

Statute for Aban Tribunal

Having been established at the initiation of three NGOs namely, Justice for Iran, Iran Human Rights Centre and Ensemble Contre la Peine de Mort (Together Against Death Penalty) (ECPM) in response to the many requests of victims and families of the victims, the International People's Tribunal for the Investigation of Crimes Against Humanity and gross violation of human rights in the Islamic Republic of Iran regarding alleged atrocities that took place in November 2019 (hereinafter the "Aban Tribunal") shall function in accordance with the provisions of the present Statute.

Preamble

On 15 November 2019, following a large and sudden increase in fuel prices, nationwide protests broke out across the Islamic Republic of Iran (IRI). On 16 November 2019, the IRI imposed a near total shutdown of the internet and took action against the protestors. Police, security and military forces reportedly shot and arrested protestors. The relevant authorities of the IRI reportedly restricted access to information about these events to the outside world.

Reports of the killings of protestors emerged nonetheless from the outset of the protests. The Iranian government has, to date, admitted responsibility for the deaths of 225 people. Media and human rights organizations have reported higher death tolls ranging from 304 people to 1,500 people. Human rights organizations documented incidents of the use of unlawful lethal force against civilians in 39 cities, across 15 provinces, over the course of five days, reportedly causing hundreds of deaths and thousands of injuries. An unknown number of individuals were allegedly imprisoned unlawfully, some of whom have reportedly since been executed without the benefit of internationally recognized standards of due process of law.

Purpose and competence of the Aban Tribunal

The Aban Tribunal is an international People's Tribunal established to investigate the alleged atrocities that took place in November 2019 in the IRI across the country during the course of the widespread protests against the Iranian government. The concept of a People's Tribunal, first conceived by Bertrand Russell and Jean-Paul Sartre following the Vietnam War (known as the "Russell Tribunal") has since become a valuable instrument for raising international awareness of alleged mass atrocities and seeking redress for the victims of such atrocities when other international mechanisms have not provided any other mechanism for investigation and, if appropriate, accountability.

The Aban Tribunal was established as a joint initiative of a number of non-governmental organisations including Justice for Iran, Iran Human Rights Centre, and the Ensemble Contre la Peine de Mort (Together Against Death Penalty) (ECPM).

With the aim of ending impunity for the perpetrators of crimes and thus to contribute to the prevention of such crimes and to guarantee lasting respect for and the enforcement of international justice, People's Tribunals are formed of citizens and make decisions about human rights' issues that have not been, and are not being, dealt with by formal national or international judicial or

similar bodies. Accordingly, the primary aim of the Aban Tribunal is to reveal the truth and to determine where the responsibility lies in light of the principles of law, human conscience and justice.

The Tribunal provides a mandate to a panel of independent, experienced, international lawyers to investigate the allegations of human rights violations and crimes under international law perpetrated during the protests of November 2019. The panel will hold hearings, modeled pursuant to international standards of fairness and due process of law, in which evidence related to the events of November 2019 will be presented. Following receipt of that evidence and argument thereon, the panel will engage in deliberations and issue a report (or findings) concerning the alleged violations of human rights and crimes under international law committed by IRI forces and/or others during the November 2019 protests. Any findings ultimately made as a result of the process, will be consistent with universal principles of justice, protection and enforcement of the rule of law, public acknowledgement of the rights of victims and respect for the rights of persons, groups or governments the tribunal may identify as bearing responsibility for the acts in question.

The Tribunal, as a people's initiative, has no legal power to enforce its judgement. It nonetheless carries the moral authority to demand enforcement of the rule of law by the international community and national governments.

The panel shall function in accordance with the provisions of this Statute and the Rules of Procedure and Evidence of the Aban Tribunal, prepared and adopted by the panel members.

Article 1

Competence of the Aban Tribunal

The Aban Tribunal shall have the power to investigate allegations of human rights violations and crimes under international law committed in the territory of the Islamic Republic of Iran in November 2019 in accordance with the provisions of this Statute, treaties ratified by the IRI and general principles of law.

Article 2

Applicable law

In the conduct of the hearings to be held by the Aban Tribunal, the panel shall apply, in the first place:

1. The legal principles contained herein and the applicable Rules of Procedure and Evidence.
2. Applicable treaties and the principles and rules of international law.
3. Whenever appropriate, general principles of law derived from Iranian national law and comparative legal systems of the world including, as necessary, the national laws of States that would normally exercise jurisdiction over the alleged crimes provided that those principles are not inconsistent with international law and internationally recognized norms and standards.
4. The application and interpretation of law pursuant to this Article must be consistent with internationally recognized human rights and be without any adverse distinction founded on

grounds such as gender, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

Nothing in this Article shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Nothing in this Statute shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the obligations of IRI under International law.

Article 3

Standard of proof

Recognizing that the Aban Tribunal is a tribunal mandated to examine the facts to ascertain whether Iranian state forces and/or others committed violations of human rights and crimes under international law during the November 2019 protests, the standard of proof employed will be guided by relevant international norms, including the right to truth and justice.

Accordingly, the Tribunal will reach findings of fact and law, including state responsibility, to a standard appropriate to the relevant finding and the rights of the individual, state or entity, and on the basis of relevant and reliable evidence.

In the event of a finding of individual criminal responsibility, the Tribunal will only reach such findings on the basis of the criminal standard of proof, namely beyond a reasonable doubt.

Article 4

Principles Governing Violations

The Tribunal will investigate allegations of human rights violations and crimes under international law committed in the territory of the IRI in November 2019 and will apply treaties ratified by the IRI, customary international law, and general principles of law.

