PROSECUTING CRIMES AGAINST HUMANITY IN IRAN: PATHWAYS FOR JUSTICE AND LEGAL ACCOUNTABILITY

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DEDICATION

This article is dedicated to my beloved aunt, Farkhondeh Monemi, whose unjust execution and courageous path of resistance have been a lasting source of inspiration for me. As I hold the small, knitted gift she once sent me from Bandar Abbas prison, I hold close the memory of her vibrant spirit. This article is also dedicated to the Monemi family, who endured immense suffering as a result of this tragedy; to my parents-especially my mother, Noushin Monemi, who mourned the execution of her sister for many years and, decades later, passed away on the same day of that execution; and finally, to all the families of political prisoners who were executed in Iran after the 1979 Islamic revolution and who have borne profound and enduring pain.

Abstract

The 1979 Islamic Revolution in Iran was a significant turning point in the nation's history, as it led to the establishment of the Islamic Republic. However, the consequences of this Revolution have included nearly a half-century of political executions that have provoked international debate and condemnation, most recently observable in the harsh and often arbitrary death penalties meted out to protestors and even passive online supporters of the Women, Life, Freedom Movement. This paper will examine routes to justice for the aggrieved and accountability for the Iranian regime and bad actors within the regime under international law, beginning with an exploration of how the executions qualify as crimes against humanity under the Rome Statute, examining whether the International Criminal Court would have

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jurisdiction, and finally exploring how universal jurisdiction might be leveraged. The analysis of available remedies illuminates how Iran's longstanding and ongoing practice of political executions does not fit easily into existing legal solutions under international law. In conclusion, this analysis proposes reforms to international humanitarian law to better account for cases in which ongoing crimes against humanity terrorize populations for decades on end. Creating more robust options for prosecuting such crimes could give the international community the ability to disrupt the more severe brutalities of autocratic regimes and provide stronger protections for universal human rights.

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I. INTRODUCTION

Farkhondeh Monemi turned twenty-years-old on October 20, 1982, and on that same day, she was executed by hanging in Bandar Abbas prison in Iran.[1] She was a political activist who was abruptly arrested and charged with moharebeh ("enmity against God") and efsad-e fel-arz ("corruption on earth").[2] Following her arrest, she was held for months under harsh and inhumane conditions, without access to a fair or transparent judicial process.[3] After a summary and expedited proceeding lacking basic procedural safeguards, she was sentenced to death and executed within hours, without access to legal counsel or any meaningful opportunity to mount a defense.[4] Her family was denied the right to a final visit. On the evening before her execution, she contacted them by telephone and stated that she was being taken to the gallows. By the time her family arrived at the prison, the execution had already been carried out, and they were not permitted a final meeting.[5] Like many other families of political prisoners at the

1. *Omid, A Memorial in Defense of Human Rights in Iran: Farkhondeh Momeni,* ABDORRAHMAN BOROUMAND CTR. FOR HUMAN RIGHTS IN IRAN, https://www.iranrights.org/memorial/story/-4375/farkhondeh-momeni (last visited Dec. 8, 2024).

2. Islamic Penal Code: The Islamic Republic of Iran, translated by Mohsen Mir Mohammad Sadeghi, (Nov. 20, 1991, translated Aug. 29, 1995).

3. HUMAN RIGHTS CTR. FOR THE VICTIMS OF FUNDAMENTALISM, *The Condition of Political Prisoners and Environmentalist Activists in Iran: A Report to the United Nations Universal Periodic Review* (Oct.–Nov. 2019).

4. Farkhondeh Monemi was my mother's sister, and as such I have been able to gather more details of her arrest, detention, and execution than would be otherwise available, hence the choice to use her experience as a case study to show a representative experience of political executions in Iran post-revolution. Sources used include interviews with family members, and review of letters written by F. M. while in prison, preserved by my family. Conducted and reviewed by the author (Jan. 15, 2024).

5. *Id.*

time, her family was denied the ability to hold customary mourning ceremonies or to conduct a proper burial.[6] Many individuals executed on political grounds were interred in undisclosed or remote locations.[7] In addition, security forces, including the Islamic Revolutionary Guard Corps (IRGC), were reported to have desecrated the graves of executed dissidents, reinforcing a broader pattern of intimidation that extended beyond the individual to their families and communities and left relatives and associates in fear of further persecution.[8]

Monemi's execution is emblematic of the thousands of extrajudicial killings carried out by the Iranian regime since the 1979 Revolution as a means of political repression.[9] Because of the lack of transparency, the true scale of these killings is effectively unknowable, with many victims buried in undisclosed locations or anonymous mass graves, but estimates of the post-Revolution death toll range from 11,000 to well over 20,000.[10] Monemi's fate was not an anomaly but part of a larger state policy that has persisted for decades, targeting political activists, ethnic and religious minorities, and dissidents under vaguely defined criminal charges.

Iran's execution policies, both historically and in their ongoing application, raise profound legal and moral questions. This article argues that the regime's systematic use of capital punishment constitutes a crime against humanity under international law. The legal framework governing crimes against humanity—most notably articulated in

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6. MEHDI ASLANI, KALAGH VA GOL-E SORKH [THE CROW & THE RED ROSE: MEMORY OF PRISON] 308-309 (2009).

7. "Few, if any, Iranians have not heard of Khavaran Cemetery, which for a long time was used as a burial ground for Tehran's Christian Armenians and Baha'is. The cemetery is now surrounded by high concrete walls to conceal the crimes committed by the Islamic Republic. In the early 1980s, it was turned into a graveyard for executed political prisoners because – as Ayatollah Khomeini, the founding father of the Islamic Republic, said – leftist political prisoners were "apostates" who must not be buried with Muslims." *See* Khavaran Cemetery: *A Symbol of Repression against Baha'is, Mass Executions*, IRANWIRE, (May 2, 2023), https://iranwire.com/en/bahais-of-iran/116123-khavaran-cemetery-a-symbol-of-repression-against-bahais-mass-executions/#google_vignette.

8. "When Khomeini issued the following fatwa: 'Burying infidels in Muslim cemeteries is not allowed,' this fatwa became an excuse for a group of Khomeini's disciples to exhume the executed prisoners and remove them from their final resting places." *See* ASLANI, *supra* note 6, at 308-09.

9. Monemi's name, for instance, is listed in a 1985 addendum to the *Mojahed* magazine alongside 12,208 other people who were executed or killed in Iran just between June 1981 and September 1985. *See Omid, A Memorial in Defense of Human Rights in Iran: Farkhondeh Momeni*, *supra* note 1.

10. *History of the Mass Executions in 1980s,* IRAN TRIBUNAL, https://irantribunal.com/mass-executions/history-of-mass-executions-in-1980s/ (last visited Sep. 10, 2025).

Article 7 of the Rome Statute—provides a means of assessing whether Iran's actions meet the threshold for international prosecution. To this end, this article examines the historical, legal, and procedural dimensions of Iran's execution practices, as well as potential avenues for accountability.

The first section provides a historical account of Iran's use of mass executions, beginning with the immediate post-revolutionary purges between 1979 and 1981, the escalation of state-sanctioned killings during the 1980s—including the 1988 prison massacres—and the continuation of these practices into the twenty-first century. While the scale and frequency of executions have fluctuated, the pattern has remained consistent: when the regime perceives a challenge to its authority, executions intensify. This historical backdrop demonstrates how capital punishment has functioned not as an ordinary penal sanction but as an entrenched instrument of state control.

The second section analyzes Iran's execution policies through the lens of international law. Under the Rome Statute, crimes against humanity encompass acts committed as part of a widespread or systematic attack against a civilian population. This section establishes how Iran's conduct satisfies these criteria, focusing on the structural and legal mechanisms that have facilitated decades of unlawful executions. It further explores how the Iranian penal system has codified these abuses, enabling the government to claim a veneer of legality while systematically violating fundamental human rights.

Having established that Iran's executions qualify as crimes against humanity, the third section turns to the question of accountability. The most obvious avenue for prosecution—the International Criminal Court (ICC)—is severely constrained by jurisdictional limitations, as Iran is not a party to the Rome Statute. This section examines whether alternative pathways to ICC jurisdiction exist, such as a Security Council referral or prosecution based on the nationality of perpetrators. Given the practical obstacles to ICC prosecution, the section also considers the potential of universal jurisdiction, which allows national courts to prosecute grave international crimes irrespective of where they were committed. The landmark prosecution of Hamid Nouri in Sweden, for his role in the 1988 prison massacres, serves as a case study in how universal jurisdiction may be leveraged to hold Iranian officials accountable.

Despite these legal mechanisms, significant barriers remain. The fourth section addresses the structural limitations of international law that have allowed Iran's government to act with impunity. Diplomatic

immunity shields high-ranking officials from prosecution, while jurisdictional hurdles prevent many states from exercising extraterritorial authority. Additionally, political considerations frequently obstruct the enforcement of international human rights law. While existing frameworks have produced isolated successes—such as the Nouri case—they have thus far failed to meaningfully deter or punish Iran's systematic human rights abuses.

