International People's Tribunal on Iran's Atrocities (ABAN TRIBUNAL)

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Carla Ferstman
Nursyahbani Katjasungkana
Colleen Rohan
Elham Saudi
Justice Zak Yacoob

Judgment of: 1 November 2022

JUDGMENT

Counsel

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International People's Tribunal on Iran's Atrocities (ABAN TRIBUNAL)

Judgment, 1 November 2022

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I. Introduction

I.1 The 2019 Aban Protests

1. On 15 November 2019, the Islamic Republic of Iran announced a steep increase in the price of fuel. This sparked mass protests throughout the country, in which protesters expressed their frustration with the fuel hike and raised concerns about wider grievances.

2. According to reports, the security forces acted over five days to clear the streets and quell the protests. They used both lethal and less-lethal force against civilians. Several hundreds of protesters and a few bystanders were killed, and many more injured. Thousands of people were arrested during and in the immediate aftermath of the protests.

3. The Iranian Government has admitted responsibility only for the deaths of 230 people,[1] all of which it has alleged to be justified and lawful. Victims, family members and others who sought an investigation and justice have been rebuffed. There has been no domestic investigation, prosecution or other accountability effort. Many have been threatened and themselves subjected to further abuses.

I.2 The Establishment, composition and operating principles of the Tribunal

4. The International People's Tribunal on Iran's Atrocities (the 'Aban Tribunal' or 'Tribunal') was established in response to public calls for truth, justice and reparation. This was because the Iranian Government had failed to institute any process to investigate any crime whether under international law or local law associated with the Aban protests. International institutions had also failed to provide victims with any procedure by which the facts could have been assessed, and their suffering acknowledged.

5. The Aban Tribunal is a People's Tribunal. It was established neither by governments nor by international institutions but by concerned individuals and civil society actors, namely three civil society organisations: Justice for Iran, Iran Human Rights Centre, and Together Against the Death Penalty who responded to the requests of victims and their families. The Tribunal was charged with determining responsibility in the light of the principles of law, human conscience, and justice. In sum, the primary aim of the Tribunal is to establish the truth, rectify historical memory and generate moral reparation for harm done.

6. People's Tribunals are not new to the human rights movement. The first People's Tribunal - the Russell Tribunal, was established in 1966 by British philosopher and Nobel Prize winner

[1] W Raha Bahreini, STMT, pp. 11-12.

Bertrand Russell, and adjudicated by Jean-Paul Sartre, Simone de Beauvoir and several other notable public figures to assess America's role in crimes committed during the Vietnam War. Since then, around 100 People's Tribunals have been held. For example, a People's Tribunal was held during the 1993 World Human Rights Conference with the theme: Women's Rights are Human Rights, which resulted in the adoption of the Vienna Declaration and Programme of Action.

7. The role of a People's Tribunal is to decide whether there have been human rights and related violations that have not been dealt with by formal national or international judicial or similar bodies. As a citizens' initiative, the decisions of a People's Tribunal are not legally binding and cannot be enforced. They nonetheless carry significant moral authority. They can also increase public awareness of human rights violations and exert moral authority to require enforcement of the rule of law by the international community and national governments. For victims, survivors and their families, a People's Tribunal can be part of a vital healing process, particularising violations, and enabling victims and survivors to raise their voices and be recognised as wronged, and not criminals as labelled by their government and the relevant perpetrators.

8. The Judgment of the Tribunal may well also be recognised in international and national fora, and may even influence the formation of international law and policy. The Tribunal's Judgment may also enable a case to be brought at the national level and create a human rights culture to prevent the recurrence of violations. It may also serve as a historical record of the atrocities and stand as an indelible record for the world. The Judgment may also be used for national and international advocacy to "fill the gap in the international legal system" and be a "precursor to an official court or tribunal by creating publicity and political pressure as part of a broad campaign to force State-based mechanisms to deal with the issue and even where an official mechanism exists, people's tribunals may nevertheless be convened because they offer something qualitatively different or beyond what an official tribunal is capable of providing".[2]

9. As one of the witnesses before the Aban Tribunal stated:

> "I just want the voices of these people to be heard. I just want to tell everybody how innocent they were, how downtrodden and wronged they were, so everybody will know

[2] Gabrielle Simm and Andrew Byrnes, "International Peoples' Tribunals in Asia: Political Theatre, Juridical Farce, or Meaningful Intervention?", (2014) 4 Asian Journal of International Law 103.

about them – the voice of [the victims] is not heard. That is my plea to you. To be their voices so that they can seek [some kind of] redress … from this regime."[3]

10. As another witness whose brother was killed during the protests testified:

> "My brother was 25 years old and in his own country, all that he received and was entitled to was a bullet. What was his crime? For what sin they kill him? After the death of my brother, my mother got ill, she could not cope with it. My father got ill. I am here now only because I want to seek justice for the blood of my brother because he always used to say that our rights should not be trampled upon, so I am here because our rights cannot be trampled upon."[4]

11. The Aban Tribunal's Prosecutor alleges that the Iranian Government and its security forces violated the rights of the protesters in a variety of ways, including, persecution, unlawful killings, torture and other ill treatment, enforced disappearances, and sexual violence. According to the Prosecution, the Iranian Government and various Government and security officials, including Ali Khamenei, the Supreme Leader of the Islamic Republic of Iran, are responsible as a State and individually criminally responsible respectively for these violations which constitute crimes against humanity.

12. It is alleged by the Prosecution that the Iranian Government designed and implemented a criminal plan to persecute the protesters who were merely exercising their political rights to peaceful assembly and protest, as guaranteed by Iran's constitution and several international treaties ratified by the State of Iran.

13. The Panel of Judges of this Tribunal (the Panel) were appointed by the founders of the Aban Tribunal to evaluate the variety of live, written and video evidence and to adjudicate on these charges, namely to determine whether these events violated the fundamental rights of the protesters and whether any violations amounted to crimes against humanity. The Panel was requested to address both State and individual criminal responsibility and ascertain, if possible, whether the evidence established the responsibility of the State of Iran and any government or security official and thereafter make recommendations concerning accountability, redress and reparation.

14. In sum, the Aban Tribunal has provided a mandate to a panel of independent, experienced, international lawyers to investigate the allegations of human rights violations and crimes under

[3] W179, 13 November 2021.
[4] W32, 10 November 2021.

international law perpetrated during the Aban protests. It is composed as follows:

WAYNE JORDASH KC (CHAIRPERSON): Co-Founder and Managing Partner of Global Rights Compliance; International Human Rights and Criminal Lawyer.

CARLA FERSTMAN: Professor, School of Law, University of Essex; Human Rights Law and International Criminal Law Expert.

NURSYAHBANI KATJASUNGKANA: Women's Human Rights Advocate; Founder of Indonesia Legal Aid Association for Women; Prosecutor of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery; General Coordinator of the International People's Tribunal on the 1965 Crimes Against Humanity in Indonesia.

COLLEEN ROHAN: Defence counsel and expert in criminal defence litigation in both domestic and international courts, including representation of members of the military and private clients in cases involving genocide, terrorism, war crimes, and crimes against humanity.

ELHAM SAUDI: Co-founder and Director of Lawyers for Justice in Libya; International Human Rights Lawyer and Expert.

JUSTICE ZAK YACOOB: Retired Justice, Constitutional Court of South Africa.

15. The Aban Tribunal has complied with the Aban Tribunal Statute reflecting its mandate,[5] to which it is bound, as well as Rules of Procedure and Evidence developed and agreed by the Panel to guide the proceedings.[6] In addition to its Statute and Rules, it must apply the treaties ratified by Iran, including the International Covenant on Civil and Political Rights, customary international law as it relates to the prohibition of crimes against humanity, and general principles of law as derived from Iran's Constitution and national laws as well as national laws of internationally recognised legal systems. The Tribunal is guided by the principles of *nullum crimen sine lege*, the presumption of innocence, impartiality; fairness; commitment to the rule of law; right to truth; and the right of victims to seek and have access to justice.

16. The Aban Tribunal applies the concept of State responsibility, in recognition of the State's responsibility to respect, protect and fulfil the rights of ordinary citizens participating in peaceful protests or any bystanders. This includes an obligation to ensure that the right to peaceful protest is guaranteed in practice. It also refers to the State's obligation to exercise due diligence to ensure that individuals' rights, including the right to life, freedom from arbitrary

[5] Annex A.
[6] Annex B.

arrest, freedom from enforced disappearance and freedom from torture and other cruel, inhuman and degrading treatment and punishment are not violated. The aim of the Tribunal is also to examine the State's obligation to prevent its officials, including military and security forces, intelligence services, government officials and individuals or groups of militia acting in conjunction with the State, from participating in any violation of individuals' rights. A State may also be responsible for the acts and omissions of its officials that may constitute crimes, including crimes against humanity.

17. Additionally, the concept of individual criminal responsibility is applied by the Aban Tribunal in order to determine whether any individual may be criminally liable for any crimes that occurred during, or associated with, the protests.

I.3 The Hearings

18. Most of the evidence was heard in two public sessions held in London, United Kingdom, from 10-14 November 2021 and online on 4-6 February 2022. The Aban Tribunal observed and listened to 55 witnesses, including protesters, relatives of protesters and bystanders killed, individuals who had been subjected to arbitrary arrest and detention and torture as well as unfair trials, healthcare workers, and former security and judicial officials. Witnesses testified in person or by video-link, some using pseudonyms and with faces covered and voices distorted to protect their identities. In a small number of cases, at the request of counsel and in accordance with the Rules of Procedure and Evidence of the Tribunal, the Panel determined that special circumstances required that certain proceedings be held in closed session for the purposes of protection of the victims and witnesses, or to protect confidential or sensitive information to be given in evidence.

19. Witnesses were introduced by the Tribunal counsel and, before giving evidence, solemnly declared "to speak the truth, the whole truth and nothing but the truth". Witnesses gave evidence and responded to questions posed by members of the Panel. The Panel, in an effort to assess the veracity of the evidence put before it, examined the evidence rigorously and with due regard for the presumption of innocence and the burden of proof.

20. The Panel also heard expert witnesses, including authors of investigative reports about the Aban protests. The experts gave details of their investigative methodologies and explained their findings. They included weapons experts, and experts on the law and political structure of Iran.

21. The Tribunal also received written statements from 169 witnesses, which were tendered into

evidence and reviewed by the Panel. The process by which individuals came into contact with the Tribunal, the methods used to record and verify their statements, as well as the security protocols were explained and considered by the Panel.[7] Additionally, the Tribunal received documentary, photographic and video evidence. The process used to authenticate the evidence was explained to the Panel by a witness.[8]

22. Public hearings were broadcast live and online to ensure they were accessible. Videos of many of the hearings have been uploaded to the website of the Aban Tribunal, and are also available on YouTube.

I.4 The role of the Government of Iran in the proceedings

23. The Iranian Government was notified of the Aban Tribunal proceedings. It was invited by the Tribunal to participate in the proceedings and provide any information or evidence to rebut the evidence presented. This invitation was never acknowledged.

24. The Tribunal heard many reports of victim and witness intimidation, ostensibly by the Iran security forces. The intimidation was reportedly experienced by individuals who were in contact with the Tribunal. They were telephoned by persons who said they were members of Iran's security. Witnesses were instructed not to speak to the media, or to anyone, about what happened during and following the protests, and were told that if they persisted to publicly call for justice their children would be in danger, arrested or even killed.[9] Numerous witnesses spoke of threats to coerce them to refrain from speaking publicly or to call for justice, or to withdraw their testimonies. Civil society groups have documented many of these types of threats.[10]

25. The Iranian Government has done nothing to investigate these allegations or to put in place measures to guarantee the safety and security of victims and witnesses. On the contrary, the evidence suggests that the threats have been coordinated and implemented by Iranian security at the behest of the Government in order to avoid any scrutiny or accountability.

II. The Tribunal s Analysis of the Evidence Presented

II.1 The context

[7] W Maryam Foumani, STMT.
[8] W Shadi Sadr, STMT.
[9] W Maryam Foumani, STMT.
[10] See Joint NGO Statement, "Iran: Authorities violating absolute prohibition of torture through harassment of witnesses involved in Iran Atrocities Tribunal" (7 April 2022); Aban Panel Statement, "Reports of Reprisals Against Aban Tribunal Witnesses and their Family Members" (19 April 2022).

26. The Tribunal was given a clear picture of the context before, during, and after the protests.

II.1.1 General discontent leading to public protests

27. On 15 November 2019, the Iranian Government announced an increase in the price of (already rationed) fuel by 50%. For fuel that was obtained outside of the rationed amount, the increase would be 200%. This announcement was the catalyst for nationwide protests involving tens of thousands of protesters. However, many protesters also expressed discontent about other economic and political issues, including unemployment, low wages and corruption. Some called for transformation of the political system, including constitutional reforms and an end to the Islamic Republic system.[11]

28. The Aban protests were not isolated events. However, their scale and the intensity of the Government response sets them apart. Beyond the protest movement that led to the establishment of the Islamic Republic in 1979, there have been protests about economic and political issues in Iran. For example, student protests dating back to 1999, protests in 2017-2018, 2021-2022 protests,[12] and significant presidential election-related protests in 2009. The latter protests were explained by Professor Ansari as "one of the most protracted challenges to the authority of the State and the most repressive crack down since the early days of the revolution".[13]

II.1.2 Conduct of the protests

29. Arrests linked to the protests occurred in at least 28 of Iran's 31 provinces.[14] Protesters included children, young men and women, including university students,[15] labourers and persons of diverse socio-economic backgrounds.

30. Crowds of people congregated in city centres and elsewhere, chanting slogans. Some had pitched tents. Traffic was blocked by drivers who left their cars stationary in the middle of the street. In some locations, tyres were set alight.[16] The protests were by and large peaceful.

[11] W Raha Bahreini, 11 November 2021; W422, STMT.
[12] Human Rights Activists in Iran (HRA), "The Uprising of the Thirst: An Analysis of the 2021 Khuzestan Protests", 2022, available at: https://www.en-hrana.org/wp-content/uploads/2021/11/Uprising-of-the-Thirsty-FINAL-for-upload.pdf.
[13] W Ali Ansari, STMT, para. 29.
[14] Amnesty International, "Trampling Humanity: Mass Arrests, Disappearances And Torture Since Iran's November 2019 Protests", AI Index: MDE 13/2891/2020, p. 17. The 28 provinces are recorded by Amnesty international as: Alborz, Ardabil, Boushehr, East Azerbaijan, Esfahan, Fars, Gilan, Golestan, Hamedan, Hormozgan, Ilam, Kerman, Kermanshah, Kurdistan, Khorasan Razavi, Khorasan South, Khuzestan, Kohgiluyeh and Boyer-Ahmad, Lorestan, Markazi, Mazandaran, Qazvin, Semnan, Sistan and Baluchestan, Tehran, West Azerbaijan, Yazd and Zanjan. See also, Transcript Raha Bahreini 11 November 2021.
[15] W422, STMT.
[16] W128, 11 November 2021; W175, 12 November 2021.

Initially protesters asked the police to support them,[17] and some were handing out flowers.[18] In some locations, slogans became aggressive, with phrases like "death to the dictator" being chanted.[19]

31. However, there were reports of violence, mainly in retaliation for violence by security forces.[20] Some protesters threw stones, mainly in self-defence.[21] As Witness 179 explained, "after they started firing at the people, we were defending ourselves with stones. We could not just stand there and be killed. The only weapon we had was stones, …while being hit with bullets, pellets, stun guns, shockers. At the beginning we did not even have stones."[22] There were individuals who burned banks, gas stations and government offices. However, the identity of these individuals is unknown. Although not dressed in attire associated with security forces, there was credible evidence that some of these were not civilian protesters but agents provocateur working with security forces.[23] In any event, the Panel considers that throwing stones, attacking banks, burning tyres, and the like, could not justify the use of lethal force and the illegal and indiscriminate forms of ammunition deployed, or the frequent use of water cannons, truncheons and batons, routinely used to beat, wound, intimidate and arrest unarmed protesters.[24]

II.1.3 Government response to protests

32. As protests intensified in most cities and elsewhere across the country, the Iranian authorities ordered 25 service providers to shut down the internet, resulting in a near-total countrywide internet blackout. Cellular operators in Iran began to disconnect services at around 2pm on 16 November. By 7pm on 16 November, there was virtually no internet or cellular communication. This continued until 27 November.[25]

33. The security forces, including the police forces (NAJA), the IRGC/Sepah, the paramilitary Basij, and other plainclothes forces, were determined to crush the protests in every way. At the outset, forces used less-lethal methods like pepper spray, teargas, water cannons, beating

[17] W125, 14 November 2021.
[18] W Raha Bahreini, 11 November 2021.
[19] W Shadi Sadr, 12 November 2021.
[20] W103, STMT.
[21] W125, 14 November 2021.
[22] W179, 13 November 2021.
[23] See e.g. W451, 4 February 2022; W5, 13 November 2021; W216, 14 November 2021; W367, 14 November 2021; W119, 14 November 2021; W183, 13 November 2021; W175, 12 November 2021.
[24] W Bahar Saba, 12 November 2021; W Bahar Saba, STMT, p. 15.
[25] W Raha Bahreini, 11 November 2021. See also, Article 19, "Iran: Tightening the Net 2020 After Blood and Shutdowns", September 2020.

people with batons, and using stun guns indiscriminately and without prior warning. The security forces quickly shifted to lethal weapons, including machine guns, Kalashnikovs, multiple shot pellets (both rubber and metal), birdshot pellets, and buckshot balls.[26] Birdshot and buckshot are designed for hunting, not policing situations. They are indiscriminate in nature and can cause grievous and painful injuries by intensively penetrating body tissue.[27] "Two level" bullets that contain TNT, explode on impact, and are "designed for killing" were also used even though this ammunition is illegal under international law.[28] They gave rise to death and serious injury to both protesters and bystanders on a wide scale.[29]

34. Plainclothes officers connected with the IRGC and Basij circulated amongst the crowds and tried to make the atmosphere tense.[30] As many witnesses confirmed, they used different strategies to foment violence and provoke attacks, including throwing water bottles,[31] stones and bricks at protesters and beating people,[32] breaking shop windows, and setting fire to buildings.[33] In some locations, criminals were brought in from the jails and used as informal militia to support the crackdown, "and they had knives, they had chains, and they started injuring people."[34] People, including children, were beaten with truncheons.[35]

35. Security forces were positioned on the rooftops of Basij bases, other administrative buildings and shopping malls, with weapons. Many witnesses confirmed that shots were being fired from the rooftops by security forces with live ammunition, killing numerous protesters and some bystanders.[36] Many victims were shot in the head or upper torso, suggesting a shoot to kill policy.[37] Some victims were shot multiple times in different parts of their bodies. Some were even shot in their backs whilst fleeing from security forces.[38] One witness stated that a member of the Basij forces told him:

> "When we were ordered, we just went ahead shot every bullet in our rounds at the people.

[26] W Bahar Saba, 12 November 2021; W303, 14 November 2021; W128, 11 November 2021; W Shadi Sadr, 12 November 2021.
[27] W Bahar Saba, 12 November 2021.
[28] W348, STMT.
[29] W Bahar Saba, 12 November 2021.
[30] W195, 11 November 2021; W175, 12 November 2021.
[31] W303, 14 November 2021.
[32] W422, 6 February 2022; W499, 6 February 2022.
[33] W227, 12 November 2021.
[34] W185, 10 November 2021.
[35] W255, 13 November 2021.
[36] W Shadi Sadr, 12 November 2021; W15, 14 November 2021; W179, 13 November 2021; W28, 13 November 2021; W5, 13 November 2021; W494, STMT.
[37] W Raha Bahreini, STMT, pp. 5-6; W366, 11 November 2021; W179, 13 November 2021.
[38] W Raha Bahreini, 11 November 2021.

> And we were shooting with Kalashnikovs. Our commander said, don't even worry about the ammunition, we have ammunition for another ten years to kill people. Just hit people so that they leave. We were told to forget the rule about not shooting people only from waist down, the order came from the highest official and he said that shoot people as much as you can in the head, as far as you can, kill; no one can question us. We ourselves were surprised, but they ordered us to go to the street. And when we went out, all we shot were shots to kill. We shot at people's heads and necks. I, myself, shot more than 30 people."

36. Bystanders were also attacked. A witness from Sanandaj explained that "shopkeepers who were standing in front of their shops were beaten with heavy chains on their heads. They were beaten in order to disperse them. Yes, it was in front of one of the shops that I saw a person I knew was shot and this person was neither a protester nor a demonstrator."[39] In Karaj, a witness explained that:

> "[a] 9-10-year-old little girl was shot; her mother was screaming and wailing. They had shot her in the back of the head; it had exited in the front of her head. I'm sure it was a sniper. Just imagine; you are walking on the side of the bridge, then a little girl gets shot right next to you. Otherwise, no one from that distance on the bridge could hit the child and only that child, in the back of her head. The girl and her mother were not among the protesters at all. They were passers-by…".[40]

37. Amnesty International has verified that there were at least 323 people killed by security forces between 15-19 November 2019,[41] though numerous reports suggest the overall figure to be significantly higher. Some reports suggest killings in the thousands, though the Tribunal was unable to confirm these precise statistics.[42] Actions by the Iranian Government have served to conceal the full extent of the killing and injury.

38. People who were injured had great difficulty securing medical attention. Hospitals were carefully monitored by security officials, and people who came there for medical help were routinely denied care and handed over to the security forces. Many of these people were detained or disappeared.[43] Consequently many injured people were afraid to go to hospital for

[39] W125, 14 November 2021.
[40] W408, STMT.
[41] W Raha Bahreini, November 2021, STMT.
[42] See e.g. Reuters, "Special Report: Iran's leader ordered crackdown on unrest - 'Do whatever it takes to end it'," 23 December 2019, available at: https://www.reuters.com/article/us-iran-protests-specialreport/special-report-irans-leader-ordered-crackdown-on-unrest-do-whatever-it-takes-to-end-it-idUSKBN1YR0QR.
[43] W408, STMT; W28, 13 November 2021; W173, 13 November 2021; W183, 13 November 2021.

help.[44] Some ambulances had been co-opted by the security forces and were helping to detain and transport protesters to police stations.[45] As one witness recalls, "we realised when they took them, the ambulance wasn't going to go to the hospital but is going to go to the police station. Afterwards we heard and we also saw that wounded people would not reach the hospital but the police station. Rather than helping them, they would arrest them."[46]

39. Security officials removed dead bodies from the hospitals without informing families.[47] The authorities routinely delayed the return to families of the bodies of persons killed during the protests.[48] Typically, bodies were sent from hospitals to the intelligence service, which then retained the bodies for several days. Families had to negotiate for the return of the bodies, and had to agree to bury the bodies quickly, without large ceremonies,[49] or were not permitted to make reference to how the family member was killed during the protests, on the tombstone.[50] Some families had to pay money to the authorities, including, for example, for the bullets used, to retrieve the bodies.[51] As one witness explained,

> "After a lot of effort and going to the IRGC Intelligence department and going to the Governors Generals office, we were allowed to receive the body of our brother. It took two days, after giving a lot of commitments. We committed not to have any interviews with foreign media and we committed not to have any interviews. After signing so many commitment papers, they released my brother's body and they caused a lot of nuisance during this time. They called us all the time."[52]

40. Thousands of people were arrested during and in the immediate aftermath of the protests, including men, women and children.[53] Individuals who had participated in the protests were identified through images taken by security officials or surveillance cameras and were arrested from their homes or workplaces and, in the cases of some children, at their schools. Many protesters and bystanders were also arrested from hospitals while seeking medical care for gunshot wounds or other injuries sustained during the protests.[54]

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[44] W5, 13 November 2021; W173, 13 November 2021.
[45] W245, 14 November 2021.
[46] W245, 14 November 2021.
[47] W294, STMT.
[48] W28, 13 November 2021.
[49] W426, STMT; W494, STMT; W337, STMT; W28, 13 November 2021; W32, 10 November 2021.
[50] W39, STMT.
[51] W494, STMT.
[52] W28, 13 November 2021.
[53] W422, STMT; W303, 14 November 2021.
[54] W Raha Bahreini, 11 November 2021.

41. Detainees were held by a variety of these same security forces, often for long periods in unofficial, secret places of detention without access to the outside world. Some were denied medical treatment, subjected to torture and ill-treatment and pressured into making confessions. As confirmed by scores of witnesses, ill treatment and torture included electric shocks, sexual violence and threats, beatings, waterboarding, and being forced into stress positions.[55] According to some witnesses, children were singled out for particularly humiliating treatment. According to one witness, "the officers were using swear words and were touching the private parts of the bodies of those children. They were asking if they had tattoos in those places and they were asking for telephone number of the mother to tell them where they were. They were sexually abusing these children. And we witnessed that."[56]

42. Families attempting to learn the whereabouts of arrested family members were often themselves threatened and harassed as a means to intimidate them into keeping quiet about the fate of their loved ones and not to pursue legal complaints. Individuals charged with specific offenses and put on trial were often denied the right to counsel and other basic fair trial rights. Some detainees were released only after they made forced confessions, and on condition that they promised never to participate in demonstrations again.[57]

II.1.4 Government response to allegations of killings, disappearances, arbitrary detentions, torture

43. Competent authorities have failed to investigate at all the allegations of unlawful killings, torture, arbitrary arrests and other abuses and crimes stemming from the protests. As a result, families do not know what happened, or the fate of their loved ones. They have not been provided with much needed closure, nor have those responsible for any wrongdoing been punished. Further, there has been no reparation to the survivors and the families of victims who perished or were injured.

44. Beyond this general failure of accountability, the Tribunal has found that government officials actively sought to supress the truth by preventing information about the events and violations from coming to light. Victims, family members and others who sought to find out what happened and to seek justice have been rebuffed and harassed, with many threatened and themselves subjected to abuses,[58] including arbitrary arrests.[59] As one witness explained,

[55] W185, 10 November 2021; W255, 13 November 2021; W26, 13 November 2021; W175, 12 November 2021; W179, 13 November 2021.
[56] W303, 14 November 2021.
[57] W422, STMT.
[58] W15, 14 November 2021.
[59] W34, 10 November 2021.

"[c]omplaints were written to several places. Not only they did not get any answer, they were even asked not to pursue the issue. The coroner's office even did not give the medical report to their family, the death report to the family."[60]

45. Many families were prevented from holding burial and memorial ceremonies. Authorities also sought to encourage family members to accept martyr status for their loved ones who had died during the protest, meaning that the person would be said to have died in the cause of defending the Islamic Republic, though many families refused because they did not want their loved ones to be labelled in this way.[61]

II.2 The structure of the Governmental apparatus in response to protests

II.2.1 Governmental structures and officials involved

46. Operatives were identified by their apparel, armour, and the transport they used as members of the IRGC, the military, paramilitary Basij forces, police and other security forces. A significant number of these operatives used police and military issue firearms. The evidence does not suggest that any private, non-State actor was involved in the violations.

47. The Iranian Government response to the protests was virtually the same in almost all the provinces and numerous cities and villages throughout the country. The Panel considers that these circumstances demonstrate a predetermined national strategy, a criminal plan involving intelligence, military, police and IRGC operatives to be implemented at national, provincial and local levels.

48. The Panel is driven to the inescapable conclusion that the criminal plan/strategy was calculated to brutally punish and deter all those who participated in or supported the protests together with members of their families. Even members of the family of a person who had died in the protest were targeted. The purpose of this strategy was to ensure that a visible example was made of all those alleged to have participated in the protests in order to ensure that the protests would disperse and would not be repeated.

II.2.2 Implicated Structures

a. The Ayatollah, Supreme Leader or Leadership

50. The Ayatollah, also referred to in the Constitution as the Supreme Leader, or the Supreme Leadership, is the head of State as described and determined by section 107 of the

[60] W15, 14 November 2021.
[61] W28, 13 November 2021.

Constitution. The Supreme Leader today is Ayatollah Ali Khamenei (the 'Ayatollah'), who has been in power since 1989. All indications are that he was in power and fully and effectively in control of the Islamic Republic at the time of the government response that is being considered by this Tribunal.

51. The Constitution empowers the Ayatollah to:

> a. delineate the general policies of the Islamic Republic after consultation with the Nation's Exigency Council whose members are, in any event appointed by him.[62]
>
> b. supervise the proper execution of the general policies of the system [63]
>
> c. assume supreme command of the armed forces;[64]
>
> d. mobilise the armed forces;[65]
>
> e. appoint and dismiss a number of officials crucial to the determination and implementation of the criminal plan described earlier namely, the fuqaha' on the Guardian Council, the supreme judicial authority of the country, the head of the radio and television network, the chief of the joint staff, the chief commander of the Guards Corp, as well as the supreme commanders of the armed forces;[66] and
>
> f. confirm and render effective the decisions of the Supreme Council of National Security (whose role is discussed below).[67]

52. The totality of the evidence makes it clear that the Ayatollah was highly likely to have been the leading perpetrator in the design, determination and implementation of the criminal plan just described, at every level. On 19 November 2019, the Ayatollah, referring to the Government's response to the protests, described the protest action in these words: "[t]he [criminal] acts committed during the past few days were not the work of the people; it was the work of those [bent on threatening] security... We pushed back the enemy in the field of military, political and security warfare."[68] The Ayatollah, in the Panel's view, as appears from this statement, took full responsibility for the brutal Government response, but justified the brutality by claiming that this was in response to an enemy attack that had been pushed back.

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[62] Article 110-1 read with Article 112.
[63] Article 110-2.
[64] Article 110-4.
[65] Article 110-5.
[66] Article 110-6.
[67] Article 176.
[68] W Raha Bahreini, STMT, p. 12.

53. The Panel has no evidence of any enemy attack and must conclude that the attempted justification was wholly unsubstantiated and demonstrably untrue. Despite the enormous power he wielded, there is no evidence of any effort by the Ayatollah to stop the targeted killings, unlawful use of force, arbitrary arrests or torture. To the contrary, the Ayatollah clearly regarded the protesters as "the enemy". The ordinary citizens who attended the protests were the political enemy that had to be pushed back "in the field of military, political and security warfare."[69]

b. The President

54. The President is the Government official next in the hierarchy. The Constitution provides him with the authority to head the executive (the cabinet of ministers), except in matters concerned with the office of the Ayatollah. It is significant, but not dispositive, in the Panel's view, that he does not head the executive in all matters. In those matters allocated to the Ayatollah in the Constitution, including the security instruments discussed earlier, the President is undoubtedly subject to the authority of the Ayatollah. He is effectively the head of Government comprising all ministers.

55. The incumbent at the time of the unrest was Hassan Rouhani. One of his most significant functions that directly concerns the response to the unarmed Aban protesters is to preside over the National Security Council. It was almost certainly in that capacity that he stated, on 4 December 2019, that "it has been made clear by the Legal Medicine Organization which kinds of bullets were used. These bullets have been identified and they do not belong to the police, Revolutionary Guards or the Basij."[70] This claim flies in the face of all the evidence presented to the Panel that shows that the Iranian security forces were responsible for the anti-protest violence.

56. Indeed, as outlined above, two weeks earlier, on 19 November 2019, the Ayatollah, the President's *de jure* and *de facto* authority, admitted that the security forces had pushed back the protesters whom he regarded as "the enemy." Both the statements of the Ayatollah and the President cannot be true. Moreover, if indeed it is true that that the security forces of Iran were not responsible for the attacks on the protesters, one would have expected that the security forces would have confronted these unknown groups and gained control of the streets. There is no evidence of any non-security force involvement in quelling the protests or

[69] W Raha Bahreini, STMT, p. 12.
[70] W Raha Bahreini, STMT, p. 11.

any action by the Iranian security forces taken to protect the protesters from any third-party force.

57. The Office of the Presidency was doubtless involved in the orchestration of the violent response to the protests, especially in its role as the office presiding over the National Security Council. The President's statement suggesting the Iranian Government was not involved is a clear effort to cover up that involvement. There is no evidence of any effort by the President or his office to stop the targeted killings, unlawful use of force, arbitrary arrests, or torture. The denial of security force involvement is not credible.

c. The Supreme National Security Council (The Security Council)

57. This all-powerful Council is constituted by section 176 of the Constitution to:

> a. determine defence and national security policies within the framework of general policies determined by the Ayatollah;
>
> b. coordinate activities relating to politics, intelligence, social, cultural, and economic fields "in regard to" general defence and security policies; and
>
> c. exploit material and intellectual resources to deal with both internal and external threats.

