests on two foundational documents: the Universal Declaration of Human Rights (Declaration)<sup>53</sup> and the International Covenant on Civil and Political Rights (Covenant or ICCPR).<sup>54</sup> The Covenant was adopted in 1966 and entered into force in 1976.<sup>55</sup> Unlike the Declaration, the ICCPR (and the companion International Covenant on Economic, Social and Cultural Rights) impose affirmative obligations on member states, including the duty to implement national legislation in order to “give effect to the rights recognized” in the treaty and the duty to provide “effective remedies” when violations of those duties occur.<sup>56</sup> Specifically, the Covenant requires all member states to “respect and to ensure to all individuals within [their] territory and subject to [their] jurisdiction” all rights recognized by the Covenant irrespective of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>57</sup> With more than one hundred signatories, the Covenant is the most significant and comprehensive instrument guaranteeing protections of international human rights.<sup>58</sup>

Iran has ratified the ICCPR.<sup>59</sup> The Islamic Republic’s campaign of state-sponsored assassinations on foreign soil is merely an extension of the regime’s systematic persecution of political dissidents inside the country.<sup>60</sup> This persecution has taken many forms, ranging from the

---

<sup>49</sup> See, e.g., Protocol I art. 7, *supra* note 38. Article 37 of the Additional Protocol I of the Geneva Convention provides four examples illustrating “treacherous” conduct, including 1) feigning a desire to negotiate under a truce or surrender flag; 2) feigning incapacitation by wounds or sickness; 3) feigning civilian, non-combatant status; and 4) feigning protected status by the use of signs, emblems or uniforms of the United Nations, neutral states, or other states not party to the conflict. *Id.*; see also Schmitt, *supra* note 2, at 634.

<sup>50</sup> See Proclamation of Teheran, Final Act of the International Convention on Human Rights, U.N. Doc. A/CONF 32/41 at 3 (1968).

<sup>51</sup> See INTERNATIONAL COMMITTEE OF THE RED CROSS, *supra* note 39.

<sup>52</sup> See, e.g., *Nicaragua v. U.S.*, *supra* note 11, at 108, 131; 22 Trial of the Major War Criminals Before the International Military Tribunal 466 (1948) (holding that “[h]e who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state, if the state in authorizing action moves outside its competence under international law”), *reprinted in* 41 AM. J. INT’L L. 172, 221 (1947).

<sup>53</sup> Universal Declaration of Human Rights, G.A. Res. 217 A (III), Dec. 10, 1948, *available at* [www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html) (last visited Oct. 31, 2008).

<sup>54</sup> ICCPR, *supra* note 10.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* art. 2; see also generally International Covenant on Economic, Social and Cultural Rights, U.N. Doc. U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976 [hereinafter ICESCR].

<sup>57</sup> ICCPR art. 2, *supra* note 10.

<sup>58</sup> See OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *International Convention for Civil and Political Rights*, *available at* [www2.ohchr.org/english/bodies/ratification/4.htm](http://www2.ohchr.org/english/bodies/ratification/4.htm) (last visited Oct. 31, 2008).

<sup>59</sup> See *id.*; see also INTERNATIONAL COMMITTEE OF THE RED CROSS, *Geneva Conventions of 12 August 1949*, *available at* [www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P](http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P) (last visited Oct. 31, 2008); INTERNATIONAL COMMITTEE OF THE RED CROSS, *Convention (II) with Respect to the Laws and Customs of War with its annex*, *available at* [www.icrc.org/ihl.nsf/WebSign?ReadForm&id=150&ps=P](http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=150&ps=P) (last visited Oct. 31, 2008).

<sup>60</sup> See NO SAFE HAVEN, *supra* note 25, at 5-14.



summary executions of thousands of jailed *Mujahedin-e Khalq* (MEK) and *Tudeh* Party members in 1988,<sup>61</sup> to the assassinations of more than eighty intellectuals, political and social activists, and ordinary citizens inside the country during a ten year period from 1988 to 1998.<sup>62</sup> It is uncontrovertibly clear that the regime's campaign of extrajudicial killings, whether conducted domestically or abroad, violates customary law and the ICCPR's guarantee of the right to life, enshrined in Article 6 of the Covenant.<sup>63</sup> To the extent that any of these killings occurred within the context of armed international or civil conflict involving Iranian military/security personnel, the regime's actions may have also amounted to war crimes pursuant to the Geneva Conventions.

## 4. Relevant Instruments of International Law Prohibiting Assassinations

Iran's campaign of political assassinations abroad triggers the applicability of several important legal instruments under international law. These instruments include but are not limited to international treaties, conventions, resolutions and declarations promulgated by the various bodies and agencies of the United Nations (U.N.), rulings by international courts and tribunals, holdings by national courts made pursuant to domestic legislation, and customary norms of international law. The most important of these instruments is the ICCPR. Examination of the rights and obligations provided by the ICCPR provides ample proof that the Iranian regime has persistently and systematically engaged in a campaign of extrajudicial murder that violates the most fundamental of all human rights: the right to life.

### 4.1. International Covenant on Civil and Political Rights (ICCPR)

As discussed earlier, the Covenant declares that all member states are required to "respect and to ensure to all individuals *within [their] territory and subject to [their] jurisdiction*" all rights recognized by the Covenant irrespective of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>64</sup> The beneficiaries of these rights are individuals.<sup>65</sup> In an important decision interpreting the jurisdictional applicability of the Covenant, the Human Rights Committee (Committee) held that the protections guaranteed by the Covenant are not limited to a state's actions within its territorial boundaries.<sup>66</sup> Noting that

---

<sup>61</sup> See 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, 230-34 (2007).

<sup>62</sup> The regime's campaign of state-sponsored assassination against domestic dissenters culminated in 1998, with the chain murders of high profile intellectuals such as Dariush Forouhar, Parvaneh Eskandari, Mohammad Jaf'ar Pouyandeh, and Mohammad Mokhtari to name a few. See Payvand, <http://www.payvand.com/news/01/jan/1053.html> (last visited Oct. 31, 2008). Investigations inside the country suggested, that like their counterparts abroad, the regime's domestic victims were eliminated as part of a systematic and well orchestrated campaign of terror planned and implemented by elements inside the Ministry of Intelligence. See *id.*

<sup>63</sup> In addition, the Islamic Republic's targeted killings of political dissidents violate other fundamental human rights guarantees, including the right to judicial due process and the freedom(s) of thought, religion, and assembly. See ICCPR arts. 9, 14, 18, 21, *supra* note 10. See also *infra* § 4.1.1 for a more in-depth discussion of Article 6 of the Covenant.

<sup>64</sup> ICCPR art. 2, *supra* note 10 (emphasis added).

<sup>65</sup> U.N. Human Rights Committee, General Comment 31, *Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, para. 9, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

<sup>66</sup> See *Burgos/Delia Saldias de Lopez v. Uruguay* (Communication No. 52/1979 (July 29, 1981), U.N. Doc. CCPR/C/OP/1 (1984)). The phrase "individuals subject to its jurisdiction" is not a reference to the place where

it would be “unconscionable” to interpret the ICCPR provisions to permit states to perpetrate violations of the Covenant on the territory of another member state, the Committee ruled that a member state can be liable for the offending actions of its agents on foreign soil.<sup>67</sup> The International Court of Justice affirmed the Committee’s interpretation in a 2004 Advisory Opinion holding that the Covenant “is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.”<sup>68</sup>

#### **4.1.1. Duty to Protect Life**

The bedrock principle of the Covenant is expressed in Article 6(1) of the document, which reads:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.<sup>69</sup>

According to the Committee, the U.N. treaty body charged with monitoring ICCPR compliance,<sup>70</sup> the right to life is “the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation.”<sup>71</sup> The “inherent right to life” cannot be interpreted too narrowly, and member states must adopt positive measures aimed at “strictly control[ing] and limit[ing] the circumstances in which a person may be deprived of his life by such authorities.”<sup>72</sup>

Implicit in Article 6’s prohibition on extrajudicial killings is the duty of member states to take effective measures to prevent the deprivation of the right to life.<sup>73</sup> This corollary duty is recognized by the Committee and various other international human rights courts, including the European Court of Human Rights.<sup>74</sup> The duty to prevent the deprivation of the right to life may be characterized by the concept of “due diligence,” an evolving principle of state accountability related to a member state’s affirmative obligations to ensure protection of the right to life (and other fundamental rights guaranteed by the ICCPR).<sup>75</sup> The Committee recognizes Article 6’s inherent duty to prevent requirements by noting that member states “should take measures not only to *prevent and punish* deprivation of life by criminal acts, but also to prevent arbitrary

---

violations take place, “but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, *wherever they occurred* (emphasis added).” *Id.* para. 12.2.

<sup>67</sup> Lilian Celberti de Casariego v. Uruguay, Communication No. R.13/56, U.N. Doc. Supp. No. 40 (A/36/40) at 185 (1981).

<sup>68</sup> Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory para. 111, 2004 I.C.J. 131; *see also* Civil and Political Rights, Including the Questions of Disappearances and Summary Executions (Report of the Special Rapporteur of Dec. 22, 2004) paras. 46-47, U.N. Doc. E/CN.4/2005/7 (Dec. 22, 2004) [hereinafter Report of the Special Rapporteur of Dec. 22, 2004].

<sup>69</sup> ICCPR, *supra* note 10.

<sup>70</sup> *See id.* art. 28. Pursuant to the First Optional Protocol of the ICCPR, member states agree to submit disputes to the Committee. Optional Protocol to the International Covenant on Civil and Political Rights art. 1, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* Mar. 23, 1976 [hereinafter First Optional Protocol]. Iran is not a signatory to the First Optional Protocol. *See id.*

<sup>71</sup> U.N. Human Rights Comm., General Comment 6, *The Right to Life*, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994); *see also* U.N. Human Rights Comm., General Comment No. 14, U.N. Doc. HRI/GEN/1/Rev.1 at 18 (1994); ICCPR arts. 4(2), 5(2), *supra* note 10.

<sup>72</sup> U.N. Human Rights Comm., General Comment No. 6, *supra* note 71.

<sup>73</sup> *Id.* para. 5.

<sup>74</sup> *See, e.g.,* Gül v. Turkey, para. 76-83, app. no. 22676/93, Dec. 14, 2000; McCann et. al v. U.K., app. no. 1998/91, Sept. 27, 1995.

<sup>75</sup> *See* Pedro Pablo Carmago v. Colombia, Human Rights Comm., Comm’n No. 45/1979, U.N. Doc. CCPR/C/OP/1 at 112 (1985); Promotion and Protection of Human Rights paras. 46-48, U.N. Doc. A/61/311 (Sept. 5, 2006).



killing by their own security forces.”<sup>76</sup> The U.N. Human Rights Committee’s General Comment on the legal obligations of states party to the ICCPR also explicitly states that the continued failure to punish and prevent extrajudicial killings may constitute a crime against humanity.<sup>77</sup>

The U.N. General Assembly has, on numerous occasions, addressed the prohibition on extrajudicial killings in unequivocal terms. In response to a continuous increase in the incidents of such killings, it passed a resolution in 1996 explicitly condemning the practice.<sup>78</sup> The language of the resolution “demands that all Governments ensure that the practice of extrajudicial ... executions be brought to an end.”<sup>79</sup> The resolution also recognizes that all governments have an obligation to “conduct exhaustive and impartial investigations into all suspected cases of extrajudicial ... executions.”<sup>80</sup> In addition to the U.N. General Assembly, the Special Rapporteur on Summary or Arbitrary Executions is specifically charged with the monitoring and regulation of Article 6(1) of the Covenant.<sup>81</sup> By mandate, the Special Rapporteur may take action in cases of extrajudicial killings linked to attacks by “state officials, paramilitary groups, private individuals or groups cooperating with or tolerated by [a member state].”<sup>82</sup> The Rapporteur’s mandate requires it to pay “special attention” to extrajudicial killings carried out against individuals engaged in “peaceful activities in defence of human rights.”<sup>83</sup> The Rapporteur also has a mandate to investigate breaches of the obligation to investigate alleged violations of the right to life and to provide adequate compensation to victims.<sup>84</sup> This mandate applies to all forms of extrajudicial killing, whether they take place during armed conflict, times of peace or in the context of “targeted killings” of alleged terrorists.<sup>85</sup>

---

<sup>76</sup> U.N. Human Rights Comm., General Comment 6 para. 3, *supra* note 71.

<sup>77</sup> See *id.* U.N. Human Rights Comm., General Comment 31, para. 8, *supra* note 65. For discussion and analysis of possible crimes against humanity charges against the Islamic Republic for the assassination of its political dissidents, see *infra* § 5.4.