The final section considers legal reforms necessary to strengthen accountability for crimes against humanity. It argues that international legal institutions must adopt measures to close impunity gaps, including limiting diplomatic immunity for individuals accused of egregious human rights violations, standardizing the application of universal jurisdiction, and enhancing international cooperation in evidence-gathering and prosecution. Without such reforms, authoritarian regimes will continue to exploit weaknesses in the international legal order, ensuring that systematic rights violations persist unchecked.

The Iranian government's long history of political executions, and its continued reliance on the death penalty as a tool of suppression demand urgent international scrutiny. As this article will demonstrate, Iran's execution policies are not simply a matter of domestic criminal law; they are crimes of a magnitude that international law was designed to address. Holding perpetrators accountable is not only a legal necessity but a moral imperative. Until the international community strengthens mechanisms to prosecute state-sponsored atrocities, Iran and regimes like it will continue to wield execution as a weapon against dissent—without consequence, and without justice.

II. THE HISTORICAL CONTEXT OF IRAN'S UNLAWFUL EXECUTIONS

The Islamic Republic of Iran was founded on a revolutionary promise of justice and self-determination, yet its consolidation of power was marked by widespread political violence and systematic executions. From the immediate aftermath of the 1979 Revolution to the present day, the regime has leveraged mass executions as a tool of political repression, targeting perceived opponents, ideological dissenters, and marginalized groups. These executions, carried out under vaguely defined criminal charges such as *Moharebeh* (Enmity Against God) and *Efsad e Fil Arz* (Corruption on Earth), have persisted as a state policy, peaking during moments of political unrest. Understanding the historical trajectory of these unlawful executions is crucial to assessing the Iranian regime's deliberate entrenchment of extrajudicial

killings and its violations of international human rights law. This section examines the evolution of Iran's execution practices from the post-revolution purges of 1979 to the contemporary suppression of opposition movements, illustrating how state-sanctioned violence has remained a defining feature of governance in the Islamic Republic.

A. From Revolution to Repression (1979-1981)

The 1979 Islamic Revolution overthrew the monarchy of Mohammad Reza Pahlavi and established the Islamic Republic under Ayatollah Ruhollah Khomeini.[11] Initially, the revolution was supported by a diverse coalition of leftist, nationalist, and religious factions, all believing they were working toward a more democratic and independent Iran. [12] However, Khomeini rapidly consolidated power, eliminating opposition through mass arrests and executions. [13]

By February 1979, revolutionary courts, led by Sadeq Khalkhali, sentenced dozens to death within days.[14] By April, Iran was declared an Islamic Republic, and a widespread purge ensued. Within two years, an estimated 3,500 people were executed**,** including political activists, intellectuals, and former government officials.[15]

B. Escalation of Political Executions (1980s)

Following the revolution, the regime institutionalized executions as a tool of repression. The 1980s saw dramatic surges in state

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11. AL-KHOMEYNI, AYATOLLAH. AL-HUKUMA AL-ISLAMIYAH [ISLAMIC GOVERNMENT] (2nd Ed. Beirut: Dar al-Tali'ah lil taba'ah wa-al Nashr, 1979).

12. Sociologist Chahla Chafiq was a 25-year-old Marxist activist during the revolution and describes the mix of groups working against the monarchy, "Right before the revolution, I became part of a circle of Marxist-Leninists and joined a left student organization. There were so many groups underground, and once the revolution started, they all came out. They were all attracting a lot of members from the student movements. There was the Tudeh party, which was the classic pro-Soviet party, and there was Fedayeen, an urban guerilla party more similar to the Cuban leftist movement. . . . My group was close to a third party, Line Three, which was the independent left. We believed that the Soviets were an imperialist force, so that's why we were not pro-Soviet. There were so many different parties. There was also the Mujahedin [People's Mujahedin Organization of Iran], which mixed a Muslim line in with the leftism." *See* Bani Khosnoudi, *How Iran's Theocrats Allied With – and Then Crushed – the Left,* JACOBIN (Oct. 24, 2022), https://jacobin.com/2022/10/chahla-chafiq-iranian-left-khomeini-protests-feminism.

13. G. Bhagat, *Khomeini: Leader of Islamic Revolution in Iran,* 48 INDIAN J. POL. SCI. 31, 31-41 (1987).

14. "Most Iranians were astonished when the ayatollah later announced that he was going to establish a theocratic state," *See* Sadeq Saba, *World: Middle East Analysis: The Forces for Change*, BBC NEWS (Feb. 2, 1999), http://news.bbc.co.uk/2/hi/middle_east/269799.stm.

15. Khosnoudi, *supra* note 12.

violence, particularly after the Mojahedin-e Khalq (MEK) protests of 1981**.** These protests led to a brutal crackdown, with Amnesty International documenting hundreds of political executions annually. [16]

A defining event was the 1988 mass executions, when thousands of political prisoners—primarily MEK members and leftist activists—were executed in 32 cities under a fatwa issued by Khomeini**.**[17] Amnesty International describes this as an "ongoing crime against humanity."[18]

C. Continued Executions in the 21st Century

The regime has maintained its pattern of mass executions, unpunished and unabated, through many uprisings of the Iranian people, such as the Green Movement that challenged the overturning of democratic election results in 2009, with hundreds of individuals killed, disappeared, and arrested.[19]

Most recently, the regime again put these same repressive and authoritarian practices to use to crush the Women, Life, Freedom protest movement following the death of Mahsa Amini at the hands of the Morality Police in 2022, arresting over 20,000 protestors and killing 500, with many put to quick deaths without proper trials.[20]

For years after the widespread protests in 2022**,** executions have again surged. In 2023, 834 known executions took place—the second-highest number in recorded history.[21] A 2024 human rights report

16. *White Revolution*, ENCYCLOPEDIA BRITANNICA (Feb. 14, 2022), https://britannica.com/topic/White-Revolution.

17. *Id.*

18. "Hundreds of modern shopping centers, mostly owned and operated by the Shah's friends, popped up all over Iran, seriously hurting the small shopkeepers or baazaris, the heart of the cities' economic systems. Innumerable Americans and other Westerners were lured to big positions, and this became quite intolerable for the new elite who had aspired to share the new prosperity." *See* Bhagat, *supra* note 13, at 31-41.

19. Ian Black, *Iran Should Face Smarter Sanctions, says Mohsen Makhmalbaf*, THE GUARDIAN (Nov. 25, 2009), https://www.theguardian.com/world/2009/nov/25/iran-mohsen-makhmalbaf-sanctions.

20. Yousra Samir Imran, *Grief to Action: The Woman Life Freedom Movement One Year On*, THE NEW ARAB (Sep. 16, 2023), https://www.newarab.com/features/grief-action-woman-life-freedom-movement-one-year.

21. Robert C. de Camera, *The Shah as Tyrant: A Look at the Record,* WASH. POST, (Mar. 22, 1980), https://www.washingtonpost.com/archive/opinions/1980/03/23/the-shah-as-tyrant-a-look-at-the-record/218c6a8e-dcb7-4168-ac9c-8f23609f888f/.

found that Iran's regime employs executions as a tool of political repression and societal control.[22]

D. The Systematic Use of Executions as State Policy

This history illustrates a clear pattern: when Iran's regime faces significant internal dissent, it leverages mass executions to consolidate power.[23] Despite repeated international condemnations, these executions have continued unchecked for over four decades. The persistence of these practices underscores the failure of international legal frameworks in holding perpetrators accountable.

Existing mechanisms such as the International Criminal Court (ICC) and universal jurisdiction have struggled to address systematic state crimes on this scale. This failure raises urgent questions about the need for legal reform to strengthen international accountability mechanisms and intervene in ongoing atrocities.

Given the Iranian regime's extensive and deliberate use of mass executions to eliminate political opposition, it is essential to examine how these acts align with established definitions of crimes against humanity under international law. The Rome Statute, which governs the International Criminal Court (ICC), provides a legal framework for prosecuting such crimes, defining specific actions that qualify as crimes against humanity. By assessing Iran's execution policies through the lens of the Rome Statute, we can determine whether and how these systematic killings meet the legal threshold for international accountability. The following section will analyze these definitions in detail and evaluate the applicability of international legal mechanisms in holding Iranian officials accountable.

III. QUALIFYING IRAN'S MASS EXECUTIONS AS CRIMES AGAINST HUMANITY

This section will affirmatively prove that the Iranian regime's use of executions, in terms of governing structure and penal law, aligns with the International Criminal Court's definition of crimes against humanity, specifically Article 7 of the Rome Statute, as excerpted from

22. James A. Bill, *Power and Religion in Revolutionary Iran*, 36 MIDDLE E.J. 22, 22-47 (1982).

23. Amnesty International recorded only two political executions in Iran after mid-1977, and the U.S. government found no reports of torture. Further, the number of political prisoners was reduced from an estimated 3,500 in 1977 down to 2,100 in 1978 according to the Red Cross. *See* de Camera, *supra* note 21.

the United Nations Office on Genocide Prevention and the Responsibility to Protect.[24]

Article 7 is excerpted below in its entirety for the purposes of showing that many of the definitional elements of crimes against humanity are met by the Iranian regime's manner of conducting executions, and it is not just the executions themselves but also the surrounding circumstances and means by which the executions were conducted that could be addressed in international courts of law. Further analysis will show how Article 7's broader list of acts qualifying as crimes against humanity are identifiable in the conduct of the Iranian regime in reference to their longstanding practice of mass executions.