58. The Council comprises the heads of all three branches of Government, (the Executive, the Judiciary and the Consultative Assembly), the National Chief of the Supreme Command Council of the Armed Forces, the officer in charge of planning and budget affairs, two representatives nominated by the Ayatollah, the ministers of Foreign Affairs, Interior, and Information, a minister concerned with the subject at hand, as well as the highest-ranking officials from the Armed Forces and the IRGC.

59. The Panel does not have any evidence of any meeting of the National Security Council at the relevant time. However, it is inconceivable that this Council was not involved in making decisions and determining the strategic and detailed response to the protests at every level of Government. The protests undeniably and intimately concerned "national security policies," general defence and security activities relating to "politics, intelligence, social, cultural and economic fields", as well as internal and external threats to security.

60. As understood from the evidence and Chapter VII of the Constitution, coordinated implementation of strategies determined at the National Security Council level occurs through the co-operation and participation of the Provincial and local level Councils. These Councils

are supervised by Provincial, City and Divisional Governors who, in their turn, are subject to the Supreme Council of the Provinces that makes binding laws in relation to all the provinces. The responsibility of officials of this Supreme Council is clear and cannot be gainsaid.

61. On the basis of the totality of the evidence, the entrenched formal roles entrusted to the National Security Council and the absence of any evidence suggesting otherwise, the Panel determines that the National Security Council bears responsibility for either ordering, facilitating, acquiescing or abjectly failing to exercise due diligence to stop the violent crackdown on protesters and others.

II.3 The status of the Constitution of the Islamic Republic of Iran

62. The Constitution of Iran was adopted after the Iranian revolution of 1979 and amended ten years later.[71]

63. The Constitution decrees that all law in Iran must be consistent, not only with the values, principles and rights enshrined in it, but also with the principles and values of Islam. Article 4 of the Constitution is clear:

> "All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the "Fuqaha"' of the Guardian Council are judges in this matter."

64. This provision is best understood in the light of the opening to the preamble that reads:

> "The Constitution of the Islamic Republic of Iran sets forth the cultural, social, political and economic institutions of the people of Iran, based on Islamic principles and rules, and reflecting the fundamental desires of the Islamic people."

65. With regards to the nature of the Guardian Council and the Fuqaha', the Panel notes first that the Guardian Council is an extremely powerful entity,[72] whose function is "to safeguard the Islamic ordinances and the Constitution, in order to examine the compatibility of the legislation passed by the Islamic Consultative Assembly with Islam..." [73] The Council comprises twelve members, six of whom are "Adil Fuqaha"', who are to be conscious of the

[71] Iran (Islamic Republic of) 1979 (rev. 1989).
[72] Created by Article 91 of the Constitution
[73] The Islamic Legislative Assembly "consisting of the elected representatives of the people" exercises the legislative function (see article 58 of the Constitution).

needs and issues of the day from an Islamic perspective. They are selected by the Supreme Leader or Leadership already described. The other six members are jurists specialising in different areas of the law, indirectly elected from Muslim jurists nominated by the Head of the Judicial Power. The Adil Fuqaha' and only the Fuqaha' (appointed by the Ayatollah) determine whether legislation passed by the Islamic Consultative Assembly complies with the tenets of Islam. Significantly, the Jurist component of the Guardian Council are wholly excluded from this determination.

66. According to Article 2 of the Constitution, "[t]he Islamic Republic is a system based on belief in" amongst other things "the exalted dignity and value of man, and his freedom coupled with responsibility before God; in which equity, justice, political, economic, social and cultural independence, and national solidarity are secured by recourse to ...continued ijtihad of the Fuqaha' possessing necessary qualifications exercised on the basis of the Qur'an and Sunah...."

67. It follows for the purpose of this judgment that Islamic values may be superior to Constitutional values. But the question of whether Islam is superior or not comes into play only if there is a conflict between Islam and the Constitution as adopted. The Panel considers, however, that the Constitution has been wholly approved by all the relevant political and religious structures in the Islamic Republic. In other words, it is reasonable to presume that, ordinarily, the entrenched rights are consistent with Islam. This presumption underpins the adoption of the Constitution by the religious structures, especially the Ayatollah.

68. Chapter III of the Constitution, entitled "The Rights of the People", comprises twenty-four rights.[74] The right to protest is expressly granted in Article 27, and is explained below.

69. The Constitution not only outlaws but also decrees punishment for perpetrators of unlawful arrest, torture and the aspersion of the dignity of arrested people in violation of Articles 32, 38 and 39. The inescapable inference to be drawn from these articles is that the perpetrators of violations must, constitutionally-speaking, be investigated and prosecuted. As the evidence shows, the Iranian Government failed to make even a superficial attempt to comply with these constitutional imperatives. Murder and assault are also crimes that warrant appropriate follow-up in terms of Iranian law more generally. Similarly, there is no evidence that any investigations or prosecutions took place in response to these crimes.

II.4 Rights violated and crimes committed

[74] The Constitution, Arts. 19-42.

II.4.1 The right to protest and principles related to the use of less lethal force during protests

a. The right to protest

70. The right to protest encompasses the right to express dissent and to voice grievances, the ability to share views and opinions even when those views go against government policy or majority opinion, and the right publicly to demand that government authorities resolve problems and are accountable for their actions. It stems from and denotes both the individual and collective exercise of human rights, including the rights to freedom of expression, freedom of peaceful assembly and of association, the right to take part in the conduct of public affairs, and the right to freedom of thought. It is also essential for securing all human rights, both civil and political, and economic, social and cultural rights.

71. Article 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iran,[75] specifies that: "The right of peaceful assembly shall be recognised. No restriction may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." Key standards related to the implementation of Article 21 ICCPR include the following.

72. A peaceful assembly is an assembly that is not violent. The presence of isolated violent protesters amongst a peaceful crowd,[76] or the presence of persons who instigate violence on behalf of the authorities does not change the character of a peaceful protest and will not suffice to taint an entire assembly as non-peaceful.

73. Protests that concern ideas that are perceived as controversial by the Government, or which cause some disruption like disrupting traffic or economic activity, are not unlawful, and must be managed by governments in accordance with the ICCPR.[77]

74. The use of the internet, social media platforms and other technology by protesters to share information about protests is not unlawful. Technology that facilities protests and other gatherings should not be banned or curtailed.[78] The UN Human Rights Council has called upon "all States to refrain from and cease measures, when in violation of international human

[75] International Covenant on Civil and Political Rights (Adopted 16 December 1966, entered into force 23 March 1976), Ratified by Iran on 24 June 1975.
[76] General Comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Doc. CCPR/C/GC/37, 17 September 2020, paras 17-19.
[77] Ibid, para. 7.
[78] Ibid, para. 34.

rights law, that are aimed at shutting down the Internet and telecommunications, or at otherwise blocking Internet users from gaining access to or disseminating information online, or from gathering in online spaces."[79]

75. The right to protest as part of the right to freedom of assembly requires that States allow peaceful assemblies without unwarranted interference: "States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organisers without legitimate cause."[80] States must also facilitate the exercise of the right and protect the participants of protests,[81] meaning that they "must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security."[82] States' obligations in respect of peaceful assemblies includes spontaneous assemblies, which are typically direct responses to current events, whether coordinated or not.[83]

76. Government restrictions on the right to protest must meet these requirements:

> **legality**: clear and foreseeable legislation that is effective and appropriate but not punitive;
>
> **necessity**: restrictions must be imposed only when strictly necessary and only to the extent required for the performance of the duty to achieve a lawful and legitimate law enforcement objective;[84] and
>
> **proportionality**: the type and level of the force used and the harm that may reasonably be expected to result from it must be proportionate to the threat posed.

77. In no instance should the force used be excessive in relation to the legitimate objective to be

[79] UN Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, UN Doc A/HRC/44/L.11 (13 July 2020), para. 13.
[80] General comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Doc CCPR/C/GC/37 (17 September 2020), para. 23.
[81] Ibid, para. 8.
[82] Ibid, para. 24.
[83] Ibid, para. 14.
[84] *Code of Conduct for Law Enforcement Officials*, General Assembly resolution 34/169, annex (17 December 1979), Art. 3.

achieved.[85] States must exercise precaution[86] and non-discrimination.[87] The role of police during protests is to ensure that peaceful protests can take place unhindered and to de-escalate situations that may lead to violence.[88] The interests of national security, public safety, and public order (*ordre public*) should be interpreted narrowly to give effect to the rights set out in Article 21.

b. Principles related to the use of less lethal force during assemblies

78. Law enforcement officials shall, as far as possible, make use of non-violent means before resorting to the use of force. Force can only be resorted to when persuasion, negotiation, mediation and other non-violent means remain ineffective or have no promise of achieving the intended legitimate law enforcement objective.[89]

79. Only the minimum force may be used:

> "Law enforcement officials may not use greater force than is proportionate to the legitimate objective of either dispersing an assembly, preventing a crime or effecting or assisting in the lawful arrest of offenders or suspected offenders. Domestic law must not grant officials largely unrestricted powers, for example to use 'force' or 'all necessary force' to disperse assemblies, or simply to 'shoot for the legs'. In particular, domestic law must not allow use of force against participants in an assembly on a wanton, excessive or discriminatory basis."[90]

80. As far as possible, force should be directed against the specific individual or group engaged in or threatening violence, not indiscriminately against a predominantly peaceful crowd. Force likely to cause more than negligible injury should not be used against individuals or groups who are passively resisting.

81. Tear gas, water cannons and other "less-lethal" weapons that have an indiscriminate effect on

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[85] Ibid, Commentary on Article 3.

[86] States must take all necessary precautions to prevent or at least minimise the risk of recourse to force by law enforcement officials and members of the public, and to minimise the severity of any injury that may be caused. See *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, welcomed by the General Assembly in its resolution 45/166, adopted by the Assembly without a vote on 14 December 1990, Principle 5(b); *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, UN Doc A/HRC/26/36 (1 April 2014), para. 63.

[87] *Code of Conduct for Law Enforcement Officials*, General Assembly resolution 34/169, annex (17 December 1979), Art. 2; General comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Doc CCPR/C/GC/37 (17 September 2020), para. 36-44.

[88] General comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Doc CCPR/C/GC/37 (17 September 2020), para. 78.

[89] *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, welcomed by the General Assembly in its resolution 45/166, adopted by the Assembly without a vote on 14 December 1990, Principle 4.

[90] General comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Doc CCPR/C/GC/37 (17 September 2020), para. 79.

a crowd should be used only as a last resort after a clear warning has been issued, and the crowd has been given an adequate opportunity to disperse.[91] Tear gas should never be used in enclosed spaces.

82. Firearms are inappropriate to police an assembly and must never be used simply to disperse protesters. It is never lawful to fire indiscriminately or to use firearms in fully automatic mode when policing an assembly. To comply with international law, use of firearms by law enforcement officials against protesters must be limited to targeted individuals only if strictly necessary to confront an imminent threat of death or serious injury.[92] This minimum threshold should also apply to the firing of rubber-coated metal bullets. Security forces preparing to respond to protests where violence is likely, must plan for adequate medical facilities to be available.[93]

83. The use of live ammunition against protesters, even if they set fire to vehicles and throw stones at officers, is disproportionate.[94] In *Andreou v. Turkey*, a human rights case in which protesters were said to have had sticks and iron bars and had been seen throwing stones at the Turkish forces, it was held that the firing of rounds into the crowd constituted disproportionate use of force, even though the demonstrators were throwing stones at the Turkish forces. The firing of live ammunition could have caused serious injury to demonstrators, bystanders or others and violated the right to life.[95]

84. Medical assistance must be provided to any person injured or affected as a result of protests at the earliest possible moment.[96] The "duty to assist applies without discrimination of any kind. Thus, assistance shall be duly provided, irrespective of whether the injured person is a suspected offender. Distinctions with regard to medical assistance can be justified only on medical grounds, like urgency. Access to medical assistance should therefore be provided on the basis of the severity of the injury."[97]

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[91] Ibid, para. 87. See also, United Nations Human Rights Guidance on Less-Lethal Weapons in Law-Enforcement (2020), available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/LLW_Guidance.pdf.
[92] See the *Code of Conduct for Law Enforcement Officials* (1979), Art. 3; *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1989), Principle 9; HRC, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para. 12. See also *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, UN Doc. A/HRC/31/66 (4 February 2016), para. 51.
[93] General comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Doc CCPR/C/GC/37 (17 September 2020), para. 88.
[94] UN Office of the High Commissioner for Human Rights, "UN experts condemn deadly police response to protest against copper smelting plant in India, call for probe", India protest, Press Release, 31 May 2018.
[95] *Andreou v. Turkey*, Appl. No. 45653/99 (ECtHR, 27 October 2009), paras 54, 57.
[96] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 5(c).
[97] United Nations Human Rights Guidance on Less-Lethal Weapons in Law-Enforcement (2020), para. 4.6.1.

c. Iranian law related to the right to protest and the use of force

85. Article 20 of the Constitution of the Islamic Republic of Iran[98] specifies that: "All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria."

86. Article 27 of the Constitution indicates: "Public gatherings and marches may be freely held, provided arms are not carried and that they are not detrimental to the fundamental principles of Islam." As there are no criteria in the Constitution or elsewhere on what the "fundamental principles of Islam" would require, the provision introduces vagueness into the rights individuals purportedly possess and has the potential to be abused.[99]

87. According to the Law on Operation of Political Groups and Parties of 2016, assemblies must obtain prior permission. The law only allows established political parties to request permission to hold them. Under this law, political parties that have a licence to operate within Iran's laws have a series of 'rights and privileges', one of which is holding demonstrations and assemblies with the knowledge and/or permission of the Ministry of Interior and the Governor's Office in question. The law requires the Secretary of the Party to apply for the required permission at least 72 hours before the planned assembly. Only those assemblies where the organisers, the subjects and the chants are vetted in advance by a government committee, will be authorised.[100]

88. In practice, authorisations are not provided,[101] and, in any event, protests, such as the Aban protests that did not emanate from an established political party, could not be authorised. In these circumstances, any peaceful protest was illegal and a political offence.[102] Those participating in peaceful but unauthorised assemblies are often charged and sentenced to prison terms under Article 610 of the Islamic Penal Code and other similar provisions.[103]

89. Authorities can disperse and quash assemblies that are illegal, even when they are peaceful. Under Article 4 of Iran's Law on the Use of Weapons by Officers of the Armed Forces, in an 'urgent situation', law enforcement officers may use their weapons upon the order of the

[98] Iran (Islamic Republic of) 1979 (rev. 1989).
[99] W Bahar Saba, 12 November 2021.
[100] W Shadi Sadr, 12 November 2021.
[101] Ibid. See also W Bahar Saba, 12 November 2021.
[102] The 2016 Law on Political Crimes, available at: https://rc.majlis.ir/fa/law/show/968421.
[103] Islamic Penal Code, Art. 610: "When two or more individuals collude and conspire to commit crimes against the national or foreign security of the country or prepare the facilities to commit the aforementioned crimes, unless they are regarded as *mohareb*, shall be sentenced to two to five years' imprisonment" (Translation provided by www.iranhrdc.org, available at: https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/).

commander of the operations, to restore order and control illegal demonstrations, and to quell riots and revolts that cannot be controlled without the use of weapons in the following circumstances: other equipment has been used pursuant to regulations to no effect; and prior to using weapons, a warning and ultimatum has been given to the rioters and agitators regarding the use of weapons. It is unclear what would constitute an 'urgent situation'.

90. Regarding armed protests, Article 5 provides that military and law enforcement officers may use weapons in order to restore order and security in illegal armed demonstrations and in armed riots and revolts. Upon the order of the commander of the operations, these officers must swiftly take action to restore order and security, disarm the individuals, collect their ammunitions, arrest and present them to judicial authorities. In all of the above instances, it is necessary for the officers to, first, have no option but to use weapons, and second, to the extent possible, fire: a) a warning shot; b) below the waist; c) above the waist.

91. The responsibility of determining which assemblies fall within Article 5 where firearms can be used rests with the Minister of the Interior in consultation with the Supreme National Security Council. On that basis, the local Government, at provincial, city and district levels, or in their absence, their political deputies, in consultation with local Security Councils, determine whether to grant permission to use force.[104] There is no transparency concerning the basis or the criteria by which a determination is made as to when an assembly is considered to have reached a level where firearms can be used.[105] The absence of a clear definition of necessity – the circumstances in which officers have no option but to use the weapons - introduces vagueness and contingency into the provision.[106] Furthermore, unlike international standards, under Iranian law there is no requirement that lethal force is restricted to circumstances in which there is an imminent risk, and there is no requirement of proportionality.[107]

d. Application of the right to protest and principles related to the use of force during the Aban protests

92. During and following the protests, the authorities, in a coordinated strategy to undermine the protests made disparaging statements in the media accusing protesters of sowing chaos and being led by "counter-revolutionary" movements. This pushed the narrative that the protests were illegal, illegitimate and had been orchestrated by "foreign enemies".

93. Immediately after the protests started, the Security Council held sessions at the provincial and

[104] W Shadi Sadr, 12 November 2021.
[105] W Bahar Saba, 12 November 2021.
[106] W Shadi Sadr, 12 November 2021.
[107] W Bahar Saba, 12 November 2021.

town levels.[108] The general order to use firearms against protesters was given by the Ministry of Interior in consultation with the Security Council and it was communicated to the provinces and governors.[109] After the permission was given, local authorities may have had some discretion about whether and how firearms should be used, depending on exigencies in the local context.[110]

94. On 17 November 2019, Iran's Supreme Leader described the protesters as "villains" who were incited to violence by counter-revolutionaries and foreign enemies of Iran. He ordered security forces to "implement their duties" to end the protests, effectively giving the green light for any brutality to continue.

95. There was overall, a clear pattern of force being used to disperse overwhelmingly peaceful protests in breach of the obligation of the Iranian Government to allow and respect freedom of assembly. This resulted in a variety of additional human rights violations examined later in this Judgment. According to experts who studied the pattern of the use of force, the aim of the use of force was to disperse and quash the protests, not to address insecurity, de-escalate tensions or otherwise to carry out legitimate law enforcement activity.[111] Oftentimes, the security forces deliberately escalated tensions in utter disregard of what the law required them to do. The force used during the Aban protests was almost always impermissible under international standards related to the use of force: both less-lethal and lethal weapons were used indiscriminately and without consideration of necessity and proportionality.

96. Evidence of teargas use was given by witnesses from Shiraz,[112] Kermanshah,[113] Sanandaj,[114] Shahriyar,[115] Marivan,[116] Behbehan,[117] Qom,[118] Mashhad,[119] Masjid Suleiman,[120] Karaj,[121]

[108] W407, 4 February 2022.
[109] W Shadi Sadr, 12 November 2021.
[110] W Shadi Sadr, 12 November 2021.
[111] W Bahar Saba, 12 November 2021.
[112] W103, STMT; W183, 13 November 2021; W337, 14 November 2021; W400, STMT; W308, STMT; W285, STMT; W183, STMT; W147, STMT.
[113] W175, 12 November 2021; W241, STMT; W171, STMT; W127, STMT.
[114] W497, STMT; W422, STMT; W225, STMT; W125, STMT; W116, STMT.
[115] W173, 13 November 2021; W367, STMT; W344, STMT; W173, STMT.
[116] W195, STMT.
[117] W156, STMT; W12, STMT; W8, STMT.
[118] W253, STMT.
[119] W403, STMT; W240, STMT.
[120] W287, STMT.
[121] W306, STMT; W266, STMT; W265, STMT; W257, STMT; W248, STMT; W243, STMT; W242, STMT; W224, STMT; W192, STMT; W163, STMT; W132, STMT; W107, STMT; W104, STMT; W6, STMT.

Isfahan,[122] Ahvaz,[123] Arak,[124] Andimeshk,[125] Bukan,[126] Baharestan,[127] Baluchistan,[128] Fardis,[129] Khademabad, [130] Khuzestan, [131] Nazarabad, [132] Nasirabad, [133] Najafabad, [134] Gatchsaran, [135] Zahedan,[136] Sadra,[137] Urmia,[138] Shahr Ghods,[139] Andisheh,[140] and Tehran.[141]

97. This evidence showed that tear gas was indiscriminately used by members of the security apparatus, without prior warning. As one witness, a police officer, explained, "[t]hey would fire it in any way they could. It would hit the people's heads, or would fall in front of their feet. They would fire it anyway, no matter where it would fall".[142] According to one witness who was present in Masjid Suleiman: "[t]hey showed no mercy to anyone. They would hit anyone, from an old man to a child, who was in front of them. It didn't matter for them whether someone had done something wrong or not. They fired tear gas directly on the bodies of children. One of them was my own brother whom a tear gas (bullet) had hit in the abdomen. It did not cause a wound, but made his abdomen black and blue."[143] Another witness from Tehran, explained that: "Officers would sit and fire tear gas directly at people. I saw a few hit some guy's face and stomach. There was no way the injured person could escape on their own. We and other young people would come and drag them to the side. Many had their lungs and eyes contaminated and injured. They sprayed tear gas and pepper on people's faces. I saw many people under the age of 18, injured by tear gas."[144]

98. A witness in Nazarabad said: "Two of the men carrying batons caught a 28-30-year-old man and handed him over to a plainclothes man. He was a large man with stubble. He grabbed the

[122] W213, STMT; W198, STMT; W140, STMT; W135, STMT; W122, STMT.
[123] W329, STMT; W115, STMT.
[124] W299, STMT; W226, STMT.
[125] W279, STMT.
[126] W437, STMT.
[127] W301, STMT; W245, STMT.
[128] W128, 11 November 2021.
[129] W216, STMT; W117, STMT; W10, STMT.
[130] W112, STMT.
[131] W281, STMT.
[132] W268, STMT.
[133] W128, STMT.
[134] W250, STMT; W208, STMT.
[135] W235, STMT.
[136] W300, STMT.
[137] W167, STMT.
[138] W182. STMT.
[139] W143. STMT.
[140] W119. STMT.
[141] W50, STMT; W5, 13 November 2021; W267, STMT; W212, STMT; W210, STMT; W196, STMT; W44, STMT.
[142] W424, STMT.
[143] W287, STMT.
[144] W210, STMT.

collar of that man. He had tear gas. He quickly sprayed the tear gas in the eyes of that man. He started shouting: 'My eyes are burning; I have gone blind.'"[145] According to another witness, who was present at the scene of the protests in Golestan on 18 November 2019, security forces used a lot of teargas, even on people who were running away and taking shelter in nearby homes.

99. Security forces broke the windows of those homes, "and they would even shoot inside the homes and throw tear gas in them. I saw that because of the tear gas in the houses, there were older women who couldn't breathe who had to leave the house. There were babies who would have to be taken out."[146] Thus, teargas was being used not only to disperse people, but also as a weapon, on persons who were retreating from the scene.[147] A witness to the protests in Karaj indicated that teargas had been thrown at a clinic, because security officials saw that some people had been brought there.[148] A witness from Sanandaj explained that teargas had been thrown into an enclosed shop.[149]

100. Another witness from Gatchsaran explained that teargas had been thrown directly into his house.[150] In Najafabad, security forces tossed tear gas canisters into entrances of shopping centres.[151] In Karaj, a witness recounted: "There was a woman with two very small kids at a bus stop. The kids were probably in class one of primary school. They had taken refuge there out of fear of the police. (The police) fired tear gas precisely inside the bus stop. It was really strange. They had no mercy for the mother and her kids. They were on foot. I was watching it all."[152]

101. Witnesses reported the use of water cannons to disperse crowds in Bushehr,[153] Fardis,[154] Nasirabad,[155] Isfahan,[156] Kermanshah,[157] Omidieh,[158] Sanandaj,[159] Shahriyar,[160] Shiraz,[161]

[145] W268, STMT.
[146] W337, 14 November 2021.
[147] Ibid. See also W290, STMT.
[148] W243, STMT.
[149] W497, STMT.
[150] W235, STMT.
[151] W208, STMT.
[152] W107, STMT.
[153] W351, STMT; W256, STMT.
[154] W216, STMT.
[155] W128, STMT.
[156] W140, STMT.
[157] W3, STMT; W127, STMT; W175, 12 November 2021.
[158] W8, STMT.
[159] W497, STMT; W225, STMT; W125, STMT.
[160] W290, STMT; W344, STMT.
[161] W285, STMT; W183, 13 November 2021.

Tehran.[162] According to one witness from Sanandaj, the water used was so hot it burnt his hand.[163] Another witness in a different location explained the water was cold.[164] In a number of videos, security forces can be seen using water cannons against peaceful protesters who were merely chanting slogans.[165]

102. Security officials, including special forces, riot police and Basij units used batons and other equipment including thick chains, sticks, their shields and paintballs to beat and injure protesters and bystanders, including children and elderly people, often breaking through the crowds on motorcycles. Beatings were typically a prelude to arrests and further violence in the context of interrogations. A witness from Sanandaj explained: "Even an old man was beaten by batons on his head and face and was brought down. He was passing from there; he had nothing to do there. He was not a protester, nothing."[166]

103. Beatings of protesters and bystanders was routine, and was reported in places like Ahvaz,[167] Arak, [168] Baharestan, [169] Behbehan, [170] Bushehr, [171] Esfahan, [172] Fardis, [173] Isfahan, [174] Islam Shahr, [175] Karaj, [176] Kermanshah, [177] Khorramabad, [178] Mahshahr, [179] Mallard, [180] Marivan, [181] Masshad,[182] Najafabad,[183] Qom,[184] Rasht,[185] Sadra,[186] Sanandaj,[187] Shahr Ghods,[188] Shahryar,[189]

[162] W44, STMT; W210, STMT; W304, STMT; W505, STMT; W5, 13 November 2021.
[163] W125, STMT.
[164] W216, 14 November 2021.
[165] W Bahar Saba, 12 November 2021.
[166] W11, STMT.
[167] W115, STMT; W501, STMT.
[168] W226, STMT; W299, STMT.
[169] W301, STMT.
[170] W179, STMT.
[171] W351, STMT.
[172] W237, STMT; W218, STMT.
[173] W117, STMT; W154, STMT; W216, STMT.
[174] W191, STMT; W198, STMT; W213, STMT; W255, STMT.
[175] W194, STMT.
[176] W107, STMT; W132, STMT; W163, STMT; W224, STMT; W243, STMT; W248, STMT; W306, STMT; W408, STMT.
[177] W241, STMT; W435, STMT; W175, 12 November 2021.
[178] W350, STMT.
[179] W197, STMT.
[180] W416, STMT.
[181] W260, STMT.
[182] W137, STMT; W240, STMT.
[183] W208, STMT.
[184] W253, STMT.
[185] W227, 12 November 2021.
[186] W337, 14 November 2021.
[187] W11, STMT; W125, STMT; W422, STMT; W497, STMT; W499, STMT; W125, 14 November 2021.
[188] W143, STMT.
[189] W290, STMT.

Shiraz,[190] Tehran,[191] Urmia,[192] Zahedan.[193]

104. Protesters were beaten indiscriminately. The witnesses provided many examples of officials beating anyone in their reach, reckless as to whether significant injury including death was caused. Protesters were even beaten with batons on the heads and neck.[194] A witness from Tehran described how "[t]he beatings were all over the body but if someone would fall down, they were beaten up on the head as well. I saw 2-3 people with broken skull."[195] A witness described events in Arak, explaining that "They beat up an 18-year-old girl; they thrashed her as if she was not supposed to live. They hit people's faces with batons, such that it could destroy their faces but they did it anyway."[196]

105. A witness describing events in Ahwaz indicated that "I saw them beating up a young man on Ayatollah Behbahani expressway; they broke his nose; his face was full of blood; they put him in the car and took him away."[197] Another witness to events in Tehran explained that "The first time my friend saw his son, he said that he had been beaten so badly that he had no teeth, his teeth were broken."[198] A witness from Isfahan explained, "A woman with a child came towards the officers of Nopu and said that she was just passing through the road. But they did not allow her to talk and hit her on the shoulder and head with baton. They pushed the tip of the baton on the belly of the child with such force that the child fell on the ground. The mother wanted to explain to the police that she was only a passer-by and was taking the kid to school or home, or something like that. But she was not given a chance and that's how they were beaten up."[199]

106. Persons who were already restrained and posed no threat were beaten.[200] A witness from Isfahan explained that he "saw a couple of people getting injured or falling on the ground and the police or the anti-riot men picking them up, dragging them on the ground and beating the hell out of them. They never thought even for a moment that those people were injured and they needed a stretcher."[201] A witness from Karaj explained that: "There was a paralysed man

[190] W183, STMT; W303, STMT; W607, STMT; W609, STMT.
[191] W121, STMT; W210, STMT; W505, STMT; W50, STMT; W294, STMT.
[192] W182, STMT.
[193] W300, STMT.
[194] W137, STMT.
[195] W50, STMT.
[196] W226, STMT.
[197] W115, STMT.
[198] W121, STMT.
[199] W255, STMT.
[200] W Bahar Saba, 12 November 2021.
[201] W198, STMT.

whose right hand had paralysis. He was born crippled in one leg. They beat him up on his (healthy) leg and destroyed it too. They snatched him from his wheelchair and threw him in the gutter."[202]

107. Lead pellet guns including prohibited multiple-shot pellets were used frequently by the police, the Basijis, those from the Intelligence, and the Sepahis in all parts of the country including Andisheh,[203] Behbahan,[204] Fardis,[205] Isfahan,[206] Karaj,[207] Kermanshah,[208] Khademabad,[209] Mahshahr,[210] Mallard,[211] Marivan,[212] Mishkin Dasht,[213] Nasirabad-Sarbaz,[214] Omidieh,[215] Sanandaj,[216] Shiraz,[217] and elsewhere. Pellets were shot directly at protesters, bystanders, including against children and persons who were attempting to flee the scene.[218] Pellet shots were fired directly at people's heads, faces, chests and legs.[219] Some of the persons who were shot died of their injuries. There are many reports of persons including children being shot with pellets in their eyes, resulting in lost vision.[220] Some pellet guns also fired plastic bullets.[221]

e. Findings on the Right to Protest and the Use of Less-Lethal Force

106. In breach of the right of peaceful assembly set out in Article 21 of the ICCPR, the authorities failed to respect the protesters' right to express their opinions or their right to gather in public to individually and collectively protest Government policies. To the contrary, peaceful protesters were treated as criminals from the outset for exercising their human rights to peacefully protest.

107. Security forces failed to plan in advance, negotiate with protesters, or use de-escalation techniques to control the protest and ensure that the protest could continue peacefully. Instead, security forces targeted peaceful protesters intentionally and quickly made a peaceful

[202] W248, STMT.
[203] W119, STMT; W196, STMT.
[204] W12, STMT.
[205] W6, STMT; W117, STMT; W216, STMT.
[206] W309, STMT.
[207] W104, STMT; W107, STMT; W192, STMT; W224, STMT.
[208] W127, STMT.
[209] W112, STMT.
[210] W197, STMT.
[211] W138, STMT.
[212] W195, STMT.
[213] W5, STMT; W10, STMT.
[214] W128, STMT.
[215] W8, STMT.
[216] W11, STMT; W125, STMT; W225, STMT.
[217] W2, STMT; W147, STMT; W183, STMT.
[218] W197, STMT.
[219] W5, STMT.
[220] W Bahar Saba, 12 November 2021; W147, STMT.
[221] W119, STMT.

situation very dangerous. The criminalisation of the right to protest was total. The authorities sought to quash the protests by any means and to punish the protesters by excessive, unnecessary and unjustified force. Consequently, the violation of the right to protest resulted not only in violations of Article 21 of the ICCPR, but led to the violation of a range of additional rights.

108. Moreover, State authorities made no effort to restrict the use of less-lethal weapons like teargas, water cannons, truncheons and pellets only to circumstances in which they were strictly necessary. Nor were warnings issued before the use of force as is required.[222] The types of weapons used and the manner in which they were used demonstrates that security forces either meant to cause the injury or death of the victims, or were aware that injury or death would occur in the ordinary course of events and did not care. Security forces resorted to force quickly and without warning. Security forces used force against protesters to intimidate them, coerce them into stopping the protest, and punish them for daring to participate in what the authorities considered to be an illegal protest. The evidence demonstrates that the authorities were routinely seeking to cause as much harm as possible, without any effort to avoid the use of these dangerous weapons even against children, the elderly or those with disabilities.[223]

II.4.2 The right to life and principles related to the use of lethal force during protests

a. Violations of the right to life

109. Article 6(1) of the ICCPR specifies that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." The right to life belongs to everyone without distinction or discrimination and concerns the right of individuals 'to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.'[224] In order to be lawful, any deprivation of life must have a legal basis and be reasonable, necessary, and proportionate. The prohibition on the arbitrary deprivation of life allows for no exception, not even in a state of war or a national emergency.[225] It also has peremptory status.[226]

110. The excessive use of force by security and law enforcement officials can breach the right to

[222] W Shadi Sadr, 12 November 2021.
[223] W Bahar Saba, 12 November 2021.
[224] HRC, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para. 3.
[225] ICCPR, Art. 4.
[226] HRC, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para. 68.

life. States' positive obligations to protect life include preventing arbitrary killings by security forces and other groups under their control.[227] States are obliged to take all necessary measures to protect life and must ensure that the conduct of law enforcement officials complies strictly with the relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Under these standards, law enforcement officials may use force only in exceptional circumstances and only as a matter of last resort, in compliance with the principles of necessity, proportionality and precaution.