<sup>78</sup> Extrajudicial, Summary or Arbitrary Executions, G.A. Res. 51/92, U.N. Doc A/RES/51/92 (Dec. 12, 1996).

<sup>79</sup> *Id.* para. 2.

<sup>80</sup> *Id.* para. 3.

<sup>81</sup> The Special Rapporteur is appointed by the Human Rights Commission (now the Human Rights Council), but is technically an employee of the U.N. Office for the Commission on Human Rights. See Office of the United Nations High Commissioner for Human Rights, <http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx> (last visited Oct. 31, 2008). The office of the Special Rapporteur was established by resolution in 1982, and is also responsible for investigations of human rights violations pursuant to Articles 6, 14, and 15 of the Covenant. See OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER ON HUMAN RIGHTS, *Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions, Methods*, available at [www.unhchr.ch/html/menu2/7/b/execut/exe\\_meth.htm](http://www.unhchr.ch/html/menu2/7/b/execut/exe_meth.htm) (last visited Oct. 31, 2008) [hereinafter *Special Rapporteur on Extrajudicial Killings - Methods*]. In 1992, the United Nations Commission on Human Rights passed a resolution seeking to widen the mandate of the Special Rapporteur to all violations of the right to life, including the practice of extrajudicial killings. Commission on Human Rights, Resolution 1992/79 (Mar. 5, 1992). In addition to the findings of the Special Rapporteur, the rulings and General Comments of the Human Rights Committee and other international human rights bodies such as the Inter-American Court on Human Rights and the European Court on Human Rights are not technically binding on Iran. See *id.* at <http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx> (last visited Oct. 31, 2008).

<sup>82</sup> OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER ON HUMAN RIGHTS, *Model Questionnaire of the Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions*, available at [www.unhchr.ch/html/menu2/7/b/execut/exequst.htm](http://www.unhchr.ch/html/menu2/7/b/execut/exequst.htm) (last visited Oct. 31, 2008); see also *Special Rapporteur on Extrajudicial Killings - Methods*, *supra* note 81. This mandate includes investigations into breaches of the right to life during “armed conflict” in violation of international humanitarian law. See *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories*, U.N. Doc. E/CN.4/1993/46 (Dec. 23, 1992).

<sup>83</sup> Report of the Special Rapporteur of Dec. 22, 2004 para. 7(f), *supra* note 68.

<sup>84</sup> See OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER ON HUMAN RIGHTS, *Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions, Mandate*, available at [www.unhchr.ch/html/menu2/7/b/execut/exe\\_mand.htm](http://www.unhchr.ch/html/menu2/7/b/execut/exe_mand.htm) (last visited Oct. 31, 2008).

<sup>85</sup> See, e.g., OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER ON HUMAN RIGHTS, Report of the Special Rapporteur, U.N. Doc. A/HRC/4/20 (Jan. 29, 2007); Report of the Special Rapporteur of Dec. 22, 2004 para. 50, *supra* note 68.

Contrary to its obligations under the Covenant and its own constitution, Iran has consistently violated the Covenant's guarantee of the right to life both inside and outside its borders.<sup>86</sup> Not only has the regime failed to prevent the commission of extrajudicial killings by its own security forces, it has actively encouraged these practices.<sup>87</sup> Such was the finding of the 1996 U.N. General Assembly resolution 51/107 addressing state-sponsored violence and extrajudicial killings perpetrated by the Islamic Republic of Iran.<sup>88</sup> Although the resolution was generally aimed at condemning human rights violations inside the country, it

deplore[d] the politically motivated continuing violence against Iranians outside the Islamic Republic of Iran, and urge[d] the Government of the Islamic Republic of Iran to refrain from activities against members of the Iranian opposition living abroad and the harassment of their relatives within the Islamic Republic of Iran and to cooperate wholeheartedly with the authorities of other countries in investigating and punishing offences reported by them.<sup>89</sup>

In addition to U.N. resolutions, the Special Rapporteur has documented a number of extrajudicial executions committed by the Islamic Republic abroad in his reports in 1993, 1996 and 1997.<sup>90</sup> Along with numerous reports detailing the long list of state-sanctioned executions that fail to meet the most basic substantive and procedural due process standards,<sup>91</sup> the Rapporteur's body of work presents a forceful condemnation of the regime's blatant disregard of the fundamental protections guaranteed by Article 6 of the ICCPR.<sup>92</sup>

#### **4.1.2. Duty to Provide Due Process Pursuant to a "Fair Hearing"**

The Covenant's Article 6 protections are inextricably linked to the member state's duty to provide judicial due process before it limits, interferes with or otherwise extinguishes an individual's right to life (or liberty).<sup>93</sup> The duty to provide judicial due process is reflected in Articles 6(2),<sup>94</sup> 9 and 14 of the Covenant.<sup>95</sup> These articles provide minimum guarantees designed to protect the pre-trial, trial and post-trial rights of an individual during the indictment, arrest, charging, detention, conviction and sentencing phases.<sup>96</sup> It follows, therefore, that notwithstanding the veneer of judicial legitimacy attached to "executions" carried out by member states, any deprivation of the

---

<sup>86</sup> See generally NO SAFE HAVEN, *supra* note 25; MURDER AT MYKONOS, *supra* note 35.

<sup>87</sup> See *id.*

<sup>88</sup> G.A. Res 51/107, ¶¶ 1, 6, 9, 10, U.N. GAOR, 51<sup>st</sup> sess., U.N. Doc. A/RES/51/107 (Mar. 3, 1997).

<sup>89</sup> *Id.*

<sup>90</sup> See Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, U.N. Doc. E/CN.4/1994/7 (7 Dec. 1993); Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, U.N. Doc. E/CN.4/1996/4 (25 Jan. 1996); Report of the Special Rapporteur, Mr. Bacre Waly Ndiaye, U.N. E/CN.4/1997/60/Add.1 (23 Dec. 1996).

<sup>91</sup> See, e.g., OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER ON HUMAN RIGHTS, Report of the Special Rapporteur, U.N. Doc. A/HRC/4/20 (Jan. 29, 2007) [hereinafter Report of the Special Rapporteur of Jan. 29, 2007]; PROJECT ON EXTRAJUDICIAL EXECUTIONS, CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, N.Y.U. SCHOOL OF LAW, *Islamic Republic of Iran: Visits and Communications*, available at [www.extrajudicialexecutions.org/communications/iran.html](http://www.extrajudicialexecutions.org/communications/iran.html) (last visited Oct. 31, 2008).

<sup>92</sup> These findings led the Special Rapporteur to conclude that no other country had exhibited such a persistent and troubling pattern of extrajudicial killings. Report of the Special Rapporteur of Jan. 29, 2007 para. 17, *supra* note 91.

<sup>93</sup> ICCPR art. 6, *supra* note 10.

<sup>94</sup> Article 6(2) reads: "Th[e] penalty [of death] can only be carried out pursuant to a final judgment rendered by a competent court." *Id.* art. 6(2).

<sup>95</sup> ICCPR arts. 9, 14, *supra* note 10.

<sup>96</sup> U.N. Human Rights Comm., General Comment 32, *Article 14: Right to Equality Before Courts and to a Fair Trial* para. 31, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter General Comment 32].

right to life that does not satisfy these minimum guarantees qualifies as an extrajudicial killing prohibited under international law.<sup>97</sup> Article 6 of the Covenant mandates that the death penalty may “only be carried out pursuant to a final judgment rendered by a competent court.”<sup>98</sup> Article 9 provides an overarching “right to liberty and security of person,” which prohibits arbitrary arrests, detention or deprivation of liberty by a member state or its security forces.<sup>99</sup> Any action taken to restrict an individual’s liberty and security of person must be taken in accordance with adequate substantive and procedural protections reflected in the established law of the member state.<sup>100</sup> These protections include the right to be informed of the reason for one’s arrest (during the course of one’s arrest) and the charges involved,<sup>101</sup> the right to a hearing assessing the legality of the person’s detention,<sup>102</sup> and the right to a timely trial before a competent court.<sup>103</sup> The Covenant’s Article 9 protections are primarily triggered during the pre-trial and detention phases of an individual’s criminal conviction.<sup>104</sup>

Trial and post-trial guarantees provided to individuals under the Covenant are principally addressed by Article 14 of the Covenant.<sup>105</sup> Article 14’s protections may generally be characterized as requiring member states to provide “fair hearing” to all individuals charged with violations of criminal domestic laws.<sup>106</sup> The “fair hearing” principle addresses a variety of guarantees, including but not limited to equality (including equal access) before the courts,<sup>107</sup> the right to be presumed innocent until proven guilty,<sup>108</sup> the right to legal counsel,<sup>109</sup> the right to cross-examine witnesses<sup>110</sup> and the right to appeal a verdict to a higher tribunal.<sup>111</sup> Additionally, the Covenant requires an individual to “be tried in his presence.”<sup>112</sup> This requirement generally prohibits the practice of conducting trials *in absentia*.<sup>113</sup> Such trials are only allowable in certain circumstances where the state makes “sufficient efforts with a view to informing the [accused person] about the impending court proceedings, thus enabling him to prepare his defense.”<sup>114</sup>

<sup>97</sup> U.N. COMMISSION ON HUMAN RIGHTS, *Report of the Special Rapporteur for Extrajudicial, Summary, or Arbitrary Executions, Transparency and the Imposition of the Death Penalty*, U.N. Doc. E/CN.4/2006/53Add.3 (Mar. 24, 2006).

<sup>98</sup> ICCPR art. 6, *supra* note 10.

<sup>99</sup> *Id.* art. 9.

<sup>100</sup> *Id.* art. 15(1), *supra* note 10 (prohibiting punishment via *ex post facto* laws); Mbenge v. Zaire, U.N. Human Rights Comm., Comm’n No. 16/1977, U.N. Doc. Supp. No. 40 (A/38/40) at 134, para. 17 (1983) (“[t]his requires that both the substantive and the procedural law in the application of which the death penalty was imposed was not contrary to the provisions of the Covenant and also that the death penalty was imposed in accordance with that law and therefore in accordance with the provisions of the Covenant.”).

<sup>101</sup> ICCPR art. 9(2), *supra* note 10.

<sup>102</sup> *Id.* art. 9(4); *see also id.* art. 9(5) (allowing for just compensation for unlawful detention).

<sup>103</sup> *Id.* art. 9(3); *see also id.* art. 14(3)(c).

<sup>104</sup> *See* General Comment 32 para. 31, *supra* note 96.

<sup>105</sup> ICCPR art. 14, *supra* note 10; *see also* Vicente v. Colombia, para. 8.7, U.N. Human Rights Comm., Comm’n No. 612/1995, U.N. Doc. CCPR/C/56/D/612/1995 (Mar. 14, 1996); McLawrence v. Jamaica, para. 5.9, U.N. Human Rights Comm., Comm’n No. 702/1996, U.N. Doc. CCPR/C/60/D/702/1996 (July 18, 1007) (holding that the duty to inform the accused under article 14 is “more precise than the duty under article 9.”).

<sup>106</sup> *See* LEGISLATION ONLINE, OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, Fair Trial (Right to a), available at [www.legislationonline.org](http://www.legislationonline.org) (last visited Oct. 31, 2008).

<sup>107</sup> ICCPR art. 14(1), *supra* note 10.

<sup>108</sup> *Id.* art. 14(2). This is a fundamental human right according of General Comment 32. *See* General Comment 32, *supra* note 96.

<sup>109</sup> ICCPR art. 14(3)(b), (d), *supra* note 10.

<sup>110</sup> *Id.* art. 14(3)(e).

<sup>111</sup> *Id.* art. 14(5).

<sup>112</sup> *Id.* art. 14(3)(d).

<sup>113</sup> *See* Mbenge, *supra* note 100, at 134.