Article 7: Crimes Against Humanity

1. For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

a. Murder;

b. Extermination;

c. Enslavement;

d. Deportation or forcible transfer of population;

e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

f. Torture;

g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

i. Enforced disappearance of persons;

j. The crime of apartheid;

24. U.N. OFFICE ON GENOCIDE PREVENTION & THE RESPONSIBILITY TO PROTECT, *Definitions: Crimes Against Humanity,* https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml (last visited Nov. 23, 2023).

k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

a. 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack . . .

A. Elements of the Crime

Crimes against humanity need not take place during war or formal armed conflict and, like genocide, can take place during peacetime.[25] Examining Article 7(1) of the Rome Statute provides a definition of the crime that requires the following main elements:

- A *physical element* - the commission of one or more in a list of ten acts (see above) or "Other inhumane acts"[26]
- A *contextual element* - "when committed as part of a widespread or systematic attack directed against any civilian population";[27] and
- A *mental element* - "with knowledge of the attack"[28]

The United Nations Office on Genocide Prevention and the Responsibility to Protect interprets further the Rome Statute's Article 7 regarding the elements of the crime, defining 'widespread' as relating to a large number of victims or occurrence over a broad geographical area, and defining 'systematic' as 'a methodical type of violence'. [29]

Further, the Office on Genocide Prevention specifies that while Article 7(2)(a) states that crimes against humanity 'must be committed in furtherance of a state or organizational policy,' and that perpetrators must be shown to have acted with knowledge of the attack and that their actions were part of it, there is not a requirement for a policy to be explicitly documented or adopted.[30] Similarly with intent, there is no requirement to prove targeting of a specific group (except in cases of persecution), and no requirement to prove an 'overall specific

25. *Id.*

26. Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90.

27. *Id.*

28. *Id.*

29. UNITED NATIONS OFFICE ON GENOCIDE PREVENTION & THE RESPONSIBILITY TO PROTECT, *supra* note 24.

30. *Id.*

intent'—a simple intent to commit any of the specified acts is sufficient.[31]

Iran's impunity in committing crimes against humanity was recently reinforced in a newly published report from a UN Fact-Finding Mission of the United Nations Human Rights Council. The Mission, appointed under Resolution S35/1 to investigate abuses during the Women, Life, Freedom Movement, reported that "institutional discrimination against women and girls enabled human rights violations and crimes against humanity".[32] The Fact-Finding Mission documented 'at least 551 protestors' killed by security forces including 49 women and 68 children while also finding evidence of extrajudicial killings.[33] The Mission further documented 'at least nine young men' to have been 'arbitrarily executed' with dozens more at risk of the same fate, reporting that 'State authorities at the highest levels encouraged, sanctioned and endorsed human rights violations, while state security forces participated in the commission of crimes under international law.[34]

B. Establishing Intent Through Iranian Penal Law and Practice

The Islamic Revolution in Iran in 1979 brought about significant changes to the country's penal law and legal system, changes which enabled the regime to leverage executions and extrajudicial killings as a tool of oppression and lever of power.[35] Examining the key differences between the penal law before and after the Islamic Revolution is a useful means of demonstrating the explicit intent of the regime to carry out executions in a larger context of human rights abuses in a manner contravening international law, and the knowledge of the actors carrying out the enforcement. The Iranian Penal Code post-revolution shows many formalized violations of international treaties and instruments. This next section examines how the policy and

31. *Id.*

32. U.N. Human Rights Council, Res. adopted by the Human Rights Council on Nov. 24, 2022, *Deteriorating Situation of Human Rights in the Islamic Republic of Iran, Especially with Respect to Women and Children*, U.N. Doc. A/HRC/RES/S-35/1 (Nov. 29, 2022).

33. *Id*.

34. U.N. Human Rights Office of the High Comm'r, *Iran: Institutional Discrimination Against Women and Girls Enabled Human Rights Violations and Crimes Against Humanity in the Context of Recent Protests, UN Fact-Finding Mission Says* (Mar. 8, 2024).

35. Sophie Abdullah, *Iran Executions Rise Sharply to 834 Last Year "To Instill Societal Fear," Report Says*, BBC NEWS, (Mar. 5, 2024), https://www.bbc.com/news/world-middle-east-68480284.

application of it satisfy the mental element of this crime against humanity and show that its commission was part of a larger and well documented state policy.

1. Legal Framework

Before the Revolution: Iran's legal system was based on a mix of civil law, customary law, and elements of Islamic Law. It was heavily influenced by the Western legal tradition and was largely secular in nature, thanks in part to the secularization initiatives of the former Shah's monarchy.[36]

After the Revolution: Legal reforms were aimed at creating a system thoroughly steeped in Islamic Law, specifically the Shi'a interpretation of Islamic jurisprudence, known as "Shari'a Law." The Islamic Republic of Iran's constitution explicitly mandated that all laws and regulations must be consistent with Islamic principles,[37] but in August 1982, Khomeini went further, declaring that "the old judicial apparatus must be transformed into an Islamic justice. Any law which is incompatible with shari'a is not a law . . . The Guardian Council and the Higher Judiciary Council must . . . annul old laws which are contrary to shari'a law. Anyone who applies them is guilty and must be put on trial and receive the punishment he deserves."[38]

2. Islamic Punishment

Before the Revolution: The penal code was more secular, and punishments were generally in line with international legal norms. Capital punishment was used but not as extensively as after the Revolution.[39]

After the Revolution: The post-revolutionary legal system incorporated Islamic punishments, including flogging, amputation, and stoning for certain crimes, in addition to the death penalty.[40] Islamic principles of retribution (Qisas) and Diya (blood money) were also applied in cases of murder or bodily harm.[41]

36. Bhagat, *supra* note 13.

37. ASGHAR SCHIRAZI, THE CONSTITUTION OF IRAN: POLITICS AND THE STATE IN THE ISLAMIC REPUBLIC 293-94 (John O'Kane trans., 1997).

38. 3 Hossein Mehrpur, MAJMU'EH-YE NAZARIYAT-E SHORA-YE NEGAHBAN [COMPILATION OF THE OPINIONS OF THE GUARDIAN COUNCIL] 184 (1992).

39. de Camera, *supra* note 21.

40. Islamic Penal Code, *supra* note 2.

41. *Id.*

3. Capital Punishment

Before the Revolution: Capital punishment existed in the legal system but was not as frequently applied. Executions were typically carried out by hanging.[42]

After the Revolution: Ayatollah Ruhollah Musavi Khomeini, as the leader of the Iranian government, advised officials in both his criminal and judicial systems 'not to hesitate to kill the opposition'.[43] He employed typical dehumanizing techniques of an autocrat[44], declaring anyone who opposed him politically as an infidel and irreligious, while many of those executed were in fact deeply religious people who were only opposed to the Khomeini government's practice of excluding other beliefs.[45] As such, the use of the death penalty significantly increased after the revolution, and Iran hence maintained one of the highest execution rates in the world.[46] Executions may be carried out in numerous ways, including hanging, stoning, and, in some cases, by firing squad.[47]

4. Role of the Judiciary

Before the Revolution: The judiciary was largely independent, and the legal system was based on a mix of civil and customary law. The courts operated with a degree of separation from religious authorities. Judges within the system were traditionally trained lawyers and professionals.[48]

After the Revolution: The judiciary became more closely tied to religious authorities and subjugated to the authority of the Supreme Leader.[49] Religious clerics play a significant role in the legal system, particularly in interpreting and applying Islamic Law.[50] A new Revolutionary Court was introduced wherein judges are either mullahs who are not trained in law and need only to have attended an Islamic school,

42. de Camera, *supra* note 21.

43. Aida Ghajar, *Blood-Soaked Fatwas: How Khomeini Turned Homicide into Policy in Iran*, IRANWIRE (June 9, 2022).

44. RUTH BEN-GHIAT, STRONGMEN: MUSSOLINI TO THE PRESENT (W.W. Norton & Co., 2020).

45. *Decree of Imam Khomeini on Infidel*, Archives of Ba'hai Persecution in Iran.

46. Bijan Baharan, *Iran/Death Penalty: A State Terror Policy* (INT'L FED'N FOR HUM. RTS., Apr. 2009), at 8–9.

47. Islamic Penal Code, *supra* note 2.

48. Azadeh Niknam, *The Islamization of Law in Iran*, 212 MIDDLE E. REP., 17, 20 (Fall 1999).

49. Bill, *supra* note 22, at 30-31.

50. Niknam, *supra* note 48, at 18.

or they are legacy judges from within the system who are heavily under the influence of the mullahs and deferring to Islamic Law.[51] These judges create their decisions based on an extratextual and extremist interpretation of the Quran that aligns with the aims of the autocratic regime in its oppression of free speech, free expression, freedom of religion and many other strictures.[52] This results in criminalization of behaviors and freedoms included in the Universal Declaration of Human Rights.