111. Due to the high risk of loss of life arising from the use of firearms, international law establishes a distinctly higher threshold for their use, as well as the use of any other type of force that carries a high likelihood or risk of death. As set out in principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the intentional lethal use of firearms is permitted only when strictly necessary to protect life. Law enforcement officials may use firearms only when less extreme means of force are insufficient to defend themselves or others against imminent threats of death or serious injury [228]

112. Using lethal force to disperse protesters violates the right to life.[229] There is also a duty to plan law enforcement operations in a manner that minimises the risk that officials may kill or injure a member of the public. Using lethal force without warning to the victims, without affording the victims an opportunity to explain their presence and/or surrender to the police *and* outside of an action in self-defence violates the right to life.[230] Furthermore, the use of lethal force cannot be justified on the basis of the need to protect public property from arson or vandalism.

113. Lethal force is also permitted to stop persons posing an imminent threat to the lives or bodily integrity of members of security forces or others. Even in these cases, lethal forces must be restricted to those individuals posing the threat. The use of lethal force randomly on a large crowd is arbitrary and always impermissible under international law as it is a clear violation of the right to life.

114. Deprivation of life that is inconsistent with the above standards is arbitrary. Moreover, 'the intentional and often premeditated use of lethal State force outside of the judicial process' also

[227] *El Alwani* v. *Libya*, CCPR/C/90/D/1295/2004 (HRC, 11 July 2006), para. 6.7.
[228] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9.
[229] *Güleç v Turkey* (1999) 28 EHRR 121, paras 71-73.
[230] *Suarez de Guerrero v Colombia,* CCPR/C/15/D/45/1979 (HRC, 31 March 1982) paras 13.2 and 13.3.

amounts to extra-judicial execution.[231]

115. Authorities must also ensure that persons in their custody or control, who have been arrested or are in prisons[232] and hospitals,[233] are adequately protected from life-threatening risks that are foreseeable and receive adequate and appropriate medical treatment. This includes preventing and responding to deaths in custody,[234] as well as not arbitrarily denying medical treatment.[235]

116. The right to life also requires a proper investigation of all deaths caused by the State or where the State has failed to protect life. These investigations must be impartial, effective, prompt, and open to public scrutiny. They must also allow for the next of kin to engage.[236] Criminal prosecutions are required in cases which reveal an arbitrary deprivation of life.[237] The duty to find out what happened is particularly strong when deaths emanate from State, or police action in which there was a use of a firearm,[238] and deaths in custody.[239] The failure to carry out a prompt, thorough and effective investigation into the circumstances of death are likely to result in findings of violation of Article 6 ICCPR.[240] As with all human rights, States must provide access to appropriate remedies for violations of the right to life, which must entail adequate and effective reparation, including guarantees of non-repetition.[241]

117. During the Aban protests, the evidence reviewed by the Panel demonstrates that protesters and bystanders including men, women, and children, were indiscriminately and unlawfully killed.[242] Witnesses described security forces shooting directly at the crowds with live ammunition. In one incident, a witness describes that forces were shooting rounds at the protesters from a helicopter, in Sadra district.[243] In Jarrahi city, security officials fired at the

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[231] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Protecting the right to life in the context of policing assemblies, A/HRC/17/28 (23 May 2011).
[232] *Paul and Audrey Edwards v UK* (2002) 35 EHRR 19; *Dzieciak v Poland,* Appl. No. 77766/01 (ECtHR, 9 December 2008).
[233] *Mehmet Şentürk and Bekir Şentürk v Turkey* (2013) 60 EHRR 4.
[234] *Zhumbaeva v Kyrgyzstan,* CCPR/C/102/D/1756/2008 (HRC, 19 July 2011), para. 8.6.
[235] HRC, General Comment 36, para 25; *Lantsov v. Russian Federation*, CCPR/C/74/D/763/1997 (HRC, 15 April 2002), para. 9.2.
[236] HRC, General Comment 36, para. 28.
[237] *Amirov* v. *Russian Federation*, CCPR/C/95/D/1447/2006 (HRC, 2 April 2009), para. 11.2.
[238] *Umetaliev and Tashtanbekova* v. *Kyrgyzstan*, CCPR/C/94/D/1275/2004 (HRC, 30 October 2008), para. 9.6.
[239] *Salman v Turkey* (2000) 34 EHRR 425, paras 104–9; HRC, General Comment 36, para. 29.
[240] *Zakharenko* v. *Belarus*, CCPR/C/119/D/2586/2015 (HRC, 17 March 2017), paras 7.3, 8.
[241] HRC, General Comment No. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 16; General Comment 36, paras 19 and 28.
[242] Amnesty International, "'They Shot Our Children': Killings of Minors in Iran's 2019 November Protests", AI Index: MDE 13/1894/2020 (March 2020). See also Amnesty International, "Iran: Details Of 324 Deaths In Crackdown On November 2019 Protests", AI Index: MDE13/2308/2020 (Updated 16 November 2021).
[243] W337, 14 November 2021.

crowds from armoured personnel carriers fitted with machine guns on top: "[t]he wounded they took to the barracks, hundred per cent of them died."[244] In Mahshahr, IRGC land cruisers had been equipped with machine guns, and were firing at the crowds.[245] The crackdown against protesters in Mahshahr, during which Iranian security forces used heavy machine guns against protesters including against people fleeing the scene and bystanders reportedly resulted in between 40-100 people being killed.[246] In Fardis, Karaj, people were also shot with machine guns as they attempted to flee.[247]

118. These were not isolated acts. To the contrary, the evidence shows that the arbitrary and illegal use of lethal force on protesters and bystanders, the denial of medical treatment resulting in the death of persons who had sustained injuries, was planned, coordinated, and directed by the highest echelons of the State and was widespread. Furthermore, there was no evidence to suggest that authorities from the local to the central undertook any action to stop the killings, or after the fact to investigate, prosecute and punish those responsible.

b. Unlawful killing/murder

119. To establish the commission of the crime of murder, there must be proof beyond a reasonable doubt that one or more persons were killed by the act or omission of the perpetrator(s),[248] and that the perpetrator(s) acted with the specific intent to kill or with reckless disregard for human life. Bearing these principles in mind the Panel makes the following findings:

Tehran

120. Protests in Tehran started on 25th Aban (16 November).[249] In response to the protesters burning tyres of cars and blocking the streets so that cars could not pass, the special units of the police used tear gas on the protesters.[250] Protesters began throwing stones at the police officers.[251] Basiji forces used tear gas against the protesters.[252] The special units then started

[244] W503, STMT.
[245] W490, STMT.
[246] W Shadi Sadr, 12 November 2021.
[247] W1, STMT.
[248] *Prosecutor v Dominic Ongwen,* ICC-02/04-01/15, Trial Judgement, 4 February 2021 ('*Ongwen* Trial Judgement'), para. 2696; *Prosecutor v. Jean-Pierre Bemba Gombo,* ICC-01/05-01/08, Trial Judgement, 21 March 2016 ('*Bemba* Trial Judgement'), paras 87-88; *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Judgement, 7 March 2014, ('*Katanga* Trial Judgement'), paras 767-769; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui,* ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, ('*Katanga & Chui* Decision on the Confirmation of Charges') para. 287; *Prosecutor v. Jean-Pierre Bemba Gombo,* ICC-01/05-01/08, Decision on the Confirmation of the Charges, 15 June 2009 ('*Bemba* Decision on the Confirmation of Charges'), para. 132.
[249] W245, 14 November 2021.
[250] W245, 14 November 2021.
[251] W245, 14 November 2021.
[252] W112, STMT.

shooting at the crowd of protesters.[253] One witness described the scene as people "being shot with a machine gun".[254] Kalashnikovs were used.[255] Another witness stated that officers in the street were wearing special security forces uniforms and aid vests, and they all carried shotguns, such as pistols and automatic and semi-automatic weapons, and attacked in a guerrilla formation.[256]

121. A witness who had been a senior officer of the IRGC in Tehran testified that the IRGC forces had been given a "fire at will order", "and the forces were told that whenever you felt necessary, you can just choose to fire".[257] The witness further confirmed that the protesters were not committing any violence and were peacefully protesting:

> "A number of hungry people were shouting and they were asking for bread as we call it and there was no violence from them. They had blocked the roads. They were turning off the cars on the roads. They were burning the rubbish bins and wherever there was a protest you could not control or you could not anticipate, there was no option but to confront it and even on the second or the third day of the protests, the reports indicated that the protests have become rare. They even said that maybe radio and television could be lost to the people. So, the forces were notified and that they had a free hand to shoot up people, arrest people and even enter the houses of those who the protesters might resort to. So, there was no need for any warrant from the judiciary. You could detain the car. You could detain people. You could do anything so that you could overcome this unrest because the country was at risk…
>
> …a reliable source who had been working along with me said that Mr Khalafi and Mr Haghanian at the Supreme Leader's office had said that you should come and wrap it up. Wrap it up at whatever price, at any price. So, that was an order to the military and the military knew what it meant. When they say wrap it up, they know exactly what it meant. It means that if you need to kill everyone, it wouldn't matter. There would be no questioning".[258]

122. The police also attacked those wounded during the protests, and denied them hospital

[253] W112, STMT.
[254] W245, 14 November 2021. See also W363, STMT [describes shooting with military grade bullets].
[255] W365, STMT.
[256] W363, STMT.
[257] W600, 6 February 2022.
[258] W600, 6 February 2022.

attention: "they would drag [the wounded person], would kick the wounded person with their boots and they would hit their legs, the knees and drag the person and take the person to the police station".[259] A medical professional witness testified that there were several patients in the hospital who had bullet wounds from war weapons like Dragonovs or Kalashnikovs that had been used in a deliberate manner indicating an intention to kill.[260] Some of the victims had their skulls crushed from a weapon of war.[261]

123. A total of 176 deaths were recorded by Amnesty International in Tehran.[262]

124. Witness 600 also noted that though some civilian protesters damaged gas stations, many Basij forces sought to instigate violence during the protests while pretending to be civilian protesters, to justify the security forces shooting at the protesters:

> "In my reports if I did not have anyone burning down banks trying to blame people for it, but in case of the petrol stations, we had reports that some of the local elements in order to allow the Basijis to shoot and to force people back home because if you have ordinary protesters you cannot shoot at them just for protesting and for chanting slogans, so there should be an excuse. So, I was informed that there were several cases, maybe two or three cases, were in the Greater Tehran area. Some of the inside forces had burned petrol stations to blame people. But in many cases, the people themselves had burnt the gas stations because they had gotten involved in clashes and as a result the people themselves had burned the gas station."[263]

125. The Panel considers that even if some protesters did damage buildings, their actions could not justify the entirely disproportionate response of the Iranian security forces who used lethal force which led to the unlawful killing of protesters in Tehran.

Islam Shahr

126. With respect to Islam Shahr, the Panel has had sight of witness statements from witnesses who did not testify before the Tribunal. One witness from Islam Shahr stated, in a written statement, that protests started peacefully in that region on 16 November 2019, when security guards came to the protest wearing black uniforms. They started beating up people with

[259] W245, 14 November 2021. See also W109, 12 November 2021.
[260] W109, 12 November 2021; W109, STMT.
[261] W80, 5 February 2022.
[262] W Raha Bahreini, 11 November 2021.
[263] W600, 6 February 2022.

batons.[264] The witness stated that on 17 November, the security forces started firing at the people:

> "A number of security guards were on the rooftop of a building; I believe it was a mosque or a government office. They were filming the crowd and threatening the people with the weapons in their hands. But I cannot say that I saw them firing from above. (Those on the rooftop) were plainclothes men. There were no police there at all or men in uniforms from the military forces. All of them were wearing keffiyeh and were the boys from the Basij.
>
> I did not see the shells up close to be able to say what it was; but I believe that they were both from the pellet guns and assault rifles. Usually, the weapons were from various organs, light hand weapons; some of them carried modern weapons; they carried light, fully automatic weapons. They carried all kinds of weapons."[265]

127. Another witness stated in his statement that "assault bullets were shot by the Basijis and the Sepahis", and he could identify the Basijis as they "were in light, muddy military uniforms [and] had shields in their hands and most of them were wearing masks".[266]

128. While the Panel has not had the opportunity to hear the testimony of these witnesses or to test their evidence, the Panel does not consider that there is any reason to doubt the veracity or reliability of their witness statements. The evidence of these witnesses, though made available to the Panel only in the form of written statements, is consistent with evidence from other witnesses who testified before the Tribunal on the same issues. Having treated the witness statements with appropriate caution due to the lack of cross examination, the Panel concludes that the evidence is reliable.

Karaj

129. Peaceful protests began in Karaj on 16 November 2019; initially there was no violence.[267] At first, only the police were present on the ground and were not taking any action against the protesters; however, things spiralled out of control once the IRGC, the Basij forces and the other plainclothes forces arrived at the protest scenes with heavy weapons, tanks and armoured vehicles. They began beating up people and using water cannons on them.[268]

[264] W194, STMT, p. 2.
[265] W194, STMT, p. 2.
[266] W40, STMT, p. 2.
[267] W451, 4 February 2022; W5, 13 November 2021.
[268] W451, 4 February 2022; W5, 13 November 2021; W268, STMT.

Multiple witnesses attest that, without any warning or provocation by the civilian protesters, the IRGC forces, Basij forces, the intelligence officers, and the police forces began shooting at the protesters.[269] There were also snipers positioned at the top of police stations and other buildings, who were indiscriminately shooting down at people on the roads.[270] The forces were in groups of 50-60 people, and in plainclothes.[271] They had their faces covered, rode motorcycles, and had weapons and walkie-talkies.[272]

130. Several passers-by who were not participating in the protests were also shot in the head or the chest without any justification; a manner of targeting which leads to the strongest of inferences that the shooters had the intent to inflict serious bodily injury or death.[273]

131. On 17 November, there was again shooting predominantly by Basij forces.[274] Witnesses testified that their family members had been shot in the head and killed during the protests.[275]

132. The shootings and use of brutal force were unprovoked – the protesters were gathered in the street, most were not chanting any slogans, and there was no attack on any police station or other building by them.[276] Several witnesses testified to people burning banks and breaking car windows. However, the same witnesses testified as to their belief that these were members of the IRGC forces, riding around town on motorcycles with their batons, who wanted to frame the civilian protesters for the violent actions to justify the ongoing use of force against them.[277]

133. The Panel notes witness testimony that the IRGC and the Basij were in control of the events on the ground:

> "The commander who started the shooting was a colonel and he was the commander of a base and he had 20 bases under his control. And the colonel and the commander of the base ordered the firing. He had a clutch in his own hands and he was controlling the efforts. And he was shooting, himself."[278]

134. A witness who was involved in dealing with dead bodies testified that the intelligence officers

[269] W451, 4 February 2021; W5, 13 November 2021.
[270] W451, 4 February 2022.
[271] W5, 13 November 2021.
[272] W451, 4 February 2022; W5, 13 November 2021.
[273] W451, 4 February 2022.
[274] W5, 13 November 2021.
[275] W83, 5 February 2022.
[276] W451, 4 February 2022; W5, 13 November 2021.
[277] W451, 4 February 2022; W5, 13 November 2021.
[278] W5, 13 November 2021.

directed that the dead bodies not be taken to their homes, and instead be taken to the security forces' base.[279] There, the security forces checked the bodies for bullets, and if it was a military bullet, the bullet would be taken out and discarded, and the body kept for another 3-4 days.[280] The deceased's family member would have to request the body from the intelligence officers.[281] The family members of the deceased were sometimes asked to pay for the cost of the bullet before the body could be returned to them, and were made to agree to not holding a funeral ceremony.[282]

135. The totality of evidence raises the reasonable inference that the police, IRGC, intelligence and other military officials of Karaj planned the killings and the use of force to subdue the protests, and that there was no objective threat faced from the civilian protesters to justify the force used or the killings.

Fardis

136. The protests began on 16 November in Fardis.[283] A witness testified that unidentified individuals in plainclothes were burning banks and urging civilian protesters to burn banks and to head to the municipality to burn that area as well.[284]

137. One witness stated that security forces urged civilian protesters to burn banks and to head to the municipality to burn that area as well, and that they could be distinguished as not being locals.[285] Protesters who marched to the main square as urged by these individuals were met by special units carrying water cannons.[286] Tear gas was used.[287] Soon, shooting started and people were dying.[288]

138. Given the evidence that the identity of these instigators was ambiguous and that the security officials did not attempt to stop them, as well as the witness' opinion that these individuals in fact appeared to be security officials and not locals,[289] the Panel considers that, on a balance of probabilities, they were likely security forces in plainclothes.

[279] W451, 4 February 2022.
[280] W451, 4 February 2022.
[281] W451, 4 February 2022.
[282] W494, 5 February 2022.
[283] W216, 14 November 2021.
[284] W216, 14 November 2021.
[285] W216, 14 November 2021.
[286] W216, 14 November 2021.
[287] W70, 10 November 2021.
[288] W216, 14 November 2021.
[289] W216, 14 November 2021.

139. Protesters were killed during the protests on 17 November.[290] Forces on the ground started shooting at people, and many were shot in the head.[291]

140. IRGC officials also threatened the family members of the deceased protesters and offered them blood money to remain quiet and not discuss the deaths of their family members in public.[292] Some family members of victims were asked to pay a bribe to the authorities for the corpse to be released to them.[293]

Shahriar

141. The protests started on 16 November, and were peaceful.[294] In the beginning, the police forces were calm and politely asked protesters to disperse. Suddenly, however, the police began to use tear gas and shot at the crowd unprovoked.[295] The Basij and Sepah began the firing of paint balls and practice bullets at the protesters.[296] Expert witness Shadi Sadr confirmed that open-source investigations showed that ordinary police forces opened fire at unarmed protesters at Farmandi Square in Shahriar.[297]

142. A group of protesters who began protesting near the entrance of the Basij base were also attacked by the Basiji forces, who came out of their base and tried to disperse people using batons, tear gas and by shooting pellets.[298] Witnesses claim that the attack was unprovoked, however, once the Basijis started using force, the protesters began to throw stones at the Basijis, and tried to burn the Basij base and storm the base.[299]

143. The IRGC forces also arrived at the ground and used batons to disperse the crowd.[300] The IRGC forces included snipers.[301] A witness who was employed with the IRGC, and was ordered to handle the protests in Shahriar, testified that the initial briefing for the IRGC units was to try to peacefully disperse protesters, but they were told to engage if the protesters clashed.[302]

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[290] W83, 5 February 2022.
[291] W83, 5 February 2022.
[292] W83, 5 February 2022; W70, 10 November 2021; W37, STMT.
[293] W37, STMT.
[294] W232, 13 November 2021.
[295] W232, 13 November 2021.
[296] W236, STMT.
[297] W Shadi Sadr, 12 November 2021; W Shadi Sadr, STMT, p. 25.
[298] W119, 14 November 2021.
[299] W119, 14 November 2021.
[300] W367, 14 November 2021.
[301] W367, 14 November 2021.
[302] W367, 14 November 2021.

144.The witness testified:

> "At the beginning the violence increased. At first batons were used and then stones were thrown by people and this side started attacking. The shootings in the air at the beginning and then shooting directly to the people...Security forces shooting did take place, there were individuals who were shot. People used to pick them up, lift them up and take them with whatever means possible motorbike or a vehicle car or just pull the individual and take him away. So, the ones who were shot were being moved away. Since I was standing among the bad people and I was far from people, therefore I cannot exactly say whether the people who were shot did die or not. But I could see that they were shot. This is undeniable."[303]

145.The witness stated that the IRGC was deployed to the ground to show the civilian protesters that the number of the police officers was more than what it really was; it was a show of power.[304]

146. The evidence, in sum, established that there were militia, Basij and other unknown forces on the ground wearing black, and standing prepared with shockers and tear gas, even before violence erupted in the area of Shahriar.[305] One witness stated that the Basij and Sepah forces used Colts, AK-47s, tear gas and paint balls to shoot at people.[306] The use of force on the protesters appears to have been unprovoked.

147.One witness saw special guards and plain clothed officers break the glass of banks and shops and cars.[307] The Panel notes that where identity of the people burning the banks was ambiguous, there is witness opinion that they were not civilians as nearby security forces took no action against them.[308] One former IRGC employee who was on the ground stated his belief that the people causing the violence were plain-clothed officials of the security forces.[309] The group of unidentified people inciting violence had covered their faces and wore hats, and used various weapons, steel levers and crowbars.[310]

148.Basiji forces could be distinguished from the civilian protesters as they wore anti–bullet vests and goggles, and their equipment matched the type of equipment generally used by the anti–

[303] W367, 14 November 2021.
[304] W367, 14 November 2021.
[305] W173, 13 November 2021.
[306] W236, STMT.
[307] W367, 14 November 2021.
[308] W119, 14 November 2021.
[309] W367, 14 November 2021.
[310] W119, 14 November 2021.

riot units.[311] Some were plain-clothed, while some forces were clearly from the IRGC.[312] One witness explained that the IRGC forces could be distinguished as military because they had helmets and their faces were covered, they had a baton in their hands, and some wore special clothes.[313]

149. There was also evidence that some of the forces appeared to not be part of the local civilian population because they spoke in a different dialect, or a different accent, (for instance, these individuals were saying "Allahu Akbar" and shouting "La Ilaaha Ila Allah" which is not Persian, and indicated that the individual likely came from Lebanon or Palestine).[314]

150. As for the total number of casualties, a medical professional witness testified to having seen approximately 30 bodies in total at the hospital morgue where they worked and estimated that a total of 170-180 bodies would have been found across all hospitals in the area of Shahriar.[315]

Shahr-E-Qods (Qods)

151. Expert witness, Shadi Sadr, testified that the Governor of Qods, Layla Vaseghi, publicly stated that she had convened the provincial Security Council, and had given a "Shooting Order" to the representatives of the IRGC, the prosecutors and other officials, allowing the security forces to use firearms against protesters.[316]

152. Expert Shadi Sadr's report on open-source investigations in Qods indicates that on the afternoon of 16 November, a relatively large group of protesters gathered in front of the local government building and tried to enter the building, at which point, police forces started shooting the protesters.[317] Video footage of the shooting has provided evidence regarding the clothing and protective equipment of the officers who were involved in shooting the protesters, and the forces are easily identifiable, by their light green shirts and dark green uniforms, as members of the Iranian police force (more specifically the Emdad Unit police forces).[318]

153. A witness testified that a family member who was shot during the protests on 16 November was not given medical attention and eventually died. This appeared to be a deliberate move

[311] W119, 14 November 2021.
[312] W173, 13 November 2021.
[313] W367, 14 November 2021.
[314] W119, 14 November 2021.
[315] W232, 13 November 2021.
[316] W Shadi Sadr, 12 November 2021; W Shadi Sadr, STMT, p. 14.
[317] W Shadi Sadr, STMT, pp. 29-30.
[318] W Shadi Sadr, STMT, p. 30.

by the hospital staff on the orders of the security forces, who the witness overheard telling the hospital staff to make room for more injured people by clearing out the more seriously wounded ones: "Take these, kill the rest so that you will have room for the rest".[319] Thereafter, the witness testified that their family member's body was not immediately released by the authorities, and it took several trips and meetings with the governor to have the body released to the family.[320] The family members also continued to be threatened by the IRGC officials to not publicly speak of the killings.[321]

154. The expert report, supported by Amnesty International's report, indicates that 10 deaths were recorded during the shootings between 15-18 November in Qods, however the actual number is likely to be much higher according to eye-witness accounts and the testimony of the witness who saw several bodies being loaded onto an ambulance.[322]

Alvand

155. A witness who lost a family member during shootings in Kazvin, Alvand testified that snipers had been shooting from the top of buildings, and were indiscriminately killing people on the ground, irrespective of whether they were participating in protests.[323] After being shot, the dead bodies were put into security buses and taken away. The bodies were not released to the families until money was paid by the families and an undertaking was made to the security officials that no burial ceremony would be conducted, that only a private ceremony with limited people would be arranged, and that the family members would not carry out any interviews to discuss their family member's death.[324]

Isfahan

156. The protests in Isfahan began on 16 November 2019.[325] Local civilians, by way of protests, had left their cars on the streets. Soon forces from the special units, both in military clothing and in Basij clothing, as well as anti-riot forces in their own clothing, all carrying different weapons, gathered.[326] The forces started beating up people with batons and nightsticks and shot plastic bullets.[327] The special unit forces used tear gas.[328] A witness testified to being

[319] W82, 4 February 2022.
[320] W82, 4 February 2022.
[321] W82, 4 February 2022.
[322] W Shadi Sadr, STMT, pp. 14-15; W82, 4 February 2022.
[323] W86, 4 February 2022.
[324] W86, 4 February 2022.
[325] W255, 13 November 2021; W81, STMT.
[326] W255, 13 November 2021.
[327] W255, 13 November 2021; W140, STMT; W269, STMT.
[328] W122, STMT; W135, STMT; W198, STMT.

beaten with a truncheon on their face, shoulder and back, and also witnessing another young man being beaten: "they hit him so hard on his face that his glasses flew away. He was, of course, injured, but they did not allow any ambulances to go in."[329]

157. Witnesses testified that unidentified people on motorcycles, most likely from the special unit, also appeared on the scene, and started beating up people with batons, truncheons, shields, screws, bolts. Then the security forces, including the Basij forces, started shooting people.[330] The police forces carried Uzi machine guns in their hands or Colts on their backs.[331]

158. Shootings continued on 17 November, and a witness testified that most of the shootings were being carried out by the special units, who also carried truncheons and tear gas with them.[332] A witness saw several injured people on the ground, including minors, and stated: "They would even hit you with the shield, they would use a truncheon first on you and then hit you with the shield and that caused bruises and cuts and lacerations on your faces."[333]

159. Witness statements indicated that several individuals died from the shootings, and at least some of these deaths were caused by a weapon of war which can fire bullets which split once inside the body.[334] The witness recounted seeing several shrouded corpses in the possession of the security officials, who wanted to quickly burn the corpses themselves.[335] Again, the Ministry of Intelligence and the security officials refused to disclose the circumstances of the victim's death. They were unwilling to hand over a corpse until the family undertook to not hold a burial ceremony and to not publicly discuss the death.[336]

Shiraz

160. Peaceful protests in Shiraz started on 25 Aban (16 November).[337] Initially, there was no violence and protesters were only chanting slogans.[338] By the afternoon of 16 November, however, armed individuals started shooting at protesters and using tear gas, with some police officers shooting from the rooftops of police stations.[339] Some civilians were shot at a distance

[329] W255, 13 November 2021.
[330] W255, 13 November 2021; W122, STMT; W135, STMT; W140, STMT; W191, STMT; W218, STMT; W269, STMT.
[331] W198, STMT. See also W269, STMT.
[332] W255, 13 November 2021; W218, STMT.
[333] W255, 13 November 2021.
[334] W81, STMT; W16, STMT; W22, STMT; W27, STMT; W43, STMT.
[335] W81, STMT.
[336] W81, STMT; W16, STMT; W22, STMT; W27, STMT; W43, STMT.
[337] W337, 14 November 2021; W183, 13 November 2021; W303, 14 November 2021.
[338] W337, 14 November 2021.
[339] W337, 14 November 2021; W Shadi Sadr, STMT, p. 19.

of a mere 50-60 meters.[340]

161. Witnesses testified to seeing military forces inside a helicopter circling the area 50 metres from the ground and shooting at the people.[341] A witness testified that 6-7 more helicopters flew in at one point and dropped off forces at the Basij base. These forces exited from the Basij base and attacked protesters.[342] The security forces included the Basij, the military, the police, and special units of the police. Each wore different types of clothing. Plain clothed officers were from the Basij.[343] In the witness' opinion, several of the forces were not Persian as they did not speak the language and looked foreign.[344]

162. Another witness testified that by 11pm on 16 November, unknown people started setting fire to banks. A park was set on fire allegedly by Basij and military forces.[345] Ten to fifteen people from the Basij, the security forces, and the military shot people with pellets which burst open and spread upon entering the body.[346] The witness also testified to seeing police forces riding into the crowd on motorcycles and shooting people.[347] Police were also using shockers, stun guns, batons, and pepper spray against the protesters.[348]

163. Similar forces were present on 27 Aban (18 November) and engaged in the same type of violence. A series of banks were set on fire that day.[349]

164. Expert Witness Shadi Sadr's report details from open-source investigation that all police forces, including ordinary police, as well as the forces from the Emdad Unit and Special Unit were present during the shootings in Shiraz.[350] In her opinion the firing of live ammunition at unarmed protesters cannot be attributed to any specific unit of the Islamic Republic of Iran Police Forces (NAJA), but implicates the entire security force in the city of Shiraz.[351] Ms. Sadr testified that IRGC and the affiliated Basij forces were also present on the scene, and were caught on video firing live ammunition at the protesters from the rooftop or upper levels of the Basij bases.[352]

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[340] W Shadi Sadr, STMT, p. 20.
[341] W337, 14 November 2021; W183, 13 November 2021.
[342] W337, 14 November 2021. See also W303, 14 November 2021.
[343] W337, 14 November 2021; W303, 14 November 2021.
[344] W303, 14 November 2021.
[345] W183, 13 November 2021.
[346] W183, 13 November 2021.
[347] W183, 13 November 2021.
[348] W303, 14 November 2021.
[349] W183, 13 November 2021; W303, 14 November 2021.
[350] W Shadi Sadr, STMT, p. 20.
[351] W Shadi Sadr, STMT, p. 20.
[352] W Shadi Sadr, 12 November 2021.