<sup>114</sup> *Id.* at 14.1 (“[j]udgment in absentia requires that, notwithstanding the absence of the accused, all due notification has been made to inform him of the date and place of his trial and to request his attendance. Otherwise, the accused, in particular, is not given adequate time and facilities for the preparation of his defence (art. 14(3)(b)), cannot defend

Arguably, the most important guarantee articulated in the “fair hearing” principle enshrined in Article 14 provides that all individuals are “entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” in accordance with international standards codified in the *UN Basic Principles on the Independence of the Judiciary*.<sup>115</sup> The competence requirement necessitates that a member state’s tribunal exercise proper subject matter, territorial and temporal jurisdiction over the accused individual pursuant to established laws.<sup>116</sup> A tribunal’s independence, on the other hand, assumes a separation of powers in which the courts and judiciary are institutionally insulated from improper interference and persuasion by other branches of government.<sup>117</sup> Finally, impartiality requires that the judiciary conduct its proceedings fairly and free of bias regarding the ultimate outcome of the case.<sup>118</sup>

The Constitution of the Islamic Republic of Iran addresses some of the rights guaranteed by the due process and “fair hearing” protections of Articles 9 and 14 of the Covenant. For example, the Constitution provides for equality before the law,<sup>119</sup> the swift charging of an arrestee pursuant to established laws,<sup>120</sup> judicial access and recourse to a competent court,<sup>121</sup> the right to counsel,<sup>122</sup> the right to sentencing (including execution) by a competent court<sup>123</sup> and the presumption of innocence.<sup>124</sup> The existence of these constitutional provisions signifies the regime’s attempt at compliance with Articles 2, 9, and 14 guarantees, and at least an implicit acknowledgment that the regime is bound by the “fair hearing” requirements of the Covenant. Yet notwithstanding these codified protections, there is overwhelming evidence that these enumerated protections either fail, in principle, to satisfy all the minimum ICCPR requirements, or that the relevant authorities willfully disregard the applicability of these provisions in practice.<sup>125</sup>

Since 1979, the Iranian judiciary and members of the clergy loosely affiliated with it have sanctioned the killings of numerous political dissidents. The period directly following the downfall of the Shah’s regime was marked by the summary indictment, imprisonment, and often, execution of hundreds of political figures by *ad hoc* revolutionary courts.<sup>126</sup> In situations where

---

himself through legal assistance of his own choosing (art. 14(3)(d)) nor does he have the opportunity to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf (art. 14(3)(e)).

<sup>115</sup> Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32, U.N. Doc. A/RES/40/32 (Nov. 29, 1985) and 40/146, U.N. Doc. A/RES/40/146 (Dec. 13, 1985) [hereinafter UN Basic Principles on the Judiciary].

<sup>116</sup> *Id.* para. 3.

<sup>117</sup> See *id.* paras. 1-2, 4, 6. The UN Basic Principles on the Independence of the Judiciary also identifies some additional features necessary to achieve judicial independence, including objective requirements used to select judges and assess their qualifications, guaranteed tenure, and fair disciplinary proceedings for the removal of judges. *Id.* paras 10-20.

<sup>118</sup> *Id.* paras. 2, 8; see also *Olo Bahamonde v. Equatorial Guinea*, U.N. Human Rights Comm., Comm’n no.468/1991, U.N. Doc. CCPR/C/49/D/468/1991 (1993); *Findlay v. UK* (ECHR), app. no. 22107/93 (Feb. 25, 1997).

<sup>119</sup> *Qanun-i Assassiyeh Jumhuriyeh Islamiyeh Iran* [CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 20, available at [www.servat.unibe.ch/icl/ir00000\\_.html](http://www.servat.unibe.ch/icl/ir00000_.html) (last visited Oct. 31, 2008) [hereinafter IRI CONSTITUTION].

<sup>120</sup> *Id.* art. 32.

<sup>121</sup> *Id.* art. 34.

<sup>122</sup> *Id.* art. 35.

<sup>123</sup> *Id.* art. 36.

<sup>124</sup> *Id.* art. 37.

<sup>125</sup> See, e.g., *Team Will Kill Shah’s Family, Judge Vows*, THE GLOBE AND MAIL (Can.), Dec. 18, 1979 (quoting Sadegh Khalkhali as stating that “we will execute without trial all members of the family, the Shah [empress Farah Diba], all of them and all the dignitaries of the old regime and [ex premier Shapour] Bakhtiar”); see also NO SAFE HAVEN, *supra* note 25, at Appendix 3.

<sup>126</sup> See NO SAFE HAVEN, *supra* note 25, at 5-6; see also DAVID MENASHRI, IRAN: A DECADE OF WAR AND REVOLUTION 83 (1990).

the accused was not in custody or had fled the country, summary trials and death sentences were carried out *in absentia*.<sup>127</sup>

In addition to death sentences handed down by *ad hoc* courts, state-sanctioned killings were also endorsed by the judiciary's ratification of *fatwas*. Over the past twenty-nine years, the regime has often relied on *fatwas* in connection with the execution or assassination of alleged "criminals" or enemies of Islam.<sup>128</sup> These decrees are usually issued by the Supreme Leader, or other high ranking members of the clergy who are often not members of the country's civil court system.<sup>129</sup> *Fatwas* are self-executing – they compel official members of the judiciary and law enforcement (i.e. prosecutors) to issue legal decrees carrying out the death sentence, even if the "offender" resides outside the jurisdiction of the Islamic Republic.<sup>130</sup> As such, they are rarely, if ever, issued pursuant to the commission of an actual trial *in absentia* conducted by an independent and impartial judiciary. Statements made by Ayatollah Khalkhali, the religious magistrate who accepted personal responsibility for the assassination of Shahriar Shafiq and sanctioned the killings of high ranking members of the former regime such as General Oveisi, reveal the degree to which Iran's judiciary essentially acted as a rubber stamp for *fatwas* issued by the Supreme Leader.<sup>131</sup> Other examples include the decree to assassinate Manouchehr Ganji,<sup>132</sup> issued by the Prosecutor General of the Islamic Republic pursuant to a *fatwa* handed out by a high ranking cleric.<sup>133</sup>

The regime's practice of issuing *fatwas* (and accompanying assassination decrees) violates all of the "fair hearing" principles articulated in both the Covenant and the Constitution of the Islamic Republic. Notably, *fatwas* violate international standards regarding the competence, independence, and impartiality of tribunals in so far as they are issued by individuals who do not meet objective criteria related to the appointment, selection and functioning of civil judges, and often serve executive or legislative functions not related to the administration of the country's civil judicial system.<sup>134</sup> Through the improper exercise of adjudicatory and enforcement jurisdiction, the regime seeks to do that which it either cannot do under proper legal channels or is prohibited from doing under international law.<sup>135</sup> The practice of issuing *fatwas* clearly violates an individual's right to a trial, even if such is conducted *in absentia*.<sup>136</sup>

The judiciary's heavy involvement in the regime's state-sanctioned killings highlights the significant gap between the minimum fair hearing guarantees enshrined in Article 14 of the Covenant and the regime's brand of justice. Specifically, an examination of the structure and function of the judiciary and its officials reveals a system that utterly fails to satisfy the competence, independence and impartiality provisions of the Covenant. It is not surprising, therefore, that over time the regime simply decided to abandon the charade of legitimizing its state-sanctioned policy of killing political dissidents through the judiciary, and instead resorted to

---

<sup>127</sup> See *id.*, *supra* note 25, at Appendix 3.

<sup>128</sup> See *id.* at Appendix 4. An example is the 1980 *fatwa* issued by the Supreme Leader, Imam Khomeini for those involved in the conspiracy to overthrow the regime. See *id.*

<sup>129</sup> *Fatwas* may not be retracted or withdrawn by anyone other than the issuing cleric. See *id.*

<sup>130</sup> See *id.* at Appendix 5.

<sup>131</sup> See *id.* at 16, Appendix 3; see also *id.* at 31 (providing statements made by Hojjatolislam Mohsen Qara'ati in connection with Kazem Rajavi's assassination).

<sup>132</sup> Ganji is an ex-minister under the Shah, and a leader of the monarchist Flag of Freedom Party. See *id.* at 37-39.

<sup>133</sup> See *id.* at Appendix 5.

<sup>134</sup> Moreover, these clerics are appointed by religious institutions using non-objective criteria. HUMAN RIGHTS WATCH, World Report 2001, Iran: Human Rights Developments, available at [www.hrw.org/wr2k1/mideast/iran.html](http://www.hrw.org/wr2k1/mideast/iran.html) (last visited Oct. 31, 2008).

<sup>135</sup> See *id.*

<sup>136</sup> See *supra* notes 112-14 and accompanying text.



a secret campaign of global assassinations orchestrated in large part by executive agencies such as the Ministry of Intelligence.

### **4.1.3. Duty to Investigate, Punish or Otherwise Provide Remedies to the Aggrieved**

Under Article 2(3) of the ICCPR, all member states are obligated to take measures to ensure that individuals have “effective remedy” pursuant to any deprivation of rights under the Covenant.<sup>137</sup> This remedy shall be provided for by “competent judicial, administrative or legislative authorities.”<sup>138</sup> This right to a remedy implies that states are obligated to investigate and prosecute violations of the Covenant.<sup>139</sup> In a series of cases, the U.N. Human Rights Committee concluded that Article 2(3) obligates government authorities to conduct investigations into alleged violations of the Covenant, including extrajudicial killings, executions and torture, and to bring to justice those responsible.<sup>140</sup> The duty to investigate and prosecute violations of the right to life has likely gained customary status in international law.<sup>141</sup> While Article 2 of the Covenant explicitly requires member states to investigate and prosecute fundamental violations of the Covenant, the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary* codify international standards which must be complied with if the Covenant’s “effective remedy” principle is to be taken seriously.<sup>142</sup> These standards address substantive and procedural norms related to both the implementation of investigations and the contour of legal proceedings leading to the prosecution of alleged perpetrators. With respect to the conduct of appropriate legal proceedings aimed at prosecuting alleged perpetrators, the *Principles* mandate that all persons identified pursuant to the investigations as having taken part in the extrajudicial killings be “brought to justice.”<sup>143</sup> “Fair and adequate compensation” must also be provided to the families of the victims “within a reasonable period of time.”<sup>144</sup> To date, the regime has initiated no investigations into the assassination and murder of its enemies on foreign soil. Not only has the regime rejected its own responsibilities under international law, but it has actively sought to frustrate the ability of foreign governments to effectively investigate the assassination of Iranian

<sup>137</sup> ICCPR art. 2(3)(a), *supra* note 10.

<sup>138</sup> *Id.* art. 2(3)(b).

<sup>139</sup> *See id.*

<sup>140</sup> *See, e.g.,* Dermot Barbato v. Uruguay, U.N. Human Rights Comm., Comm’n no. 84/1981, U.N. Doc. CCPR/C/OP/2 at 112 (1990); *see* Muteba v. Zaire, U.N. Human Rights Comm., Comm’n no. 124/1982, U.N. Doc. Supp. No. 40 (A/39/40) at 182 (1984); Bautista de Arellana v. Colombia, U.N. Human Rights Comm., Comm’n no. 563/1993, U.N. Doc. CCPR/C/55/D/563/1993 (1995).

<sup>141</sup> Both the European Court of Human Rights and the Inter-American Court of Human Rights have ruled that member states have a duty to provide effective remedies to victims of extrajudicial killings pursuant to regional human rights conventions, and that this redress inherently involves the duty to investigate, prosecute, punish and provide just compensation. *See, e.g.,* Adali v. Turkey, app. no. 38187/97, Mar. 31, 2005; Myrna Mack Chang Case, Judgment of Nov. 25, 2003, Inter-Am. Ct. H.R., (Ser. C) No. 101 (2003).

<sup>142</sup> *See* U.N. Econ. & Soc. Council [ECOSOC], Resolution 1989/65, May 24, 1989. *See also* Amnesty Int’l, Fourteen Point Program for the Prevention of Extrajudicial Killings (Fourteen Point Program), reproduced in AMNESTY INTERNATIONAL USA, *Bolivia: Awaiting Justice: Torture, Extrajudicial Executions, and Legal Proceedings*, Appendix IV, Sept. 1996, available at [www.amnestyusa.org/document.php?lang=e&id=A589B0C1996080B9802569000069344D](http://www.amnestyusa.org/document.php?lang=e&id=A589B0C1996080B9802569000069344D) (last visited Oct. 31, 2008) [hereinafter Fourteen Point Program].

<sup>143</sup> Fourteen Point Program principle 18, *supra* note 142 (“[t]he prohibition of extrajudicial executions and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency”).

<sup>144</sup> *Id.* principle 20.

dissidents on their soil.<sup>145</sup> This is not surprising given mounting evidence suggesting the involvement of public officials connected to the Ministry of Intelligence, the Revolutionary Guard and other government agencies.<sup>146</sup> Regardless, the regime's failure to investigate and prosecute those responsible for these crimes, and to provide "effective remedy" to the victims of such crimes, constitutes a violation of the Covenant and customary norms of international law.