In the 'Revolutionary Courts' created to expedite executions of regime opponents, criminal procedure was not followed, even though it was technically the 'law of the land' at the time. For example, legal notifications and the right to appeal were blatantly and regularly ignored, along with a host of other protections. In this way, the Revolutionary Courts resembled the field courts, where the death sentence is known before the trial, and meetings are convened only for appearance.[53]

At the time of the Monemi case detailed in this analysis, Ayatollah Mohammad Mohammadi Gilani, who was a member of the Assembly of Experts and was appointed by Khomeini to preside over his newly formed Islamic Revolutionary Court,[54] made a short trip from Tehran to Bandar Abbas and within a few hours announced her death sentence along with the executions of dozens of other political activists and student protestors, then returned to Tehran on the same day.[55]

Gilani was known to supporters of the regime as a hero of the Islamic Revolution and died peacefully in Tehran, aged eighty-six. His obituary noted his involvement in thousands of executions, including rumors of ordering or at least approving of, the execution of his own sons, and a systematic persecution of Baha'i people in Iran.[56]

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51. *Id.*

52. *Id.*

53. *See supra* note 4, regarding interviews with family members.

54. Golnaz Esfandiari, *Obituary: Iranian Revolution's Willing Executioner,* RADIO FREE EUR./RADIO LIBERTY (July 10, 2014).

55. *Id.*

56. Human rights activists and opponents of the regime call Gilani "a ruthless judge who played a significant role in the executions of a large number of regime opponents – possibly including his own sons – in the 1980s. Rights groups say the executions took place after summary trials that lasted a few minutes." *See* Esfandiari, *supra* note 54.

5. Criminalization of "Un-Islamic" Behavior

Before the Revolution: Iran's criminal justice system was based on the French system. Pre-trial work was written, non-public, and non-defensive; and trials were oral, causal and defensive.[57]

Under the Shah, although the official religion of Iran was Islam, the judicial system in Iran was based on French law and was established based on codified law. In the penal code, the punishments were largely based on Western legal principles, and punishments, such as whipping and stoning, were rarely, if ever, inflicted.[58] In fact, in June of 1965, the Iranian legislature passed a law declaring whipping to be an obsolete sentence in most instances. Although the death penalty was in the criminal law, judges also rarely issued death sentences.[59]

Even though the laws on the principles of criminal trials were not approved by the legislature and were put into effect on a temporary basis, the law was the basis of criminal proceedings in the country. During its 97-year life, this law underwent many changes and reforms.

After the Revolution: The post-revolution legal system introduced laws criminalizing behaviors deemed un-Islamic, such as the consumption of alcohol, extramarital relationships, and homosexuality.[60] These laws were not as prominent in the legal system before the revolution and went a long way to encoding 'persecution against identifiable groups' in contravention of Article 7, Section h.[61]

6. Rights of Women and Minorities

Before the Revolution: Several decades before the Islamic Revolution, Iranian society was a traditional and religious society. But under the former Shah's rule, reforms equalized the rights of men and women, perhaps to help the Shah win the support of his Western allies while still allowing him to retain a chokehold on the power and wealth of Iran. For example, the Shah gave Iranian women the right to vote and participate in elections while maintaining a monarchy wherein elected leadership was relatively powerless.[62] Several years before the

57. Mahmoud Akhondi, Criminal Procedure Code, 1368 [1989/90].

58. de Camera, *supra* note 21.

59. *Id.*

60. Niknam, *supra* note 48.

61. Rome Statute, *supra* note 26, art. 7.

62. "In the 1960s, during what we call the White Revolution, the Shah's regime was doing show reforms, like giving women the right to vote. (It was absurd because the right to vote in a

revolution, the family protection law was approved.[63] This law, for example, set the minimum marriage age for girls at 18 and changed many women's rights in family law in favor of women.[64]

Regarding the rights of minorities, such as the rights of LGBT+ people, it should be noted that special protections were not explicit in most countries' legal systems at the time. Therefore, even though there were no special protective laws in this regard in Iran, people in these classes were not specifically tried or tortured either.[65] Even in the 70s, some political and cultural figures were implicitly homosexual, but they were not prosecuted or fired. In fact, historian Afsaneh Najmabadi claims that pre-Revolutionary Tehran "had a reputation in the West as being a gay paradise."[66] The Shah's moves towards secularization also meant that as part of the so-called White Revolution, non-Muslims were also allowed to run for and hold office.[67]

After the Revolution: The legal status of women and religious minorities underwent drastic changes. Women's rights have been limited in areas such as family law, inheritance, and dress code. Religious minorities, such as Baha'is, have faced deep discrimination and persecution including forced disappearances, confiscation of property, imprisonment and executions which Human Rights Watch and the UN argue amounts to crimes against humanity.[68] Baha'is and other ethnic and religious minorities are routinely deprived of rights to education, employment, property, religious practice, expression. Morality Police and judicial authorities cooperate in arresting, detaining and convicting these minorities of offenses against national security, and other 'offenses' that have been enshrined in the Iranian Penal Code.[69]

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monarchy, where you can't really pick your leader, makes no sense.)" *See* Khosnoudi, *supra* note 12.

63. *White Revolution*, *supra* note 16.

64. *Id.*

65. de Camera, *supra* note 21.

66. Afsaneh Najmabadi, *Reading Transsexuality in "Gay" Tehran (around 1979)*, *in* THE TRANSGENDER STUDIED READER: Volume 2 379 (Susan Stryker & Aren Aizura eds., 2013).

67. *The Evil Precedents of Iran's Khomeini*, IRAN NEWS WIRE (Feb. 4, 2019), https://iran-newswire.org/khomeinis-evil-precedents-in-iran/.

68. *U.N. Report on Discrimination Against Baha'is,* THE IRAN PRIMER (U.S. INTS. OF PEACE) (Mar. 17, 2022), usip.org.

69. Baha'is are commonly convicted under Article 620 of the Islamic Penal Code which involves assembly and collusion to act against national security, or Articles 498 and 499 (belonging to a group against the state), in addition to Articles 500 and 698 which relate to spreading falsehoods. *See U.N. Report on Discrimination Against Baha'is, supra* note 68.

7. Role of Revolutionary Courts

Before the revolution, there was no court that wanted to issue a verdict based on absolute Shari'a law. Criminal courts were the courts where all criminal offenses were dealt with; no special or separate 'Islamic' courts existed.[70] After the Revolution, Revolutionary Courts were established to deal with political and security-related offenses. These courts have been criticized for their lack of transparency and due process and have been associated with human rights abuses.[71]

It's important to note that the impact of these changes has been a subject of ongoing debate, both within Iran and internationally. While the Islamic legal framework has become a defining feature of Iran's legal system, there are also diverse interpretations and practices within the country, and reform efforts continue to be a topic of discussion and contention. Still further elements of Islamic Penal Law can also be found to be in contravention of the Rome Statute and other instruments, specifically the elements of *Efsad e Fil Arz* and *Moharebeh*, as they are capital offenses that allow for execution.

C. The Significance of Moharebeh and Efsad e Fil Arz in Islamic Penal Law

Islamic Penal Law in Iran addresses the issues of "Moharebeh" (Enmity Against God) and "Efsad e Fil Arz" (Corruption on Earth).[72] Both the construction of these code sections and the methods and means of their application in context lead to frequent and consistent contraventions of the Rome Statute and other international law. These are two separate, serious, yet vaguely delineated charges with roots in the Qur'an which have been frequently used to convict and condemn Iranian political opposition, marginalized populations, and activists since the early days of the current regime through to the latest rounds of retaliation and oppression following the widespread Mahsa Amini protests.[73] Moharebeh and Efsad e Fil Arz are capital offenses under Iranian law, and the regulations for these crimes are defined separately in the Islamic Penal Code of Iran.

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70. Niknam, *supra* note 48, at 212.