165. One witness testified that plain-clothed individuals were causing unrest amongst the protesters and throwing water bottles at the police. In the witness's opinion, these people were Basijis who wanted to provide the police with an excuse to use force on the protesters.[353] The witness testified that the police reacted to these attacks by using pepper spray, batons and stun guns on protesters, which later accelerated to shootings.[354] The same witness testified that, while they were under police detention, they overheard a colonel giving orders over the walkie-talkie to unknown persons to occupy government bases and resist on the street while pretending to be civilian protesters until the security forces retaliated.[355]

166. Further, the bodies of deceased protesters were not given to family members by the security officials, and burial ceremonies were not allowed to be conducted in the traditional way unless the family agreed to remain silent about the events.[356]

Mahshahr

167. The protests began on 16 November, and the authorities immediately shut down the internet (a shutdown which would continue until 28 November).[357] The protests were initially peaceful, however on 18 November, when 700-800 protesters had gathered and blocked the roads, the security forces, including the IRGC, the naval forces, the Basijis, as well as the plain-clothed forces began shooting at protesters.[358] A witness testified that IRGC officials took out Kalashnikovs and threatened to shoot the protesters unless they left the protests.[359] The other forces also had special weapons, including Colts and heavy machine guns with very large cartridges.[360]

168. Protesters started to flee towards the marshes but were trapped there when security forces surrounded them and continuously shot at them in the reeds.[361] Many of those injured or killed were forced into the backs of cars. Nobody was taken to the hospital.[362]

169. On 17 November, Witness 190 went to Mahshahr. Many of the local residents there have guns, including Kalashnikovs, as they are in agriculture, go hunting and are permitted to own them. On 17 November young men in that area had closed the roads with tyres, sticks and

[353] W303, 14 November 2021.
[354] W303, 14 November 2021.
[355] W303, 14 November 2021.
[356] W337, 14 November 2021.
[357] W Shadi Sadr, STMT, p. 36.
[358] W503, 4 February 2022; W503, STMT. See also W Shadi Sadr, STMT, pp. 36-37.
[359] W503, 4 February 2022.
[360] W503, 4 February 2022. See also W Shadi Sadr, STMT, p. 39.
[361] W503, 4 February 2022. See also W Shadi Sadr, STMT, pp. 36-37.
[362] W503, 4 February 2022.

stones.[363] Witness 190 along with several other people hid in nearby reed beds. Helicopters sent by the Sepah Pasdar began to fire into the reed beds. About 30 to 40 people hidden in the reeds fired back with Kashnikovs, driving the helicopter away. Then shots were fired at them from a gun mounted atop a Toyota.[364] During this clash Witness 190 saw men around him being shot and killed. Some of the bullets fired at the reeds passed through and hit nearby homes located behind the reeds in Taleghani Township. A number of women, elderly and children located in these homes were killed as a result. Witness 190 escaped the reed beds and fled the area. The Chief of the Joint Staff of the Armed Forces in Tehran claimed later the people who were killed were members of Daesh. He said it was for that reason helicopters, drones and heavy arms were used.[365]

170. Witness 360, a truck driver, was en route from Mahshahr to Bandar when all traffic came to a halt. He testified that "[c]ommon people" had blocked the road. Parts of the road were blocked with burning tyres. Locals told him there were skirmishes ahead and that he should avoid the area as he might get hit with a bullet. After some period of time, he was told the road was open again.[366]

171. He drove past Ramshir and arrived at the beginning of Mahshahr, in a township called Taleghani Township. Beside it there is a township called Kooreha located opposite a bed of reeds. Vehicles were parked everywhere blocking the road. A group of 10 to 20 people wearing keffiehs ran from vehicle to vehicle taking the switches. Witness 360 stayed in his truck that night and for the following three days.[367]

172. Every night Witness 360 could hear gunfire. Ultimately 50 or so Sepah soldiers carrying heavy weapons and ammunition stationed themselves behind the parked vehicles. Security forces with heavy machine guns and tanks opened fire on the houses along the road. The "officers were firing straight on the peoples' houses."[368]

173. The reed beds were located between the vehicles and the houses. There were people hiding in the reed beds. The officers did not give any of them the chance to get away. They trained

[363] W190, STMT.
[364] W190, STMT; this clash in Mahshahr has become known as the Mahshahr Massacre. On 18 January 2020 the US. State Department sanctioned Brigadier General Hassan Shahvarpour as being responsible for the killings there, estimated to be between 40 to 150 people. See Reuters, "U.S. sanctions Iranian commander over Mahshahr killings", 18 January 2020, available at: https://www.reuters.com/article/us-usa-iran-sanctions/us-sanctions-iranian-commander-over-mahshahr-killings-idUSKBN1ZH0LM.
[365] W190, STMT.
[366] W360, STMT.
[367] W360, STMT.
[368] W360, STMT.

bursts of fire on everyone and "had no mercy on anyone." No one knew how many people died in the reed beds. [369]

174. When Witness 360 was finally able to leave he drove past a local bridge. An interview was being conducted there with Sardar Ghassem Soleimani. He was dressed all in black. He stated: "We have killed villains."

175. He returned to Mahshahr. When he arrived, the entire city was under siege. Security forces were there with guns, tanks and personnel carriers watching people was they moved on the roads.[370]

176. Expert witness Shadi Sadr testified that the civilians were attacked more aggressively in Mahshahr than in other cities.[371] She testified that the "ruthless crackdown in Mahshahr was not limited to the special unit forces", and that the open-source investigation "confirmed the IRGC's role, including bringing armed fighting vehicles to the residential areas as documented in at least three videos".[372] Iranian made Boraghs with heavy machine guns, which are IRGC's armored fighting vehicles, were used in Mahshahr as confirmed by the military uniform of the IRGC forces standing with weapons by the tanks.[373] Basij forces were also involved in the violence against the protesters there.[374]

177. After the shooting began, protesters threw stones and sticks at security forces and burnt tyres.[375] Some of the protesters had arms and returned fire when shot at by security forces. There was no evidence that any security force member was injured as a result of those sporadic responses to security force shootings.[376]

178. Ms. Sadr testified that media reports indicate that approximately 40-100 people were killed in Mahshahr as a result of the security force attack on protesters.[377] A witness testified that the IRGC refused to give the bodies of those killed to their family members, and that they continued to harass and silence the family members until today.[378]

[369] W360, STMT.
[370] W287, STMT.
[371] W Shadi Sadr, 12 November 2021.
[372] W Shadi Sadr, 12 November 2021.
[373] W Shadi Sadr, 12 November 2021.
[374] W Shadi Sadr, 12 November 2021.
[375] W503, 4 February 2022.
[376] W Shadi Sadr, STMT, p. 39.
[377] W Shadi Sadr, 12 November 2021.
[378] W503, 4 February 2022.

Kermanshah

179. Protests in Kermanshah started on 25 Aban (16 November).[379] The demonstrators' numbers increased rapidly, and there were persons who were setting fire to tyres of cars, attacking firefighters' vehicles, and breaking windows of banks.[380] Witness 175 testified that he saw a number of people urging protesters to set fire to tyres. He believed these people were plainclothes security officers as he recognised them from before the protests.[381] Then police forces arrived and beat the protesters with their batons and truncheons.[382]

180. Witnesses 175 and 28 identified the security forces present as coming from special units dressed in military uniforms, who were charging towards the protesters and throwing tear gas at the crowd, as well as plainclothes forces from the Basij, the IRGC and paramilitary units. Police forces, who were ready and standing by, attacked the crowd from behind. [383]

181. Witnesses testified that protesters were shot with war weapons, and hit in the head. Over 30-40 people were badly injured.[384] Amnesty International reported that 30 deaths were recorded in Kermanshah.[385]

182. The Intelligence Minister threatened the families of deceased protesters to remain silent or face another member of the family being tortured or killed.[386] Bodies of deceased protesters were not released freely by the IRGC Intelligence Department, and were often released only after money was paid.[387] The IRGC also offered blood money to the victims' families to stay quiet regarding the circumstances of the victim's death.[388] No action was taken on complaints made to the IRGC seeking to learn the identities of the perpetrators of the killings.[389]

Behbahan

183. Demonstrations began in Behbahan on 16 November.[390] One witness estimated the crowd outside of the Meli Bank numbered 8,000 to 10,000 people that day.[391] The protesters were

[379] W175, 12 November 2021.
[380] W175, 12 November 2021.
[381] W175, 12 November 2021.
[382] W175, 12 November 2021.
[383] W175, 12 November 2021; W28, 13 November 2021.
[384] W175, 12 November 2021; W17, 12 November 2021; W28, 13 November 2021.
[385] W Raha Bahreini, 11 November 2021; W Raha Bahreini, STMT, pp. 4-5.
[386] W17, 12 November 2021.
[387] W17, 12 November 2021; W28, 13 November 2021.
[388] W28, 13 November 2021.
[389] W17, 12 November 2021; W28, 13 November 2021.
[390] W179, 13 November 2021; W12, STMT; W Amin Ansarifar, 10 November 2021.
[391] W179, 13 November 2021.

chanting. They were not armed; they were peaceful.[392] Nonetheless they were surrounded by security forces armed with lethal weapons including the Basij, the police, and the IRGC.[393] There were snipers located on roof tops wearing helmets.[394] Their faces were covered. As the day progressed the snipers began shooting indiscriminately into the crowd "with no concern for the children or elderly" in the street. These rooftop forces were Basij, wearing uniforms the same colour as the army and armed with AK-47s.[395] Security forces on the street were also armed and shooting directly at protesters.[396] The protesters were throwing stones.[397]

184. A number of people were shot and killed during these protests as a result of the indiscriminate firing into the crowd. Numerous others were wounded. Witness 12 saw plainclothes forces armed with Kalashnikovs on 17 November and heard machine gun fire coming from the roof tops. He saw people shot in the chest, neck and front of the body. Two of them, the Dashtinia's, were brothers.[398] Witness 156 knew the brothers. She was on the street near them and was shot herself. Immediately after that she saw the two brothers shot, one in the chest; one in the head.[399] Both died. Mr. Hashamar, who had earlier rescued an employee from a burning bank, was shot and killed the same day.[400] Witness 12 saw six people shot and heard that a fifth or sixth grade child was shot and killed.[401] Amin Ansarifar's son, Farzad, was shot in the back of the head by a Kalashnikov and killed.[402] Witness 179, who saw that shooting, testified that Farzad was not participating in the protests. He was on a motorbike watching a traffic light when he was killed. Witness 179 saw three other people shot after that.[403] It was a city under siege.[404]

185. People in the streets were shot at with machine guns and other weaponry when they attempted to help the injured. There was no ambulance.[405] Witness 179 was shot in the back "by a Basij in white-grey clothes" while trying to lift an injured man to safety.[406]

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[392] W12 STMT; W179, 13 November 2021.
[393] W179, 13 November 2021.
[394] W12 STMT; W179, 13 November 2021.
[395] W179, 13 November 2021.
[396] W12 STMT.
[397] W12 STMT; W179, 13 November 2021, W156 STMT.
[398] W12 STMT.
[399] W156 STMT; W179, 13 November 2021.
[400] W179, 13 November 2021; W156 STMT.
[401] W12 STMT.
[402] W Amin Ansarifar, 10 November 2021; W179, 13 November 2021; W12 STMT; W156 STMT.
[403] W179, 13 November 2021; and see W338 STMT [brother shot while seated in car].
[404] W12 STMT.
[405] W179, 13 November 2021.
[406] W179, 13 November 2021.

Marivan

186. Marivan is a border town in Kurdistan.[407] At the time of the Aban protests the Security Council of Marivan issued an order by telephone, from the Governor of the Provincial Security Council, ordering suppression of the protests by any means possible including by shooting protesters. The Security Council is comprised of the commander of the police force, the Sepah, the Governor of Marivan, the Intelligence Department and the Head of the Judiciary; they were all from Marivan. The Security Council made the decisions about the protests. The Order made clear that ordinary rules regarding the use of lethal force could be disregarded.[408] The City Security Council was at that point mostly in the hands of the Sepah Pasdaran.[409] Thereafter Witness 260, while in the street, saw a plainclothes member of the Intelligence, approach security forces in Jehad Square and order them to shoot at protesters.[410]

187. Snipers were stationed on roof tops, targeting people randomly, many using Kalashnikovs. The killings were committed by men in plain clothes. It was not clear whether they belonged to the Police, Sepah, Basij, or the Sepah Ghods.[411] IRGC forces, plain clothes, army personnel, intelligence, State organs, and military forces were also firing at will without any purpose or aim.[412]

188. Members of the security forces who failed to obey the order were arrested. Witness 195, a police commander in charge of a 60-man unit in Marivan, received the Order to shoot by walkie-talkie from a member of the Sepah forces. He was arrested when he refused to comply with it and subjected to constant psychological torture while in detention. He was ultimately sentenced to five years after a "sham", ten-minute trial.[413] Witness 340, a member of W195's unit, was also arrested for failure to follow the Order, but was acquitted because his team leader took responsibility for everything. Witness 340 stated that he could still have problems though because if "they" come to know anything about his team now or anything leaks out "perhaps they will kill us."[414]

189. Witnesses testified to random, indiscriminate firing of lethal weapons at unarmed protesters and the disappearance of individuals from the protests.[415] Security forces were firing at will in

[407] W426, 5 February 2022.
[408] W195, 11 November 2021.
[409] W99, STMT.
[410] W260, STMT.
[411] W195, 11 November 2021.
[412] W195, 11 November 2021; W220, STMT.
[413] W195, 11 November 2021.
[414] W340, STMT.
[415] W260, STMT.

Jehad Square; everywhere people were being shot.[416] Ershad Ahmadi, a student who was not involved in any political activity, disappeared during the Aban protests. His family looked everywhere for him including with security forces, prisons, hospitals and morgues.[417] One month after his disappearance his body was found by locals near a dam about 40 kms from Marivan. His body had bruises and other injuries suggesting he had been tortured. There was a hole in his head. His autopsy indicated only that the wound could have been caused by a sharp object.[418] Witness 220 knew of a diver who discovered five or six bodies underwater near the dam; all "arrested men." He was himself arrested after he reported the finding.[419]

190. Witness 15 was in Kermanshah on 16 November on his way to visit a friend when he got caught between a group of protesters and the police. The police were shooting at protesters and Witness 15's cousin, was shot and killed.[420] The killer was a sniper located on a roof top.[421] Witness 99 saw snipers stationed on roof tops firing randomly into the crowd but also at times apparently targeting specific people.[422] He saw four or five people shot and killed. He stated the people protesting included "everyone;" the elderly, children, rich and poor. About 10 to 15 percent of the protesters were women.[423] Witness 426's nephew was participating in the demonstration when he was shot in the forehead and killed. Seven or eight other youths were killed that day. This occurred during peaceful protesting. People shooting protesters had their faces covered so no one could identify them.[424]

191. Some witnesses described the use of apparently untrained security forces. Witness 99 saw a completely non-professional, amateur force of plainclothesmen "clearly from other regions of Iran," who seemed to have no training, arrive in Marivan on 17 November. They carried batons and shields and were very "conspicuous."[425] Witness 195, himself a police commander, stated many of the various security forces were not trained in the use of guns, did not know how to use a gun and just shot the weapons. The plan was to suppress the protests; it was not important where these untrained forces were firing their weapons.[426] Witness 220 described

[416] W260, STMT.
[417] W17, 12 November 2021.
[418] W17, 12 November 2021; W99, STMT; W220, STMT.
[419] W220, STMT.
[420] W15, 14 November 2021.
[421] W15, 14 November 2021.
[422] W99, STMT.
[423] W99, STMT; W220 STMT.
[424] W426, 5 February 2022.
[425] W99, STMT.
[426] W99, STMT.

the same thing; retired men and young boys, aged 15 to 20, had been bussed in, given uniforms and armed with batons. A number of security forces had their faces covered with Balaclavas.[427]

192. Banks were burned in Marivan during the protests. The identities of those starting the fires were not specifically known, but Witness 426 testified that the fires were set by IRGC forces; he recognised some of them.[428]

Sanandaj

193. An order permitting security forces to use lethal force on unarmed protesters was also active in the Sanandaj region. Witness 125 was in Sanandaj on 16 November 2019. He estimated that about half the city's population was out in the streets engaging in peaceful protests that day.[429] The Police, a Special Unit, the Relief Unit, Intelligence agents and the Basij and Sepah forces were present in large numbers. About 10 to 20 officers would surround three or four protesters and "beat the hell out of them." He heard Sepah forces were doing the same thing but stabbing people.[430] Security forces were armed with AK-47s, Uzi's and wore helmets and face masks. Special unit forces attacked people with motorbikes, cars and heavy chains. They "acted like savages". Police brutally beat a group of 17- to 18-year-old boys.[431] They beat women, children and the elderly. Wounded people were dragged away, put in cars and taken away.[432] As Witness 225 described it, they "crushed the people mercilessly."[433] Witness 427's 15-year-old nephew was arrested. She looked for him at various places including the Intelligence Unit where she saw people as young as 15 to 16 years old under arrest.[434]

194. The following day, Witness 125 saw a member of the Relief Unit who he recognised, Colonel Javanmard. He was holding a wireless set in his hand and issuing orders saying, "Shoot 'em, have no mercy, bastards."[435] Two colonels on the police force approached Witness 125 and told him to leave, saying "this is not like yesterday, today we have permission to shoot you."[436] "They have orders to shoot. The order to shoot to kill has come. Do not stay."[437] Special Unit

[427] W220, STMT.
[428] W426, 5 February 2022; and see W10, STMT describing the chaos in the city of Mishkindasht, created by the burning buildings and indiscriminate shooting at protesters as "a war ravaged city;" "nothing in the streets save stones, fire and damage."
[429] W125, 14 November 2021.
[430] W125, 14 November 2021, W225, STMT.
[431] W422, 6 February 2022, W225, STMT.
[432] W125, 14 November 2021; W11 STMT; W499, 6 February 2022.
[433] W225, STMT.
[434] W427, 6 February 2022; and see W497 STMT.
[435] W125, 14 November 2021.
[436] W125, 14 November 2021.
[437] W125, 14 November 2021.

officers from Imam Ali garrison of Sanandaj, wearing black with covered faces shot directly at people. The protesters had no arms; they only threw stones.[438]

195. At sundown on 17 November Witness 225 was in Azadi Square in Sanandaj. Security forces stationed on the rooftops of government buildings fired J-3s and Kalashnikovs at protesters. These forces were from the police, border guards and plainclothes units. Their faces were covered. Forces on the ground fired pellet guns directly at protesters, including children. They fired at peoples' backs and at people who were running away.[439]

196. These were not tactics security forces had used on unarmed protesters in the past. Previously, "if the Special Forces men came out, they only intended to disperse the crowd and end the demonstrations. But this time they shot to kill. [440] The firing of weapons was indiscriminate.[441] Security forces shot at protesters' head, back, waist, legs; anywhere. [442] Snipers were located on the tops of buildings; many armed with Kalashnikovs. They were also throwing tear gas in the street,[443]as well as into shops and homes.[444]

197. Some protesters were disappeared. Witness 499 saw a friend get shot and taken away. He learned the friend had been arrested but he was not heard from for three weeks. Afterwards his body was found in Saranjianeh. It showed signs of torture; black and blue marks and a broken hand. He had been electrocuted.[445]

198. Students were protesting in front of Azad University. About a half hour into that protest security forces carrying weapons and wearing helmets, bullet proof vests and black uniforms began breaking the windows of cars parked in the area. In other parts of town similar forces were on motorbikes smashing the glass and rooftops of parked vehicles.[446] A heavily guarded bank was set on fire. Witness 125 opined protesters could not have started that fire as it began inside the bank which was too well guarded for anyone to enter it.[447]

Omidiyeh

199. In Omidiyeh, the pattern of initially peaceful protests turning violent due to the intervention

[438] W116, STMT; W499, 6 February 2022.
[439] W225, STMT.
[440] W116, STMT.
[441] W499, 6 February 2022; and see W497, STMT.
[442] W11 STMT; W116, STMT.
[443] W125, 14 November 2021; W11 STMT.
[444] W497, STMT.
[445] W499, 6 February 2022.
[446] W497, STMT; and see W453, STMT [an ambulance driver, describing the same methodical use of motorbikes to attack protesters in his area].
[447] W125, 14 November 2021.

of security forces was repeated. The pattern suggested the existence of a "shoot to kill" order. The protests began peacefully. The Governor and a local prosecutor showed up at the protests and told people to go ahead but not to cause any disturbances.[448] About 4000 to 5000 people were out on the first day. On the second day Basij and Sepah officers joined the local police at the protests. On the second or third day the internet went down.[449]

200. On the third day and thereafter Basij and Sepah forces attacked protesters, firing guns—Kalashnikovs and pellet guns--into the air. Protesters were unarmed. They did not attack banks or the Basij or government forces. All protesters did was close the roads, shout slogans and at times throw stones.[450]

201. Tear gas was fired. Witness 8 began getting reports of people being killed. He was told by an Anti-Riot Basij officer that they "were ordered to fire at anyone who was there to kill and not to give a damn." Basij forces fired on people "recklessly."[451] Many people were injured; many seriously. The firing was scattered; bullets were "everywhere."[452] Witness 312 was hit in the mouth with a pressurised bullet that tore into his tongue and drove pellets into his face, neck, cheeks, and chest.[453]

202. Forces from Behbahan came into the city on motorbikes; each one carrying two people and all of them armed. There were pickup trucks with the Sepah license plate on them carrying armed men. These forces had a large number of war weapons like Kalashnikovs as well as airguns and batons. They were hitting people on the head with batons as a way to prevent people from gathering.[454]

Andimieshkt

203. The evidence regarding events in the Andimieshkt region was based on the testimony of one witness, but it followed a familiar pattern. Peaceful demonstrations took place in Imam Square in Andimieshkt beginning in front of the Governorate. About 4000 to 5000 people gathered there, shouting slogans. A truck and some officers in uniform were in front of the Governate to prevent anyone from going inside.[455]

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[448] W8, STMT.
[449] W8, STMT; W362, 5 February 2022.
[450] W8, STMT.
[451] W8, STMT; W312, STMT.
[452] W312, STMT.
[453] W312, STMT.
[454] W8, STMT.
[455] W279, STMT.

204. Then uniformed police located on the roof tops and in front of the Governate fired assault rifles into the air. The Guard, in guerrilla uniforms with helmets and Plexiglass masks, attacked the crowd with tear gas and batons.[456]

205. There was evidence that a man with his face covered fired a gun at the edge of one of the roof tops, although it did not appear to be aimed at any of the officers. The man ran away but was later found at his house where he was shot and killed by police.[457]

206. Witness 279 described the situation as "frenzied." He was hit on the foot with a tear gas canister. When he bent over to look at his foot he was shot in the eye with a pellet. Someone took him to the hospital on a motorbike. People were being arrested at the hospital. He later went to Tehran to get further surgery for his eye. There he was confronted by people posing as reporters who wanted to question him about his role in the protests and how he was shot. He refused to speak with them and returned home.[458]

Ahvaz

207. Protests began in Ahvaz on 16 November. As with the rest of the country the demonstrations were initially peaceful until security forces instigated violence.[459] People had parked their cars in the streets and turned the engines off, blocking roads. When plainclothes security and police arrived, they began smashing car windows and set cars on fire. These forces also set banks on fire. They teargassed the crowd in order to disperse it.[460]

208. Witness 115, a resident of Ahvaz, heard shooting but did not see any. Anti-riot, Basij, and plainclothes forces chased people in the streets and later in the day shot at them. Several people were killed.[461]

209. There was an order to shoot protesters in Ahvaz as well. Sardar Ahmad Abdollahzadeh, a commander of the Intelligence Security of Iran, issued that order, a fact Witness 190 learned from Abdollahzadeh's son.[462] Security forces then began firing directly at unarmed protesters.[463] Several people in the protests were killed.[464]

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[456] W279, STMT.
[457] W279. STMT p 1.
[458] W279, STMT.
[459] W501, STMT.
[460] W190, STMT.
[461] W190, STMT; W362, 5 February 2022.
[462] W190, STMT.
[463] W501, STMT.
[464] W115, STMT.

210. Security forces were apparently also attempting to hide their identities. Witness 190 saw men from the Sepah Pasadaran remove their usual uniforms, put on "panther-like spotted uniforms of the Basij" and then fire shots directly at the protesters. He saw these forces throw a number of young men off the Naderi Bridge into the river. He stated that he secretly filmed those events.[465]

211. Witness 190 saw one of the only armed clashes between protesters and security forces raised in evidence.

Arak

212. During protests in Arak, armed Basij and Sepah forces surrounded protesters and beat them indiscriminately. Witness 226 saw an 18-year-old girl "thrashed in such a way that she was not supposed to live."[466] The protesters were not armed. Security forces, however, shot tear gas into the crowds, pepper sprayed protesters and threw knives at them. They beat them with batons. Some carried assault rifles. Witness 226 did not see anyone getting shot but heard rifle fire and later learned, while in detention, that a number of protesters had been killed. The forces engaged in this violence were Sepah in uniform and Basij.[467]

213. A member of the Basij fired a taser gun directly at the chest of an old man who was, along with several other people, running down the street. The man fell and died instantly. Witness 226, who witnessed this event, decided to leave the area but was surrounded by security men who pulled his windbreaker over his head and repeatedly tased him. He felt he was paralysed. He was beaten and arrested and taken to the Police Building.[468]

Khuzestan

214. There were a large number of protesters out in Sheiban City on 16 November blocking the roads. Although the protests were peaceful about 30 to 40 security forces on motorbikes surrounded them and fired tear gas at them at close range. There were policemen and Basij forces involved in this, wearing helmets and anti-riot uniforms. They were throwing stones at protesters and beating them. A 17-year-old boy was beaten so badly he fell to the ground, cracking his head.[469]

[465] W190, STMT.
[466] W226, STMT.
[467] W226, STMT.
[468] W226, STMT.
[469] W281, STMT.

215. Then 150 to 200 additional forces arrived all "armed to the teeth." They carried AK-47s and began shooting at protesters. Basij forces shot a tracer bullet at a covered corridor on City Hall, setting the building on fire. They threw stones, breaking windows in the same building. Later they spread rumours that protesters had caused the fire. Witness 281 saw two young boys, both under 18 years of age, shot by Basij forces.[470]

216. The Basij had their heads covered with helmets and with Keffieh. The other security forces involved in these events were military men wearing helmets with their masks pulled down.

217. Similar violence was taking place in Kut Abdullah. Forces there were also "armed to the teeth." They were anti-riot forces, riding on motorbikes and wielding batons and shields. There were Basij forces there as well, many riding in the back of Sepah vehicles. A 17-year-old boy was shot and killed in Kut Abdullah that night.[471]

218. In Masjid Suleiman the police, Sepah and Intelligence forces were grouped around the Governate building where about 1000 protesters had assembled. Initially there was no violence. Protesters were speaking with the head of Sepah forces there about the high price of gasoline. The Governor of Masjid Suleiman, Haidar Hojjati Nia, came and talked to people for about one hour. Protesters began shouting slogans and did not leave the area. Hojjati Nia then left the area, telling the Commander of the Sepah, Mr. Hosseini, to do whatever he needed to do to disperse the protesters. Witness 287 personally saw Mr. Hosseini order his forces to shoot, based on an order from Governor Hojjati Nia. The police played no role in this; all the confrontations were caused by the Sepah.[472]

219. Security forces, armed with tear gas, batons and guns, were dressed in plain clothes and covered their faces. Two of the people involved in attacking protesters were Mr. Suri and Mr. Bakhtiar. They beat anyone they saw. Security forces fired on protesters from the rooftop of the Governate. One of the shooters was Mr. Zakari. No one was killed but several people were wounded.[473]

Additional evidence of unlawful killings/murder

220. A number of witnesses were not identified by the region of Iran in which they were located out of fear for their safety. However, their evidence demonstrated a similar pattern of events. These witnesses testified that peaceful protests were met with unprovoked, violent responses

[470] W281, STMT.
[471] W281, STMT.
[472] W287, STMT.
[473] W287, STMT.

from the security forces. Security forces, often stationed on roof tops, fired directly at protesters, hitting many above the waist, indicating, at minimum, a reckless disregard for human life, if not an intent to kill.[474] The shootings appeared to be both random and, at times, targeted at individual protesters. Anyone could be a victim including young children, women and the elderly, as well as people not actually involved in the protests.[475] Security forces used lethal weapons and, in some cases, illegal weaponry and/or ammunition like "two-level" bullets.[476] Security forces, in addition to the use of tear gas and pepper gas, also brutally beat unarmed protesters with batons, truncheons and other weapons.[477]

221. Expert Witness Robert Heinsch testified that Reuters News had estimated over 1500 people were killed during the November 2019 protests.[478] Witness 185 stated that over 120 people were killed in his town alone.[479] Amnesty International was able to verify 324 killings but suggested there were many more.[480]

222. The evidence also established that security forces were specifically authorised to use lethal force against unarmed protesters, including shooting to kill. Witness 5 stated that the now Commander of Alborz Province authorised security forces in that area to "do whatever they wanted to do" including firing on protesters.[481] The Basij and Sepah, in particular, fired "everywhere."[482] Expert witness Robert Heinsch testified that any order to shoot protesters had to have come "from the top" and that the manner in which shootings were carried out reflected an intent to kill on the part of the shooters.[483]

223. Witness 185, a confidante of the Friday Prayer Leader in his district in Iran, testified that in a session with the Friday Prayer Leader the IRGC took control of the meeting and said the protests had to end and security forces were permitted to do whatever they had to, including shooting people, to stop the protests. He testified shoot to kill orders came from Tehran as locals had no power on their own to issue this order.[484] Witness 418, a member of the police

[474] W366, 11 November 2021; W28, 13 November 2021; W31, 12 November 2021; W5, 13 November 2021; W110, 13 November 2021; W18, STMT; W82, 4 February 2022; W86, 4 February 2022; W451, 4 February 2022; W84, 5 February 2022; W436, 5 February 2022; W494, 5 February 2022; W80, 5 February 2022; W83, 5 February 2022.
[475] W28, 13 November 2021; W31, 12 November 2021; W5, 13 November 2021; W407, 4 February 2022; W436, 5 February 2022; W80, 5 February 2022; W83, 5 February 2022.
[476] W Bahar Saba, 12 November 2021; W82, 4 February 2022; W86, 4 February 2022.
[477] W110, 13 November 2021; W351, STMT [regarding Bushehr province].
[478] W Robert Heinsch, 13 November 2021.
[479] W185, 10 November 2021.
[480] W Raha Bahreini, 11 November 2021, updated by AI Index number: MDE13/2308/2020, 16 November 2021.
[481] W5, 13 November 2021; W407, 4 February 2022.
[482] W5, 13 November 2021; W418, 6 February 2022.
[483] W Robert Heinsch, 13 November 2021; W418, 6 February 2022.
[484] W185, 10 November 2021.

force, testified that though the police were not ordered to shoot, the IRGC and Basij were ordered to do so; they were the forces shooting at protesters.[485]

224. Security force members who refused to comply with this order were arrested, beaten and punished.[486]

225. The evidence, taken as a whole, established beyond a reasonable doubt that Iranian security forces engaged in widespread and systematic unlawful killing of individuals who participated (or were suspected of participating) in the Aban protests. The evidence disclosed that at least 324 individuals were killed. Although the total number of those killed cannot be accurately assessed, this figure is undoubtedly a significant underestimation. The number of unlawful killings may be as high as 1500. However, due to the Iranian Government's attempts to conceal the crimes, particularly through ongoing and illegal threats of reprisals targeted at, and harassment of, families of the victims, the precise figure cannot at this time be verified.

II.4.3 Arbitrary arrest and detention

a. The right to liberty

226. Article 9 of the ICCPR specifies that no one can be subjected to arbitrary arrest or detention and/or deprived of liberty except on grounds and in accordance with procedure established by law.[487]

227. Deprivation of liberty is the restriction "of motion within a narrower space than mere interference with liberty of movement."[488] In its General Comment No. 35 on Article 9 ICCPR, the UN Human Rights Committee identifies a range of situations of deprivation of liberty, including police custody, remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalisation, or being involuntary transported.[489] The UN Working Group on Arbitrary Detention considers that "[a]ny confinement or retention of an individual accompanied by restriction on his or her freedom of movement, even if of relatively short duration, may amount to a *de facto* deprivation of liberty."[490]

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[485] W418, 6 February 2022.
[486] W601, 6 February 2022.
[487] ICCPR, Art. 9(1).
[488] HRC, General Comment No. 35, Article 9 (Liberty and security of person), UN Doc. CCPR/C/GC/35, 16 December 2014, para. 5.
[489] Ibid.
[490] UNWGAD, *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/22/44, 24 December 2012, para. 55.

228. Arrest and detention are arbitrary where they are unlawful or can be characterised as including elements of inappropriateness, injustice, lack of predictability and due process of law.[491] According to the Working Group on Arbitrary Detention, referring to relevant jurisprudence of the UN Human Rights Committee, "secret and/ or incommunicado detention constitutes the most heinous violation of the norm protecting the right to liberty of human beings under customary international law. The arbitrariness is inherent in these forms of deprivation of liberty as the individual is left outside the cloak of any legal protection."[492] Other forms of arbitrary detention include enforced disappearances which "constitute a particularly aggravated form of arbitrary detention."[493] Any arrest and detention as "punishment for the legitimate exercise of rights protected under international law" (see further below) is also arbitrary.[494]

229. States must set out clearly in domestic legislation the permissible reasons for depriving a person of their liberty, and the procedures for doing so.[495]

The right to liberty in the context of protests

230. A deprivation of liberty through arrest or detention as punishment for the exercise of an individual's right to freedom of protest, or to prevent individuals from continuing with peaceful protests, is arbitrary.[496] This includes "preventative detention" of individuals to keep them from participating in protests as well as "indiscriminate mass arrest prior to, during or following an assembly."[497]

231. In a case where police in Ukraine had arrested protesters on the suspicion of committing the crime of "mass disorder" during the Maidan protests in 2013/2014, the European Court of Human Rights considered that authorities failed to meet the standard of "reasonable suspicion" that the arrested protesters had committed the alleged offence. Instead it considered that the arrest and detention of protesters was arbitrary and formed part of the authorities' larger deliberate strategy in relation to the protests (which also included excessive force by law enforcement amounting to ill-treatment) to "put an end to and further hinder the

[491] Ibid, para. 12.
[492] UNWGAD, A/HRC/22/44, 24 December 2012, para. 60.
[493] HRC, General Comment No. 35, para. 17.
[494] Ibid.
[495] HRC, General Comment No. 35, para. 14.
[496] HRC, General Comment No. 35, para. 17; UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, A/HRC/22/44, 24 December 2012, para. 38 (b).
[497] HRC, General Comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Doc. CCPR/C/GC/37, 17 September 2020, para. 82.