Furthermore, there is substantial evidence suggesting that the governments of several European states were negligent (if not reckless) in fulfilling their duty to provide "effective remedy" following the murder of Iranian dissidents within their jurisdiction.<sup>147</sup> This negligence may also constitute a violation of Article 2 of the Covenant. A particularly egregious example of a European state's negligence in fulfilling its Article 2 responsibilities is the woeful response of the Austrian government to the murder of Dr. Abdol-Rahman Ghassemlou, which drew sharp criticism from numerous domestic and international outlets.<sup>148</sup> As highlighted in the IHRDC's underlying report on Iran's campaign of foreign assassinations, the Austrian authorities' negligence permeated all levels of the criminal investigation.<sup>149</sup> Despite contradictory statements given by the main suspects and preliminary conclusions reached by the Austrian Special Anti-Terrorism Unit strongly suggesting the involvement of high ranking regime elements, the two suspects were escorted to the airport by Austrian police and allowed to leave the country.<sup>150</sup> The preliminary conclusions reached by the Special Anti-Terrorism Unit were later bolstered by further evidence, and arrest warrants were eventually issued by the Austrian Public Prosecutor *three months after* the alleged suspects were escorted to the airport.<sup>151</sup> When Dr. Ghassemlou's widow filed suit against Austria alleging that the government willfully prevented authorities from promptly and effectively investigating her husband's assassination due to improper political considerations, her case was dismissed for lack of jurisdiction.<sup>152</sup>

France's denial of the Swiss government's extradition request of suspects allegedly involved in the assassination of Kazem Rajavi provides yet another striking example of a European nation's probable violation of Article 2.<sup>153</sup> The denial came in the wake of a French court's opinion affirming the legality of France's extradition to Switzerland of two of the fugitives involved in the murder of Rajavi.<sup>154</sup> In denying the extradition request, the office of the French Prime Minister cited "reasons connected to [France's] national interest," suggesting that like Austria, France was in part concerned that compliance with its Article 2 requirements may lead to a terrorist response by the Islamic Republic.<sup>155</sup> Although France's negligence did not implicate the investigation and judicial remedy requirements applicable in the case of Austria, its response likely failed to meet the general "effective remedy" objectives of the Covenant.

---

<sup>145</sup> See, e.g., MURDER AT MYKONOS, *supra* note 35, at 18-19; NO SAFE HAVEN, *supra* note 25, at 48-49 (documenting the evasive response of the Iranian government to allegations that elements within the regime were responsible for Mohammad Hossein Naghdi's assassination); see also *id.* at 32 (discussing the Iranian government's suit in Swiss court against a staff reporter who had written an article alleging that Iranian President Rafsanjani had 'masterminded' Kazem Rajavi's assassination.).

<sup>146</sup> For example, Mohammad Jafari Shahroudi and Mehdi Hadavi Moghaddam were involved in the assassination of Dr. Ghassemlou in Vienna, Austria. See NO SAFE HAVEN, *supra* note 25, at 25-29.

<sup>147</sup> See NO SAFE HAVEN, *supra* note 25, at 27-30.

<sup>148</sup> See *id.*

<sup>149</sup> See *id.*

<sup>150</sup> *Id.* at 28

<sup>151</sup> See *id.*

<sup>152</sup> *Id.* at 29.

<sup>153</sup> See *id.* at 32-33.

<sup>154</sup> See *id.*

<sup>155</sup> See *id.*

Like the Austrian reaction, France's response casts serious doubts on the ability of some European governments to investigate or otherwise provide effective remedy in the wake of political assassinations and other acts of terrorism committed inside their territories. All governments directly affected by Iran's campaign of political assassinations abroad must be held to account for any abrogation of their responsibilities under Article 2 of the Covenant. Condemnation should be particularly fierce where evidence suggests that these governments have willfully tainted the prosecutorial and judicial process by allowing improper outside influences or political pressures to affect the outcome of an investigation.

## 4.2. Other Guaranteed Rights

In addition to the critical protections provided by the ICCPR's right to life, due process and remedies provisions, the Covenant provides guarantees protecting an individual's freedom of thought,<sup>156</sup> expression,<sup>157</sup> assembly<sup>158</sup> and association.<sup>159</sup> These rights, like the right to life and fair hearing, are explicitly guaranteed by the Iranian Constitution.<sup>160</sup> It is incontrovertible, however, that the regime's assassination of dissidents abroad violates all of these protections. In fact, the regime's campaign of assassinations abroad highlights the critical link between the Covenant's right to life and other fundamental rights such as the freedom of thought. The extrajudicial murder of political dissidents abroad is but an extension of the regime's systematic persecution of political, religious and ethnic dissidents within the country. It is an exercise in operational *and* psychological intimidation – a message to all dissidents seeking refuge abroad that the regime's long arm of "justice" is not and will not be limited by national boundaries.

## 5. Legal Venues and Remedies

Iran's global assassination campaign has unquestionably violated a multitude of domestic and international laws. In order to hold the regime, its officials and agents acting on its behalf liable for these violations, victims and prosecutors must pursue the proper legal channels. Given the transnational nature of the extrajudicial killings examined in this report, prosecutors and families of the victims have the option of choosing to pursue domestic or international legal channels in order to seek redress. This choice requires selecting the appropriate forum and ensuring that that forum has jurisdictional capacity to prosecute the perpetrators.

Additionally, the nature of legal remedies afforded must also be taken into account before prosecutors and victims select the proper forum. Remedies may range from international condemnation, imposition of sanctions against the Islamic Republic, damages awards or reparations directed at the state or individuals acting on its behalf, or judicial prosecution and conviction based on individual criminal accountability. Domestic or international channels may provide a mix of political and/or legal remedies, but only some of these remedies will directly benefit the victims of Iran's campaign of assassinations. For example, international pressure may

---

<sup>156</sup> ICCPR art. 18, *supra* note 10.

<sup>157</sup> *Id.* art. 19.

<sup>158</sup> *Id.* art. 21.

<sup>159</sup> *Id.* art. 22.

<sup>160</sup> IRI CONSTITUTION art. 23, *supra* note 119. Article 23 of the Constitution of the Islamic Republic guarantees freedom of belief and thought. *Id.* Article 24 guarantees freedom of the press. *Id.* art. 24. Article 25 guarantees "secrecy of communication." *Id.* art. 25. Article 26 guarantees freedom of association. *Id.* art. 26. Article 27 guarantees freedom of assembly. *Id.* art. 27. Additionally, articles 19 and 27 provide overarching rights such as the right to be free from discrimination and the right to human dignity. *Id.* arts. 19, 27.



lead to the passage of a resolution by the U.N. General Assembly or Security Council condemning Iran's actions pursuant to customary international or treaty law.<sup>161</sup> Yet these resolutions, even if they provide for the implementation of a tough sanctions regime against the Islamic Republic, will likely fail to provide an "effective remedy" to the families of the victims. On the other hand, successful prosecution of a civil or criminal case against the regime or its agents, whether pursued in an international or domestic court, is more likely to benefit victims directly.

Notwithstanding this report's primary focus on the international laws violated by the Islamic Republic, victims of Iran's campaign of political assassinations abroad will most likely rely on domestic laws in their pursuit of justice. The reasons for this are readily apparent. Due to the extraterritorial nature of the killings, primary investigative and prosecutorial responsibilities will be assumed by the affected state pursuant to its exercise of territorial jurisdiction over crimes committed within its borders. Indictment and prosecution will, therefore, likely occur pursuant to the state's domestic criminal laws. Moreover, most international courts or tribunals, such as the International Criminal Court (ICC) or International Court of Justice (ICJ), either lack jurisdiction over Iran's actions or require the consent of the regime prior to exercising jurisdiction. Similarly, victims may have limited recourse in particular regional courts such as the European Court of Human Rights. But while prosecution in such courts may implicate the European governments' negligence and allow recovery of damages awards, it will not lead to the punishment of those ultimately responsible for the extrajudicial killings. This is also the case for possible remedies provided by other non-judicial international channels, such as the U.N.

## 5.1. Jurisdictional Issues

Before victims of Iran's campaign of global assassinations can qualify to receive legal redress, whether in the form of reparations from the regime or punishment of the alleged perpetrators, they must first pursue their case before a domestic or international forum empowered to exercise jurisdiction over the crimes committed. International law generally recognizes the exercise of five types of jurisdiction by domestic courts: territorial, national, protective, passive personality, and universal.<sup>162</sup> On one end of the jurisdictional spectrum is territorial jurisdiction, which is unquestionably the strongest basis for the exercise of jurisdiction under customary international law because it is inextricably tied to the exercise of sovereignty.<sup>163</sup> On the other end, is the more controversial exercise of universal jurisdiction.<sup>164</sup> Since the end of World War II, the exercise of universal jurisdiction in connection with the prosecution of international crimes, which include war crimes, crimes against humanity, genocide, war crimes and torture, has steadily increased. Three of these four categories of international crimes are specifically addressed in treaties or conventions.<sup>165</sup> The fourth, crimes against humanity, has no treaty devoted exclusively to its

---

<sup>161</sup> See, e.g., Press Release, Security Council, Security Council Tightens Restrictions on Iran's Proliferation-Sensitive Nuclear Activities, Increases Vigilance over Iranian Banks, Has States Inspect Cargo, U.N. Doc. SC/9268, Mar. 3, 2008. This action may have been instigated by other U.N. channels, such as the Special Rapporteur, the Human Rights Council, or the Human Rights Committee. See Gideon Moor, *The Republic of Bosnia-Herzegovina and Article 51: Inherent Rights and Unmet Responsibilities*, 18 FORDHAM INT'L L. J. 870, 896-98 (1995).

<sup>162</sup> See *infra* note 167-70 for further discussion.

<sup>163</sup> See *id.*

<sup>164</sup> See *infra* § 5.2.

<sup>165</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951 [hereinafter Genocide Convention]; Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987 [hereinafter Convention Against Torture].

regulation and criminalization, but has long been recognized as among the gravest crimes in international law pursuant to customary international law.<sup>166</sup>

The most common exercise of jurisdiction is territorial jurisdiction, which allows the courts of a state to exercise power over crimes and persons within the bounds of a particular geographic territory.<sup>167</sup> Territorial jurisdiction is unquestionably the strongest basis for the exercise of judicial jurisdiction under customary international law because it is inextricably tied to the exercise of sovereignty.<sup>168</sup> A state court's legitimacy to prosecute and enforce laws is at its highest, therefore, when it is exercising its territorial jurisdiction. When the German judiciary arrested and tried five people involved in the *Mykonos* killings, it was acting on the basis of territorial jurisdiction, since the killings occurred in Berlin.<sup>169</sup> Nations that have territorial jurisdiction to try perpetrators of the assassinations detailed in *No Safe Haven* include Austria, France, Italy, Switzerland and the United States.<sup>170</sup>

Territorial jurisdiction is not, however, the only recognized form of jurisdiction under international law. Nationality jurisdiction may be asserted by a state whose national is a suspect.<sup>171</sup> Though nationality jurisdiction is often considered a subsidiary to territorial jurisdiction, it is nonetheless recognized as a legitimate doctrine falling within the purview of issues connected to the exercise of state sovereignty.<sup>172</sup> Another form of non-territorial jurisdiction is passive personality jurisdiction, which allows a state to exercise jurisdiction when its national is a victim of a crime.<sup>173</sup> Finally, under protective jurisdiction, a state may claim jurisdiction over crimes that threaten its national security.<sup>174</sup>

As has previously been stated, international legal standards usually discourage trials conducted *in absentia*.<sup>175</sup> Therefore, although national and international tribunals often allow investigations and even indictments before the extradition and apprehension of suspects, they have generally required the physical presence and custody of a suspect before the launch of a trial.<sup>176</sup> The International Criminal Tribunal for Rwanda (ICTR), International Criminal Tribunal for the Former Yugoslavia (ICTY) and the ICC all require physical custody before suspects can be put to trial.<sup>177</sup> The successful exercise of jurisdiction is further complicated by the concept of immunity, which often serves to shield government officials or those carrying out official duties on behalf of a state from criminal prosecution in foreign courts.<sup>178</sup>

---

<sup>166</sup> See, e.g., Beth Van Schaack, *Crimen Sine Lege: Judicial Lawmaking at the Intersection of Law and Morals*, 97 GEO. L.J. 119, 163-63 (2008). It is, however, an enumerated offense triggering subject matter jurisdiction under the Rome Statute of the International Criminal Court. Rome Statute art. 7, *supra* note 46. For further discussion of crimes against humanity, see *infra* § 5.4.

<sup>167</sup> See ANTONIO CASSESE, *INTERNATIONAL CRIMINAL LAW* 281-84 (2003).