71. Bill, *supra* note 22, at 22–47.

72. Islamic Penal Code, *supra* note 2.

73. Connor Bradbury, *The Iran Primer: Harsh Sentences for Iranian Protestors,* U.S. INST. OF PEACE (July 26, 2023).

1. Islamic Penal Code Chapter Eight, Articles 279 – 285: Moharebeh (Enmity Against God)

"Moharebeh" is understood to mean "enmity against God," although the Iranian Penal Code Article's title is sometimes translated into English as "Armed Violation of the Public Security," and the offense is described as "drawing weapons with the intent of taking life, property or a female member of the people, or threatening them, in such manner that results in insecurity in the environment."[74] Several inferences are necessary to understand Moharebeh as a crime against God. First, we must understand that the term 'public security' here is not primarily referring to the welfare of the people, but more so to the secure operations of the political state or regime. Second, since the Iranian theocratic regime conflates their rule with the divine rule, criminal acts against the Islamic Republic or compromising national security are looked upon as being directly against God, or "Moharebeh". This crime includes activities aimed at altering or undermining the Islamic system of governance, as well as aiding those involved in such acts.[75] Moharebeh crimes are strictly punished, with Chapter Eight, Article 282 calling for death, crucifixion, amputation or banishment, at the sole discretion of the judiciary and with no further guidance as to which option should be applied to what circumstances.[76] In practice, despite there being four possible punishments including banishment for Moharebeh, judges almost unanimously apply the death penalty to persons found guilty of this crime, though this practice has been criticized and called into question by human rights organizations and Iranian legal experts alike.[77]

2. Islamic Penal Code Chapter Nine, Articles 286-288: Efsad e Fil Arz ("Armed Rebellion and Corruption on Earth")

Efsad e Fil Arz is the second capital offence of Qur'anic origins frequently used--in conjunction with Moharebeh- to quell and cull Iran's political opposition and marginalized populations. Article 286 defines the charge as applying to any person who "widely" commits crimes against the physical integrity of persons, the security of the

74. Islamic Penal Code, *supra* note 2, ch. 8, arts. 279-85.

75. *Id.*

76. Islamic Penal Code, *supra* note 2, ch. 8, art. 282.

77. *Islamic Law Experts Question Basis of Iran's Death Sentences,* IRAN INT'L (Dec. 11, 2022).

country, criminal libel, or disorder in the State economic system."[78] The Article notes that this charge should apply in cases of severe disruption to the public order of the state, or damage on a widespread scale, but at the same time, it can be used to criminalize activities as vague as spreading lies and 'corruption' or distributing 'dangerous' materials.[79] Further, the language of this Article broadens criminal actions to include damage to public or private property and criminalizes anyone "who becomes an accessory to" any of the named actions.[80] In this way, we can imagine, for instance, that a contributor to a 'dangerous' student newspaper, someone who carries that newspaper across campus, the professor who taught the student journalists, and the company that sold them the ink are all potentially guilty of Corruption on Earth.

Chapter Nine, Article 287 specifies that "Any group that makes armed rebellion against the foundation of the system of the Islamic Republic of Iran shall be deemed to be a rebel. And should [the group] use arms, its members will be sentenced to the death penalty."[81] In practice, many people charged with *Efsad e Fil Arz* are errantly accused of "using arms" at peaceful protests. The definition of 'armed rebellion' is conspicuously absent from the Penal Code, and in the additional absence of a fair trial or presumption of innocence, the accused have little to no recourse. Additionally, the group nature of this Article's language can be used to extend death sentences to those with little to no affiliation or personal connection to a given incident. For instance, all those attending a vigil or peaceful protest where one individual chalks a pavement or sets something on fire could then be accused of being part of that group and therefore eligible for execution. For that matter, a complete bystander or taxi driver could be accused by association of place and time, or for appearing to become an accessory to such actions. The language of this Article, which seems to be merely vague, thus turns its enforcement into an instrument of terror and oppression. For instance, a child walking down the street during the Mahsa Amini protests, on her way to the shop for eggs or bread, could wind up arrested en masse and accused of Corruption on Earth.

There are only two exceptions noted in Chapter Nine to the provision of the death penalty for *Efsad e Fil Arz*. The first is if the court

78. Islamic Penal Code, *supra* note 2, ch. 9, art. 286.

79. *Id.*

80. *Id.*

81. Islamic Penal Code, *supra* note 2, ch. 9, art. 287.

fails to establish an intent to cause extensive disruption or damage on a large scale.[82] The second exception to the death penalty is "when members of the rebel group are arrested before any conflict occurs or a weapon is used". For such occasions, imprisonment is prescribed.[83]

Efsad e Fil Arz was applied to many officials of the deposed Pahlavi dynasty after the Revolution, including Mohammad Reza Shah and most of his family members. In this way, Sadegh Khalkhali, the Sharia Ruler of the first Revolutionary Court, was able to issue a death sentence in absentia or execute anyone arrested without further process. Other people executed under this charge included Nader Jahanbani, Farrokhro Parsa, Nematullah Nasiri and Shahriar Shafiq. Moharebeh and *Efsad e Fil Arz* entered the Iranian legal system in the Hudud and Punishment Law (1361) and is reiterated in the Islamic Penal Code (1370), which replaced it.[84]

It is essential to note that these regulations are interpreted and enforced based on Islamic principles and religious morality. The application and interpretation of these concepts and penalties can vary depending on the political and judicial context. Additionally, the legal and judicial system in Iran is subject to ongoing changes and debates, and interpretations may evolve over time—with the result being that political opponents can be newly defined and discriminated against based on the need of the autocratic government to quash dissent and maintain absolute power.

D. The Applicability of the Rome Statute, Article 7

The first condition of meeting the definition of crimes against humanity set out in the Rome Statute is that the acts must be committed 'as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'.[85]

The political executions carried out on an ongoing basis, and further oppression and deprivation of human rights of whole segments of the Iranian civilian population meet this condition. [86] The systematic changes apparent after the revolution served to support the extermination of political opponents as incidental as young students attending

82. *Id.*

83. *Id.*

84. Mohammad Ja'far Habibzadeh & Seyed Doraid Mousavi Mojab, *Legality Principle of Crimes and Punishments in Iranian Legal System*, 1 J. OF EDUC. RSCH. AND REV., 108-14 (2006).

85. Rome Statute, *supra* note 26, art. 7.

86. *Id.*

peaceful protests, and the practice has persisted systematically, with knowledge, for 43 years and counting.

Even pre-execution, the subject of our case study, Farkhondeh Monemi, (likely along with thousands of others) suffered several conditions qualifying as crimes against humanity, including 7(d) *forcible transfer of population*, 7(e) *Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law,* 7(h) *Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law and* 7(i) *Enforced disappearance of persons*.[87]

Of the specific list of acts listed under the first condition in Article 7, Iran's ongoing practice of political executions easily includes seven out of the eleven enumerated circumstances, and possibly more. Just in the accounts examined in this paper, we can see a case for establishing murder, extermination, imprisonment or other severe deprivation of physical liberty, torture, persecution against an identifiable group on political, cultural, religious, gender or other grounds, enforced disappearance, and "other inhumane acts intentionally causing great suffering or serious injury to mental or physical health."[88]

Therefore, a cursory read of Article 7(1) gives an assurance that the Iranian regime leaders' conduct in the Monemi case and throughout the regime's history evinces a pattern including a majority of the specific acts referenced as crimes against humanity. Indeed, the latest UN OHCHR Fact-Finding Mission documented many of these acts, and in addition to murders and extermination, documented cases of imprisonment, torture, rape and enforced disappearance.[89]

Further, Article 7(2)(a) specifies that "an attack directed against any civilian population" is defined as "a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack".[90]

Iran's attacks on its civilians have been in the thousands (if not hundreds of thousands), and clearly in accordance with the post-Revolutionary changes to penal law and the judiciary, such attacks were

87. *Id*.

88. *Id.*

89. U.N. Human Rights Office of the High Comm'r, *supra* note 34.

90. Rome Statute, *supra* note 26, art. 7(2)(a).

'pursuant to or in furtherance of a State' policy meant to secure and maintain the inextricable control of the Iranian authoritarian regime. The recent Fact-Finding Mission confirmed this qualifier in reference to the regime's actions in the aftermath of the Women, Life, Freedom Movement as well, noting that 'State authorities at the highest levels encouraged, sanctioned and endorsed human rights violations".[91]

The political executions also seem to clearly meet both the contextual and mental elemental requirements laid out under Article 7(1), which do not need to be carried out in a wartime environment to meet the definition of crimes against humanity, but that they must meet two conditions.[92]

To meet the requirement for contextual element, the acts must be large scale, widespread (over a large geographical area), or systematic.[93] Because the political persecutions of opposition have been carried out by the tens of thousands, over the entire country of Iran, and have shown over a period of 43 years to follow a similar, mechanized pattern involving police actions, deprivation of due process, inhumane imprisonment, brutal execution methods and ensuing continued persecution and psychological torture of victims' families, it would be difficult to argue an International Criminal Court case against an integral regime actor would fail to satisfy this element.

The second element to be satisfied in bringing a case is that it must be proven that the perpetrator acted with knowledge of the attack and that his or her action is part of that attack.[94] Satisfying this element would be more specific to the individual charged and the range of circumstances in scope of the case, but constructing a specific case for a specific actor is outside the scope of this essay, which instead is aimed at establishing the general feasibility of assembling a successful criminal case in the International Criminal Court. Again, with a carefully constructed case, it would seem difficult to imagine an inability to show that individuals participating in mass executions of peaceful protestors and activists including underage minors would not have been acting with an understanding of the widely published policies and dehumanizing rhetoric of the Ayatollah, at the behest of the Ayatollah, and with the intent of crushing any opposition or challenge to his totalitarian leadership, especially since the Ayatollah took actions such

91. *Id.*
92. *Id.*
93. *Id.*
94. *Id.*

as issuing written fatwas and ongoing condemnations of many groups.[95]

Considering the alignment between the Article 7 definition and the Iranian Regime's 43-year track record of well-documented aggressions toward its civilian populations, there is potential to hold Iranian regime members accountable for their actions under international criminal law on a definitional basis, should the proper jurisdiction be available. The next section explores potential methods of establishing standing, and the challenges and shortcomings thereof, under current international law.