Maidan protests."[498] Similarly, the Inter-American Court of Human Rights found in a case against Honduras in which authorities carried out mass arrests of protesters that "a massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers, may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest."[499]

Iranian law and the right to liberty

232. The Iranian Constitution provides in Article 32 that "[N]o one shall be arrested except by the order and in accordance with the procedures laid down by law."[500] Article 4 of the Iranian Code of Criminal Procedure (CCP) provides that "[A]ll actions restricting an individual's liberty or depriving them of it, as well as entering the private sphere of individuals, are prohibited except on legal grounds, with due respect to regulations and under the supervision of judicial officials."[501]

233. These provisions may, however, interfere with the right to liberty in light of overly broad and vague provisions in other pieces of legislation, which criminalise the exercise of certain human rights and freedoms, like freedom of expression, thought, conscience, religion and the right to privacy.[502] For example, Article 498 of Book Five of the Islamic Penal Code provides that whoever forms or administers a group or association larger than two persons either inside or outside the country that aims to "perturb the security of the country" shall be sentenced to between two and 10 years' imprisonment.[503] Judges have the discretion to define what amounts to "perturbing the security of the country." This requirement is so wide that it can result in an interpretation that decimates the right.

b. Violations of the right to liberty during and in the aftermath of the Aban protests

235. The evidence presented to the Panel establish beyond a reasonable doubt, when viewed in totality, that security forces engaged in the arrests and detention of thousands of civilians during and in the aftermath of the November 2019 protests. The arrests were done without

[498] *Shomorgunov and others v Ukraine*, Appl. Nos. 15367/14 and thirteen others (ECtHR, 21 January 2021), paras 464-478.
[499] *Servellón-García et al. v. Honduras*, (Merits, Reparations and Costs) Ser. C. No. 152 (IACtHR, 21 September 2006), para. 93.
[500] Constitution of the Islamic Republic of Iran, 1979, Art. 32.
[501] Code of Criminal Procedure, Art. 4.
[502] Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, E/C.12/IRN/CO/2, 10 June 2013, para. 7.
[503] Book Five of Islamic Penal Code- Ta'zir and Deterring Punishments, 2013, Art. 498.

warrants and without legal justification.[504] The conditions of confinement were generally appalling and involved the infliction of sexual assaults, rape and torture. Detainees were also routinely denied access to counsel and a fair trial.

236. At the time of the Aban protests, detention centres were set up across Iran to house arrested protesters in groups. It was Witness 407's opinion that this was done because official prisons had strict rules, systems of arrest, and conditions of confinement which the security forces wanted to avoid for the protesters.[505] The witness, who was a former judicial officer, testified that, "[t]hey would keep them in places where, if they got killed, they could absolve themselves of any guilt or crime."[506]

237. The police, the IRGC or Basij forces, and the Ministry of intelligence each ran its own detention centres. There was cooperation amongst these forces in running the centres, with some prisoners being transferred between the various forces' detention centres.[507]

238. Amnesty International reported that over 7,000 men, women and children were arrested by Iranian security forces across 28 of 31 provinces in Iran during November 2019.[508] Expert Witness Robert Heinsch reported the same number.

239. The Panel finds as follows:

Tehran

240. The evidence established that security officials entered hospitals in Tehran and dragged away or interrogated patients injured in the protests, and that the Security forces also either prevented patients from accessing hospitals or ordered hospitals not to take in patients injured in the protests.[509] One witness testified that the police took the wounded to the police station instead of the hospitals: "they would drag this person, would kick the wounded person with their boots and they would hit their legs, the knees and drag the person and take the person to the police station".[510]

241. Detention centres were set up in Tehran, for instance in Khorramabad, where arrested protesters would be locked up, beaten aggressively, interrogated, and forced to confess to

[504] W407, 4 February 2022; W109, 12 November 2021; W245, 14 November 2021; W5, 13 November 2021; W216, 14 November 2021; W173, 13 November 2021; W225, STMT; W183, 13 November 2021; W175, 12 November 2021.
[505] W407, 4 February 2022.
[506] W407, 4 February 2022.
[507] W Mohammad Nayyeri, 13 November 2021; W Raha Bahreini, 11 November 2021; W175, 12 November 2021; W303, 14 November 2021.
[508] W Raha Bahreini, 11 November 2021.
[509] W109, 12 November 2021; W112, STMT.
[510] W245, 14 November 2021.

instigating violent protests.[511] Several of those detained were young boys under the age of 15-16, even 13-14 years old.[512]

242. Witness 604, who was a member of staff of the Greater Tehran Prison (Feshafouyeh), stated that around 500 arrested protesters were brought to their prison, several of whom were wounded, but there were strict orders that the prisoners should under no circumstances be sent to hospitals.[513] The prisoners were not allowed to contact their families.[514] Later, 20-30 interrogators from the Ministry of Intelligence and the Security Police of Tehran visited the prison to interrogate the detained protesters.[515] The witness stated that Montazeri, the Public Prosecutor of Tehran, came one day unannounced to give moral support to the interrogators, and himself visited each protester detained and interrogated them.[516] Thereafter, assistant public prosecutors began to arrive at the prison to hand out extremely harsh sentences of imprisonment in accordance with the reports written by the interrogator – one even received a death sentence and was executed in the middle of the night.[517]

243. Witness 604 stated that the volume of persons arrested in November 2019 was so high that, aside from the police prisons, some of them were kept at the Basij barracks, some at the CID, some at the police station(s), some at the Qamar Detention Centre of Pasdaran.[518]

244. Another female witness detained at an IRGC detention centre testified that she was detained, beaten badly and forced to confess. Subsequently she was taken to court to face charges she stated were false. While in court her ankles were shackled and she was not allowed to speak with the judge directly.[519] The witness stated that when she asked to speak with the judge, she was told, "No, you have no right to talk to the judge. You are somebody who has opposed the Islamic regime. You have no such rights."[520] When the witness refused to confess to the charges, she was photographed, blindfolded, and taken to another detention centre. There she was forced to cover her head and body by wearing a headdress, she was beaten again and forced to confess.[521]

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511 W110, 13 November 2021.
512 W363, STMT.
513 W604, STMT.
514 W604, STMT.
515 W604, STMT.
516 W604, STMT.
517 W604, STMT.
518 W604, STMT.
519 W110, 13 November 2021.
520 W110, 13 November 2021.
521 W110, 13 November 2021.

245. When the witness was finally released, she met with a judge and discussed with him the physical torture and sexual abuse she endured in detention. The judge ignored her and stated that the assaults had nothing to do with the court, refusing to discuss or consider the circumstances of her wrongful detention, and failing to instigate an investigation on her behalf[522]

246. The security forces also threatened and interrogated family members of detained protesters.[523] The Panel notes instances where the detainees were tried in absentia and sentenced to several lashes of whips and years in imprisonment thereafter.[524]

247. This evidence established, in the Panel's opinion, proof beyond a reasonable doubt that protesters were arbitrarily arrested and detained in Tehran during the November 2019 protests.

Islam Shahr

248. The Panel has had sight of two witness statements from Islam Shahr, from individuals who did not testify before the Tribunal. The witnesses both stated that the security forces were arresting wounded protesters from the protest sites and the hospitals.[525] One witness stated that a colleague of his was arrested and detained forcibly by the Intelligence Department of Sepah for 24 hours, before being released. He was released owing to his personal contacts.[526]

249. The evidence of these witnesses is consistent with evidence from other witnesses testifying before the Tribunal in relation to arbitrary arrests in various different provinces across Iran. Despite not being able to question these witnesses, the Panel finds this evidence credible.

Karaj

250. In Karaj security forces were arresting people at the sites of the protests. The Basij forces were riding around on motorcycles, shooting coloured paintball pellets at people on the streets – without verifying whether they were participating in the protests or were passers-by – so that intelligence forces would thereafter identify the people marked by the pellets and arrest them.[527]

251. Security forces also entered hospitals and took away injured protesters. As one witness

[522] W110, 13 November 2021.
[523] W110, 13 November 2021.
[524] W110, 13 November 2021.
[525] W194, STMT, p. 2; W40, STMT, p. 2.
[526] W194, STMT, p. 2.
[527] W5, 13 November 2021.

described:

> "The security forces had control of the hospital, in other words, they would come and check their bodies and those that had bullets in them. They would remove any personal IDs and anyone who was injured after identifying them, they would handcuff them. They would handcuff them to their beds, hospital beds, to allow the doctors to carry on the preliminary examination. Those whose injuries were not very serious were just taken away by the security forces."[528]

Fardis

252. In Fardis, the security forces were arresting injured people from the streets as well as from hospitals, as in other provinces. As one witness recounted:

> "We saw that the forces were gathering even outside the clinics. They would not even allow the wounded people to be taken inside. The person who was wounded whether with a war bullet or with the pellets, they would just throw them into their vehicles and would take them away...
>
> …there were a number of plainclothes forces and there were also members of the police force [outside the medical clinics]. And I could hear from what they were saying to each other, I could tell that they were waiting for the wounded people to be brought there, in order to take them away. And they had also instructed the doctors that they had no right to admit any wounded people. And of course, the doctors were fearful and they would not admit them, they would not accept them."[529]

253. Witness 70 testified that after her son was killed, she and her family members were violently arrested and detained by the security forces, blindfolded and interrogated.[530]

Shahriar

254. In Shahriar, protesters were dragged away by security forces on motorbikes or put into cars from the protest grounds.[531] Witnesses testified to being warned against going to the hospitals for treatment as IRGC officials were entering hospitals, and arresting and taking away whoever had been, in whatever manner, connected to the protests, whether severely injured or not.[532]

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[528] W451, 4 February 2022.
[529] W216, 14 November 2021.
[530] W70, 10 November 2021.
[531] W367, 14 November 2021.
[532] W173, 13 November 2021.

One witness testified that his father had been arbitrarily arrested and tortured to obtain information on the witness, who had escaped the country following the protests.[533] The same witness also testified:

> "They easily took people and put them in these cars…These cars were refrigerated cars…They were filled up with people who had been arrested by the Basij and the IRGC, so in such a way they took people out of the city to Kahrizak. Kahrizak is a place where after they take you nobody can find you. They either kill you there or they do something to you. Nobody will know what will happen to you."[534]

255. According to another witness, if not killed, the arrested individuals were detained at detention centres in poor conditions, like at Fashapouyeh prison.[535] Prisoners were given electric shocks, and were forced to confess in front of a camera and also in writing for participating in the riots, causing arson, destroying public property, provoking people to come to the streets to riot, and disrupting the order and security of the country.[536] Those who confessed were sentenced to lashings with electric whips on unclothed skin, often in areas like the lower back, or across the entirety of their body from the neck to the upper part of the buttocks.[537] Many were also sentenced to exile whilst in prison, during which time they were not allowed visits from family members.[538]

Isfahan

256. On 27 Aban (18 November 2019), the special unit forces were arresting people en masse in Isfahan who they suspected of having participated in the protests over the previous days.[539] The arrested men, women and children were forced into cars and taken to detention centres, where they were beaten and kept in solitary confinement.[540]

257. Witnesses testified to being kept in detention with 17-18 other people, including minors, 18 days were spent in solitary confinement.[541] The witness testified that they were interrogated intensely every day and tortured both physically and psychologically.[542] The witness stated that

[533] W173, 13 November 2021.
[534] W173, 13 November 2021.
[535] W26, 13 November 2021.
[536] W26, 13 November 2021.
[537] W26, 13 November 2021.
[538] W26, 13 November 2021.
[539] W225, STMT; W213, STMT; W140, STMT.
[540] W225, STMT; W213, STMT.
[541] W225, STMT; W213, STMT.
[542] W225, STMT. The details of the torture of this witness are discussed in Section II.4.4 below regarding the widespread use of torture techniques during the November 2019 protests. See also W213, STMT.

they were charged with apostasy, and that their detention was aimed at forcing them to confess to acting as a spy for the United States of America or Israel, and deliberately inciting protests in Isfahan to destabilise the Iranian Government.[543]

258. Witness 225 testified to having used personal contacts in the Government and signing a false confession to obtain release.[544] It was the witness's opinion that filing a complaint with the authorities was not feasible as there would be no outcome to the complaint.[545] Witness 213 also stated that although he was released without signing a confession, he was asked to report to the security authorities, who then told him to sign a confession that he was fighting on behalf of ISIS, failing which they would harm his child.[546]

Qom

259. Witness 253 provided evidence that on all three days from 16-18 November 2019, the special unit forces in Qom were going around the city on motorbikes and arresting protesters who refused to retreat.[547]

260. The witness stated:

> "Whenever it got chaotic, the Special Unit men on motorbikes and vehicles and plainclothes men would come and tell us not to stand there. Those who put up some resistance would be slapped and kicked, thrown in a vehicle and hauled away. All of them carried batons and beat up the people. Anyone they wanted to arrest they would pepper spray him or hit him on the face with baton and arrest him. There was a girl who was zealously shouting slogans. They seized her. A couple of young men came and asked to let her go. They beat up those couple of young men and took them away. If you wanted to take a film, they would come and seize the gadget and delete everything. If you protested as to why they were taking away the gadget, they would take you too with them…
>
> … One woman shouted slogans from her car; the Basijis broke the glass of her car to pieces, dragged her out of the car, slapped and kicked her, dragged her by her hair, shoved her in a car and drove her away. There were a large number of police

[543] W225, STMT.
[544] W225, STMT.
[545] W225, STMT.
[546] W213, STMT.
[547] W253, STMT.

and security forces… They would arrest anyone who protested. "[548]

261. The witness stated that they were arrested on 18 November, and detained at the CID detention centre on Saheli Road.[549] They stated they were detained in a small cell with other prisoners, and blindfolded and interrogated regularly.[550] The witness recalled being accused of working with adversary groups and countries to initiate protests in Qom, and being forced to confess.[551] The witness was charged with creating terror and intimidation, and disturbing the public peace, and was informed by the CID chief that he would be hanged for the crimes. Nonetheless the witness was able to use personal contacts with a Member of Parliament to obtain release on bail. The witness subsequently fled Iran.[552]

Mashad

262. Witness 137 and Witness 240 provided written statements regarding events in Mashad during the Aban protests. Witness 137 stated that the security forces were going around beating people participating in the protests, handcuffing them, and putting them into prison vans before driving off.[553] Witness 240 similarly stated that they had witnessed security officers beating up several protesters with batons, dragging them away into armoured vehicles, and taking them away to prisons.[554] Witness 403 specifically named Basij forces and IRGC riding around on motorcycles and beating up protesters with nightsticks and throwing tear gas.[555]

263. Again, this evidence is consistent with reports of similar actions by security forces throughout the country in November 2019.

Shiraz

264. Witness 183 testified that on 16 November 2019, injured people were being arrested from inside the local hospital.[556] On 18 November, police forces were seen ransacking shops as well as going around to people's houses and arresting people from inside their homes.[557] These people were forced into cars, ambulances, taxis and any other available vehicles, and transported to detention centres.[558] The Panel notes witness evidence that the Basiji, the

[548] W253, STMT.
[549] W253, STMT.
[550] W253, STMT.
[551] W253, STMT.
[552] W253, STMT.
[553] W137, STMT.
[554] W240, STMT.
[555] W403, STMT.
[556] W183, 13 November 2021.
[557] W183, 13 November 2021.
[558] W303, 14 November 2021.

IRGC, and the police each had their own detention centres with their own prisoners in Shiraz.[559]

265. One witness described his arrest during the protests as follows:

> "When they arrested me they took my mobile from me, they beat us, and they swear at us and used obscene language. And they pushed us in the back of a car where only three people should sit, and I may say there were seven of us on top of each other and we were taken to the first detention centre. When we entered that detention centre it was like the horror tunnels...like the horror tunnels that they sometimes mention that used to exist at the beginning of the revolution. We went through corridors. We were beaten with...and kicked and punched. Then we went in. They said we will be all killed, and we were below 1000. That what we were told, that we were under 1000 individuals and they would kill us all."[560]

266. The witness testified that he had been abducted by plainclothes officers and thereafter taken to a police detention centre, but that his subsequent interrogation and detention were likely carried out by a mix of IRGC, police and intelligence forces.[561] The witness also testified that the detainees were forced to sign written confessions, and were refused the opportunity to either read the document before signing it or to have access to a lawyer.[562] Anyone who protested the wrongful detention was beaten up.[563]

Kermanshah

267. Protesters were also subjected to arbitrary arrest and detention by security officers in Kermanshah.[564] One witness, who had taken part in protests, testified to being hit by a pellet bullet by armed individuals, blindfolded and forced into a car, and finally taken into an IRGC detention centre.[565] The witness was detained in solitary confinement for 38 days, and interrogated and tortured as a means to obtain a confession. He was required to state before a camera that he had caused disruptions, vandalism and anarchy, as well as being responsible for killing security officers.[566]

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[559] W303, 14 November 2021.
[560] W303, 14 November 2021.
[561] W303, 14 November 2021.
[562] W303, 14 November 2021.
[563] W303, 14 November 2021.
[564] W175, 12 November 2021.
[565] W175, 12 November 2021.
[566] W175, 12 November 2021.

268. The witness was threatened that he would be transferred to the Ministry of Intelligence detention centre and killed there unless he confessed to these crimes.[567] The witness was played audio clips of his wife being tortured. He was told his wife would be killed unless he confessed.[568] He was also denied a lawyer.

269. The witness was thereafter taken to the Revolutionary Court of Kermanshah:

> "I asked the judge whether these tortures that I had undergone in the detention centres, were they ordered by judge? He said, 'No, this is based on their own discretions, the discretions that they have. … You have been using arms, weapons, and you are considered the enemy of God.'"[569]

270. The witness was transferred after that to the Ministry of Intelligence detention centre, where he was tortured again and told that unless he confessed within the week he would be killed.[570] Ultimately, the deputy governor of Kermanshah gave a final warning to the witness, following which the court sentenced the witness to 10 years imprisonment.[571]

Behbahan

271. In Behbahan province, the families of people injured or killed during the protests were abused, threatened and harassed by security forces as well as subjected to arbitrary arrest.[572] Mr. Ansarifar, whose son, Farzad, was killed by security forces, testified that Farzad's body was released to him by plainclothes forces from the Governorate of Behbahan.[573] They were warned: "Do not put up a show, do not raise slogans; bury the corpse and do not create any problems for us."[574] Mr. Ansarifar and his daughter were interviewed by the media about what happened to Farzad and the media subsequently broadcast the film of that interview. They were both threatened by Sepah Intelligence in Behbahan after that. The daughter was told: "If you speak out, we would put you in prison. Do not get in touch with anyone. Do not contact anyone outside of Iran."[575] Mr. Ansarifar's daughter and his brother were both arrested after that and charged with spreading lies and colluding with foreign countries. The

[567] W175, 12 November 2021.
[568] W175, 12 November 2021.
[569] W175, 12 November 2021. See also W175, STMT.
[570] W175, 12 November 2021.
[571] W175, 12 November 2021; W175 STMT.
[572] W12 STMT; W179, 13 November 2021; W Amin Ansarifar, 10 November 2021.
[573] W Amin Ansarifar, 10 November 2021.
[574] W Amin Ansarifar, 10 November 2021.
[575] W Amin Ansarifar, 10 November 2021.

daughter was put in prison. Someone set fire to his daughter's car and her home.[576]

272. Mohammad Rasoulan, then chief of Sepah Intelligence, participated in threatening the Ghanavati and Abdollahnejad families warning them not to hold mourning ceremonies.[577] When the Dashtinia family, who had also been threatened, subsequently had a memorial anniversary a hundred people were arrested at the scene.[578]

Marivan

273. Wounded people taken to the hospitals were in danger of arrest by security forces in Marivan, as in other parts of the country. Police vehicles waited outside hospitals to arrest the wounded as they arrived.[579] Due to this threat doctors and nurses encouraged people to go home, not to a hospital. Many of the injured were treated in secret in their homes.[580]

274. Families of victims were repeatedly threatened by security forces including the Ministry of Intelligence, Friday Prayer Leader Office, the Governor and the Sepah not to speak about what happened to their loved ones.[581] Some were subjected to political pressure; others filmed and harassed.[582] Witness 99 was in hiding as security forces came to arrest him after he gave an interview to the foreign press.[583]

Sanandaj

275. Sepah forces were deployed into small villages located near the Pakistan border. Witness 128 took part in demonstrations in the village of Nasirabad which is close to the Pakistan border. There were protests in the villages of Chahbahar, Iranshahr and Zahedan and demonstrations in the city of Sarbaz; all located within 15-20 km from Pakistan.[584] Over a seven- or eight-day period, 15 to 20 people were arrested and some tortured.[585]

276. When the injured were taken to the hospital they were often arrested there. People injured during the protests were also arrested on the streets and driven away, although protesters were able to "rescue" some of the injured.[586] No one "dared" to send an injured person to a

[576] W Amin Ansarifar, 10 November 2021; W179, 13 November 2021.
[577] W179, 13 November 2021.
[578] W179, 13 November 2021.
[579] W220 STMT; W99, STMT; W260, STMT.
[580] W99, STMT. See also W453, STMT [plainclothes forces came to hospital and demanded access to patient records to determine if people injured or wounded in the protests had been treated there].
[581] W17, 12 November 2021.
[582] W17, 12 November 2021; W15, 14 November 2021.
[583] W99, STMT.
[584] W128, 11 November 2021.
[585] W128, 11 November 2021.
[586] W225, STMT.

hospital.[587]

277. Witness 497's adolescent nephew who was not a protester, but a pedestrian went missing during the protests. The family was ultimately told he had been arrested and would be released later, despite his having been under 18 years. When the nephew was finally released in the middle of the night, he said he had been detained at the Police Intelligence building at 12 Farvardin Avenue. He had been thrown into a room with 40 to 50 other people; all blindfolded and in handcuffs. Each was taken to a room for interrogation. There were 12- and 13-year-old children among them.[588]

Omidiyeh

278. A similar pattern of indiscriminate use of force and arbitrary arrests took place in Omidiyeh. On the last couple days of the protests, Basij and Sepah forces began firing tear gas directly into people's homes and fired guns directly at protesters. A large number of people were arrested. Many of the people who were arrested were not heard from for weeks. Witness 8 saw children (12-, 13-, and 15-year-olds) being arrested.[589]

279. There was a large number of injured people but people were afraid to go to the hospital as injured people were being arrested there.[590]

Ahvaz

280. On the first day of the protests in Ahvaz many people were arrested and handed to Sepah and the Ministry of Intelligence. There were so many arrests that the jails were full causing the security forces to detain people in Takhti Stadium in Ahvaz.[591]

281. Witness 115 personally saw anti-riot forces beating a young man, breaking his nose and taking him away. Security agents were raiding houses and arresting people directly from their homes.

282. Witness 115 heard that security forces were not returning the bodies of the dead to their families but instead burying the bodies themselves.[592]

Arak

283. When Witness 299 saw plainclothes men dragging a young man down the street while beating

[587] W225, STMT.
[588] W497, STMT.
[589] W8, STMT.
[590] W8, STMT; W312, STMT.
[591] W190, STMT.
[592] W115, STMT.

him with a chain, he approached the forces and objected. He was immediately arrested and put in a kiosk with seven or eight other people, including one woman. One man in the group had already been repeatedly beaten with a "shocker" and hit on the head with a baton.[593]

284. They were all taken to the Imam Ali Complex, a detention unit belonging to the Police Intelligence Department. They were told to sit on the floor with hands on their heads. They were interrogated and put in prison uniforms. Witness 299 was held in a room with 28 to 30 other prisoners. There were no facilities there; no place to sleep. One person there was a kid arrested on his way home from school. Another was a man arrested with his four-year-old daughter who security forces just let go alone into the crowd after they took her father away.[594]

285. Each prisoner was taken before a judge. Witness 299 was accused of being a leader of the protests, which he denied. The judge was extremely partisan, asking Witness 299 about his views on President Rouhani. Witness 299 was not provided with a lawyer. He was charged with various things but not permitted to see his court file. After he was released, he was put on trial with 28 other people in a trial that lasted less than two hours. Almost everyone was acquitted because there was not enough evidence. The Witness had to sign an undertaking stating he would not participate in any future protests before the acquittal was entered.[595]

Urmia

286. In the Urmia region, plainclothes men encircled the crowd which was in Ayalat city square; the city's main square.[596] Witness 182 who attended the protests saw Special Forces there, beating people and firing tear gas. Most were dressed in black uniforms, wore black helmets and their faces were covered. Some wore green uniforms but Witness 182 did not think they were military forces.[597]

287. As with other protesters and witnesses, Witness 182 saw people being arrested and taken away even though the protesters were not being violent. They were simply chanting slogans about the increase in the price of gas.[598]

Gorgan

288. Only one witness gave evidence regarding the Gorgan region. The description of the protests

[593] W299, STMT; and see W235, STMT [regarding Gatchsaran].
[594] W299, STMT.
[595] W299; STMT, and see W350, regarding similar conditions of arrest in Khorramabad; W423, STMT [regarding Kerman province].
[596] W182, 14 November 2021.
[597] W182, 14 November 2021.
[598] W182, 14 November 2021.

was familiar. Witness 233 went to the city centre and saw that 300 to 400 people had assembled there, protesting the price of gas. Although the protesters were unarmed, officers of the Police Special Unit were engaged in "intense" skirmishes with the people, aiming their guns at protesters.

289. Witness 233 was filming these events which happened from Friday 15 November through Sunday 17 November. Witness 233 stated that Special Unit police dressed in black and driving Toyotas attacked protesters and then arrested them. Handcuffed protesters were taken away in vehicles.[599]

Khuzestan

290. Witness 287 was standing in the street among protesters in Masjid Suleiman when a Mr. Babadi, a member of the Basij, grabbed him by the collar. Several other security forces surrounded him, beat him and put him in a van with other detainees. Colonel Hosseini, the Commander of the Police, was present. He hit Witness 287 in the stomach, twisted his hand to force it into handcuffs. His brother, who had been shot, was arrested with him as well as a 70-year-old man. Four women were also put in the van. They were all blindfolded and taken to a place under Sepah control.[600] A 13-year-old boy was beaten and kicked, but released after one day.[601]

291. Witness 287 was transferred to the central prison where he was interrogated. He was asked why he was in the protests. A number of people, arrested in their homes, were also in prison with him. Many were young; 18- to 20-year-olds.[602]

292. He was held in prison for 17 days. He was denied any contact with his family. Ultimately, he was charged with taking money from 'adversary media', aiding and abetting protesters, and acting as an agent of the Aban protests. His case is still pending.[603]

Additional evidence of illegal arrests/threats to families

293. A member of the judiciary in Iran testified before the Aban Tribunal that legal processes were taken out of the hands of the judicial and prosecutorial authorities when the protests began. Throughout the country no responsibility was given to those legal authorities; they could do nothing. Security and non-security forces attacked people and their homes without judicial

[599] W233, STMT.
[600] W287, STMT.
[601] W287, STMT.
[602] W287, STMT.
[603] W287, STMT.

authority and arrested people in groups. Raids on private homes occurred in the day and the night without legal warrants.[604] "Basically orders were taken from the security council, were transferred to them [local authorities] and they wilfully did whatever they wanted to do, without any supervision whatsoever."[605] Arrestees were taken to places which were not detention centres at all. The proper detention centres did not have the capacity to hold the number of people arrested in November 2019.[606]

294. Those arrested in the protests were routinely denied access to family members for days or weeks after arrest.[607] Family members were often not informed of the whereabouts of missing loved ones, be those individuals alive or dead.[608] Some arrested individuals have not been heard from since the time of the protests.[609]

295. Other evidence was uniform in establishing that security forces were stationed at local hospitals all over the country. Citizens injured during the protests were targeted for arrest when they sought treatment at hospitals, often leading to the denial of proper medical treatment for many.[610] Hospital personnel performed their duties but the guards were there provoking fear; "the whole atmosphere was [a] police atmosphere".[611] Some of the injured died at home as a result.[612]

296. Efforts by families to file complaints regarding the killings or to initiate investigations as to the identity of the shooters were repeatedly thwarted by authorities.[613] Family members of protesters who were injured or killed were themselves routinely threatened with arrest or other harassment if they spoke to the media or revealed anything about the circumstances in which victims died.[614]

297. The evidence, taken as a whole, established beyond a reasonable doubt that Iranian security forces engaged in the widespread and systematic arbitrary arrest, deprivation of liberty and imprisonment of individuals, both participants and non-participants in the Aban protests. It

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[604] W362, 5 February 2022; W436, 5 February 2022.
[605] W407, 4 February 2022.
[606] W407, 4 February 2022; W418, 6 February 2022.
[607] W110, 13 November 2021.
[608] W18, STMT; W110, 13 November 2021; W407, 4 February 2022; W86, 4 February 2022; W80, 5 February 2022.
[609] W362, 5 February 2022.
[610] W32, 10 November 2021; W31, 12 November 2021; W451, 4 February 2022; W436, 5 February 2022; W80, 5 February 2022.
[611] W451, 4 February 2022.
[612] W5, 13 November 2021.
[613] W28, 13 November 2021; W31, 12 November 2021; W82, 4 February 2022; W86, 4 February 2022; W84, 5 February 2022.
[614] W32, 10 November 2021; W31, 12 November 2021; W110, 13 November 2021; W82, 4 February 2022; W86, 4 February 2022; W451, 4 February 2022; W83, 5 February 2022; W185, 10 November 2021; W19, STMT.

also established ongoing and illegal threats of reprisals and harassment of families of the victims.

II.4.4 Enforced Disappearances

298. Under human rights law, enforced disappearances are defined as continuous acts that begin with the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. The act extends for the whole period of time that the crime is not complete, that is to say, until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual.[615]

299. The phenomenon of enforced disappearances is a complex form of human rights violation that must be understood and confronted in an integral fashion.[616] Any act of enforced disappearance has the consequence of placing the persons subjected thereto outside the protection of the law.[617] Not only are the fate or the whereabouts of the person concealed, but while deprived of his/her liberty, this person is denied any right under the law, and is placed in a legal limbo, in a situation of total defencelessness.[618]

300. In order for the crime of enforced disappearances to be established, the evidence must demonstrate that the deprivation of liberty was accompanied by a refusal to acknowledge or to give information on the whereabouts of an individual. This requirement is "inseparably interrelated"[619] with the requirement that a victim be deprived of their liberty and goes to one of the foundational aspects of the offence; that is, that friends and relatives of disappeared individuals are deprived of, or actively prevented from discovering, information regarding the fate or whereabouts of the persons concerned.

301. Article 6(2)(i) of the Statute of the Aban Tribunal defines the crime of the "enforced disappearance of persons" as the arrest, detention or abduction of persons by, or with the

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[615] HRC, *Report of the Working Group on Enforced or Involuntary Disappearances*, UN Doc. A/HRC/16/48, 26 January 2011, para. 39; Declaration on the Protection of all Persons from Enforced Disappearance, UNGA Resolution 47/133, 18 December 1992, preamble.
[616] *Velasquez Rodriguez v. Honduras*, (Merits) Ser. C. No. 4 (IACtHR, 29 July 1988), para. 150.
[617] WGEID, General comment on the definition of enforced disappearance (March 2007), reproduced in UN Doc. A/HRC/7/2, 10 January 2008, para. 5.
[618] WGEID, General comment on the right to recognition as a person before the law in the context of enforced disappearances, para. 1, reproduced in UN Doc. A/HRC/19/58/Rev.1, 2 March 2012.
[619] Burundi Decision, para. 118.

authorisation, support or acquiescence of, a State or a political organisation, 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.