<sup>168</sup> See *id.*

<sup>169</sup> See MURDER AT MYKONOS, *supra* note 35, at 8-9, 13, 18-19.

<sup>170</sup> See generally NO SAFE HAVEN, *supra* note 25.

<sup>171</sup> See, e.g., CASSESE, *supra* note 167, at 281-84.

<sup>172</sup> *Id.* at 281-82.

<sup>173</sup> *Id.* at 282-84. Passive personality jurisdiction is also referred to as passive nationality jurisdiction.

<sup>174</sup> ANTHONY AUST, *HANDBOOK OF INTERNATIONAL LAW* 42 (2005).

<sup>175</sup> See *supra* note 113-14 and accompanying text.

<sup>176</sup> See Mbenge, *supra* note 100.

<sup>177</sup> See, e.g., Goran Sluiter, *Geert-Jan Knoops' Surrendering to International Criminal Courts: Contemporary Practice and Procedures*, 8 J. CONFL. & SEC. L. 411, 411-12 (2003) (book review).

<sup>178</sup> ROBERT CRYER, ET AL., *AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE* § 20.1.2 (2007). Immunity, however, is not permanent. Because the doctrine is designed to protect the person as a representative of his or her government, the immunity only lasts so long as the person is in office. See, e.g., Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium), ICJ, Judgment, 14 Feb. 2002, para. 75 [hereinafter Arrest Warrant Case]; Pieter H.F. Bekker, *World Court Orders Belgium to Cancel Arrest Warrant, Issued*

Given the transnational nature of the crimes perpetrated by the regime and its agents, affected countries such as the United States, Austria, Argentina, Germany, France, Iraq, Turkey and Pakistan may all exercise territorial jurisdiction over the assassination of political dissidents perpetrated within their borders. Many of these nations have in fact exercised such jurisdiction and either indicted or convicted Iranian officials or agents connected to the extrajudicial killings of civilians on their soil.<sup>179</sup> Conceivably, many of these same countries may also choose to exercise protective or passive personality jurisdiction as a basis for prosecuting suspects.<sup>180</sup> To date, however, such prosecutions of alleged perpetrators have not occurred. Moreover, given the intimate involvement of the Iranian regime in the planning and commission of the assassinations, it is unlikely that the Islamic Republic will exercise nationality jurisdiction over alleged perpetrators in order to prosecute and / or extradite them to the proper fora. Unless indicted individuals such as Fallahian, Rafsanjani, or David Belfield (aka Daoud Salahuddin) voluntarily leave Iran and enter the territory of a prosecuting state (or are extradited to the prosecuting states by third states), they will not be arrested and put on trial.<sup>181</sup> In such cases, the only legal remedies available to prosecutors and victims may be civil in nature.

## 5.2. Criminal Prosecutions in Domestic Courts

In light of the many political and legal limitations imposed on international courts, tribunals, and international bodies such as the U.N., domestic courts will likely provide the best and most efficient avenue of legal redress to victims of Iran's campaign of global assassinations. Victims pursuing prosecution of their cases in domestic courts have two options: to pursue criminal prosecutions of individuals directly or indirectly involved with the assassinations, or initiate civil proceedings implicating state action or individual tortious liability. From the perspective of accountability and retribution, criminal prosecutions are arguably the preferred method for dealing with the regime's orchestrated campaign of violence against political dissidents abroad.

As detailed in IHRDC's two previous reports, *Murder at Mykonos* and *No Safe Haven*, many courts, including those in Europe and the United States, have already initiated criminal proceedings against those alleged to be involved in the regime's campaign of political assassinations within their territorial jurisdiction. In addition to domestic criminal prosecutions by states directly affected by Iran's global assassinations campaign, however, other members of the international community may also seek to prosecute alleged perpetrators in their national courts based on the principle of universal jurisdiction. The request by a Spanish court for the arrest and extradition of Augusto Pinochet on charges of torture from the U.K. in 1998 set off a wave of interest in the prosecutions of international crimes based on universal jurisdiction. Since then,

---

*Against the Congolese Foreign Minister*, ASIL INSIGHTS, Feb. 2002, available at [www.asil.org/insights/insigh82.htm](http://www.asil.org/insights/insigh82.htm) (last visited Oct. 31, 2008). While immunity often shields alleged criminals in national courts, it does not appear to be recognized by international criminal courts. In the case of *ad hoc* tribunal such as the ICTY, for example, immunity is relinquished because there is an overriding obligation to comply with Chapter VII of the U.N. Charter. See Prosecutor v. Blaskic para. 41, Case No. IT-95-14 A (Oct. 29, 1997).

<sup>179</sup> See generally NO SAFE HAVEN, *supra* note 25.

<sup>180</sup> Indeed, some European countries such as Belgium have actually passed legislation allowing prosecution based on active and passive personality jurisdiction. See Preliminary Title of the Code of Criminal Procedure (Titre préliminaire du Code de procédure pénale), Chapter II, arts. 6 (1), 7(1) and 10 (5).

<sup>181</sup> Some states have argued that international criminals may be forcibly apprehended on foreign soil and transferred to a prosecuting jurisdiction in order to satisfy the physical presence requirement. See Attorney General of Israel v. Eichmann, Criminal Case No. 40/61 (Dec. 11, 1961), reprinted in Covey Oliver, *Judicial Decisions*, 56 AM. J. INT'L L. 805 (1962). Most European countries that have passed legislation allowing prosecution based on universal jurisdiction, however, have rejected this approach. See Lieutenant Commander James Paul Benoit, JAGC, USN, *The Evolution of Universal Jurisdiction Over War Crimes*, 53 NAVAL L. REV. 259 (2006).

several European nations such as Spain, France, Belgium, the U.K. and the Netherlands have successfully prosecuted international crimes in their courts pursuant to the exercise of universal jurisdiction.<sup>182</sup> Under the principle of universal jurisdiction, a state is entitled or even required to prosecute certain serious or grave violations of international law, irrespective of the location in which the crimes took place or nationality of the victims or perpetrators.<sup>183</sup> In other words, a state exercising universal jurisdiction has no ties to the territory or nationality of the victims or perpetrators.<sup>184</sup>

Central to the exercise of universal jurisdiction is the requirement that the alleged violators actually committed an international crime.<sup>185</sup> International crimes involve the commission of certain grave offenses in violation of treaty or customary law.<sup>186</sup> Any international crime committed within the territory of one member state victimizes not only those directly affected by the deprivation of fundamental rights, but the international community as a whole.<sup>187</sup> As such, all states are obligated to exercise universal jurisdiction in order to prosecute or extradite alleged offenders. This concept of the mandatory exercise of jurisdiction has been codified with respect to war crimes under the Geneva Conventions,<sup>188</sup> torture under the Convention Against Torture<sup>189</sup> and genocide under the Genocide Convention.<sup>190</sup> The codification, in turn, reflects customary law encouraging all states to prosecute or extradite international criminals pursuant to the principles of universal jurisdiction.<sup>191</sup>

Eight countries in Europe have passed domestic legislation allowing for the exercise of universal jurisdiction and the prosecution of international crimes. These countries are France, Belgium, Denmark, Germany, the Netherlands, Norway, Spain and the United Kingdom.<sup>192</sup> Universal jurisdiction in the domestic courts of these countries may solely be exercised in the prosecution of international crimes, including war crimes, crimes against humanity, genocide and torture.<sup>193</sup> However, each state has made its own decision as to which of these crimes may be prosecuted in their domestic courts.<sup>194</sup> For example, France's legislation only allows the exercise of universal jurisdiction for torture in connection with the Convention against Torture.<sup>195</sup> Similarly, Denmark

<sup>182</sup> See Benoit, *supra* note 181, at 277-281.

<sup>183</sup> See Anthony Colangelo, *The Legal Limits of Universal Jurisdiction*, 47 VA. J. INT'L L. 149, 150-51 (2005).

<sup>184</sup> Unlike domestic courts, international tribunals usually exercise jurisdiction pursuant to international conventions, or United Nations Security Council resolutions. See, e.g., Statute of the International Criminal Tribunal for the Former Yugoslavia arts. 6-9, U.N. Doc. S/25704 at 36 (1993) [hereinafter ICTY Statute]. These conventions allow individual member states to transfer their jurisdictional capacity to an international tribunal such as the ICC. See Rome Statute arts. 4, 5, *supra* note 46.

<sup>185</sup> See *infra* § 5.4 for a discussion of international crimes, including crimes against humanity.

<sup>186</sup> See *id.*

<sup>187</sup> See generally Adil Ahmad Haque, *Group Violence and Group Vengeance: Toward a Retributivist Theory of International Criminal Law*, 9 BUFF. CRIM. L. REV. 273 (2005).

<sup>188</sup> Protocol I arts. 11, 85, 86, 88, *supra* note 38.

<sup>189</sup> Convention Against Torture arts. 2, 4, 5, 6, *supra* note 165.

<sup>190</sup> Genocide Convention art. 6, *supra* note 165.

<sup>191</sup> Amnesty Int'l, *Universal Jurisdiction in Europe: The State of the Art*, at 1-4 (2006), available at <http://www.hrw.org/reports/2006/ij0606/10.htm> (last visited Oct. 31, 2008) [hereinafter *State of the Art*].

<sup>192</sup> See *id.* at 37-100. Six of these eight jurisdictions have actually passed implementing legislation pursuant to their treaty obligations or customary international law. See *id.* This legislation effectively supplements their criminal codes with international charges, such as crime against humanity or genocide. See *id.* The remaining jurisdictions, Norway and Germany, have no implementing legislation and may prosecute international crimes based solely on domestic criminal charges. See *id.* at 63-70, 80-85. See also *infra* § 5.4 (providing a discussion of international criminal law, crimes against humanity and the exercise of universal jurisdiction pursuant to customary law (as opposed to treaty law)).

<sup>193</sup> *Id.* at 3.

<sup>194</sup> *Id.* at 5.

<sup>195</sup> *Id.* at 55.

and Spain only apply universal jurisdiction pursuant to their treaty obligations under the Convention against Torture and the Geneva and Genocide conventions.<sup>196</sup> Germany, Belgium, the United Kingdom and the Netherlands all allow the exercise of universal jurisdiction in connection with crimes against humanity.<sup>197</sup>

To the extent that the Islamic Republic's state-sponsored assassinations of political dissidents abroad constitute international crimes, any member of the international community may initiate judicial proceedings against persons allegedly responsible for the commission of these crimes. As will be explained, evidence suggests that the regime's actions may be characterized as murder or persecution within the context of a crime against humanity.<sup>198</sup> Some of these assassinations may also constitute war crimes. Victims of Iran's campaign of assassinations may, therefore, petition governments in Europe to initiate proceedings against high ranking Iranian officials implicated in these murders based on the commission of an international crime.

Yet significant legal barriers may delay or frustrate the successful implementation of criminal trials against Islamic Republic officials and their agents. For example, all eight jurisdictions above foreclose the option of prosecuting current state officials pursuant to the principles of immunity recognized by international law.<sup>199</sup> Many of the highest ranking members of the Islamic Republic implicated in the assassinations of political dissidents, such as Khamenei and Rafsanjani, continue to serve the regime in an official capacity and are thus immune from prosecution. Moreover, most of the jurisdictions require the suspect's voluntary physical presence either before the initiation of an investigation or the issuance of an arrest warrant.<sup>200</sup> Finally, some jurisdictions have instituted statutes of limitations on prosecutions of international crimes.<sup>201</sup> Despite these limitations, victims and human rights advocates must put pressure on all governments, including those in Europe, to exercise their obligations to prosecute all international criminals to the fullest extent of the law.

### 5.3. Civil Remedies in Domestic Courts

Given the legal and logistical difficulties inherent in actually bringing alleged criminals to trial abroad, many families of victims of Iran's global assassinations campaign have resorted to seeking money damages in European and U.S. domestic courts. An example of a civil remedy available to families of the victims of the Islamic Republic of Iran's assassination campaign is the Alien Tort Statute (ATS).<sup>202</sup> The ATS allows an alien to sue in U.S. federal court for the commission of a tort committed in violation of the law of nations.<sup>203</sup> Under *Sosa v. Alvarez-*

---

<sup>196</sup> *Id.* at 24.

<sup>197</sup> *Id.* at 40-74; *see also infra* § 5.4.

<sup>198</sup> *See infra* § 5.4.