IV. PATHWAYS TO ACCOUNTABILITY: JURISDICTION AND LEGAL BARRIERS

While Iran's systematic executions meet the legal criteria for crimes against humanity, the next challenge is determining whether international legal mechanisms can be leveraged to hold perpetrators accountable. Jurisdiction is a fundamental barrier to enforcement, as Iran is not a signatory to the Rome Statute, and its leaders have deliberately avoided international scrutiny. However, certain legal pathways—such as prosecution through the International Criminal Court (ICC) or the application of universal jurisdiction—may offer avenues for justice. This section will explore these options, assessing their feasibility, limitations, and potential for reform to close the impunity gaps that have allowed Iran's regime to act without accountability. The first step is examining Iran's relationship with the Rome Statute and whether it provides a viable legal basis for prosecution.

A. Iran and the Rome Statute

According to the United Nations, although crimes against humanity are not codified in a separate and specific treaty of international law, the prohibition of such crimes has been considered "a peremptory norm of international law, from which no derogation is permitted, and which is applicable to all States".[96]

Being a more recent instrument of international law, the first question of jurisdiction is temporal in nature. The Rome Statute was drafted and adopted in 1998 and applies to crimes committed in the 120 states'

95. *Decree of Imam Khomeini on Infidel*s, *supra* note 45.
96. *Id.*

territories or by their nationals after the Rome Statute's entry into force on 1 July 2002.[97]

This timeframe would, unfortunately, disqualify individuals responsible for the 1980 post-Revolution slaughter from being tried and held accountable under the Rome Statute. However, more recent applications of the same machinery, like the regime crackdowns on the Green Movement and Women Life Freedom movement, would fall into the time period, and the patterns, laws, and consistent and ongoing rhetoric established in post-Revolution Iran could serve to buttress the contextual and mental elements of any case brought, to remain relevant in this way.

The second question is whether the Statute applies to the persons in the State of Iran. By becoming a signatory to the Rome Statute, a State agrees to submit itself to the jurisdiction of the International Criminal Court regarding the crimes included in the Statute, which makes for clear-cut jurisdictional authority for a case to be brought.

Iran had joined many human rights conventions before the Islamic Revolution. The monarchy sought to maintain Iran's position as a leading country in the international arena. Mohammad Reza Shah Pahlavi tried to show that the state of democracy in Iran was aligned with his Western allies.

Iran was not among the first signatories of the Rome Statute upon its initial adoption in 1998; however, Iran became a signatory shortly afterwards, on 31 December 2000 (along with the United States, incidentally). The Statute, though, has not been ratified in either the U.S. or Iran, with the U.S. indicating it no longer intends to ratify, and Iran remaining silent on its intentions.[98]

Without ratification in place, it seems doubtful under present political circumstances that an easy path to using the International Criminal Court as an instrument to hold Iranian perpetrators of crimes against humanity to account could exist, and more likely that a criminal case under the Rome Statute might take place only after the current regime would be removed or collapse on its own accord. Although technically, a State which is not a party to the Rome Statute may decide to accept the jurisdiction of the ICC, it is hard to imagine the autocratic, theocratic regime of Iran willing to sign up for accountability in this regard, unless a schism might be found inside the regime where factions are turning on factions.

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97. *Rome Statute of the International Criminal Court,* UNITED NATIONS TREATY COLLECTION (2019), https://treaties.un.org.

98. *Id.*

There might be a less obvious way of bringing a case. For instance, the ICC may claim jurisdiction if the alleged perpetrator is a national of a State Party. If an egregious actor within the Iranian regime held a nationality of one of the State Parties, that person could be charged even if the crime was committed in a non-State territory.[99] This presents a significant opportunity to hold the worst actors accountable, as some members of the Iranian regime may have held dual nationalities at the time of their offending activities. The last, and most hopeful option available under the Rome Statute is also more complicated and time-consuming, and seems politically infeasible at the present time. The United Nations Security Council (UNSC) can refer alleged atrocity crimes committed in any country to the Office of the International Criminal Court Prosecutor. This process requires the successful passage of a resolution authorized by the United Nations Charter and can be vetoed by any permanent member of the UNSC.[100]

The current permanent member States of the UNSC include Russia, China, the U.S., U.K., and France. Though this route is theoretically viable, and jurisdiction would then apply, considering Russia's current political alignment to Iran and aggressions against NATO member States, it would seem to have an almost zero chance of success at moving forward unless the UNSC permanent member States shifted or a radical change occurred in geopolitical alignments.

B. International Criminal Court Feasibility

So, can Iran's most egregious offenders be held to account in the International Criminal Court to find some mechanism of support for the members of the Iranian public who have long been in search of a more just governing system for themselves?

It would seem many of the conditions for such litigation is unquestioningly met, such as whether the acts being committed meet the ICC definition of crimes against humanity.

Jurisdiction within the ICC is also theoretically achievable via multiple routes, but each route presents steep hurdles or is politically infeasible unless current alignments radically change. With the limited efficacy of the ICC and the Rome Statute, it may be useful to explore alternative options.

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99. *Id.*

100. ABA-ICC PROJECT, *How the ICC Works,* https://how-the-icc-works.aba-icc.org (last visited Oct. 25, 2023).

C. The Utility of Universal Jurisdiction in Pursuing Justice for Iran's Executions

The Center for Justice and Accountability explains that "International law recognizes that certain crimes are so serious that the duty to prosecute them transcends all borders".[101] This is the underlying principle of universal jurisdiction, which can be applied to certain serious crimes that violate international law—many of the same crimes detailed and defined under the Rome Statute, such as crimes against humanity, war crimes, genocide, and torture.

"Universal Jurisdiction is based on the idea that since perpetrators who commit such heinous crimes are *hostes humani generis*—' enemies of all mankind'—any nation should have the authority to hold them accountable, regardless of where the crime was committed or the nationality of the perpetrator or the victim".[102]

This principle, first codified in the Geneva Conventions in 1949[103], would seem to have been constructed for cases such as the Iranian executions, where some form of international jurisdiction would be necessary to address grave offences.

Universal jurisdiction cases offer recourse where the Rome Statute and the ICC fall short. For instance, whereas the Rome Statute largely applies when offenders are citizens of a State which is signatory and has ratified the treaty, universal jurisdiction creates the capability to seek redress without regard to nationality or geography restrictions, providing that the country in which a case is brought has laws permitting its courts to exercise universal jurisdiction.

Additionally, whereas the Rome Statute only applies to crimes committed after its adoption in 2002, universal jurisdiction has broader temporal jurisdiction as it was introduced post-World War II as part of the Geneva Conventions, and most of the grave crimes it addresses are not subject to statutes of limitations.

Article 29 of the International Criminal Court Convention emphasizes that crimes against humanity and war crimes are not subject to any statute of limitations. Before the adoption of the International

101. CTR. FOR JUSTICE & ACCOUNTABILITY, *Universal Jurisdiction*, https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/ (last visited Jan. 9, 2024).

102. *Id.*

103. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31.

Criminal Court, the United Nations Convention also specified that the statute of limitations does not apply to such crimes.[104]

If leveraging universal jurisdiction to address Iranian political executions, the formation of a case must be considered. For instance, would a private plaintiff be required? And, if so, does this limit the scope of harms addressed? A cursory examination finds that in most countries with universal jurisdiction incorporated into their criminal laws, private plaintiffs are allowed to bring a complaint, but they are not required to. Therefore, a prosecutor can file a complaint on behalf of the state.[105]

Indeed, the recent report of the UN Fact-Finding Mission concluded that, in the absence of effective remedies and in light of the systemic and historic impunity for violations in Iran, Member States should explore avenues for accountability both domestically and internationally--calling on States to apply the principles of universal jurisdiction without procedural limitations.[106]

D. Limitations of Universal Jurisdiction

Diplomatic immunity presents a hurdle to the application of universal jurisdiction. International customs and laws establish judicial immunity for heads of state and many government officials. Without such immunity, heads of state would be dissuaded from travelling and engaging in diplomacy. If a head of state commits a crime against humanity in their own country and then travels to another country for political purposes, can they be arrested and prosecuted using the principle of universal jurisdiction? In the Case Concerning the Arrest Warrant of 11 April 2000, *Democratic Republic of the Congo v. Belgium*, for instance, the ICJ found that high-ranking government officials such as the president and foreign minister enjoy diplomatic immunity even if they are accused of war crimes or crimes against humanity.[107] [108]

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104. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Nov. 26, 1968, 754 U.N.T.S. 73.