302. Enforced disappearances infringe a number of human rights recognised by Iran through its ratification of the ICCPR, including: the right to liberty and security of the person;[620] the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;[621] the right to life, when the disappeared person is killed;[622] the right to recognition before the law;[623] the right to a fair trial and to judicial guarantees;[624] the right to an effective remedy and the right to know the truth regarding the circumstances of a disappearance.[625] Enforced disappearances also infringe on a number of economic, social and cultural rights of the victims including relatives and communities affected, such as the right to protection and assistance to the family; the right to an adequate standard of living; the right to health; and the right to education.[626]

303. There is no minimum time for a disappearance to qualify as an enforced disappearance under human rights law. The crime can result from the incommunicado detention of an individual, even if for a limited amount of time, as long as the State refuses to acknowledge the whereabouts of the individual. In *El-Megreisi v. Libyan Arab Jamahiriya*, the UN Human Rights Committee recognised that prolonged incommunicado detention in an unknown location constitutes a violation of the prohibition against torture and cruel and inhuman treatment.[627]

304. The enforced disappearance of children who are particularly vulnerable represents an extreme form of violence against children which violates multiple rights concomitantly.[628]

305. The UN Working Group on Enforced and Involuntary Disappearances has determined that "when the dead body of the victim is found mutilated or with clear signs of having been tortured or with the arms or legs tied, those circumstances clearly show that the detention was not immediately followed by an execution, but that the deprivation of liberty had some

[620] Arts 9, 10 ICCPR.
[621] Art 7 ICCPR.
[622] Art 6 ICCPR.
[623] Art 16 ICCPR.
[624] Art 14 ICCPR.
[625] Art 2(3) ICCPR. See also General Comment 31.
[626] Arts 6, 7, 10, 11, 12, 13 ICESCR.
[627] *El-Megreisi v. Libyan Arab Jamahiriya*, CCPR/C/50/D/440/1990 (HRC, 23 March 1994), para. 5.4.
[628] WGEID, General Comment on children and enforced disappearances, UN Doc. A/HRC/WGEID/98/1, 14 February 2013, para. 1.

duration, even of at least a few hours or days. A situation of such nature not only constitutes a violation to the right not to be disappeared, but also to the right not to be subjected to torture, to the right to recognition as a person before the law, and to the right to life."[629]

306. The UN Human Rights Committee recognised in the case *Quinteros v. Uruguay*, for example, that the mother of the disappeared person was herself a victim of the violation of the Covenant, especially article 7 (the prohibition of torture), on account of the suffering she faced as a result of not knowing the fate or whereabouts of her child.[630]

a. *The available evidence*

308. The Panel has heard evidence, as outlined in earlier sections of this Judgment, that numerous individuals were arrested, detained, killed or abducted by the Iranian security forces. Witnesses also indicated that after the November 2019 protests there were a number of people who had gone missing, whose whereabout still remained unknown.[631] There were also events described in witness testimony that indicate the occurrence of enforced disappearances. These will be discussed below.

Shiraz

309. Witness 303 testified that he was arrested by plain-clothes officers during the protests on 16 November and taken to a detention facility.[632] After being held there in inhumane conditions for 10-12 hours – where he was subjected to torture and deprived of food and water – the witness was handcuffed, blindfolded, and taken to a second detention facility.[633] Crucially, the witness specified that "[d]uring this time our families didn't know where we were. They did not know what our situation was".[634] Witness 303 also testified that a 10-year-old boy was detained with him, and that "[f]or 10 days no family had any idea where they were whether alive or dead".[635]

Tehran

310. Witness 110 was also arrested during the protests of 16 November. She was subsequently beaten, blindfolded, placed in a car, and taken to the IRGC's base.[636] The witness testified that

[629] WGEID, General comment on the definition of enforced disappearance (March 2007), reproduced in UN Doc. A/HRC/7/2, 10 January 2008, para. 9.
[630] *Quinteros v. Uruguay*, Communication No. 107/1981, 21 July 1982, para. 14.
[631] See e.g. W220, STMT.
[632] W303, 14 November 2021, pp. 2-3, 8.
[633] W303, 14 November 2021, p. 4.
[634] W303, 14 November 2021, p. 5.
[635] W303, 14 November 2021, p. 9.
[636] W119, STMT, p. 3.

"[d]uring this time, my family did not know anything about me for 20 days almost. My family did not know anything about where I was. The courts, forensic medicine, the prisons, my mother went to all of those".[637]

Fardis

311. Witness 70 testified that soon after her son was killed during the protests, her husband was violently arrested and the family was not informed of his whereabouts for seventy days:

> "He was arrested in his brother's house. The Government officials attacked the house of his brother, arrested him violently, put him in a car, and I think that they even put him in the boot of the car, so that he would not be seen because they did not want anyone to see him on the way, that's how they took him to prison. They were not aware of him for 70 days and when my daughter was worried about her father and did not have any news of her father and called to see how her father was doing".[638]

Shahriar

312. Witness 26 described how her nephew was arrested and detained in Feshafevieh prison, where he was subjected to torture and inhuman treatment.[639] She proceeded to explain that "[a]fter a month we had no news of him".[640]

313. Witness 173 told the court that a fellow protester had disappeared without news: "[n]obody has heard from him. We have no news from him. We don't know if he is alive, dead, executed, imprisoned. We have no news of him. His family does not have any news of him. He is an unknown person now".[641] The same witness also stated that the security forces "took people out of the city to Kahrizak. Kahrizak is a place where after they take you nobody can find you. They either kill you there or they do something to you. Nobody will know what will happen to you."[642]

Marivan

314. Ershad Rahmanian, as discussed *supra,* disappeared in Marivan and was not heard from for days. Someone finally called the family and told them Ershad had been arrested and was being detained. The family was not provided with any information. Their search for him did not

[637] W119, STMT, p. 7.
[638] W70, 10 November 2021.
[639] W26 STMT, p. 1.
[640] W26 STMT, p. 1.
[641] W173, 13 November 2021, p. 3.
[642] W173, 13 November 2021, p. 4.

result in their learning of his whereabouts. About 20 days later a diver accidentally came upon five or six bodies beneath a local dam. Rahmanian body was among them. His body was bruised and injured, suggesting he had been subjected to torture. He had a head wound consistent with being shot in the head.[643]

315. After Ershad was found security forces tried to coerce his father into saying that his son had mental issues and had committed suicide. The father refused. He was then instructed to get the family to say he had been killed by anti-revolutionaries. The family also refused this demand. They were instructed not to contact the media.[644]

Sanandaj

316. A young man who worked as a cab driver disappeared during the protests in Sanandaj. His family was adamant that he did not participate in the protests, but was working his job at the time of the protests. His body was found nineteen days later. Security forces insisted he died due to accidental electrocution; an explanation which the family rejected.[645]

Omidiyeh

317. Witness 362 worked closely with others to collect and publish photographs of the protests and the actions of the security forces in responding to the protests. He had just transferred a set of photos to two colleagues and left the region when both of those colleagues were arrested. Neither of them was heard from again. Witness 362 stated:

> "I know that there are no traces and trails of those two arrested persons, as if they never existed; not a contact, a phone call, an address, nothing at all; as if they were never born of their mother."[646]

Razavi Khorasan

318. Witness 503 testified that security forces in Jarrahi City had fired weapons into reed beds where dozens of protesters had fled to hide during protests in his area. The number of people who were killed or injured during this attack remains unknown. Witness 503 stated, however, that the children of many families were still missing and that no one knows anything about their fate or their whereabouts.[647]

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[643] W99, STMT; W17, STMT.
[644] W17, STMT.
[645] W499, STMT.
[646] W362, STMT.
[647] W503, STMT.

Expert Witnesses

319. Apart from this testimony, expert witness Raha Bahreini testified that she had prepared a report on behalf of Amnesty International based on "in-depth interviews with 66 individuals inside Iran and 10 outside the country between 26 November 2019 and 26 August 2020", including "60 victims of arbitrary arrest, enforced disappearance, torture and other ill-treatment or their relatives or close acquaintances".[648] Ms. Bahreini's investigation revealed that many detained protesters were subjected to incommunicado detention and enforced disappearance for days, weeks or even months while held in undisclosed locations, in unofficial secret detention places, or in official "security detention facilities" run by the ministry of intelligence or IRGC.[649] Bahreini's report states:

> "Distressed relatives told Amnesty International that they visited hospitals, morgues, police stations, prosecution offices, Revolutionary Courts, prisons and other known detention centres to enquire about their loved ones, but the authorities refused to provide them with information. In some cases, officials deliberately denied information they had on the fate and whereabouts of forcibly disappeared individuals to their relatives, even though they were in their custody. In other cases, officials admitted to relatives that their loved ones were in custody but refused to disclose their place of detention or the charges they faced. Instead of alleviating the anguish of relatives, the authorities frequently threatened them with arrest if they kept seeking information about their loved ones or publicly spoke out about them".[650]

320. Expert witness Robert Heinsch, testified to findings made by the UN Special Rapporteur and Amnesty International which concluded that "the authorities failed to inform the victims' families of the fate and whereabouts of their loved ones", and that "many of the victim's families were subjected to intimidation and harassment when they tried to obtain information on their relatives' whereabouts".[651] Heinsch's report contains the account of a protester who was "arrested and detained, while his family was denied any information about where he was being kept";[652] as well as three cases of arrest and detention where "the location of the

[648] W Raha Bahreini, 11 November 2021, p. 8.
[649] W Raha Bahreini, 11 November 2021, p. 7.
[650] W Raha Bahreini, 11 November 2021, p. 9.
[651] W Robert Heinsch, STMT, pp. 68-69. See also pp. 70-71, 122-123, 126.
[652] W Robert Heinsch, STMT, pp. 133-134.

individuals has still not been disclosed by the Government in August 2020".[653] Heinsch's report points out that Iranian authorities have not released the official figures of those they arrested or detained during the November 2019 protests,[654] or the practice of holding people in 'secret' or 'unofficial' detention centres.[655]

c. Standard of proof

321. The Panel notes, as a threshold matter, that there are issues unique to the crime of enforced disappearance relating to proof. By their nature, enforced disappearances are difficult for victims (including their family members) to demonstrate. This is because, by definition, the offence involves the failure of the State to acknowledge the detention or to release information pertaining to the fate or whereabouts of the individuals concerned. Consequently, human rights jurisprudence has taken the lack of State cooperation into account in the assessment of evidence. For instance, the UN Human Rights Committee in the *Bleier v. Uruguay* case,[656] established the principle of the reversal of proof regarding a State's liability.

322. This principle of reversal of burden of proof was underscored in *Quinteros v. Uruguay* as required to protect against a complete denial of justice.[657] In *Bousral v. Algeria*, the UN Human Rights Committee clarified that "where the allegations are corroborated by evidence submitted by the author and where further clarification of the cases depends on information exclusively in the hands of the State party, the Committee may consider the author's allegations as substantiated in the absence of satisfactory evidence and explanation to the contrary submitted by the State party".[658]

323. Thus, if a victim or person on their behalf presents 'an arguable case', including arguments and some evidence showing that the victim has been subjected to enforced disappearance, the burden of proof will shift to the State to positively demonstrate why the case should not be characterised as an enforced disappearance. This could happen in a variety of situations, including for instance, when the disappeared victim was last seen under the control of the State or in a State-run detention facility or location. A similar approach to evidence has been taken by the European Court of Human Rights which has adopted a flexible approach, relying

[653] W Robert Heinsch, STMT, p. 126.
[654] W Robert Heinsch, STMT, pp. 24, 66.
[655] W Robert Heinsch, STMT, pp. 24, 68-69, 73,
[656] *Bleier v. Uruguay*, CCPR/C/15/D/30/1978 (HRC, 29 March 1982), paras 13.3-13.4.
[657] *Quinteros v. Uruguay*, CCPR/C/19/D/107/1981 (HRC, 21 July 1983), para. 11.
[658] *Bousroual v. Algeria*, CCPR/C/86/992/2001 (HRC, 24 April 2006), para. 9.4.

on these presumptions and the reversal of the burden of proof to establish the violation.[659]

d. Findings related to enforced disappearances

324. The Panel was presented with credible, reliable evidence of the unexplained disappearance of a number of people at the time of the Aban protests. There was also evidence regarding individuals whose bodies were ultimately found, without explanation as to how they met their deaths. There is evidence, albeit hearsay, that those individuals disappeared during the protests and undisputed evidence that they did not die of natural causes. In one instance there is evidence the individual was tortured. The only unusual events taking place at the time of the disappearances was the countrywide, violent suppression of the protests. The Panel concludes, given these circumstances, that the most reasonable inference to be drawn, is that these disappearances occurred at the hands of Iranian security forces.

325. As indicated above, there is, at minimum, sufficient evidence available to the Panel to meet the threshold for a reverse burden of proof in respect of the State's responsibility for enforced disappearances. This is particularly true given that the evidence available to the Panel also shows that the Iranian Government and security forces did nothing to assist families in determining the fate of their disappeared loved ones. They did not, for example, offer to investigate the disappearances. To the contrary, the evidence discloses a pattern of obfuscation and denial. No explanation or justification was ever offered by Iranian authorities for keeping detained people in custody without letting their families know where they were and what their fate was.

326. Consequently, the Panel determines that, on the basis of the information before it, the State is responsible under human rights law for the perpetration of enforced disappearances. It is responsible for its failure to protect individuals from enforced disappearances, for its failure to investigate and prosecute cases of enforced disappearances, and to remedy situations of enforced disappearances by informing families of the whereabouts of their loved ones, and for its failure to return arbitrarily detained individuals or their mortal remains to their families, or to advise families of the whereabouts of graves. This is in violation of Iran's obligations under the ICCPR, particularly articles 2(3), 6, 7, 9, 10, 14, 16.

327. Accordingly, the Panel determines that on the basis of the evidence as a whole, there is proof beyond a reasonable doubt that the crime of enforced disappearances took place by, or at the

[659] *Varnava and Others v. Turkey,* Appl. Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90 (ECtHR, 18 September 2009), para. 183.

behest of, the Iranian State.

II.4.5 Torture and cruel, inhuman or degrading treatment or punishment

a. Violations of the prohibition on torture and other ill-treatment

328. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment) is universally recognised,[660] and enshrined in international human rights law.[661] It can also constitute a war crime and an underlying act of crimes against humanity under international criminal law.[662]

329. The prohibition of torture and ill-treatment aims "to protect the dignity and the physical and mental integrity of the individual."[663] It sets absolute limits to the State's use of force which the State cannot exceed regardless of the circumstances. No derogation is allowed, irrespective of the conduct of the victim, or the position of the perpetrator, and regardless of the circumstances, including situations of public emergency, internal political instability, war or other armed conflict or any other public emergency.[664] This means that any use of force amounting to torture or ill-treatment is unlawful and "cannot be justified under any circumstance."[665]

330. Article 7 of the ICCPR provides that "[No] one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 1 of the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment (UNCAT) defines

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[660] *Questions relating to the obligation to prosecute or extradite (Belgium v Senegal)* [2012[ICJ Rep 422, para. 99; *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)* [2010] ICJ Rep 639, para. 87; UNGA, "Torture and other cruel, inhuman or degrading treatment or punishment", UN Doc. A/RES/70/146, 12 February 2016.

[661] The prohibition of torture and ill-treatment is included in the Universal Declaration of Human Rights 1948, Art. 5; International Covenant on Civil and Political Rights, 1966, Art. 7; General Assembly Resolution 3452/30, 9 December 1975 on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment, 1984; the UN Convention on the Rights of the Child, 20 November 1989, General Assembly Resolution 44/25, Art. 37; Convention on the Rights of Persons with Disabilities, 13 December 2006, General Assembly Resolution A/RES/61/106, Art. 15.

[662] See e.g. Draft Convention on Crimes Against Humanity, Art. 2(1)(f), available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf; Rome Statute of the International Criminal Court, Art. 7(1)(f).

[663] HRC, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992 ('HRC, General Comment No. 20'), para. 2.

[664] HRC, General Comment No. 20, para. 3; International Law Commission, *Peremptory norms of international law (jus cogens), Texts of draft conclusions and Annex adopted by the Drafting Committee on second reading*, UN Doc. A/CN.4/L.967, 11 May 2022, Conclusion 23, providing a non-exhaustive list of norms that the International Law Commission "previously referred to as having that status [of a peremptory norm], including the prohibition of aggression; the prohibition of genocide; the prohibition of crimes against humanity; the basic rules of international humanitarian law; the prohibition of racial discrimination and apartheid; the prohibition of slavery; the prohibition of torture; the right to self-determination;" *Prosecutor v. Furundzija*, IT-95017/1-T, Judgment, 10 December 1998, para. 144.

[665] HRC, General Comment No. 20, para. 3.

torture as

> "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

331. This definition reflects State practice so that it has been considered "to be representative of customary international law."[666]

332. The prohibition of torture and ill-treatment requires States to refrain from committing acts that amount to torture or ill-treatment, and to take legislative, judicial, administrative, educational and other appropriate measures to prevent and prohibit torture and ill-treatment, and respond adequately and effectively to allegations. This includes the obligations to investigate allegations of torture and ill-treatment, and where sufficient evidence exists, to prosecute those responsible, and to provide full reparation to the victims. The obligation to investigate does not depend on the existence of a complaint; there is an obligation to promptly and impartially investigate allegations "whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."[667] However, where authorities do receive complaints, these must be investigated promptly and impartially.[668]

333. As part of the obligation to investigate and prosecute, there is a need to protect victims, witnesses, and their families from violence and threats of violence or any other form of intimidation, including through the use of arbitrary arrest and detention, unjust prosecutions and other forms of harassment. Intimidation and harassment of and actual reprisals against victims, witnesses, their families, and others, can be seen as a method to prevent effective investigations in an effort to cover up actual incidents of torture and ill-treatment.

Torture, ill-treatment and protests

334. Since the prohibition against torture is absolute, it means that individuals cannot be deprived

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[666] See e.g. *Prosecutor v Zejnil Delalic* et al, IT-96-21-T, Judgement, 16 November 1998, para. 459.
[667] UN General Assembly Resolution, *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 4 December 2000.
[668] HRC, General Comment No. 20, para.14.

of their right to freedom from torture and ill-treatment including in the context of protests. This applies to all demonstrations, whether they are peaceful or violent, lawful or unlawful.[669]

335. Beating protesters, including with truncheons or batons, has been considered to cause severe physical and psychological suffering. Where this was done systematically and indiscriminately and for the purposes of retaliation and humiliation, it was considered to amount not only to ill-treatment but to torture.[670] In other cases involving excessive use of force allegedly to control protests, the launch of a teargas grenade aimed at protesters has been found to breach the prohibition of torture and ill-treatment because it was not "proportionate to the aim pursued, namely to disperse a non-peaceful gathering."[671] The resulting injuries to the victim's head were not "commensurate with the strict use by the police officers of the force necessitated by his behaviour."[672]

Torture, ill-treatment and detention

336. Treatment of detainees and prisoners merits particular attention given their vulnerability to potential abuse in an environment that usually is controlled exclusively by State officials.[673] All persons under any form of detention or imprisonment, including women, children, the elderly, and irrespective of what they may have been accused of or the prevailing context, must be treated in a humane manner and with respect for the inherent dignity of the human person.[674] Children in detention are particularly vulnerable and require special protection against any form of violence, including non-physical and unintentional violence.[675]

337. Regional and international human rights treaty bodies and courts have considered a wide range of acts amounting to torture or ill-treatment in detention, including, failure to provide food, water and medical care,[676] threats, including threats to family members, mock executions, as

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669 See UN Special Rapporteur on Torture, *Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/72/178, 20 July 2017, para. 15, referring to the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 7 September 1990, paras 12-14.

670 *Cestaro v Italy*, Appl. No. 6884/11, (ECtHR, 7 April 2015) paras 177 – 190; *Bartesaghi Gallo and Others v. Italy*, Appl. Nos. 12131/13 and 43390/13 (ECtHR, 22 June 2017), paras114 – 120.

671 *Abdullah Yaşa and Others v. Turkey*, Appl. No. 44827/08 (ECtHR, 16 July 2013), para. 48.

672 Ibid, para. 50.

673 UN Standard Minimum Rules for the Treatment of Prisoners (the 'Nelson Mandela Rules'), UNGA Resolution 70/175, 17 December 2015; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules'), UNGA Resolution 65/229, 21 December 2010. Other internationally recognised standards are set out in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UNGA Resolution 43/173, 9 December 1988, and the Basic Principles for the Treatment of Prisoners, UNGA Resolution 45/111.

674 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UNGA Resolution 43/173, 9 December 1988, Principle 1.

675 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, UNGA Resolution 45/113, 14 December 1990, Rule 2; 87(a).

676 *M.T. v Uzbekistan*, CCPR/C/114/D/2234/2013 (HRC, 23 July 2015), paras 5.14 and 7.4.

well as sexual violence, beatings of prisoners' feet ('falanga'), electric shock treatment, waterboarding, and stress positions.[677] Conditions of detention themselves can constitute ill-treatment.[678]

Iranian law and the prohibition of torture and ill-treatment

338. The Iranian Constitution prohibits torture where it is used to obtain a confession or information, with Article 38 of the Constitution prohibiting the use of "any kind of torture to extract an admission of guilt or to obtain information."[679] According to Article 38, "such evidence or confession…is null and void. Any person infringing this principle is to be punished in accordance with the law."[680] This is also reflected in Article 169 of the Iranian Penal Code providing that "a confession obtained under duress, coercion, torture or mental or physical harassment have no value or validity and the court is obliged to re-investigate the accused." Article 39 of the Constitution prohibits all affronts to the dignity of detainees and prisoners.[681]

339. The "Law on Respecting Legitimate Liberties and Protecting Citizens' Rights" and Article 60 of the Criminal Procedural Code also outlaw torture, specifically in the context of interrogations, and prohibit interrogators and law enforcement officers to harm a suspect.[682]

b. Acts of torture and ill-treatment occurring in the context of the Aban protests and their aftermath

340. Article 6(2)(f) of the Statute of the Aban Tribunal defines torture as 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. To establish the crime of torture the evidence must show that the perpetrator(s) inflicted severe physical or mental suffering on a person, either by an act or omission.[683] The Government may also be found responsible for violating the human rights obligation to exercise due diligence to prevent torture or otherwise comply with its obligations to investigate, prosecute and provide remedies to victims.

341. The term severity implies an "important degree of pain and suffering [which] may be met by

[677] *Al-Nashiri v Romania*, Appl. No. 33234/12, (ECtHR, 31 May 2018), para. 675.
[678] *Mukong v Cameroon*, CCPR/C/51/D/458/1991 (HRC, 21 July 1994), para. 9.4.
[679] Ibid.
[680] Iran (Islamic Republic of) 1979 (rev. 1989).
[681] W Mohamed Nayyeri, STMT, para. 24.
[682] Ibid, para. 25.
[683] *Prosecutor v Dominic Ongwen,* ICC-02/04-01/15, Trial Judgement, 4 February 2021 ('*Ongwen* Trial Judgement'), para. 2700; *Prosecutor v. Delalić et al.,* IT-96-21-T, Trial Judgement, 16 November 1998 ('*Delalić* Trial Judgement'), para. 468.

a single act or by a combination of acts when viewed as a whole".[684] Proof the victim was in the "custody" or "under the control of the perpetrator" are not the same as physical imprisonment or other severe deprivation of liberty.[685] Instead, this describes situations, whatever the circumstances, from which there is no escape for the victim.[686] The evidence must also establish that the pain or suffering did not arise from, and was not inherent or incidental to, lawful sanctions. Mental or physical pain or suffering inflicted upon the victim in the course of and inherently part of a lawful sanction, does not constitute torture.[687] However sanctions are "lawful" only if they are provided by national law and are in line with international standards.[688] Accordingly, sanctions should comply with the minimum conditions of humane treatment of detained persons as laid out in international human rights instruments.[689] These minimum conditions include the obligation to, *inter alia*, treat persons deprived of their liberty with humanity and respect for inherent human dignity, ensure accommodations are sanitary and hygienic and provide adequate food and drinking water.[690]

Tehran

342. The evidence establishes that torture was inflicted upon persons who had been detained by security officials in Tehran.

343. Witness 604, who worked at the Greater Tehran Prison (Feshafouyeh), stated that the prisoners in his prison were punched or kicked by the prison authorities, while several of the detainees who were transferred to his prison had already been beaten severely, particularly at the CIDs of Shahriar or Fardis.[691] There was no medical service at the prisons.[692]

344. Female detainees, as a general matter, were subjected to ongoing psychological torment given

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[684] *Ongwen* Trial Judgement, para. 2701
[685] O. Triffterer and K. Ambos (eds), *Rome Statute of the International Criminal Court: A Commentary* (3rd edn, C.H. Beck, Hart, Nomos 2016) ('Triffterer & Ambos, *Commentary*'), p. 271.
[686] K. Ambos, *Treatise on International Criminal Law: Volume II* (OUP 2014) ('Ambos, *Treatise on ICL: Vol II*'), p. 92.
[687] *Delalić et al.* Trial Judgment, para. 926.
[688] Triffterer & Ambos, *Commentary*, p. 272.
[689] Ambos, *Treatise on ICL: Vol II*, p. 92. See e.g. International Covenant on Civil and Political Rights (adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49) 999 UNTS 171 ('ICCPR'), Art. 10; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended), ETS No.005 (opened for signature 4 November 1950 entry into force 3 September 1953), Art. 5. See also Standard Minimum Rules for the Treatment of Prisoners (adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977) ('Standard Minimum Rules for the Treatment of Prisoners'), available at: https://www.ohchr.org/en/professionalinterest/pages/treatmentofprisoners.aspx
[690] ICCPR, Art. 10(1); Standard Minimum Rules for the Treatment of Prisoners, Arts. 9-14, 20.
[691] W604, STMT.
[692] W604, STMT.

the conditions of their confinement. They were interrogated by men even in the women's prisons. Cameras were placed in the detention rooms for constant supervision, preventing any privacy.[693]

345. A female who had been detained in a detention centre in Tehran testified:

> "There were no sanitary facilities. There was only tap water, a shower, and a toilet. And the wall of the cell was so short that the camera could see me even if I was taking a shower, even if I was going to the toilet."[694]

346. The witness testified that she had suffered multiple beatings, inflicted mostly by men, in order to force her to confess. When she refused, she was sexually assaulted:

> "The woman who was my minder, put a blindfold on me and took me somewhere else and took my blindfold off. And I looked and I saw there are no cameras in the room. And very obscenely, she said, "Take your clothes off. Give them to me, I am going to go and bring you another set of clothes." I was really very worried, and I don't know why I was so stressed. And I did, I stripped. I took my clothes off and then I saw that five men, who all had hats on, came to the small room where I had been placed and they started touching my body. And the interrogator whose voice I always heard; he was also with them. I couldn't say anything, I had contractions all over my body. I couldn't believe that this was happening to me.
>
> He said, "If you had confessed, as we forced you to, this would not have happened to you." And he told two of them, "Put her on the floor." And I pleaded with them. I said, "Please, whatever you say I will do, whatever you ask for I will do. What must I do?" I told them...It was as if they killed me there, with what they did. What was my sin? It was only... my only sin was that I was a protester."[695]

347. The witness also testified to having been punched and kicked by the detention officers at the IRGC detention centre.[696] Even when the witness was taken to the court for the charges levied against her, she was cuffed at the ankles at all times.[697]

Shahriar

348. Protesters arrested in Shahriar were detained at detention centres under very poor conditions,

[693] W110, 13 November 2021.
[694] W110, 13 November 2021.
[695] W110, 13 November 2021.
[696] W110, 13 November 2021.
[697] W110, 13 November 2021.

as one witness described regarding the detention of her nephew at Fashapouyeh prison:

> "[H]e was being kept in an industrial building. A place where there was no cover on the floor, no carpet, no heating and no facilities for them to use. There was a public toilet for a large number of people. There was just one toilet for a large number of people. There was no wash basin either. They had to sleep on the floor. It was in a very bad condition, it was considered a cell".[698]

349. Prisoners in Fashapouyeh prison were given electric shocks and forced to confess in front of a camera and also in writing.[699] Those who confessed were sentenced to lashings with electric whips on unclothed skin, often in areas like the lower back, or across the entirety of their back from the neck to the upper part of the buttocks.[700]

Isfahan

350. Witness 225 testified that he spent eighteen days in solitary confinement.[701] The conditions in detention were inhumane, including: a lack of adequate medical treatment services for the wounded; being forced to drink water from the toilets; poor air circulation; and poor quality of food.[702] The witness testified that they were tortured both physically and psychologically in order to obtain a confession from them:

> "They prevented me from sleeping. I had other psychological torture that was inflicted on me. One of them was make a cloth wet, a thin cloth wet and strip me naked and beat me up and whip me with the wet cloth. And thicker cloth would leave traces and scars on you.
>
> My left eye is not right now and it causes me a lot of severe headaches that could become permanent…they would cuff me and put cuffs also on my ankles and they would put me on a chair in a way I cannot move without having my trousers or my shirt. They would put these kinds of cloths that I talked to you about on my knees. They would make them wet and then put a hot iron on it. They would tell me this is your opportunity to tell me whatever you have otherwise they will have to increase the heat. Even though I knew the electricity would not electrify me and it is not going to burn me but it still instils such fear in me because it was when they would turn it high up, the wet cloth would get little by little would get hotter and the water in it would boil and it would burn you on your skin. It was

[698] W26, 13 November 2021.
[699] W26, 13 November 2021.
[700] W26, 13 November 2021.
[701] W225, STMT.
[702] W225, STMT.

not one or two places on my skin. It was lots of places that was burned... They would threaten you to sexually rape. They did not do it but they threatened me with it."[703]

Shiraz

351. Witness 303, describing their experience as a detainee in Shiraz, stated that protesters were violently arrested, thrown into crammed spaces with several other detainees, and threatened that they would be killed.[704] The detainees were tortured, beaten up, some to the point of near-death, and interrogated extensively.[705] The detainees were kept under constant surveillance through monitors.[706]

352. Minor prisoners were sexually abused and denied medical attention.[707] Witness 303 recounted the poor conditions of detention in a police detention centre, including: being stripped naked and touched on private parts of the body; having fifteen people forced into cells designed to host a maximum of four to five people; being forced to drink water from the toilet areas; being fed only once or twice a day with leftovers served on a piece of dustbin liner; having microphones and cameras in all cells; being regularly beaten up and deprived of any medical care. Prisoners were forced to sign confessions daily.[708]

Kermanshah

353. Witnesses testified that the protesters were beaten up with batons and truncheons, and were shot at with sniper rifles and machine guns.[709] One witness who was detained in solitary confinement for thirty-eight days and tortured throughout,[710] described detention at an IRGC detention centre:

"I had a wounded body. I may rather say that I had lost my soul, I was just a body there. They started torturing me afterwards. They said if I did not confess to what they wanted, then I would be killed under torture. During days and nights, I was tortured to confess to what I had not done."[711]

[703] W225, STMT.
[704] W303, 14 November 2021.
[705] W303, 14 November 2021.
[706] W303, 14 November 2021.
[707] W303, 14 November 2021.
[708] W303, 14 November 2021.
[709] W175, 12 November 2021; W17, 12 November 2021; W28, 13 November 2021.
[710] W175, 12 November 2021.
[711] W175, 12 November 2021.

Behbahan

354. The evidence available from Behbahan reflected that people who were arrested there during the protests were mistreated. Witness 179 stated he was tortured after his arrest and forced to say, in a sham video recording, that the activities in the street during the protests were all done by terrorist groups.[712]

Marivan

355. Ershad Ahmadi disappeared during the Aban protests.[713] His body was found one month later near a dam about 40 kms from Marivan. His body had bruises and other injuries suggesting he had been tortured. There was a hole in his head. His autopsy noted only that the wound to his head could have been caused by a sharp object.[714] Witness 220 knew of a diver who discovered five or six bodies underwater near the same dam; all "arrested men." He was himself arrested after he reported the finding.[715] Witness 220's neighbour, a member of the military police, told him that prisoners were tortured in the Sepah garrison in Marivan and that over two hundred to three hundred people were detained there. These people had their clothes removed in the night time and cold water was poured over them. The neighbour could "hear their cries as they were tortured."[716]

356. Witness 260 was arrested by IRGC. He was blindfolded, put against a wall and told to spread his legs. Any time his legs moved he was kicked and beaten. Then he was told to take off the blindfold and go outside. There he was beaten by four or five people with nightsticks, iron bars and whips. He testified that then "they started crushing my legs and everything below the waist." The beating stopped when he finally collapsed. He was held with several other people who had been beaten, some with their heads split open in two or three places. Most were eighteen, nineteen or twenty years old and had been severely tortured. He had no contact with his family. Five days later, he was taken to a Marivan court and ultimately released. His case is still pending. He was threatened not to speak about what had happened to him during his detention.[717]

Ahvaz

357. Security forces also engaged in torture in Ahvaz. Witness 190 was arrested and transported to

[712] W179, 13 November 2021.
[713] W17, 12 November 2021.
[714] W17, 12 November 2021; W99, STMT; W220 STMT.
[715] W220 STMT.
[716] W220 STMT.
[717] W260, STMT.

the "intelligence prison" located in the Golestan area of Ahvaz. Intelligence departments of the police, army and Sepah were present.[718] He was handcuffed to a chair, accused of being a political activist and beaten with an electric cable. His nose and elbow were broken. Intelligence officers demanded he confess to cooperating with foreign media in order to end the abuse.[719]

358. While in detention in Ahvaz, he saw the dead bodies of several women lying in a hallway. They all bore marks of being tortured, like obvious head injuries.[720] He was ultimately transferred to Shiban Central Prison located in Ahvaz where he saw one man tortured to death. He stated that people were arrested "in bulk," brought to this prison, and charged with being anti-revolutionary. Torture was then used to secure confessions.[721]

Arak

359. Witness 226, who had been tasered and detained on the streets in Arak, was taken to the Police Building which had a sign on the door stating "Police Information Department." He was interrogated, along with several other detainees, by a prosecutor. When he did not answer any questions, he was transported to the Ministry of Information, Gilan Province, located in Valiasr Square, known as the Blue Building. He was put outside in a yard during the night along with seven hundred to eight hundred others. It was very cold. All had been forced to remove their clothing and were naked. They were kept in the yard for hours. He was detained in this place for eight days.[722]

Rasht

360. Unlawful arrests and abuse of detainees was routine in the Rasht region. Witness 227 was arrested by Intelligence Service officers in plainclothes, beaten, handcuffed and put in a Ministry of Intelligence detention centre before being taken to the police station. He estimated four hundred to five hundred people were similarly arrested. At the police station, he was stripped naked with all other detainees, taken to an outside yard at night in the cold and forced to stay there. Detainees received no food or water. There were constant beatings all over the body. He was beaten in ways that did not leave marks. Those who were visibly injured were executed.[723]

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[718] W190, STMT.
[719] W190, STMT, p 3.
[720] W190, STMT, p 3.
[721] W190, STMT.
[722] W226, STMT.
[723] W227, 12 November 2021; and see W235, STMT [regarding Gatchsaran].