<sup>199</sup> *See* Arrest Warrant Case para. 75, *supra* note 178; *State of the Art*, *supra* note 191, at 39 (discussing the Belgium Supreme Court's abandoning of a universal jurisdiction case against Ariel Sharon, then Prime Minister of Israel, based on the immunity principle; *see also* Pieter H.F. Bekker, *World Court Orders Belgium to Cancel Arrest Warrant, Issued Against the Congolese Foreign Minister*, ASIL INSIGHTS, February 2002, available at [www.asil.org/insights/insigh82.htm](http://www.asil.org/insights/insigh82.htm) (last visited Oct. 31, 2008)).

<sup>200</sup> *See State of the Art*, *supra* note 191, at 28-30; *see also* Mohamed El Zeidy, *Universal Jurisdiction in Abstenia: Is it a Legally Valid Option for Repressing Heinous Crimes*, 4 OXFORD COMP. L.F. (2003).

<sup>201</sup> *See, e.g.*, DUTCH MINISTRY OF FOREIGN AFFAIRS, Introduction to the International Crimes Act, available at [www.minbuza.nl/en/themes/international-legal-order/international-criminal-court/background-information/Introduction-to-the-International-Crimes-Act.html](http://www.minbuza.nl/en/themes/international-legal-order/international-criminal-court/background-information/Introduction-to-the-International-Crimes-Act.html) (last visited Oct. 31, 2008). Further, the United Kingdom only allows prosecution for crimes committed after 2001. *See* Olympia Bekou and Sangeeta Shah, *Realizing the Potential of the International Criminal Court: The African Experience*, 6 HUMAN RIGHTS L. REV. 499 (2006).

<sup>202</sup> *See* 28 U.S.C. § 1350 (1789). The Alien Tort Statute is also commonly referred to as the Alien Tort Claims Act.

<sup>203</sup> 28 U.S.C. § 1350 (2002).

*Machain*, the alleged violation of the law of nations must be specific and well-established enough to compare with the three offenses recognized at the time of the drafting of the ATS in 1789: assaults against diplomats, piracy, and violation of safe passage.<sup>204</sup> Extrajudicial killings are recognized as a violation of the law of nations that satisfies this standard.<sup>205</sup> Although there is a requirement of state action,<sup>206</sup> the perpetrators of Iran's assassination campaign certainly acted pursuant to orders from Iran's government officials.<sup>207</sup>

Until relatively recently, however, victims of state-sponsored acts of violence had little recourse to civil remedies in domestic courts because of the principle of sovereign immunity. Foreign states and their officials were generally immune from civil liability in many domestic courts.<sup>208</sup> As a result, foreign states were rarely, if ever, held liable for causing injuries carried out by their agents or proxies, even if these injuries were perpetrated with criminal intent, unless it could be shown that the officials were acting outside the scope of government authority.<sup>209</sup> Over the past thirty years or so, however, many states in the international community have begun to place restrictions on the concept of absolute sovereign immunity, and have created exceptions for certain activities for which their courts will exercise personal and subject matter jurisdiction.<sup>210</sup>

For example, as early as 1976, the United States recognized the inapplicability of the Foreign Sovereign Immunities Act in circumstances where states engage in state-sponsored assassination of dissidents on foreign soil. In the case of *Letelier v. Republic of Chile*, a U.S. district court denied Chile's sovereign immunity argument that U.S. courts lacked jurisdiction, reasoning that the Foreign Sovereign Immunities Act does not provide a defense from liability where a foreign state has ordered its agents to conduct an assassination or other act of political violence.<sup>211</sup> In its holding, the district court assessed damages of approximately \$4.9 million against Chile and certain agents and employees of its intelligence services who were found to have directed and carried out the assassination.<sup>212</sup>

Since *Letelier*, numerous other U.S. federal courts have imputed responsibility to states for the assassination of political dissidents carried out by the officials or agents of that state.<sup>213</sup> In *Liu v.*

---

<sup>204</sup> 540 U.S. 692, 724-25 (2004).

<sup>205</sup> See *Filartiga*, 630 F.2d 876.

<sup>206</sup> See, e.g., *Kadic v. Karadzic*, 70 F.2d 232 (2d Cir. 1995); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702, cmt. b (1987).

<sup>207</sup> See NO SAFE HAVEN, *supra* note 25, at 3.

<sup>208</sup> See *supra* notes 178, 199 and accompanying text.

<sup>209</sup> *Doe v. Qi*, 349 F. Supp. 2d 1258, 1280-84 (2004). Whether the official who allegedly committed the violation of the law of nations was acting within his or her government authority is determined by examining the domestic law under which he or she was operating at the time of the alleged violation. Sovereign immunity is not waived simply because gross violations of human rights took place. *Belhas v. Ya'alon*, 515 F.3d 1279 (2008).

<sup>210</sup> See, e.g., Foreign Sovereign Immunities Act, which restricts immunity in cases where victims are seeking money damages "for personal injury or death . . . caused by the tortious act" of a foreign state or its agents. 28 U.S.C. § 1605(a)(5); (7). Additionally, the United States has carved out a major exception to the Foreign Sovereign Immunities Act with the passage of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. §1605(a)(7), which allows nationals to sue foreign states if the state has been designated as a state sponsor of terrorism and if the plaintiff's injury has been caused by the state's support of a terrorist organization. Because some courts have held that the AEDPA does not create a cause of action against foreign states, plaintiffs have often relied on the AEDPA and other civil statutes (i.e. Torture Victims Protection Act (TVPA), 106 Stat. 73 (1992)).

<sup>211</sup> See generally *Letelier*, 488 F.Supp. 655.

<sup>212</sup> *Letelier*, 488 F. Supp. at 670-73.

<sup>213</sup> See, e.g., *Bakhtiar v. Islamic Rep. of Iran*, 571 F.Supp.2d 27 (D.D.C. 2008) (holding that Shapour Bakhtiar's assassination by agents of the Islamic Republic constituted an "extrajudicial killing" and fell within the Foreign Sovereign Immunity Act's state-sponsored terrorism exception, and that Bakhtiar's widow should be awarded \$12 million in compensatory damages pursuant to California's intentional infliction of emotional distress laws). In its decision, the Bakhtiar court also noted that the Foreign Sovereign Immunities Act "adopts the definition of 'extrajudicial killing' used in section 3 of the Torture Victims Protection Act" (see *infra* note 218), and that that Act

*Republic of China*, the court applied a combination of international and domestic laws to hold the government of Taiwan responsible for the assassination of a political dissident.<sup>214</sup> Taiwan was held liable despite evidence suggesting that the perpetrators of the murder held a personal grudge against the victim, and notwithstanding the government's investigation, prosecution, and conviction of high ranking officials involved in the assassination.<sup>215</sup> Essential to the court's holding was its reasoning that for purposes of immunity analysis, there is a distinct difference between an extrajudicial killing perpetrated inside a nation (which amounts to murder) and one committed on foreign soil.<sup>216</sup> The latter act violates the sovereignty of another state, and is therefore exempt from traditional notions of immunity recognized under international law.<sup>217</sup>

Victims of Iran's campaign of political associations and other forms of violence perpetrated on foreign soil have employed various civil remedies, particularly in U.S. courts. In recent years, a majority of these plaintiffs have relied on a combination of statutes including the Antiterrorism and Effective Death Penalty Act (AEDPA), the Torture Victims Protection Act (TVPA) and the ATS.<sup>218</sup> Compensatory and punitive judgments awarded as a result of these suits have run into the millions, with more than \$400 million actually paid out.<sup>219</sup> Many of these cases implicate the regime's sponsoring of terrorism through proxies such as Lebanese *Hezbollah* and Palestinian *Islamic Jihad*, while others are directed against the officials and agents of the Islamic Republic itself. An example is the civil case brought by the family of Cyrus Elahi against the Islamic Republic and its Ministry of Intelligence in U.S. courts in 2000.<sup>220</sup> Before awarding the plaintiffs damages amounting to more than \$310 million, the *Elahi* court noted that "every instrument and agreement that has attempted to define the scope of human rights has recognized a right to life coupled with a right to due process to protect that right."<sup>221</sup> It noted that the Iranian government had "sought to eliminate any effective opposition to the clerical regime by engaging in the widespread assassination of dissidents both within Iran and abroad."<sup>222</sup>

---

"defines extrajudicial killing as 'a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.'" *Id.* para. 24. The court then cited the *Elahi* court, noting that "assassination is clearly contrary to the precepts of humanity as recognized in both national and international law." *Id.*

<sup>214</sup> *Liu*, 892 F.2d 1419.

<sup>215</sup> *See generally id.*

<sup>216</sup> *Id.* at 1431-33.

<sup>217</sup> *Id.*

<sup>218</sup> For example, the Alien Tort Statute, 28 U.S.C. § 1350, and the Torture Victims Protection Act, 28 U.S.C. § 1350 (note), require proof of state action to state a claim. *See, e.g.,* *Khulumani v. Barclay Bank*, 504 F.3d 254 (2d Cir. 2007) (holding that absent state action, plaintiffs failed to state a claim under the TVPA but could allege aiding and abetting liability under the ATS). *See also supra* note 200 and accompanying text for a discussion of AEDPA.

<sup>219</sup> *See* AMERICAN LAW DIVISION, CRS REPORT FOR CONGRESS: SUITS AGAINST TERRORIST STATES BY VICTIMS OF TERRORISM (2008), available at <http://www.fas.org/sgp/crs/terror/RL31258.pdf> (last visited Oct. 31, 2008); *see also* CRS REPORT FOR CONGRESS: LAWSUITS AGAINST STATE SUPPORTERS OF TERRORISM: AN OVERVIEW (2005), available at <http://www.fas.org/sgp/crs/terror/RS22094.pdf> (last visited Oct. 31, 2008).

<sup>220</sup> *See Elahi*, 124 F. Supp. 2d 97; *see also* NO SAFE HAVEN, *supra* note 25, at 37-38.

<sup>221</sup> *Elahi*, 124 F.Supp. 2d at 107 (quoting *Xuncax v. Gramajo*, 886 F.Supp. 162, 185 (D.Mass. 1995); *see also* NO SAFE HAVEN, *supra* note 25, at 38.

<sup>222</sup> *Elahi*, 124 F.Supp. 2d at 101-02 (citing with approval, the testimony of Dr. Patrick Clawson, an expert on Iran's campaign of global assassinations). In a subsequent case brought by Dariush Elahi, the victim's brother, who attempted to collect on the damages awarded by the D.C. district court, the 9<sup>th</sup> Circuit Court of Appeals held that Dariush Elahi could recover part of the damages by going after the proceeds of an arbitration award given the to Iranian Ministry of Defense back in the 1970s. *See* Ministry of Defense and Support for the Armed Forces of the Islamic Rep. of Iran v. Elahi, 495 F.3d 1024 (9<sup>th</sup> Cir. 2007); *see also* NO SAFE HAVEN, *supra* note 25, at 38. The decision was, however, ultimately overturned by the United States Supreme Court, which held that the 9<sup>th</sup> Circuit had incorrectly defined the defendants as an "agent or instrumentality" of the state of Iran "rather than an integral part of the state itself," thereby defeating applicability of the Foreign Sovereign Immunities Act. Ministry of Defense and Support for the Armed



## 5.4. Crimes Against Humanity

Recent developments in the field of international criminal law have widened the legal avenues available to those seeking to hold violators of fundamental rights guaranteed under international human rights and humanitarian law to account for their actions. The establishment of the ad hoc criminal tribunals for the former Yugoslavia and Rwanda, set up in 1993 and 1994 respectively, contributed significantly to these developments because criminal prosecutions were no longer strictly tied to or limited by the will of individual states to prosecute offenders pursuant to international treaties such as the Geneva Convention or the Convention Against Torture.<sup>223</sup> The codification of many of the rules of criminal accountability pursuant to the Rome Statute, which established the ICC, provides further evidence of a shift away from traditional notions of state sovereignty and diplomatic immunity shielding alleged violators of human rights and towards a truly international system of individual accountability.<sup>224</sup>

To date, customary international law recognizes four distinct crimes that rise to the level of “international crimes”: war crimes, genocide, torture and crimes against humanity.<sup>225</sup> Pursuant to treaty obligations and customary international law, all states are obligated to exercise jurisdiction in order to prosecute or extradite alleged perpetrators of these offenses. While the Iranian government is not bound by the constitutive statutes of the ICTY, ICTR or ICC, it is not immunized from liability pursuant to the principles of international criminal law as reflected in customary law.<sup>226</sup> Substantial evidence presented in *No Safe Haven* indicating the involvement of high ranking officials connected to the intelligence, security and other executive ministries of the Islamic Republic in the assassination of political dissidents abroad exposes these officials to criminal prosecution.<sup>227</sup>

The term “crimes against humanity” is defined in the Rome Statute of the ICC as one of the enumerated underlying crimes (i.e. murder, torture or persecution) carried out as part of a widespread and systematic attack directed at a civilian population.<sup>228</sup> Pursuant to customary international law, war or “armed conflict” is generally not a required element of crimes against humanity.<sup>229</sup> More importantly, crimes against humanity are treated as “international crimes” that may be prosecuted pursuant to the principles of universal jurisdiction.<sup>230</sup> That is, they are crimes

---

Forces of the Islamic Rep. of Iran v. Elahi, 546 U.S. 450, 453 (2006) (per curiam); see also *NO SAFE HAVEN*, *supra* note 25, at 38.