105. AMNESTY INT'L, LEGAL MEMORANDUM ON UNIVERSAL JURISDICTION 9 (1999), https://www.amnesty.org/en/wp-content/uploads/2021/06/ior530022001en.pdf (last visited Jan. 7, 2024).

106. U.N. Human Rights Office of the High Comm'r, *supra* note 34.

107. *Case Concerning the Arrest Warrant of 11 April 2000* (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3 (Feb. 14).

108. *Case Concerning Certain Criminal Proceedings in France* (Congo v. Fr.), Judgment, 2003 I.C.J. (Dec. 9).

In another case, the International Court of Justice stated that the French police investigation of the Congolese President as a witness in the arrest case violated the criminal immunity of the heads of foreign countries.[109]

A 2009 Human Rights Watch analysis of universal jurisdiction cases found few cases being brought to trial (fewer than 20 in a 15-year period). Further, most of the alleged perpetrators brought to trial were low or mid-level officials who were living in the territory of the state exercising jurisdiction.[110]

If high-ranking officials are not subject to universal jurisdiction, brutal regimes will continue to act with impunity, as only mid- or low-ranking members are subject to prosecution and punishment.

Physical presence of the accused and of witnesses can be another limiting factor in universal jurisdiction cases. Article 14(d) of the International Covenant on Civil and Political Rights states that a defendant has the right "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing . . . "[111]

So, the presence of the accused is required by international law, which greatly impedes states' ability to bring suit against the worst perpetrators of human rights violations. Even if an accused is present in a country and is unprotected by diplomatic immunity, a proceeding may be highly challenged if key witnesses are not motivated to travel and testify, and states do not have the authority to compel witnesses from other countries to comply. Trials in absentia might be applicable in a universal jurisdiction case if the criminal laws of the country where the proceedings are held allow for it.

The fact that universal jurisdiction relies on the laws of the country in which the case is brought can also present limitations. For instance, not all countries incorporate universal jurisdiction into their criminal code, and some countries have statutes of limitations that would supersede the traditions and conventions of international law. For example, in *Public Prosecutor v. Karl Hass and Erich Priebke*, the Supreme Court of Argentina agreed to the extradition of Nazi captain Erich

109. *Id*.

110. HUM. RTS. WATCH, BASIC FACTS ON UNIVERSAL JURISDICTION (Oct. 19, 2009), https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction (last visited Jan. 2, 2024).

111. International Covenant on Civil and Political Rights art. 14(3)(d), Dec. 16, 1966, 999 U.N.T.S. 171.

Priebke accused of war crimes, to Italy, but the Italian court initially refused him, citing the passage of time.[112] [113]

E. Hamid Nouri and Universal Jurisdiction in Sweden

Hamid Nouri was arrested in Stockholm in November 2019, after travelling to Sweden on personal business.[114] The Swedish authorities used universal jurisdiction to arrest and charge him for his role in the mass executions of thousands of prisoners who opposed the Iranian Regime in 1988.[115] After 92 hearings, including extensive eyewitness testimony and other direct evidence, Nouri was found guilty of war crimes and mass murder by the Stockholm District Court in July of 2022.[116] Sentenced to life in prison, he appealed the case, and in December of 2023, the Svea Court of Appeal 'upheld in all major regards' his conviction.[117]

Nouri's trial and conviction are a landmark event in the efforts to hold the Iranian Regime accountable for its many crimes against humanity. Over thirty years have passed since the mass executions in which he participated, and no other regime actors have been held accountable. Thousands of Iranians died unjust and unnecessary deaths, and for the first time, one of the agents of those executions was tried in a Western country.

As autocratic regimes routinely seek to suppress freedom of expression,[118] information about these atrocities spread slowly, and international awareness was limited. The reopening of Nouri's case also represents an opportunity for the atrocities of the Iranian Regime to be exposed on the global stage and to raise awareness of the need for change in Iran.

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112. *Public Prosecutor v. Hass*, Corte Militare di Appello [Military Ct. of Appeal] Mar. 7, 1998, *aff'd*, Corte Suprema di Cassazione [Supreme Ct. of Cassation] Nov. 16, 1998 (It.).

113. J.A. Consigli, *The Priebke Extradition Case Before the Argentine Supreme Court*, 1 Y.B. INT'L HUMAN. L. 496 (1998).

114. Mark Klamburg, *A Swedish Court Just Upheld the Conviction of a Former Iranian Official. It's a Warning to All Perpetrators of Atrocity Crimes*, ATLANTIC COUNCIL (Dec. 20, 2023), https://www.atlanticcouncil.org/blogs/new-atlanticist/a-swedish-court-just-upheld-the-conviction-of-a-former-iranian-official-its-a-warning-to-all-perpetrators-of-atrocity-crimes/.

115. *The Swedish Court of Appeal Confirmed Hamid Nouri's Life Sentence*, EURONEWS (Dec. 19, 2023), https://parsi.euronews.com/2023/12/19/appeal-verdict-due-in-ex-iran-officials-trial-in-sweden.

116. *Id.*

117. Klamburg, *supra* note 114.

118. BEN-GHIAT, *supra* note 44.

As families of the victims experienced a long-sought hope for some sense of justice, the Iranian Courts took a different turn on December 10, 2023, charging a Swedish diplomat they'd been holding in prison with spying for Israel and the most serious crime of 'corruption on earth', which is punishable by the death penalty.[119] This move represents Iran's attempts to put pressure on Sweden to release Nouri and indicates an escalation in the Regime's retaliatory policing and court actions, which also include threatening to impose the death penalty against a previously detained Iranian-Swedish dual national.[120]

As is evident from the Nouri case, while universal jurisdiction has proven to provide some accountability and justice for Iran's mass executions, accountability is effectively limited to lower-level actors and the Regime continues to act with impunity, with the most responsible parties still protected.

V. NEEDED REFORMS TO INTERNATIONAL HUMAN RIGHTS LAW

International law and human rights conventions promise a window of hope to achieve accountability and end impunity. However, in practice, the utility of international law meets many barriers such as jurisdictional limitations, failures of ratification or adoption, and home country laws including statues of limitations. Nevertheless, when millions of people are imprisoned by tyranny and dictatorship, and domestic activism for change becomes impossible, a persistent hope lies in finding and enacting meaningful reforms to strengthen enforcement of international law through the United Nations.

As explained in this article, thousands of people have been sentenced to death in political and unfair trials in Iran and subsequently lost their lives. Many families are experiencing generational trauma and suffering due to the grief of these executions. Thousands of parents grew old and died without witnessing justice.

In this situation, how can international law stop the impunity of dictators and the atrocities they commit? Can we one day expect a global consensus to curb government executions through international law when politics seem to intrude upon such agreement? With the failure of Iran to ratify the Rome Statute, the most feasible route to holding

119. *Swedish EU Diplomat Jailed in Iran Faces Charges of Spying for Israel,* FRANCE24 (Dec. 10, 2023), https://www.france24.com/en/asia-pacific/20231210-swedish-eu-diplomat-jailed-in-iran-faces-charges-of-spying-for-israel.

120. *Rights Group Warns of Iran Executing Swedish Dual National*, IRAN INT'L (Dec. 23, 2023), https://www.iranintl.com/en/202312239993.

their worst perpetrators accountable under the Statute seems impossible to pursue in the current geopolitical moment. Even if the United Nations Security Council (UNSC) referred the alleged atrocity crimes to the Office of the International Criminal Court Prosecutor, a resolution would have to be authorized by the United Nations Charter without a veto from any permanent member of the UNSC.[121] Given the massive tensions between the U.S. and Russia, and Russia's strategic ties to Iran, this could not be viewed as a likely route to prosecution absent a major reshuffle of the world order.

Given the failure of the Rome Statute as an accountability measure in this instance, the concept of Universal Jurisdiction would seem to hold promise, but again a raft of limitations seems to hamper the pursuit of justice through this route. The Center for Justice and Accountability explains that "International law recognizes that certain crimes are so serious that the duty to prosecute them transcends all borders".[122] So why haven't Iran's worst actors been uniformly brought to justice in a way that would curtail the continuation of their ongoing crimes against humanity?

International customs and laws that establish diplomatic immunity for heads of state and government officials seem to nullify the utility of Universal Jurisdiction and thereby erode the efficacy of international human rights law. Human Rights Watch found less than 20 universal jurisdiction cases brought in a 15-year period, where most of the alleged perpetrators were low or mid-level officials.[123] If diplomatic immunity results in heads of state having no accountability for the gravest crimes, this should be a subject for further study and reform. International governing bodies should look for legal jurisdictional means to safeguard against the potential political abuse of universal jurisdiction while not exempting certain persons from accountability for crimes against humanity.