361. As with other regions of the country, he was told he would not be released until he signed a confession, in his case stating that he set fire to banks. The confession was false; it was security forces who were burning the banks.[724] He learned that one person, charged with "fighting against God," because he had burned a Khamenei banner, was executed three months later.[725] He knows other people were executed as well because he heard about it. Some were broadcast.[726]

362. Witness 227 stated that after his release, he was told if they ever saw him again, he would be executed. This kind of thing was said to everyone in order to intimidate them.[727]

363. On 19 November, Witness 462 was put in a car, blindfolded and taken to an unknown place. He thought it might be the Ministry of Intelligence or IRGC. He was held in solitary confinement for thirty days with no contact with his family. He endured physical and mental torture and was subjected to salacious sexual comments, though no actual physical sexual abuse took place. He signed a document because he was told to sign it. Then he was released. He fled the country thereafter. The name of his interrogator was Hassan Rajabi.[728]

Baluchestan

364. On 15 November in Zahedan at around midnight, Witness 300 saw security forces firing shots in the air and attempting to disperse people who were protesting. About thirty people were arrested, including children and an elderly man. The security forces were policemen dressed in green uniforms and a Special Unit dressed in black. They wore balaclavas so their faces could not be seen. Some were on foot. Some were in cars or on motorcycles. They struck protesters on the head, waist and legs with batons as they moved around.[729]

365. The following day, Witness 300 saw a group of people arrested even though they had just been passing by the protest area. They were beaten for no reason.[730]

366. Weeks later, in late December, Witness 300 was arrested while visiting the courthouse. He was blindfolded, tied up and driven to his home. Security forces searched his home and seized his computer, satellite dish and cell phone. He was taken to the Ministry of Information and put in a chair. He was blindfolded, threatened, and tortured for seven days. He was held in solitary

[724] W227, 12 November 2021.
[725] W227, 12 November 2021, p 3.
[726] W227, 12 November 2021.
[727] W227, 12 November 2021, and see W235, STMT [regarding Gatchsaran].
[728] W462, STMT.
[729] W300, STMT.
[730] W300, STMT; and see W521, STMT [people on street arrested for no reason].

confinement; the torture happened at night.[731] He was forced to stand against a wall. Threats were made against his family and against him. He ultimately signed a confession. Due to the physical and mental torture, he could not remember what the confession said after his release.[732]

367. There were six young men held in the same cell as Witness 300. They were removed for interrogation each day and returned with bruises all over their bodies. They said the officers called them dirty names and beat them, sometimes using a thick cable to beat the soles of their feet.[733]

368. After several days, Witness 300 was taken to the Security Justice Administration building in Zahedan. He was given a piece of paper listing criminal charges and told to sign it. Seven days later, while blindfolded, he was given another piece of paper and told to sign it. When that blindfold was removed, he saw he was in the Central Prison of Zahedan.[734]

369. The conditions of confinement were filthy. No attention was paid to hygiene or sanitation. Many of the prisoners were sick. The food was extremely poor.[735]

Additional evidence of torture/mistreatment of detainees and the injured

370. Security forces engaged in the use of torture throughout and following the Aban protests.[736] Detainees and prisoners were tortured to obtain false confessions through the use of beatings, lashings and electrical shocks.[737] One prisoner reported seeing detained boys set on fire while still alive.[738] Prisoners were also tortured in an apparent effort to hide the truth of the events leading up to their arrests and the killing of protesters.[739] The conditions of confinement were often inhumane; involving cells infested with insects, no toilet facilities and inadequate food and water.[740] Prisoners were repeatedly interrogated, beaten and threatened.[741] They were denied proper medical care.[742] Detention centres used to house and mistreat detained protesters were controlled by the Ministry of Intelligence and the IRGC.[743]

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731 W300, STMT.
732 W300, STMT.
733 W300, STMT.
734 W300, STMT.
735 W300, STMT.
736 W436, 5 February 2022.
737 W26, 13 November 2021.
738 W84, 5 February 2022.
739 W366, 11 November 2021; W26, 13 November 2021; W185, 10 November 2021.
740 W110, 13 November 2021; W407, 4 February 2022.
741 W110, 13 November 2021; W407, 4 February 2022; W418, 6 February 2022.
742 W110, 13 November 2021; W84, 5 February 2022.
743 W185, 10 November 2021.

371. The Panel considers that the aforementioned evidence establishes beyond a reasonable doubt that the Iranian security forces were responsible for a range of acts against an as-yet unknown number of wrongly detained people, and that these acts constituted torture and cruel, inhuman or degrading treatment or punishment under international human rights and criminal law.

II.4.6 Sexual assault and rape

372. Sexual assault and rape in detention or confinement may amount to torture and cruel, inhuman or degrading treatment or punishment under international human rights and international criminal law.

373. Rape will be established when the evidence shows that the perpetrator penetrated any part of the body of a victim, however slightly, by sexual use of any organ, or penetrated the body of the victim with any object or any other part of the body. This element is gender-neutral and includes same-sex penetration and both male and/or female perpetrators and victims.[744] Any form of penetration, however slight, is sufficient to complete the crime.[745]

374. Any other form of sexual violence of comparable gravity will be demonstrated by evidence establishing that the perpetrator(s) either: (i) committed an act of a sexual nature against one or more persons; or (ii) caused the person(s) to engage in an act of a sexual nature.[746] This can include both physical and non-physical acts with a sexual element.[747] It includes acts such as forced nudity, even in the absence of any physical contact.[748]

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[744] *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Trial Judgement, 8 July 2019 ('*Ntaganda* Trial Judgement'), para. 933; *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Trial Judgement, 21 March 2016 ('*Bemba* Trial Judgement'), para. 100; *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Decision on the Confirmation of Charges, 9 June 2014, para. 52; *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Trial Judgement, 2 March 2009 ('*Sesay et al.* Trial Judgement'), para. 146.

[745] See ICC Elements of Crimes, Art. 7(1)(g)-1; *Prosecutor v. Kunarac et al.*, IT-96-23& IT-96-23/1-A, Appeal Judgment, 12 June 2002 ('*Kunarac et al.* Appeal Judgment'), para. 127.

[746] *Prosecutor v. Dordević*, IT-05-87/1-T, Trial Judgement, 23 February, para. 1768; *Prosecutor v. Delalić et al.*, IT-96-21-T, Trial Judgement, 16 November 1998 ('*Delalić et al.* Trial Judgement'), para. 1065; *Prosecutor v. Todorović,* IT-95-9/1-S, Sentencing Judgment, 31 July 2001 ('*Todorović* Sentencing Judgment'), paras 37-40.

[747] *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment, 2 September 1998 ('*Akayesu* Trial Judgment'), para. 688; *Prosecutor v. Furundžija*, IT-95-17/1-T, Trial Judgement, 10 December 1998 ('*Furundžija* Trial Judgement'), para. 186; *Prosecutor v. Brima et al.*, SCSL-04-16-T, Trial Judgement, 20 June 2007, para. 720; *Prosecutor v. Milutinovic et al.*, IT-05-87-T, Trial Judgement, 26 February 2009, paras 194-195, 199; *Prosecutor v. Rukundo*, ICTR-2001-70-T, Trial Judgement, 27 February 2009, para. 380. See also ICC Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014 ('ICC Policy Paper on Sexual and Gender-Based Crimes'), p. 3; UNCHR, Contemporary forms of slavery: Systematic rape, sexual slavery and slavery like practices during armed conflict, E/CN.4/Sub.2/1998/13, 22 June 1998, paras 21-22.

[748] ICC Office of the Prosecutor, Report on Preliminary Examination Activities 2016 (14 November 2016), para. 94: "In addition, detainees were forcibly maintained in a state of forced nudity, compelled to perform physical exercises naked […]"; ICC Policy Paper on Sexual and Gender-Based Crimes, p. 3: "An act of a sexual nature is not limited to physical violence, and may not involve any physical contact – for example, forced nudity". Before, the ICC, the *Bemba* Arrest Warrant decision did not dispute the fact that forced nudity constitutes sexual violence; rather, the decision indicated that the alleged acts of forced nudity were not of sufficient gravity to prosecute: *Prosecutor v. Bemba*, ICC-

375. The evidence must also establish that the perpetrator(s) committed the act(s) by force, or by threat of force or coercion, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[749] It is not necessary to prove the victim's lack of consent,[750] or to show that the victim resisted.[751] The coercive behaviour or environment may be directed towards the victim or a third person.[752]

Tehran

376. Witness 110 stated that she suffered multiple beatings in order to force a confession out of her. When she refused, she was sexually assaulted:

> "…the woman who was my minder, put a blindfold on me and took me somewhere else and took my blindfold off. And I looked and I saw there are no cameras in the room. And very obscenely, she said, "Take your clothes off. Give them to me, I am going to go and bring you another set of clothes." I was really very worried, and I don't know why I was so stressed. And I did, I stripped. I took my clothes off and then I saw that five men, who all had hats on, came to the small room where I had been placed and they started touching my body. And the interrogator whose voice I always heard; he was also with them. I couldn't say anything, I had contractions all over my body. I couldn't believe that this was happening to me. A male interrogator, present for this, directed the five men where to touch her and directed Witness 110 to touch the genitals of the five men.
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> He said, "If you had confessed, as we forced you to, this would not have happened to you." And he told two of them, "Put her on the floor." And I pleaded with them. I said, "Please, whatever you say I will do, whatever you ask for I will do. What must I do?" I told them...It was as if they killed me there, with what they did. What was my sin? It was only... my only sin was that I was a protester."[753]

01/05-01/08, Warrant of Arrest for Jean-Pierre Bemba Gombo, 23 May 2008 ('*Bemba* Arrest Warrant Decision'), paras 39-40; *Akayesu* Trial Judgment, para. 688.

[749] ICC Elements of Crimes, Art. 7(1)(g)-6, Element 1.

[750] *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Trial Judgement, 4 February 2021 ('*Ongwen* Trial Judgement'), para. 2709 (citing *Ntaganda* Trial Judgement, para. 934; *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Judgement, 7 March 2014 ('*Katanga* Trial Judgement'), para. 965. See also ICC Rules of Procedure and Evidence, Rules 70 and 71).

[751] *Ongwen* Trial Judgement, para. 2709 (citing *Prosecutor v. Kaing Guek Eav (alias Duch)*, 001/18-07-2007/ECCC/TC, Trial Judgment, para. 363; *Prosecutor v. Taylor*, SCSL-03-01-1281, Trial Judgement, 18 May 2012 ('*Taylor* Trial Judgement'), para. 416; *Prosecutor v. Kunarac et al.*, IT-96-23& IT-96-23/1-A, Appeal Judgment, 12 June 2002 ('*Kunarac et al.* Appeal Judgment'), para. 128. See also *Fernández Ortega et al. v. Mexico*, (Preliminary Objection, Merits, Reparations, and Costs) Ser. C. No. 215 (IACtHR, 30 August 2010), para. 115.

[752] The Hague Principles on Sexual Violence, p. 47; ICC Elements of Crimes, Arts. 7(1)(g)-1, 8(2)(b)(xxii)-1, and 8(2)(e)(vi)-1, Element Two. See also *Ntaganda* Trial Judgement, para. 944; *Kunarac et al.* Appeal Judgment, para. 130; *Kunarac et al.* Trial Judgement, para. 711.

[753] W110, 13 November 2021.

377. After being threatened with rape by the five men and told another five would replace them once they were done, Witness 110 agreed to confess to crimes she had not committed.

378. The witness also testified to being punched and kicked by the detention officers at the IRGC detention centre.[754] When the witness subsequently complained of being physically and sexually assaulted by detention officers to the court, the judge refused to take the allegations into consideration.[755]

Isfahan

379. Witness 225, from Isfahan, testified to being kept in a detention centre by the special unit forces, being stripped naked and being whipped while naked, as well as being threatened with rape:

> "My charge was apostasy and if I do not confess to what they were saying my whole family would be harassed… I had other psychological torture that was inflicted on me. One of them was make a cloth wet, a thin cloth wet and strip me naked and beat me up and whip me with the wet cloth. And thicker cloth would leave traces and scars on you.
>
> …they would cuff me and put cuffs also on my ankles and they would put me on a chair in a way I cannot move without having my trousers or my shirt. They would put these kinds of cloths that I talked to you about on my knees. They would make them wet and then put a hot iron on it. They would tell me this is your opportunity to tell me whatever you have otherwise they will have to increase the heat. Even though I knew the electricity would not electrify me and it is not going to burn me but it still instils such fear in me because it was when they would turn it high up, the wet cloth would get little by little would get hotter and the water in it would boil and it would burn you on your skin. It was not one or two places on my skin. It was lots of places that was burned... They would threaten you to sexually rape. They did not do it but they threatened me with it."[756]

Shiraz

380. Witness 303 testified to observing acts of sexual violence in a police detention centre, including minor prisoners being sexually abused and subjected to sexual taunts, prisoners stripped naked and touched on private parts of their body, and microphones and cameras placed in all the cells:

[754] W110, 13 November 2021.
[755] W110, 13 November 2021.
[756] W225, STMT.

"Among us there were 13-14-year-old adolescents who had tattoos. The officers were using swear words and were touching the private parts of the bodies of those children. They were asking if they had tattoos in those places and they were asking for telephone number of the mother to tell them where they were. They were sexually abusing these children. And we witnessed that…

immediately after our arrival in the second detention centre, they stripped us naked and they were touching our private parts. We were completely naked. Once again, they insulted us and humiliated us, and put in cells which were like solitary confinement and perhaps a little bit bigger than those solitary confinement cells you see in films…

We did not have any kind of medical facilities. Over there once again we saw that this thirteen to fourteen year-old boy was sexually abused, he was talked to with sexual slurs, they touched him, they asked him what have you done, which part of your body, show us…

…for the younger ones, the eighteen -year-old, fifteen, fourteen, or even thirteen that was a bit too much. It was more than just a similar body search. I believe it was somehow a sexual harassment…

There was no need for so many body searches. We were objecting, we were protesting. We had nothing with us. There was no need for them to touch us and for them to touch every part of our body time and again. It was much worse than what you can think. And some were being really badly touched."[757]

381. In Witness 303's opinion, approximately forty to sixty minor prisoners between the ages of thirteen to eighteen years were subjected to acts of sexual violence.[758]

382. Security forces also threatened a family with sexual violence against their missing daughter unless the family remained silent about her disappearance:

"There was a family who had lost the twenty-year-old girl and they had told the family if we have the name your name or interviews in the media you will never see your daughter and they had talk to them in sexual slurs that we will take your daughter and we'll do lots and lots of things to her if you talk."[759]

[757] W303, 14 November 2021.
[758] W303, 14 November 2021.
[759] W337, 14 November 2021.

Khorramabad

383. On 16 November, Witness 314 was participating in a peaceful protest in Shaghayegh Square or Imam Hossein Square. Two plainclothes men grabbed her hands and said they wanted to rape her. She managed to get away from them, but was caught by four more men using tasers. They undressed her in front of everyone, removed her bra and sexually assaulted her in the street. About fifteen other men joined in. They had peppered sprayed her eyes so she could not see for about three days afterwards. She was beaten "in the worst possible manner"; her body was covered with bruises.[760]

384. Witness 314 was put into a vehicle, naked, by several men. Another woman was also in the vehicle. Her head was pushed down and her legs pulled up as she was peppered sprayed there. They were taken to the Basij residence of Sepah and put in the basement, which appeared to have been prepared in advance. There were young boys and girls there, school children, who had been arrested by Sepah intelligence and kept in separate rooms. Her room, which she shared with four other women, had no sanitation or heating. She was kept there for three days.[761]

385. She was repeatedly interrogated and asked to sign a statement. The interrogators were the same men she had seen on the street when she was arrested. She refused. She was told if she had sexual relations with the interrogators, they would try to get her a lighter sentence. They accused her of working for the CIA.[762]

386. Witness 314 was interrogated for twelve days. All the interrogations were done by men and done separately in separate rooms. There was no sanitation. She had to ask for a tampon. Female detainees were not given any underwear to wear. They received no medical treatment even when the prison was gassed.[763]

387. She and her family have been constantly harassed and threatened since her release. She has seen some of the men who interrogated her. They act as informers and agents of Sepah. One of these men has been shadowing her closely. Many sexual and other threats have been made to her.[764] Another, posing as a taxi driver, came to her place of work and told her that if she did not cooperate, she would be harassed. He said that if she identified any of the men she

[760] W314, STMT.
[761] W314, STMT.
[762] W314, STMT.
[763] W314, STMT.
[764] W314, STMT.

recognised, she would be killed.[765]

Bukan

388. Security forces attacked and sexually harassed Witness 437, a mother of three, a writer and social activist.

389. During the peaceful protest in Bukan, police grabbed her by her boots and tried to drag her off to a car. Other protesters surrounded her in support. The same evening, plainclothes men raided her house, beat her in the presence of her son and took her to the Intelligence Ministry. She felt sexually threatened during this raid as the men made gestures, she was dressed only in her nightdress with no headscarf. She tried to cover herself but she could see from their behavior they felt they could do what they wanted with her.

390. She was told she was going to be filmed. She was also interrogated for hours. Throughout that time, she feared she would be raped or assaulted as she was always with men. She had no privacy. They also threatened her with harm to her children. One night a woman ordered her to take off all her clothes. She put a dirty towel around her body as she did not want to be seen naked.[766]

Other evidence of rape and sexual assault of prisoners

391. Witness 436, a male, was sexually assaulted while in detention. Male guards touched his sexual organs and inserted a soft drink bottle into his anus.[767]

392. Female and adolescent detainees under the age of 18 were subjected to sexual assault by security forces in detention centres. Witness 110 testified that she was in Evin prison in a room with several female detainees when they were ordered to remove all their clothing. When they protested that men were present, female guards agreed to carry out this demand. After the female detainees were naked they were ordered to spread their legs and submit to cavity searches by the female guards. The guards "touched and inspected all of our body, even our private parts."[768] Thereafter the women were taken to be interrogated by male guards one by one. Each had been threatened with rape. When one was taken for interrogation, "the others worried until she returned."[769]

393. Based on the evidence, the Panel concludes that the aforementioned security forces were

[765] W314, STMT.
[766] W437, 4 February 2022.
[767] W436, 5 February 2022.
[768] W110, STMT.
[769] W110, STMT.

responsible for crimes of sexual assault and rape, as established beyond a reasonable doubt.

II.4.7 Right of access to justice

a. International standards related to access to justice

394. Access to justice entails equal access to an independent, impartial and appropriate process capable of delivering justice and reparation and the opportunity to receive a fair and just trial when an aggrieved individual's liberty or property is at stake. The right of access to justice is a basic principle of the rule of law. It enables individuals to protect themselves against infringements of their rights, to remedy civil wrongs, to hold executive power accountable and to defend themselves in criminal proceedings.[770] Article 2(1) ICCPR requires that the State ensure rights to all individuals within its territory and subject to its jurisdiction, and Article 2(3) provides that persons whose rights are violated shall have an effective remedy, with their rights to be determined by the competent authorities. The associated right to a fair trial is set out in ICCPR Article 14. In all circumstances, the delivery of justice should be impartial and non-discriminatory.

395. The right of access to justice includes the right of victims and their loved ones, as well as the wider communities affected by violence, to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.[771] Searching for truth is not only about knowing the whereabouts of disappeared persons, rather, the need to know the details of all violations is a precondition of becoming reconciled with the reality of the crime and, eventually, to start the healing process. The right to truth requires positive action from the State to undertake a sustained and systematic effort to investigate and accumulate evidence, and to share that evidence with victims, their families and all those affected.

396. The right to justice also includes the right to an effective investigation. This applies to serious violations of human rights and abuses of power including, *inter alia,* torture and other forms of prohibited ill-treatment, disappearances, extrajudicial executions and other killings by the State. Investigations into serious violations of human rights should be timely, impartial and

[770] HRC, General Comment on Article 2 CCPR: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/74/CRP.4/Rev.3, 5 May 2003, para. 15.
[771] UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 8 February 2008, Principle 2.

effective.[772] They should also be credible and transparent, and States must disclose relevant details about the investigation to victims or the victim's next of kin, as appropriate and allow them to present new evidence, afford them with legal standing in the investigation, and make public information about the investigative steps taken and the investigation's findings, conclusions and recommendations.[773]

397. A timely investigation is one which is conducted promptly, as soon as practicable after the alleged events, when forensic, documentary and witness evidence remain fresh.[774] An impartial investigation is one which is free from undue bias. Investigators must not allow their judgments to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular allegations before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other(s). Investigations must also appear to be impartial to a reasonable observer.

398. An effective investigation is one which is sufficiently thorough that it is capable of clarifying the facts and establishing and acknowledging any individual and State responsibility, identifying the measures needed to prevent recurrence and facilitating the prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible.[775] This requires that all relevant persons are interviewed and forensic examinations carried out to the requisite standards.

399. For State killings and deaths in custody, there is an obligation on the State to carry out an autopsy to determine forensically the cause of death, and to communicate that to the family and to apply it to the investigation. For persons summarily arrested during or in the immediate aftermath of the protests for their alleged role in fomenting violence or other unlawful acts as part of the protests, authorities are obliged to ensure that allegations of criminality are duly investigated and where there is no justification for the arrests, to ensure that persons are released forthwith.

400. The obligation to investigate also requires that witnesses are protected from threats and reprisals, regardless of what the witnesses will potentially speak about and who may be implicated and irrespective of whether these threats emanate from the State or non-State

[772] *Fuenzalida v Ecuador*, CCPR/C/57/D/480/1991 (HRC, 12 July 1996), para. 9.4.
[773] HRC, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para. 28.
[774] *Stephens v. Jamaica*, CCPR/C/55/D/373/1989 (HRC, 18 October 1995), para. 9.2.
[775] Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Professional Training Series No. 8/Rev.1 (2004), para 78.

actors. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in the abuses must be removed from any position of control or power, whether direct or indirect. over complainants, witnesses and their families, as well as over those conducting investigations.[776] A failure to ensure that witnesses are protected impacts on both the impartiality of the investigation as well as its effectiveness.

401. Where sufficient evidence exists about the perpetration of criminal acts under either domestic or international law, like torture, disappearances, extrajudicial killings and killings by security forces, States are obliged to prosecute. States are also obliged to afford victims with an effective and enforceable remedy in case of serious violations of human rights, including in cases of arbitrary arrest and detention, torture and ill-treatment, enforced disappearances and unlawful killings by police or security forces.[777] The *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*,[778] recognises that the right to remedies, enshrined in almost all international and regional human rights conventions and in customary international law, includes: a) equal and effective access to justice; b) adequate, effective and prompt reparation for harm suffered; c) access to relevant information concerning violations and reparation mechanisms.[779]

b. Iranian standards related to access to justice

404. The Iranian Constitution provides in Article 34 for "the indisputable right of every citizen to seek justice by recourse to competent courts. All citizens have right of access to such courts, and no one can be barred from courts to which he has a legal right of recourse."

405. According to Articles 38 and 39 of the Iranian Constitution, torture and the affront to the dignity and repute of persons arrested or detained are punishable in accordance with the law.

c. Violations of the right to access justice during and in the aftermath of the Aban protests

406. The Panel sought specifically to determine if any investigations were initiated by authorities into the alleged crimes and abuses occurring during and in the aftermath of the Aban protests. There was no evidence of any case of a public official that has been held accountable, for

[776] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council resolution 1989/65, 24 May 1989, para 15.
[777] ICCPR, Art. 2(3).
[778] Approved by the UN General Assembly, UNGA Resolution 60/147, 16 December 2005.
[779] Ibid.

ordering, committing or acquiescing to crimes committed in the context of the protests.

407. Iranian authorities deliberately attempted to conceal what happened from the public, denying victims, family members and the Iranian people the right to truth. The evidence makes clear that Iranian authorities failed to investigate allegations of unlawful killings, sexual violence, torture, and ill-treatment, persecution, arbitrary arrest, and enforced disappearances on their own initiative. They sought deliberately to suppress any incriminating information from entering into the public domain, thwarted formal complaints lodged by victims and family members and shut down public debate about what happened, denying victims, family members and the Iranian people the right to truth.

408. The violation of the right to truth occurred at both the individual and family level and at the macro level. At the individual and family level, corpses were typically only returned to grieving family members if the families agreed not to speak publicly about what had happened and to limit their mourning practises, including the nature of mourning ceremonies and what could be written on the tombstones.[780] For example, witness 309 from Isfahan explained that "[t]hey handed over the corpse after obtaining an undertaking from us. They made us undertake not to file a complaint. But we filed a complaint with the military court. It was said that they were not military personnel. The file is still open. One and a half years has passed but there is no news about it."[781] Witness 147 from Shiraz explained that: "[the bodies] of many victims were not returned to their families. Families were told that they can receive the bodies provided that they would not file any complaint and refrain from talking about the incident and holding funeral ceremony."[782]

409. In many instances, autopsy reports were not provided to family members. Some of the ordinary citizens who were arrested, charged and ultimately convicted of offences linked to their alleged participation in the protests were warned by intelligence and security officials not to disclose the details of court cases and verdicts to news organisations and human rights groups. In some of these cases, the individuals who were convicted and sentenced in connection with the protests were never provided with an official determination as to what they were convicted of and why.

410. At the macro-level, accurate statistics on the numbers of persons killed and by whom have not been made public by the State. The Iranian authorities have also refused to make public

[780] See section on the violations of the right to dignity, below.
[781] W309, STMT.
[782] W147, STMT.

any official information on the final number of arrests, the number of people who remain in detention, and the status of their cases.

411. Family members have faced challenges when filing complaints about their loved ones who were killed during the protests. Often, authorities discouraged family members from filing complaints and from following up on complaint already filed. According to Witness 28, "we lodged a complaint with intelligence services, with the police, against the perpetrators. We wanted the killers to be identified, to be punished. No rights were given to us. We were deprived of the right of having a lawyer. Every time we addressed ourselves to them, they said that they themselves will pursue the matter and there is no reason for us to pursue the matter."[783]

412. Many individuals were threatened by security forces, faced harassment, summons to appear by intelligence services sometimes resulting in further threats and arbitrary arrests.[784] For example, Witness 83 explained that his father had:

> "[C]alled for justice last year and posted one video on Instagram and said that he was seeking justice for the blood of his son. For this, he was interrogated two or three times. My brother also spoke to one foreign TV channel; they took him to Sepah [IRGC Intelligence Services] and interrogated him. I did not file a complaint; filing a complaint in Iran is a joke and a fiction. However, I gave an interview to foreign press. After that we received threats a couple of times. They had called my father from an unidentified phone number and asked as to why we had done this; they said that we must not do it and if we do, it would cost us dearly. They phoned me and My brother's father-in-law from an unidentified phone number and said the same thing: 'It would cost you dearly; you shouldn't do it'."[785]

413. Another witness explained:

> "Seeking justice is a grave crime in Iran and this is what we realised since my son was killed. We have committed no crime. [….] we objected to the killing of my son [and] we became criminals. And from that moment on, we have been prosecuted, we are under threat and the Government is threatening us and we never feel safe, we have never felt safe afterwards. […] The arrest warrant has been issued for all members of our family. All mobile phones have been taken from us, they have never been returned to us, and even

[783] W28, 13 November 2021.
[784] See e.g. W34, 10 November 2021; W32, 10 November 2021.
[785] W83, STMT.

the mobile phone of my son which could have been the most valuable memory of my son because it included some pictures and films of our family which was taken by him, that telephone has also been taken by the security and intelligence agents".[786]

414. Those who persisted in seeking answers to the legitimate questions they have about the deaths of their loved ones or have sought to speak about the injustice they face publicly, have also received threats of violence and death. For example, Witness 84 explained that:

> "I kept coming and going [to follow up on my complaint]. I knew that it will be of no avail; but I kept coming and going for my own sake. Ultimately, they declared the file closed. I protested as to why the case was not heard. A long time passed. Again, nothing happened. I started pursuing it seriously. Every once in a while, I would go to the court and come back. At the last meeting they threatened me and told me never to set my foot in the court. I was threatened by the security department. They said: 'Do not pursue this case for the sake of security of your other son.' I could no longer go. I mean, I could go but it was to no avail."[787]

415. Some of the witnesses who courageously testified before the Panel, in person or online, and their family members were subjected to reprisals including harassment and intimidation by Iranian authorities,[788] signalling to all that they had no right to expect justice, and would be punished for seeking it. Complaints have not resulted in the initiation of a timely, transparent or effective investigation.

416. Further, family members have not been provided with details of the findings of any inquiries that may have been undertaken by the authorities. Many complaints have been summarily dismissed on the simple assertions of public authorities that they were not involved, without any independent investigation ever taking place. For example, Witness 366 who was shot during the protests and is now confined to a wheelchair explained that he had filed a complaint with the courts: "The first time around they gave a response and it said that the police force has said that they have not shot anybody. Once again, we complained and we said this was the situation and we saw the police shot us and they rejected the file and said that's not so."[789]

417. Numerous witnesses explained that authorities would tell them virtually anything to shut down

[786] W70, 10 November 2021.
[787] W84, STMT.
[788] See Joint NGO Statement, "Iran: Authorities violating absolute prohibition of torture through harassment of witnesses involved in Iran Atrocities Tribunal" (7 April 2022); Aban Panel Statement, "Reports of Reprisals Against Aban Tribunal Witnesses and their Family Members" (19 April 2022).
[789] W366, 11 November 2021.

the conversation on complaints. Witness 28 explained that:

> "They told us that your brother, your son was killed by ordinary people. He was not killed by one of the officials. Whereas after some time, after some time passed from this incident, we went around in our area we asked those who resided in the area who had been there. They told us officials of the police force themselves, they killed him because they were shooting people from rooftops."[790]

418. Similarly, Witness 17 explained that after having filed a complaint with the police, first the family was told he had committed suicide; then they were told that he was killed by a political group; later they were told he was killed as an ordinary crime. "After two years there has been no sign, no answer, no nothing on why he was killed and who killed him. It has been two years. No answer has been given."[791]

419. Often, the rationale given was that the person killed had participated in the protests and this obviated the need for an investigation, presumably on the basis that any use of force against a protester, even lethal force, was incontrovertibly justified. This, despite the clear obligation on the competent authorities to carry out an effective investigation in any case of alleged killing by the State.

420. Many families have been pressured into accepting "martyr" status for their loved ones who had been killed. This status traditionally refers to persons who have died valiantly in the service of the Islamic Republic or to civilians who were killed accidentally in conflicts between military or intelligence forces with enemies.[792] While this ultimately may entitle them to payments on the form of monthly wages or other benefits from the Foundation of Martyrs and Veterans, or a diya (blood money) payment[793] depending on the circumstances,[794] it was designed to shut down the prospect of any criminal investigation into the alleged responsibility of the State and its officials for the killing.