<sup>223</sup> See Payam Akhavan, *Beyond Impunity: Can International Criminal Law Prevent Future Atrocities?*, 95 AM. J. INT’L L. 7 (2001) (providing a detailed account of the development of a truly international criminal justice system charged with prosecuting international crimes such as war crimes, torture, crimes against humanity and genocide).

<sup>224</sup> See Lindsay Zelniker, *Towards a Functional International Criminal Court: An Argument in Favor of a Strong Privileges and Immunities Agreement*, 24 FORDHAM INT’L L.J. 988 (2001).

<sup>225</sup> The Rome Statute arts. 5-8, *supra* note 46. In fact, it may be argued that the prohibition on the commission of all of these crimes has surpassed customary status and elevated to a peremptory norm (i.e. *jus cogens*) from which no derogation is ever permitted. See Karen Parker et al., *Jus Cogens: Compelling the Law of Human Rights*, 12 HASTINGS INT’L & COMP. L. REV. 411 (1989).

<sup>226</sup> Criminal prosecution of individuals by permanent and *ad hoc* international tribunals has been on the rise since the Nuremberg trials. See George E. Edwards, *International Human Rights Law Challenges to the New Criminal Court: The Search and Seizure Right to Privacy*, 39 YALE J. INT’L L. 323, 340-41, 385-88 (2001).

<sup>227</sup> See *NO SAFE HAVEN*, *supra* note 25.

<sup>228</sup> Rome Statute art. 7, *supra* note 46.

<sup>229</sup> “It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict. Indeed . . . customary international law may not require a connection between crimes against humanity and any conflict at all.” Prosecutor v. Tadic, para. 141, Case No. IT-94-1 A, Oct. 2, 1995.

<sup>230</sup> See, e.g., Amnesty Int’l, *Universal Jurisdiction: Questions and Answers*, December 2001, available at [www.amnesty.org/en/library/asset/IOR53/020/2001/en/dom-IOR530202001en.pdf](http://www.amnesty.org/en/library/asset/IOR53/020/2001/en/dom-IOR530202001en.pdf) (last visited Oct. 31, 2008).



horrific and offensive enough to merit prosecution wherever the perpetrator is found.<sup>231</sup> Under customary law, prosecution or extradition of those responsible for crimes against humanity is the responsibility and obligation of all states in the international community.<sup>232</sup> This responsibility extends to the Islamic Republic of Iran, and any other state(s) directly or indirectly affected by the assassination and extrajudicial killings of Iranian dissidents abroad.

Murder has long been recognized as one of the underlying offenses of a crime against humanity charge.<sup>233</sup> Under customary law, prosecutors seeking a conviction for murder as a crime against humanity must establish: a) the *actus reus* (the underlying offense or prohibited act, in this case murder), b) that the act was committed as part of a widespread or systematic attack, c) that the act was committed pursuant to or in furtherance of a state or organizational policy,<sup>234</sup> d) directed against any civilian population,<sup>235</sup> and e) that the accused had knowledge of the attack.<sup>236</sup> The prosecutor also must prove that the accused had the appropriate *mens rea*: intent to kill or inflict serious injury<sup>237</sup> to the victim in reckless disregard of human life.<sup>238</sup> Proof of premeditation is generally required, but the accused need not have premeditated the murder of a particular individual; it is sufficient that she had a premeditated intention to murder civilians.

The most significant element of a crime against humanity charge is the requirement that an underlying offense be committed “as part of a widespread or systematic attack.”<sup>239</sup> Criminal acts such as murder must be linked to crimes of a collective nature before individuals may be prosecuted and punished for perpetrating crimes against humanity. However, singular acts may constitute crimes against humanity as long as they occur as part of a wider and systematic campaign of terror and meet other relevant criteria.<sup>240</sup> Pursuant to international law, “widespread” may be defined as “massive, frequent, large- scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims.”<sup>241</sup> “Systematic,” on the

---

<sup>231</sup> See generally Lloyd Axworthy, *Afterword: The Politics of Advancing International Criminal Justice*, in UNIVERSAL JURISDICTION: NATIONAL COURTS AND THE PROSECUTION OF SERIOUS CRIMES UNDER INTERNATIONAL LAW 260 (Stephen Macedo, ed., 2004).

<sup>232</sup> See Colangelo, *supra* note 183, at 163-65.

<sup>233</sup> Rome Statute art. 7(1)(a), *supra* note 46. Underlying offenses recognized as constituting crimes against humanity include but are not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions (based on political, racial or religious grounds), and other inhumane acts. *Id.* at 7(1)(b)-(k).

<sup>234</sup> Rome Statute art. 7(2)(a), *supra* note 46. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has concluded that the “policy” element often noted in international law is not a requirement element of crimes against humanity. Prosecutor v. Tadic para. 654, *supra* note 229.

<sup>235</sup> Civilians must be the “primary object” of the attack. Prosecutor v. Naletilic and Martinovic para. 235, Case No. IT-98-34-T, March 31, 2003.

<sup>236</sup> Rome Statute art. 7(1), *supra* note 46. See also Prosecutor v. Tadic para. 626, *supra* note 229.

<sup>237</sup> Prosecutor v. Kayishema and Ruzindana para. 133-34, Case No. ICTR-95-1-A, May 21, 1999. The *mens rea* for murder may also be satisfied if at the time of the killing the accused or subordinate intended to inflict grievous bodily harm on the deceased having known that such harm would likely cause the victim’s death. See e.g., ICTY Statute, *supra* note 184.

<sup>238</sup> Prosecutor v. Popovic para. 41, Case No. ICTY-02-57-I, March 26, 2002.

<sup>239</sup> Rome Statute art. 7(1), *supra* note 46. The requirement that the attack be widespread or systematic is a disjunctive one. See *id.* An “attack” is defined as a course of conduct involving the commission of acts of violence. See Rome Statute, art. 7(2)(a). Attacks can precede, outlast, or continue during the armed conflict, but it need not be a part of it. See The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic. Case No. ICTY-96-23 & IT-96-23/1 - A - , Appeals Judgment, para. 420 (Jun. 12, 2002). Furthermore, in the context of a crime against humanity, an attack is not limited to the use of armed force; it also encompasses any mistreatment of the civilian population. See Payam Akhavan, *Reconciling Crimes Against Humanity with the Laws of War*, 6 J. INT’L CRIM. JUST. 21 (2008).

<sup>240</sup> Prosecutor v. Mile Mrksic, Miroslav Radic, and Veselin Sljivancanin, Case No. ICTY-95-13-R61, Defence Preliminary Motion, (Apr. 3, 1996); see also Doe v. Saraiva, 348 F.Supp. 2d 1112, 1157 (E.D. Cal. 2004) (holding that the assassination of El Salvadoran archbishop Romero in 1980 was a “crime against humanity” actionable under the Alien Tort Claims Act).

<sup>241</sup> Prosecutor v. Akayesu, Case No. ICTR-96-4-T, para. 579 (Sept. 2, 1998).

other hand, may be defined as “thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources.”<sup>242</sup> There is no requirement that the policy be adopted formally as a policy of the state.<sup>243</sup>

The Iranian regime’s campaign of assassinations and extrajudicial killings ostensibly satisfies all of the elements of murder constituting a crime against humanity pursuant to customary international law.<sup>244</sup> The extraterritorial killings may be characterized as both widespread and systematic. Victims of the regime’s state-sponsored killings number more than one hundred and sixty, all of whom were civilians at the time of their deaths. The numbers are considerably larger if the count includes the murder of dissidents and intellectuals inside the country’s borders. There is, in fact, no reason to distinguish between the regime’s extrajudicial killings of dissidents domestically or abroad – each individual killing is part of a thoroughly organized and deliberate policy of state-sponsored terror aimed at stifling political dissenters<sup>245</sup> anywhere they are found. To the extent that the perpetrators of these crimes were either agents or ideological proxies of the regime’s intelligence, they acted knowingly and in furtherance of the state’s policy of eradicating political opponents abroad.<sup>246</sup> Finally, all of the targeted killings were carefully planned and executed, and resulted in the unlawful deaths of their targets.

Accountability based on individual criminal liability allows for the arrest, conviction and punishment of individuals responsible for violations of fundamental human rights.<sup>247</sup> Such accountability may be based on direct involvement in a crime, including the commission, planning, instigation, ordering or aiding and abetting of criminal conduct.<sup>248</sup> Individual liability may also be established pursuant to the principle of command responsibility, which assigns liability for the failure of a superior to take necessary and reasonable measures to prevent or punish subordinates who perpetrated crimes of which the superior had knowledge.<sup>249</sup> Application of this international principle of accountability, whether grounded in direct involvement or command responsibility, demonstrates that the Iranian regime, high ranking officials, agents associated with its security and intelligence apparatuses, and proxies willing to commit crimes on the regime’s behalf are all liable for serious and grave violations of international law.

Since 1979, at least twenty officials, agents, or proxies of the Islamic Republic have been tried, convicted and held individually accountable for their involvement in the murders of Iranian dissidents abroad. Many of these individuals were involved with the implementation and execution of the assassinations. Most of the high ranking figures that ordered or instigated the assassinations at the top of the command chain, however, remain at large. Individuals associated with the Islamic Republic’s Special Affairs Committee, Ministry of Intelligence and Revolutionary Guards from 1979 to 1996 should receive special scrutiny based on these agencies’ intimate involvement in the planning and commission of Iran’s campaign of global

---

<sup>242</sup> Prosecutor v. Tadic para. 648, *supra* note 229.

<sup>243</sup> *Id.* at para. 655.

<sup>244</sup> Admittedly, the charge of murder as a crime against humanity has not been often used in cases of selective targeting and assassination of political opponents abroad. That this has not occurred, however, does not provide proof that the assassinations do not satisfy the basic elements of a crime against humanity charge.

<sup>245</sup> Some of these political dissidents were considered opponents of the regime based on their membership in a particular ethnic or religious group. See MURDER AT MYKONOS, *supra* note 35, at 4-6 (analyzing the assassination of leaders of the Kurdish Democratic Party of Iran (PDKI)).

<sup>246</sup> See, for example, the Lebanese agent Naccache’s interview by British journalist Robert Fisk, *Two Faces of an Unlikely Assassin; Robert Fisk Talks to a Tehran Hitman who Tells His Story for the First Time*, THE INDEPENDENT, Oct. 27, 1991. There is perhaps an argument that not all of the perpetrators acted knowingly and in furtherance of a state policy to eradicate regime opponents.

<sup>247</sup> Rome Statute art. 25, *supra* note 46.

<sup>248</sup> *Id.* art. 25(3).

<sup>249</sup> *Id.* art. 28.

assassinations.<sup>250</sup> Particularly noteworthy is the critical multi-functional role of the Ministry of Intelligence and its Special Operations Council, presented in depth by the IHRDC in its companion reports examining the murders of PDKI leaders Drs. Ghassemlou and Sharafkandi.