Other reforms that might facilitate enforcement of international human rights law include recognizing exceptions to physical presence rules when alleged crimes reach a certain level of severity, scale, and persistence. Many high-level actors within authoritarian countries rely on international travel and communication with other countries for the survival of their governments. In this situation, if they know that international travel will not be safe for them, and there will be a possibility

121. ABA-ICC PROJECT, *supra* note 100.

122. CTR. FOR JUSTICE & ACCOUNTABILITY, *supra* note 101.

123. HUM. RTS. WATCH, *supra* note 110.

of opening court cases against them, they would be incentivized to stop or minimize the worst atrocities against innocent people.

International governing bodies should also explore the feasibility of an international form of universal jurisdiction, or at the very least, resolutions and recommendations to State Parties to adopt a more uniform practice, since the exercise of this principle currently relies on the laws of states, and many states have varying statutes of limitations, or lack universal jurisdiction procedures entirely. However, the implementation of universal jurisdiction at a truly international level faces significant political resistance. Many states fear that such an expansive mechanism could be weaponized against them, either through politically motivated prosecutions or through cases that infringe on their sovereignty. For instance, powerful nations may be reluctant to support universal jurisdiction reforms due to concerns over how their own officials and military personnel might be targeted. Moreover, smaller states may fear retaliation from dominant geopolitical actors if they exercise universal jurisdiction in cases that challenge global power structures.

Despite these obstacles, international bodies could address such concerns by ensuring that universal jurisdiction mechanisms contain safeguards against politically motivated cases while maintaining their effectiveness in prosecuting the gravest crimes. For example, a centralized oversight committee within the United Nations could be tasked with reviewing universal jurisdiction claims to prevent abuse while still holding perpetrators accountable. Additionally, a consensus-driven treaty mechanism could outline specific, high-threshold criteria for cases that qualify under universal jurisdiction, thereby mitigating fears of overreach while reinforcing accountability for crimes against humanity.

Absent the exploration of reforms to create more truly universal enforcement, the heads of governments will remain free to carry out factional executions and other crimes against humanity without fear of the consequences of their tyranny and what may await them in the International Criminal Court. Reforms and amendments to instruments like the Rome Statute and diplomatic immunity, physical presence laws, and universal jurisdiction could create needed authority in the gravest of cases when the crimes alleged rise to the level of those enumerated in the Geneva Conventions and Rome Statute.

The balance of jurisdiction and sovereignty in international law is a challenge second only to enforcement, but this doesn't mean the status quo should be looked upon as sufficient. Finding effective solutions

that will gain the support of the international community is complex, but the failure to explore avenues of change and reform not only leaves generations of people suffering under authoritarian regimes in Iran and around the world; it also turns international governing bodies more of an advisory versus an enforcement status, which harms their credibility and creates threats to their future support.

VI. Conclusion: Toward Greater Accountability for Crimes Against Humanity

In the case of Iran's long history of executions, there are limited instances where, under current laws, universal jurisdiction can and should be applied with all force, as in the case of Hamid Nouri. However, we can see from recent waves of renewed political executions that current international governing structures are insufficient to curb the impunity of Iran's regime. Millions of Iranians should not have to wait for a catastrophic invasion or a bloody revolution before they can hope for justice. After over 40 years, the international community should step in to consider changes to conventions, statutes, and policies so that the growing number of victims' families can one day witness the trials of the leaders who perpetrated such grave harms to so many.

International law and human rights conventions promise a window of hope to achieve accountability. However, in practice, the utility of international law meets many barriers, such as jurisdictional limitations, failures of ratification or adoption, and home country laws, including statutes of limitations. Nevertheless, there is a self-interest for every citizen in every member state to ensure that when millions of people are imprisoned by tyranny and dictatorship, and domestic activism for change becomes impossible, there is some feasible route for enforcement of international law through the United Nations.

As demonstrated throughout this analysis, thousands of people have been sentenced to death in political and unfair trials in Iran and subsequently lost their lives. Many families are experiencing generational trauma and suffering due to the grief of these executions. Thousands of parents and siblings grew old and died without witnessing justice. The continued impunity of Iranian government officials underscores the urgent need for enhanced legal mechanisms and international coordination to hold perpetrators accountable for crimes against humanity.

In conclusion, this analysis proposes five key recommendations for legal reform: reforming universal jurisdictions; closing loopholes for diplomatic immunity; strengthening the ICC; enhancing international judicial cooperation; and leveraging targeted sanctions. First, it is important to move toward greater uniformity in universal jurisdiction mechanisms. The Hamid Nouri case shows that while universal jurisdiction has proven to be a valuable tool in the fight against impunity, its effectiveness is currently limited by jurisdictional inconsistencies and procedural hurdles. The international community should work toward greater standardization in how states apply universal jurisdiction, ensuring it is not arbitrarily limited by procedural technicalities. International governing bodies, such as the United Nations, should develop a framework that encourages all states to incorporate universal jurisdiction into their domestic legal systems, removing unnecessary barriers to prosecution.

Second, the current application of diplomatic immunity often shields high-ranking officials from prosecution, even in cases of egregious crimes against humanity. International law should seek to create specific exemptions to diplomatic immunity for individuals accused of systematic and widespread human rights abuses. A global convention on limiting immunity for crimes against humanity has been in development, led by Professor Leila Sadat since 2008, drawing from existing principles in the Rome Statute and the Nuremberg precedents. In December of 2024, the U.N. General Assembly approved Resolution 79/122 aimed at closing the 'gap of impunity' currently allowing crimes against humanity to continue undeterred, and at last this treaty will be sent to negotiations for adoption.[124]

Third, the role of the International Criminal Court (ICC) must be improved. While the ICC has played a crucial role in prosecuting war crimes and crimes against humanity, it remains constrained by political considerations and jurisdictional limitations. States should be encouraged to ratify the Rome Statute, particularly those with a history of impunity for human rights violations. Additionally, international advocacy should focus on empowering the ICC with greater authority to initiate investigations into non-signatory states where overwhelming evidence of crimes against humanity exists.

Fourth, the system of international cooperation in evidence gathering can be improved. Many universal jurisdiction cases struggle due

124. *Professor Sadat's Crimes Against Humanity Initiative Reached a Historic Milestone*, WASH. UNIV. SCH. L. (Jan. 8, 2025), https://law.washu.edu/professor-sadats-crimes-against-humanity-initiative-reached-a-historic-milestone/.

to difficulties in obtaining credible evidence and witness testimony. To counteract this, international organizations and human rights advocacy groups should establish more robust mechanisms for documenting atrocities, preserving evidence, and supporting victims in providing testimony safely. A global repository of human rights violations, managed by an independent international body, could facilitate more effective prosecutions across multiple jurisdictions. Finally, even in the absence of direct legal accountability, individually targeted economic and travel sanctions can act as deterrents against human rights violators. Coordinated efforts among democratic nations to impose visa bans, asset freezes, and other personal restrictions on known perpetrators of mass executions and other crimes against humanity could serve as a form of pressure and de facto accountability. The current limitations of international law do not mean that accountability is impossible. Instead, they highlight the need for a multi-pronged approach that includes legal reform, diplomatic pressure, and persistent advocacy. Human rights organizations, scholars, and policymakers must work together to push for these reforms, ensuring that international law evolves to meet the realities of modern-day autocratic repression.

Advocacy groups should continue to document and raise awareness of human rights abuses, particularly through high-profile campaigns that bring global attention to the ongoing executions in Iran. Legal scholars and policymakers must collaborate to draft proposals for closing legal loopholes and expanding mechanisms for prosecution. Governments committed to human rights should increase funding and support for institutions like the ICC and the UN Human Rights Council to strengthen their capacity to hold perpetrators accountable.

Despite the complexities involved, the pursuit of justice must remain relentless. The Iranian regime's continued use of political executions as a means of consolidating power serves as a stark reminder that international law must be both strengthened and enforced. Finding effective solutions that gain the support of the international community is challenging, but the failure to explore avenues of change and reform not only leaves generations of people suffering under authoritarian regimes—it also erodes the credibility of international human rights institutions. Without action, the world risks turning these bodies into advisory institutions rather than enforcement mechanisms.

The legacy of those executed in Iran should serve as a catalyst for international legal reform. If human rights are to have meaning beyond rhetoric, then global legal institutions must rise to the challenge,

ensuring that no regime can act with impunity and that those who commit crimes against humanity will one day face justice.

Author's Note: Hamid Nouri, a former Iranian prison official convicted and sentenced to life imprisonment in Sweden for his role in the 1988 mass executions, was released in June 2024 as part of a prisoner exchange between Iran and Sweden and returned to Tehran.[125]

125. *See* Bijan Bazargan, *The Pardoning and Release of a Convicted Iranian War Criminal Is a Crime in Itself*, ATLANTIC COUNCIL (June 27, 2024), https://www.atlantic-council.org/blogs/iransource/pardoning-hamid-noury-war-criminal-crime-bijan-bazargan/; AMNESTY INT'L, *Iran: Authorities Continue Crimes Against Humanity in Relentless Persecution of Families Seeking Truth and Justice for 1988 Massacre*, MDE 13/8181/2024 (2024), https://www.amnesty.org/en/documents/mde13/8181/2024/en.