Article 5

Human Rights Violations

Human rights are violated if the State fails:

- (a) To respect and to ensure to all individuals within its territory and subject to its jurisdiction the human rights recognized in the treaties ratified by the Islamic Republic of Iran and general principles of law without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- (b) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 6

Crimes against humanity

1. The State has the obligation not to engage in acts that constitute crimes against humanity and to prevent and to punish crimes against humanity, which are crimes under international law.
2. For the purpose of the present 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, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph;
 - (i) enforced disappearance of persons;
 - (j) the crime of apartheid;
 - (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
3. For the purpose of paragraph 2:
 - (a) “attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 2 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) “extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) “enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) “deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) “torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused;

except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) “forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) “persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) “the crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) “enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

4. This article is without prejudice to any broader definition provided for in any international instrument or in customary international law.

Article 7

Statute of limitations

The human rights violations and crimes investigated by the Aban Tribunal, arising from the events of November 2019, shall not be subject to any statute of limitations.

Article 8

State Responsibility

1. A State shall be responsible for every internationally wrongful act when conduct consisting of an action or omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.

2. A State shall be responsible for human rights violations and criminal conduct which arises from any of the following:

- a) Commission of crimes or acts as referred to herein by military forces, government officials and individuals or groups of militia acting in their official capacity;
- b) Acts or omissions by the State, such as:
 - i) Concealment, denial or distortion of the facts or in any other manner neglecting or failing to meet its responsibility to find and disclose the truth concerning crimes referred to in Articles 5 and 6 of this Statute;

- ii) failure to prosecute and punish those responsible for said crimes;
- iii) failure to provide reparations to those victimized;
- iv) failure to take measures to protect the integrity, wellbeing and dignity of the human person.

Article 9

Circumstances Precluding State Responsibility

1. The wrongfulness of an act of the State not in conformity with an international obligation of the State is precluded if:
 - a) the act constitutes a lawful measure of self-defence.
 - b) the act is due to force majeure, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.
 - c) the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.
 - d) The act is the only way for the State to safeguard an essential interest against a grave and imminent peril.
2. Paragraph 1 (b) does not apply if:
 - (i) the situation of force majeure is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
 - (ii) the State has assumed the risk of that situation occurring.
3. Paragraph 1 (c) does not apply if:
 - (i) the situation of force majeure is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
 - (ii) the State has assumed the risk of that situation occurring.
1. Paragraph 1 (d) does not apply if:
 - (i) the international obligation in question excludes the possibility of invoking necessity; or
 - (ii) the State has contributed to the situation of necessity.
2. Nothing in this Article precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under peremptory norm of general international law.

Principles Applicable to Findings of Individual Criminal Responsibility

Article 10

Nullum crimen sine lege

1. A person shall not be adjudged criminally responsible unless the conduct in question constituted, at the time it took place, was a crime under national or international law.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person, group, or Government being investigated.

This Article shall not affect the characterization of any conduct as criminal which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 11

Individual liability

A person who commits a crime shall be individually criminally responsible and liable for punishment if that person:

- a) Commits such crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
- c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
- d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime;
 - ii) Be made in the knowledge of the intention of the group to commit the crime;
- e) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose

No provision relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 12

No jurisdiction over minors

The Aban Tribunal shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 13

Irrelevance of official capacity

1. These provisions shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, or a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility.
2. Immunities or other special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Aban Tribunal from exercising its investigatory inquiry regarding such a person.

Article 14

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility for crimes subject to investigation by the Aban Tribunal;

1. A military commander or person effectively acting as a military commander shall be criminally responsible for crimes committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
 - a) That military commander or person either knew or, owing in the circumstances at the time, should have known that the forces were committing or about to commit crimes,
 - and*
 - b) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
2. With respect to superior and subordinate relationships not described in paragraph 1, a superior shall be criminally responsible for crimes committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where;
 - a) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - b) The crimes concerned activities that were within the effective responsibility and control of the superior, *and*
 - c) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 15

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime only if the material elements are committed with knowledge and intent.
2. For purposes of this Article, a person has *intent* where:
 - a) In relation to conduct, that person means to engage in the conduct;
 - b) In relation to the consequence of such conduct, that person means to cause that consequence or is aware that it will occur in the ordinary course of events
3. For purposes of this Article, *knowledge* means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “*Know*” and “*knowingly*” shall be construed accordingly.

Article 16

Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility provided herein, a person shall not be criminally responsible if, at the time of that person’s conduct;
 - a) The person suffered from a mental disease or defect that destroyed that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;
 - b) The person is in a state of intoxication that destroyed that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person had become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk that as a result of the intoxication he or she was likely to engage in conduct constituting a crime;
 - c) The person acts reasonably to defend himself or herself or another person;
 - d) The conduct which is alleged to constitute a crime was caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
 - i) Made by other persons, or
 - ii) Constituted by other circumstances beyond that person’s control.

Article 17

Mistake of fact or mistake of law

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime

2. A mistake of law as to whether a particular type of conduct is a crime shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required for the crime in question.

Article 18

Superior orders and prescription of law

1. The fact that a crime has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian shall not relieve that person of criminal responsibility unless:
 - a) The person was under a legal obligation to obey orders of the Government or the superior in question,
 - b) The person did not know the order was unlawful, *and*
 - c) The order was not manifestly unlawful.
2. For purposes of this Article orders to commit genocide or crimes against humanity are manifestly unlawful.