Scrutiny should not, however, be limited to individuals connected to the aforementioned agencies. In 1996, the British Parliamentary Human Rights Group published a transcript of a tape recording of a telephone conversation between Mohammad Karim Nasser Saraf, a senior official in the Iranian Ministry of Post, Telegraph and Telephone, and an unnamed Iranian Foreign Ministry official.<sup>251</sup> The two were discussing the assassination of Mohammad Hossein Naghdi in Rome, suggesting that many high ranking officials including Iran's Italian ambassador may have been informed of the assassination plans prior to their implementation.<sup>252</sup> Similarly, the French investigation and trial surrounding the murder of Bakhtiar revealed a complex network of secondary Iranian officials, such as Mohammad Gharazi, Amirolah Teimoury and Hossein Sheikh Attar, who were directly involved in the planning and commission of the former Prime Minister's murder.<sup>253</sup> Many of these individuals were identified as co-conspirators involved in providing logistical support for the foreign operations, including the facilitation of documentation allowing Iranian agents to enter and escape France.<sup>254</sup>

A person of particular interest is Hojjatoleslam Ali Fallahian, who served as the Minister of Intelligence from 1989 to 1997 and has already been implicated and indicted in connection with the assassinations of several dissidents abroad.<sup>255</sup> Evidence presented in IHRDC's previous reports indicates that Fallahian's involvement was far more pervasive than his current indictment record would indicate. During the trial of suspects alleged to have been involved in the assassination of Cyrus Elahi in Paris, investigators determined that Fallahian had personally met with Mojtaba Mashhady, who was later sentenced to seven years' imprisonment on a charge of conspiracy to commit terrorist acts in connection with Dr. Elahi's murder.<sup>256</sup> According to testimony delivered under oath, Ali Fallahian was personally involved in ordering the killings of Iranian dissidents in Paris.<sup>257</sup> Some of these operations were eventually traced to proxies and agents of the Ministry of Intelligence and prosecuted in European courts.<sup>258</sup> Others, like the 1991 murder of Abdorrahman Boroumand, a prominent founder and member of the National Movement of the Iranian Resistance, were never prosecuted.<sup>259</sup> Fallahian's statements after the fact provide further proof that the *mens rea* requirements for criminal liability were satisfied. In an interview for Iranian television in 1992, Fallahian stated, "we have been able to strike a blow

---

<sup>250</sup> See, for example, the intimate and comprehensive details of the Ministry of Intelligence's involvement in connection with the assassination of Drs. Ghassemlou and Sharafkandi in NO SAFE HAVEN, *supra* note 25, at 25-30; MURDER AT MYKONOS, *supra* note 35, at 12-17. See also NO SAFE HAVEN, *supra* note 25, at 25-30 for information on the involvement of the current commander of the Quds Force Intelligence Directorate, Guards Corps Brigadier General Mohammad-Jafar Shahrودي.

<sup>251</sup> NO SAFE HAVEN, *supra* note 25, at 48.

<sup>252</sup> *Id.*

<sup>253</sup> Many of these officials were actually tried and convicted *in absentia* by a Paris court. NO SAFE HAVEN, *supra* note 25, at 39-47.

<sup>254</sup> The Swiss investigations surrounding the assassination of Kazem Rajavi also revealed the significant involvement of Iranian officials connected to the Foreign Ministry and diplomatic corps. *Id.* at 30-33.

<sup>255</sup> See NO SAFE HAVEN, *supra* note 25, at 11.

<sup>256</sup> *Id.* at 34-37.

<sup>257</sup> *Id.* at 38.

<sup>258</sup> See generally MURDER AT MYKONOS, *supra* note 35; NO SAFE HAVEN, *supra* note 25.

<sup>259</sup> See NO SAFE HAVEN, *supra* note 25, at 39-40; see also *supra*, n. 352, 357 and accompanying text.

at many of these opposition groups outside or close to our boundaries ... The[y] suffered severe blows and their activities shrank.”<sup>260</sup>

While individual responsibility addresses criminal liability pursuant to a direct involvement in the preparatory or execution stages of a crime, command responsibility deals with indirect criminal liability based primarily on omission.<sup>261</sup> Command responsibility assigns liability for the failure of a superior to take necessary and reasonable measures to prevent or punish subordinates who perpetrated crimes of which the superior had knowledge.<sup>262</sup> As such, three elements must be proven before a person may incur superior responsibility: 1) the existence of a superior-subordinate relationship between the accused and the perpetrator of the underlying offense; 2) the superior’s knowledge that the subordinate committed or was about to commit the crime; and 3) the failure of the superior to prevent the commission of the crime or punish the perpetrator.<sup>263</sup>

Given the central role of the Special Affairs Committee and the Ministry of Intelligence in the assassination of dissidents abroad, there is a high likelihood that command responsibility could be imputed to many high ranking members of these two agencies. This is especially true of the permanent members of the Special Affairs Committee, which included the Supreme Leader, the President of the Republic, the Speaker of the *Majlis*, the Minister of Intelligence, and the heads of the Judiciary.<sup>264</sup> This committee was responsible for spearheading the effort to silence opposition abroad by recommending individuals for assassination.<sup>265</sup> Once the recommendation had been approved by the Supreme Leader, the committee would arrange for the Ministry of Intelligence or the *Quds* Force to carry out the assassination.<sup>266</sup>

In addition to the current Supreme Leader Ayatollah Ali Khamenei, high ranking individuals who may carry command responsibility liability for the commission of assassinations abroad include, but are not limited to: Akbar Hashemi Rafsanjani, Mohammad Reyshahri, Ali Fallahian, Mohsen Riza’i, Ali Akbar Velayati, Reza Seyfollahi, Ayatollah Khaz’ali, Hassan Rouhani and Ali Larijani. Although a particular member of the Committee may not have been directly involved in the murder of dissidents, it is likely that all members were aware of the Committee’s role in the killings of dissidents abroad. Individual members, therefore, probably had at least constructive knowledge that the extrajudicial killings of Iranian dissidents would be committed and failed to do anything to prevent the commission of the assassinations (or punish the perpetrators). Although it is unclear whether any individual member exercised effective control over the agents who ultimately executed the targeted killings,<sup>267</sup> their positions as executive heads of agencies directly involved in the planning and commission of the assassinations strongly suggest the existence of a superior-subordinate relationship between them and the perpetrators of the assassinations. Further inquiry into the inner workings of the Special Affairs Committee is needed

---

<sup>260</sup> *Id.* at 11. In addition to incurring individual responsibility for ordering Dr. Elahi’s assassination, Fallahian may also be charged with attempting to instigate the murder of Shahpour Bakhtiar. According to Fariborz Karimi, a close associate of Dr. Bakhtiar, Iranian agents approached Karimi to try to convince him to kill Dr. Bakhtiar. *Id.* at 42. As a reward, they promised that if Karimi succeeded in killing Dr. Bakhtiar, he would receive a home in Tehran and \$600,000. *Id.* When Karimi, acting on Dr. Bakhtiar’s instructions, failed to commit to the plan, he received two telephone calls from Fallahian urging him to carry out the murder. *Id.* at 42-43. This conduct was undoubtedly intended to contribute to the criminal conduct of the murderer. See generally *id.*

<sup>261</sup> Rome Statue art. 28, *supra* note 46; see also Application of Yamashita, 327 U.S. 1 (1946).

<sup>262</sup> See Application of Yamashita, 327 U.S. at 15.

<sup>263</sup> Rome Statute art. 28, *supra* note 46.

<sup>264</sup> See NO SAFE HAVEN, *supra* note 25, at 8-9; MURDER AT MYKONOS, *supra* note 35, at 6-7.

<sup>265</sup> NO SAFE HAVEN, *supra* note 25, at 8-9.

<sup>266</sup> *Id.*

<sup>267</sup> This is, of course, not the case for Ali Akbar Velayati, who was indirectly implicated in the killings of Dr. Sharafkandi and his comrades in Berlin, Germany. MURDER AT MYKONOS, *supra* note 35, at 18.

to establish whether individual members were criminally accountable pursuant to the doctrine of command responsibility.

## 6. Conclusion

It is the judgment of the IHRDC that Iran's global campaign of political assassinations abroad amounts to a crime against humanity. The campaign evinced a widespread and systematic character and was directed at the highest levels of the Iranian state. More specifically, a number of leading regime figures including Supreme Leader Ayatollah Khamenei, Akbar Hashemi Rafsanjani, Mohammad Reyshahri, Ali Fallahian, Mohsen Riza'i, Ali Akbar Velayati, Reza Seyfollahi, Ayatollah Khaz'ali, Hassan Rouhani and Ali Larijani may all bear a direct criminal responsibility for these actions.

At present, there seem to be relatively few logistical (and political) avenues by which high ranking regime elements involved with Iran's campaign of foreign assassinations can be brought to justice. Yet legal channels do exist. Domestic indictments and prosecutions, such as those leveled against former Iranian Intelligence chief Ali Fallahian in Argentina, Germany and Switzerland offer some hope, particularly in situations where the perpetrators of these crimes come within the jurisdiction of the countries concerned. Criminal prosecutions based on universal jurisdiction and customary norms, whether they occur in the domestic courts of a U.N. member state or as part of a future ad hoc tribunal charged with prosecuting and convicting high ranking Iranian officials responsible for crimes against humanity, also remain a possibility. In the absence of effective opportunities to secure criminal convictions, however, prosecutors and families of victims should continue to employ innovative civil legal strategies in order to hold the Iranian regime financially accountable for its actions.

To bring the perpetrators of Iran's state-directed violence to justice requires great resolve and perseverance. It is the hope of the IHRDC that at the very least this report (and its companions *No Safe Haven* and *Murder at Mykonos*) informs, educates and inspires victims, human rights advocates, government authorities and members of the public to remain steadfast in their pursuit to bring the Islamic Republic to account for its violations of the most fundamental of human rights: the right to life.

## 7. Methodology

The legal analysis presented in this report is based on the facts collected and collated in two previous IHRDC reports: *No Safe Haven: Iran's Global Assassination Campaign* and *Murder at Mykonos: Anatomy of a Political Assassination*.

It is the nature of intelligence services to shroud their actions in secrecy, to dissemble and deceive in their daily operations, and to work through covert organizations and proxies. The Iranian Ministry of Intelligence is no exception to this rule. Little definitive is known about the institutional arrangements governing its operation other than the bare bones laid down by statute. Much of the public commentary surrounding the Ministry's activities is attributed to anonymous sources or is based on simple speculation. In this report, the IHRDC has sought to keep such speculation to a minimum and to rely only on sources who are prepared to stand behind their words.

IHRDC gathered information for this report from the examination of the following sources:

- *Government documents.* These include recorded public statements by state officials, court documents, official reports by organs such as the United Nations Commission for Human Rights and the British Parliamentary Human Rights group, statements released by Iranian government agencies and published legal instruments.
- *Documents issued by non-governmental organizations.* These include reports and press releases written by organizations such as Amnesty International and Reporters without Borders.
- *Books and articles written by private individuals.* These include political memoirs, and the published accounts of survivors and eyewitnesses of the incidents described.
- *Academic articles.* A number of historians and political scientists have written on the assassination campaign against political opponents of the Islamic Republic.
- *Media reporting.* This includes articles published in newspapers inside Iran and foreign media sources in the countries where the events recounted in this report occurred.
- The IHRDC particularly wishes to thank the Library of Congress for its invaluable assistance in researching this project.

We have chosen to refer to the *Vizarat-i Ittila't* as the Ministry of Intelligence, a literal translation of the Persian. Readers should, however, be aware that it is more often referenced in western sources as the Ministry of Intelligence and Security (MOIS) or by the acronym VEVAK.

All names of places, people, organizations, etc., originally written in Farsi have been transliterated using the system of the International Journal of Middle Eastern Studies (IJMES), available at [http://assets.cambridge.org/MES/mes\\_ifc.pdf](http://assets.cambridge.org/MES/mes_ifc.pdf). Under the IJMES system, names of places with an accepted English spelling and names of prominent cultural or political figures may be spelled according to the English norm.

Where the report cites or relies on information provided by government actors or other involved parties, it specifies the source of such information and evaluates the information in light of the relative reliability of each source. The IHRDC has meticulously cross-checked all the sources of information used to compile this report to ensure their credibility and accuracy.

**Look for these forthcoming IHRDC Reports documenting:**

- The activities of Iran's secretive **parallel intelligence agencies**, which have engaged (and continue to be engaged in) the illegal arrest, detention, torture and killing of political dissidents inside the country;
- Tehran's persistent crackdown on the free flow of information in cyberspace, including its arrest and detention of **webloggers** and other sources of independent information on the internet;
- The Islamic Republic's systematic cleansing of its correctional facilities during the **1988 prison massacres**, which resulted in the summary execution of thousands of the regime's political prisoners.





Dr. Abdorrahman Boroumand (born 1927) was a pro-democracy activist and opposition figure during both the Shah's regime and the Islamic Republic. He was among the very few National Front candidates to run in the parliamentary elections during the 1960s, and was arrested twice for his political activities. He was eventually elected to the Council of the National Front in 1963. Along with his colleague and friend, Shapour Bakhtiar, he founded the National Movement of the Iranian Resistance (NAMIR), the first pro-democracy opposition group to Iran's theocratic regime. Dr. Boroumand was stabbed to death in the lobby of his Paris apartment on April 18, 1991 by agents of the Islamic Republic.