421. Because "martyr" status labelled the person as aligned with the State, many families resisted

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[790] W28, 13 November 2021.
[791] W17, 12 November 2021.
[792] According to the Executive By-law on the Definition of Martyrdom, Martyr and Martyrs' Families, a "martyr is someone who sacrifices his life for the high goals of Islam, and the Islamic Revolution, the preservation of its achievements, and the defence of the Islamic Republic of Iran against the attacks and threats of adversaries and counter-revolution agents.". See Executive By-law on the Definition of Martyrdom, Art. 1, available at: https://rc.majlis.ir/fa/law/ show/123575 (translated by Justice for Iran and appearing in their report "Mockery of Justice For Victims of Iran's November Protests" (April 2020). See also section on the violations of the right to dignity, below.
[793] Iran Penal Code, Art. 473.
[794] See Justice for Iran, "Mockery of Justice For Victims of Iran's November Protests" (April 2020).

the designation. For instance, Witness 39, whose brother was killed in Javanroud, explained that the security office of the Healthcare Department said that the Intelligence Department had phoned it and told it not to issue a death certificate unless the family agreed to declare the deceased as a martyr.[795] Another witness explained that:

> "My aunt did not agree to their proposal and told them that the blood of her son was not for sale. She wanted justice, like the mother of […], mother of […], like the mothers of one thousand five hundred other persons who were seeking justice. She said that of course he was a martyr, a people's martyr, not the Establishment's martyr."[796]

422. Similarly, Witness 28, speaking of the death of her brother, explained:

> "They [the authorities] called us all the time. They said they were calling that they were going to come and have an interview with us from the TV, so our brother would be considered a martyr and to be covered by the Martyrs Foundation. But we did not allow them to hold an interview with us. We said our brother is a martyr, but he is a martyr in the way of his country. He is a martyr for Iran. Not a martyr for the Government."[797]

423. The policy on designating victims of the Aban protests as martyrs determined what sort of benefit the families should receive on the basis of what role they allegedly played during the protests. However, it ignored that peaceful protest is not a crime, and that any alleged killing by the authorities merits scrupulous and independent investigation, regardless of what the purported role of the victim of the said killing may have been. As explained already in this judgment, the intentional lethal use of firearms is permitted only when strictly unavoidable in order to protect life. Law enforcement officials may only use firearms when less extreme means of force are insufficient to defend themselves or others against imminent threat of death or serious injury, to prevent a particularly serious crime involving grave threat to life, to enable a person resisting arrest to be arrested if he or she is about to commit a particularly serious crime that involves grave threat to life, or to prevent a person resisting arrest from escaping where he or she is about to commit a particularly serious crime that involves grave threat to life.[798]

424. Many individuals who have been arrested and detained in the context of the protests, several of whom were subjected to torture and other forms of prohibited ill-treatment, have had their

[795] W39, STMT.
[796] W309, STMT.
[797] W28, 13 November 2021.
[798] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9.

tortured or coerced confessions serve as the basis for criminal charges lodged against them,[799] leading to grossly unfair judicial proceedings. Many detainees were denied access to lawyers during the investigation phase, and some were denied the assistance of a lawyer of their own choosing at their summary trials. Those who were unlawfully arrested and ill-treated in detention that sought to file complaints were often discouraged, their complaints not taken seriously.[800]

II.4.8 The right to dignity and to reparations including the right to dignified burial in international law

425. Human dignity is not only a fundamental right in itself but is the basis of all fundamental rights. It underpins all rights contained in the Universal Declaration of Human Right (UDHR), human rights treaties to which Iran is a party and international humanitarian law. Human dignity recognises that each human being possesses worth intrinsic to their humanity, and is entitled to respect by virtue simply of being a human being. As a right and concept included across all human rights, the right to dignity falls within the realm of various other rights expressly provided for under international human rights law, including the right to life, the right to family life, freedom of religion, the prohibition of torture and other ill-treatment, the prohibition of enforced disappearance, as well as victims' right to reparation.

426. The preamble of the UDHR states the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." It also provides that "the peoples of the United Nations have in their Charter reaffirmed their faith … in the dignity and worth of the human person and in the equal rights of men and women." Article 1 of the UDHR further asserts that "[a]ll human beings are born free and equal in dignity and rights."[801]

427. The preamble to the ICCPR, which has been ratified by the Islamic Republic of Iran, opens with these words: "Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."[802]

428. Other human rights treaties which the Islamic Republic of Iran has ratified, including the

[799] See e.g. W110, STMT.
[800] See e.g. W283, STMT.
[801] See also UDHR, Arts. 22 and 23.
[802] See also ICCPR, Art. 10.

International Covenant on Economic, Social and Cultural Rights[803], the Convention on the Rights of the Child,[804] and the Convention on the Rights of Persons with Disabilities,[805] all recognise the inherent dignity of the human.

429. The right to dignity implies the respect for the autonomy and equality of all persons and is the foundation of all human rights. Human dignity therefore includes the dignity of the living and the dignity of the dead.[806] Where individuals died because of the authorities' use of excessive force, their right to dignity requires, *inter alia*, that their bodies are handled respectfully and in a manner that protects their dignity.[807]

430. A failure to comply with these standards results in a violation of the deceased's right to dignity. It can also result in pain and suffering of family members that might amount to inhuman or degrading treatment, where the pain and suffering is different to the natural pain and suffering experienced as a result of the death itself.[808]

a. The right to a dignified burial and victims' right to reparation

431. Victims of gross human rights violations have a right to reparation enshrined in international human rights, humanitarian and criminal law.[809] This is based on the recognition that these violations and crimes "constitute an affront to human dignity",[810] and thus one main goal of the victims' right to a remedy and reparation, is to restore their dignity.[811] States must provide reparation to victims by taking a range of measures, including restitution, compensation, rehabilitation, satisfaction and the right to know the truth, as well as to guarantee non-

[803] See International Covenant on Economic, Social and Cultural Rights, preamble and Art. 13.
[804] See Convention on the Rights of the Child, preamble and Arts. 23, 28, 37, 39 and 40.
[805] See Convention on the Rights of Persons with Disabilities, preamble and Arts. 1, 3, 8, 16, 24 and 25.
[806] See UN Commission of Human Rights, Human Rights Resolution 2005/26: Human Rights and Forensic Science, E/CN.4/RES/2005/26, 19 April 2005, noting the "importance of dignified handling of human remains, including their proper management and disposal, as well as of respect for the needs of families."
[807] International Committee for the Red Cross (ICRC), Advisory Service on International Humanitarian Law, '*Humanity after Life: Respecting and Protecting the Dead*', August 2019, p.1.
[808] *Case of Moiwana Community v Suriname*, (Preliminary objections, merits, reparations and costs) Ser. C. No. 124 (IACtHR, 15 June 2005), paras 98- 100.
[809] See e.g. ICCPR, Art. 2(3); and HRC, General Comment No. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004. See also Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Resolution 40/34 (29 November 1985); UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations and Serious Violations of International Humanitarian Law, UNGA Resolution 60/147, 16 December 2005.
[810] UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations and Serious Violations of International Humanitarian Law, UNGA Resolution 60/147, 16 December 2005 ('UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations and Serious Violations of International Humanitarian Law'), Preamble.
[811] Ibid, para.22 (d).

repetition of violations and crimes.[812] States cannot oblige victims to give up on their right to reparation or to condition the provision of reparation on the signing of certain undertakings like a promise not to initiate judicial proceedings against the State. Specifically in the context of enforced disappearances, for example, the UN Human Rights Committee considers that "[u]nder no circumstances should families of victims of enforced disappearance be obliged to declare them dead in order to be eligible for reparation."[813]

432. Under international law, a victim includes the direct victim who suffered the violation as well as "the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation."[814] This is because family members may experience pain and suffering as a result of the harm suffered by the direct victim.

433. This is particularly so in cases where the direct victim was killed by authorities. In these cases, States not only have a responsibility towards the deceased victim as outlined above but also towards that victim's family. They must investigate the circumstances that led to the victim's death and keep the family informed if they so wish. The authorities are obliged to search for and identify the bodies of those killed, and to assist "in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities."[815] Where the remains are not in the possession of the family already, they must be returned promptly so that they can be buried in accordance with the family's wishes and their religious beliefs.[816] These standards are also reflected in international humanitarian law, which has extensive provisions regarding the dignified treatment of the dead.[817]

434. A State's failure to abide by these standards can in and of itself amount to treatment in violation of the prohibition of torture and ill-treatment of the deceased and their next of kin.[818] The Inter-American Court of Human Rights for instance found in a case where the excessive use of force by soldiers in the Dominican Republic caused seven persons to lose their life, that

[812] HRC, General Comment No. 36, para. 28.
[813] HRC, General Comment No. 36, para. 58.
[814] Ibid, para. 8.
[815] UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations and Serious Violations of International Humanitarian Law, principle 22(c).
[816] *Case of The Rio Negro Massacres v Guatemala*, (Preliminary Objections, Merits, Reparations and Costs) Ser. C. No. 250 (IACtHR, 4 September 2012), paras157-163.
[817] ICRC, *Study on customary international humanitarian law (IHL)*, Cambridge University Press (2005), Rules 112-116.
[818] *Case of Nadege Dorzema et al. v. Dominican Republic*, (Merits, Reparations, Costs) Ser. C. No. 251 (IACtHR, 24 October 2012), para. 117.

their mass burial "without being clearly identified or returned to their loved ones" violated their family's right to know the truth and prevented them from burying their loved ones in accordance "with their beliefs and to close the mourning process they experienced owing to the events."[819] According to the Court, this amounted to "demeaning treatment"[820] in violation of the prohibition of torture and ill-treatment, "to the detriment of the deceased and their next of kin."[821]

b. The right to dignity including the right to dignified burial in Iranian law

435. Article 6(2) of the Iranian Constitution states that "The Islamic Republic is a system based on belief in the exalted dignity and value of man, and his freedom coupled with responsibility before God."

436. Article 20 of the Constitution specifies that "All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria."

437. Article 22 of the Constitution states that "The dignity, life, property, rights, residence and occupation of the individual are inviolate, except in cases sanctioned by law."

438. Further, the oath to be taken by the President of the Islamic Republic of Iran, as set out in Article 121 of its Constitution, includes the oath to "protect the freedom and dignity of all citizens and the rights the Constitution has accorded the people."

439. A key source of Shia jurisprudence, that of Mohammed Yazdi, provides clearly for the sanctity of the dead calling on the Muslim community to show utmost respect in burial. In fact, he even provides for situations where a person may be exhumed from their grave and moved to a new grave, including where that person "was not washed and shrouded", "was not washed and shrouded correctly"; if "buried without the permission of their guardian" or if "buried in an unsuitable cemetery, like that where infidels are buried".[822]

440. Furthermore, in Khomeni's *fatwas* in the Book of the Dead, a key source of Shia jurisprudence, there are numerous references on the "sanctity of the dead" and clear orders not to disrespect

[819] Ibid, para. 115.
[820] Ibid, para. 117.
[821] Ibid.
[822] Yazdi, Mohamed, Al Urwa al Wuthqa, First Edition, Aeen Danish (2015), Qum, Iran, Volume 2, pp 50-52.

the sanctity of the dead.[823] It provides for the "respectful burial" of Muslims.

441. Article 4 of the law establishing the Martyrs and Veterans Affairs Foundation[824] sets out the definition of a martyr. The definition includes "someone who gave his life for the Islamic Revolution and preserving its achievements and defending the integrity of the Islamic Republic of Iran against threats or aggression of the enemy and counter-revolutionary element and villains",[825] as well as other persons identified pursuant to the Executive Regulations prepared by the Foundation. The Regulations include in the definition of martyrs, "all those people whom the Supreme Leader considers as martyrs by special decree".[826]

442. The Ayatollah Khameni did issue a decree [*fatwa*] in which he categorised those who may have been killed in the Aban protests into three groups: (1) those who were "regular citizens" and who did not "play a role in the chaos"; (2) those who took part in the protests; and (3) those who were killed in "armed conflict". The decree granted the status of 'martyr' to those in the first category and placed their families under the care of the Foundation. The decree also allowed the payment of compensation [*diyya*] for those killed "in any way". The decree goes on to state that, in relation to those killed in the third category, a distinction should be made between them and their families and that the families should "be cared for and consoled". The decree ends with a call that "Islamic compassion should be the basis" for its application.[827]

c. Consideration of the right to dignity in the context of the burials of protesters taking part in the Aban protests

443. In the period during and following the protests, the authorities, in what appears to be a coordinated strategy, adopted a policy of harassment and persecution of the families of those killed during the protests. This included delaying the return of the bodies of those protesters who were killed as a means by which to obtain undertakings from their families not to speak to the media about the deaths of their loved ones.[828] One witness reported the authorities

[823] See Ayatollah Khomeini collection of jurisprudence, pp 78 onwards, available at: http://shiaonlinelibrary.com/%D8%A7%D9%84%D9%83%D8%AA%D8%A8/717_%D8%AA%D8%AD%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D9%88%D8%B3%D9%8A%D9%84%D8%A9-%D8%A7%D9%84%D8%B3%D9%8A%D8%AF-%D8%A7%D9%84%D8%AE%D9%85%D9%8A%D9%86%D9%8A-%D8%AC-%D9%A1/%D8%A7%D9%84%D8%B5%D9%81%D8%AD%D8%A9_80#top.

[824] Law of the Martyr of the Islamic Revolution Foundation of 27/2/1377 [1998].

[825] Translation of Farsi text.

[826] Executive Regulations [translation of Farsi text on Google Translate], Art. 2(15).

[827] See Euronews, "Iranian Supreme Leader Ali Khamenei agrees to consider some protest victims as 'martyrs'", 5 December 2019, available at: https://arabic.euronews.com/2019/12/05/iran-s-leader-ali-khamenei-agrees-considerin-some-protest-victims-martyrs.

[828] W19, STMT; W34, 10 November 2021; W81, STMT; W82, 4 February 2022.

telling her, "If you ever tried to talk about his killing, or how and where he was killed, we would come and open his grave and remove his corpse. You would not know where he is; you would never know his whereabouts."[829] Another witness told of how officials "visited the family with the camera and wanted them to say in front of the camera that this job was done by [minority] political parties. But the family refused. They threatened the family that they would hand over the corpse on condition that they keep silent and make no noises at [the] memorial service."[830] In another account, the Panel heard from a witness about the death of his brother: "[a]fter a lot of effort and going to the IRGC Intelligence department and going to the Governors Generals office, we were allowed to receive the body of our brother. It took two days, after giving a lot of commitments. We committed not to have any interviews with foreign media and we committed not to have any interviews. After signing so many commitment papers, they released my brother's body and they caused a lot of nuisance during this time."[831]

444. An ambulance worker who transferred bodies of the deceased, testified that:

> "The family of the killed person who wanted to transfer the corpse to a provincial city, such as the father and the relatives of the first degree, were required to go to the administrative section of the hall where the administrative work is performed. There they would be required to give undertaking to the Intelligence Security officer that there would be no problems for the ambulance, they would hold no ceremonies, a large number of people would not attend the burial, they would do everything quietly, that they would not take the corpse to their house (for farewell), and that no photographs would be taken and no film would be made."[832]

445. Another witness told the Panel of the impact of the delays of delivering his brother's body on the family: "they did not deliver the body to us for two weeks. We really were feeling very ill because they had killed our brother and still they were not giving us the body. My father was extremely depressed, he was going from here to there to find my brother."[833]

446. According to witnesses who testified before the Panel, security and intelligence officials placed the families under surveillance and attended funerals and commemorative ceremonies to ensure that restrictions were observed. These restrictions included: restrictions on the number

[829] W82, STMT.
[830] W499, STMT.
[831] W28, 13 November 2022.
[832] W451, STMT.
[833] W32, 10 November 2021.

of mourners attending;[834] burials being forced to take place at short notice and irregular hours;[835] including in the middle of the night;[836] burials being forced to take place in cemeteries other than those requested by the families;[837] and prohibiting and limiting memorial posters and banners from being displayed in public places or on social media.[838] One witness explained: "They harassed us for the notice of memorial service. We had written in it that we could not hold the ceremonies at the cemetery for certain reasons. The security council asked why we had written 'for certain reasons.' They told us to write 'because of Corona virus.' We said: No, it's 'because of certain reasons', not Coronavirus.'"[839] Witnesses also expressed their distress at officials attending burials and memorial services to ensure compliance with the restrictions[840]. Witness 426 told the Panel of how the authorities sought to intimidate them saying: "You are under surveillance of the Sepah. No matter where you hold the memorial service, be sure that our plainclothes men would attend that service. They are watching you so you won't a mistake."[841]

447. In certain cases, according to witnesses who testified before the Panel, bodies were returned for immediate burial, depriving the families of their right to administer the last rites to their loved ones in a manner consistent with their religious beliefs and customs.[842] Witnesses testified that officials washed and prepared the bodies for burial without informing the families and then handed over the bodies for immediate burials. Witness 34 explained: "[t]he officials prepared the corpse, and we just buried the body. They had done everything themselves. We did not ever see what they had done. We don't know what they did to him, we just buried him." He went on to explain that this is not normal practice and was inconsistent with custom, stating "[r]eligiously speaking the family need to prepare the body." The family's right to determine to final rites of the deceased was further violated as they decided on the place of burial too, with the witness stating: "they decided for us. We had no role in deciding where to bury our child."[843] Witness 13 reported a similar experience, stating "They gave us the corpse ready for burial; they did not allow us to shroud it. God knows how and in what conditions

[834] W82, STMT.
[835] W31, 12 November 2021; W32, 10 November 2021.
[836] W34, 10 November 2021; W81, STMT.
[837] W13, STMT; W28, 13 November 2021; W31, 12 November 2021; 3 W32, 10 November 2021; W34, 10 November 2021; W83, 5 February 2022.
[838] W34, STMT.
[839] Ibid.
[840] W82, 4 February 2022; W83, 5 February 2022.
[841] W426, STMT.
[842] W13, STMT; 19, W32, 10 November 2021; W82, 4 February 2022; W83, 5 February 2022.
[843] W34, 10 November 2021.

they did it."[844]

448. In other instances, the Panel heard from witnesses who testified that authorities refused to bury the bodies in the home cemetery or where the family sought to have them buried, but chose other cemeteries sometimes a very far way away from the family.[845] One witness stated that "the security agents did not allow him to be buried in Marivan; they took him to Sarvabad."[846] Another witness told the Panel: "for a few days, we had no sign of the body. After a few days, we were called back that the body was at some cemetery and we should go and bury him."[847]

449. In another case, the Panel heard of the extent to which the authorities went. The witness testified that not only did officials prevent the burial of the deceased in the cemetery chosen by his family but physically obstructed an ambulance transporting the body and even instructed the guild of florists to instruct all florists in the city not to make any flower crowns for the deceased.[848] The witness concluded that "[t]he place of burial was chosen by the security officers; they even put the corpse in the grave themselves."

450. The Panel heard of how the Martyrs and Veterans Affairs Foundation also played a part in the harassment of the families of those killed in the Aban protests. The Foundation would offer the families support and martyr status for those killed but on the condition that they did not talk about the killing. Witness 28 told us: "[t]hey said they were calling that they were going to come and have an interview with us from the TV, so our brother would be considered a martyr and to be covered by the Martyrs Foundation."[849] Witness 39 told of how the Sepah warned "'[d]on't let us harass you more than this. Sign these papers and we'll declare your son as a martyr. Remove the tombstone that you have installed otherwise we'll destroy it.'"[850] The status of martyr often came with the promise of the payment of a *diyyah* or blood money. The Panel heard from witnesses that the payment of *diyyah* was often linked to the securing of an undertaking from families that they would not lodge any complaints nor speak to the media about their loss.[851]

[844] W13, STMT.
[845] W17, STMT.
[846] W17, STMT.
[847] W18, 14 November 2021.
[848] W31, 12 November 2021.
[849] W28, 13 November 2021.
[850] W39, STMT.
[851] W28, 13 November 2021.

451. In many cases, families declined the *diyyah* and the martyr status;[852] one witness explained: "two plainclothes young men came and asked us to file a complaint. They wanted to declare (my brother) a martyr. I did not comply. I said: "My brother is not *a shahid*; he was not a Basiji so he could be designated as a *shahid*. You killed him, and now you want to do this and that for him.""[853] Another testified that they also declined martyr status, "We refused because I feel that this foundation that they have started calling the Foundation for Martyrs, is a foundation which is supervised and controlled by the Government and it's a means of betrayal."[854]

III. Findings

III.1 Findings related to the violation of human rights

452. The Panel finds that the Government of Iran and its security forces are responsible for the massive violation of human rights during and in the aftermath of the protests. In particular, the failure to guarantee citizen's right to peaceful protest, including the right to express dissent and voice grievances even when they go against Government policy. The Government has an obligation to actively enable this right – to take positive steps to make it a reality. In practice, as the evidence demonstrated, not only did the Government thwart peaceful protests, it actively persecuted all persons it associated with the protests in order to make clear that no dissenting civil society space is to be tolerated in the country. This is in direct contravention of Article 21 ICCPR. The restrictions the Government imposed, including the use of both less-lethal and lethal force, were not proportionate or necessary, and only served to extinguish the right to protest and violate the range of civil and political rights of individuals who were simply asserting their right to engage in public debate.

453. The violent and targeted attacks on protesters which led to unlawful, arbitrary and indiscriminate killings violated the right to life of ordinary Iranians of all ages and genders, in all parts of the country. It is unlawful for a Government to order, cause, or allow officials to shoot to kill protesters or indeed any persons who do not pose an immediate threat to life. It violates Iran's international obligations and its Constitution. It is also criminal behaviour.

454. Furthermore, the right to life requires the Government to exercise due diligence to prevent investigate and prosecute all allegations or occurrences of arbitrary deprivation of the right to

[852] W13, STMT; W15, STMT; W17, 12 November 2021; W20, STMT; W21, STMT; W23, STMT; W28, 13 November 2021; W39, STMT.
[853] W20, STMT.
[854] W17, 12 November 2021.

life. The evidence demonstrates that the Iran Government failed this test. To the contrary, the protesters and others in their vicinity were not seen as worthy of having their lives safeguarded. The Government of Iran is responsible for the disregard of the sanctity of human life.

455. The security forces acting through their chains of command appeared to believe that they had absolute authority to arrest any person in connection with the protests, as it had deemed these protests unlawful. Again, peaceful protests should never be considered unlawful and the Government is under an obligation to ensure that they can take place unhindered. The actions of the authorities in effecting arbitrary arrests and releasing detainees only on the condition of forced confessions, promises to avoid future involvement in protests, and to refrain from speaking about their time in detention, violated Article 9 of the ICCPR among other human rights and provisions.

456. The Panel has determined that there were several instances of enforced disappearances, involving persons who were taken by authorities and either kept incommunicado in undisclosed locations for extended periods of time before being released, or never to be heard from again. The practice of enforced disappearance including the failure of authorities to acknowledge or give information about victims' whereabouts is devastating for victims' families and violates Article 2(3), 7 and 9 of the ICCPR. The failure to have in place and to enforce a system whereby individuals are only arrested on lawful grounds, and anyone detained is appropriately registered also violates the due diligence obligations to prevent these violations.

457. Despite the absolute prohibition of torture and other cruel, inhuman or degrading treatment and punishment, the Panel has found that these acts were commonplace and common currency by security forces on the streets as well as in detention centres in violation of Article 7 ICCPR. Protesters were impermissibly routinely and severely beaten at protests causing severe physical and psychological suffering. The Panel underscores that these acts could never have served any law enforcement function; they were simply an exercise of brute and unlawful force.

458. Detainees including women and children were routinely tortured and ill-treated, subjected to sexual violence and to other inhuman conditions of detention. Article 7 of the ICCPR requires States not only to prohibit torture, but also to take active steps to prevent it, to investigate and prosecute allegations and provide remedies to the victims. There is no evidence of any effort to prevent, prohibit, prosecute or afford reparations for the torture. Instead, torture was routinely used to obtain confessions which were not rendered inadmissible in court

proceedings. The Panel has determined that torture was used as a common component of the arsenal of the offensive in the protests.

459. These various violations stem from the direct acts attributable to the Government and members of the security forces. The responsibility of the Government also stems from its failure to exercise due diligence to protect protesters and ordinary citizens from harm during and in the immediate aftermath of the protests as well as its failure to investigate and prosecute the crimes that ultimately occurred.

460. Additionally, the Government has thwarted efforts made by victims, their families, journalists and ordinary memories of the public to know the truth about what happened, violating the right to truth. Victims and their family members have a right to a remedy and reparation, which to date has not been made available to them in equality or dignity. That some persons have been offered or afforded martyr status for deceased loved ones does not address victims' right to a remedy and reparation because it is partial, it requires victims to give up their quest to find out what truly happened and to obtain a measure of accountability in respect of the individuals and the governmental bodies that perpetrated or created the conditions for the crimes to occur.

461. In preventing the families from burying their loved ones in dignity and in accordance with their religious rituals and customs, the Iranian Government breached Article 15 of the International Covenant on Economic, Social and Cultural Rights, which Iran has ratified. These actions can also amount to cruel, inhuman or degrading treatment in violation of Article 7 of the ICCPR.

462. Victims and their families deserve truth, accountability *and* reparations. The right to a remedy and reparations includes equal and effective access to justice and the prevention of all threats and reprisals for those seeking to access the justice system. They have a right to reparation which should not be contingent on what they say in public or how they decide to frame their grievances. This right to reparation must be adequate and effective in light of the nature of what transpired and should include, as appropriate, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

III.2 Findings related to crimes against humanity

463. The Prosecution has alleged that the Iranian Government's brutality in relation to the Aban also constituted the commission of crimes against humanity. Article 6(2) of the Statute of the

Aban Tribunal defines crimes against humanity.[855]

464. According to Article 6(2), the following acts are capable of amounting to crimes against humanity, 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; and (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. This definition mirrors the definition in Article 7(1) of the Rome Statute.

465. Article 6(2) of the Statute of the Aban Tribunal also states that for any of these enumerated acts to constitute a crime against humanity, they must have been committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".[856] An 'attack directed against a civilian population' is defined as "a course of conduct involving the multiple commission of acts referred to in [Article 6] paragraph 2 against a civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack".[857] Random and isolated acts will not satisfy the definition of 'attack' for the purposes of this contextual element.[858]

466. The attack need not be military in nature.[859] Civilians must be the primary target of the attack,[860] as opposed to members of the armed forces or other combatants.[861] The presence

[855] The definition contained in Article 6(2) is consistent with principles of international criminal law as already defined in the statutes and jurisprudence of the International Criminal Court (ICC) and the international *ad hoc* tribunals.
[856] Aban Tribunal Statute, Art. 6(2).
[857] Aban Tribunal Statute, Art. 6(3)(a). Such crimes include *inter alia* murder, sexual assault, rape, false imprisonment, torture, and persecution.
[858] *Prosecutor v. Ntaganda*, ICC-01/04-02/06 A A2, Appeal Judgment, 30 March 2021 ('*Ntaganda* Appeal Judgment'), para. 430.
[859] *Katanga* Trial Judgment, para. 1101; *Gbagbo* Decision on Confirmation of Charges, para. 209; *Prosecutor v. Bemba,* ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009 ('*Bemba*" Decision)
[860] *Katanga* Trial Judgment, para. 1104; *Ongwen* Trial Judgment, para. 2675; *Bemba* Decision on Confirmation of Charges, para. 76; *Prosecutor v. Kunarac et al.,* IT-96-23 & IT-96-23/1-A, Appeal Judgment, 12 June 2002 ('*Kunarac et al.* Appeal Judgment'), paras 91-92.
[861] *Katanga* Trial Judgment, paras 1102-1105.

of non-civilians within a population that is composed primarily of civilians does not alter that population's civilian status however.[862]

467. Based on the evidence made available to it, as well as the legal principles applicable in this case, and in conformity with the applicable international legal principles, the Panel finds that the acts of murder, enforced disappearances, imprisonment, torture, sexual assault and rape were established by the evidence beyond a reasonable doubt.

III.2.1 The Crimes Constitute Crimes Against Humanity

468. In sum, to find that these violations (murder, enforced disappearances, imprisonment, torture and sexual assault) constitute crimes against humanity, it must be established that they occurred as part of a widespread or systematic attack against a civilian population. [863]

469. In general, the term 'attack' relates to a campaign or operation carried out against the civilian population,[864] involving the commission of multiple acts rising to the level of a crime against humanity under Article 7(1) of the ICC Rome Statute.[865]

470. The term 'widespread' refers to the large-scale nature of the attack and the number of persons targeted.[866] Determination of whether an attack is widespread is based on consideration of all relevant facts, and not exclusively quantitative or geographical criteria.[867]

471. The term 'systematic' refers to the organised nature of the acts of violence, and the

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[862] *Katanga* Trial Judgment, para. 1105; *Ongwen* Trial Judgment, para. 2675; *Prosecutor v. Jelisič*, IT-95-10-T, Trial Judgment, 14 December 1999 ('*Jelisič* Trial Judgment'), para. 54; *Prosecutor v. Tadič,* IT-94-1T, Trial Judgment, 7 May 1997, paras 638-639; *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Judgment, 2 September 1998 ('*Akayesu* Trial Judgment'), para. 582; *Prosecutor v. Kayishema et al.,* ICTR-95-1-T, Trial Judgment, 21 May 1999 ('*Kayishema et al.* Trial Judgment'), para. 128.

[863] *Ongwen* Trial Judgment, para. 2680; *Akayesu* Trial Judgment, para. 579; *Prosecutor v. Alfred Musema*, ICTR-96-13-A, Judgment and Sentence, 27 January 2000, para. 203; *Bemba* Decision on Confirmation of Charges, para. 82; *Situation in the Republic of Kenya*, ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya, 31 March 2010 ('*Situation in the Republic of Kenya* Investigation Authorisation Decision'), para. 94.

[864] ICC, *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, para. 80.

[865] Rome Statute, Art. 7(2)(a); *Katanga* Trial Judgment, para. 1101; *Gbagbo* Decision on Confirmation of Charges, para. 209.

[866] See e.g. *Bemba* Trial Judgment, para. 163; *Katanga* Trial Judgment, para. 1123; *Gbagbo* Decision on Confirmation of Charges, para. 222; *Prosecutor v. Harun & Ali Kushayb*, ICC-02/05-01/07, Decision on the Prosecution Application under 58(7) of the Statute, 27 April 2007, para. 62; *Ongwen* Trial Judgment, para. 2681; *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Trial Judgment, 8 July 2019 ('*Ntaganda* Trial Judgment'), para. 691; *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-A, Appeal Judgment, 17 December 2004 ('*Kordić & Čerkez* Appeal Judgment'), para. 94; *Prosecutor v. Blagojević & Jokić*, IT-02-60-T, Trial Judgment, 17 January 2005 ('*Blagojević & Jokić* Trial Judgment'), paras 545-546.

[867] *Ongwen* Trial Judgment, para. 2681; *Bemba* Trial Judgment, para. 163.

improbability of their random or spontaneous occurrence.[868] It may include an organised plan which follows a regular pattern resulting in the continuous commission of acts or the non-accidental repetition of acts.[869]

472. The Aban Tribunal Statute requires proof that the course of conduct involving the multiple commission of acts must take place 'pursuant to or in furtherance of a State or organisational policy to commit such attack'. That requirement is consistent with general principles of international law which require proof "that the State or organization actively promote or encourage such an attack against a civilian population",[870] and consider that "the existence of a plan or policy" is indicative of the systematic character of offences charged as crimes against humanity.[871]

473. An attack that was planned, directed, organised, promoted or actively encouraged by a State or organisation satisfies this criterion, even if a policy was not formally adopted.[872] The plan need not necessarily be pre-established, it may also "crystallise or develop only as actions are undertaken by the perpetrators".[873] There is no prescribed requirement as to the content of the policy which would satisfy this element.[874]

474. The existence of a 'policy' may be inferred from various factors, including: (i) the identification and designation of victims by the accused prior to the attack; (ii) the preparation or mobilisation of the armed forces prior to the attack; (iii) the allocation of substantial resources in preparation for the attack; (iv) public statements made prior to the attack; (v) meetings among high-ranking officials of a State or organisation prior to the attack where discussions of military nature (e.g., logistics and strategy) took place; (vi) the appointment of commanders responsible for the attack; and (vii) the recurrence of similar attacks.

475. The terms 'pursuant to or in furtherance of' requires that the individual criminal act was carried

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[868] *Katanga* Trial Judgment, para. 1123; *Ongwen* Trial Judgment, para. 2682; *Ntaganda* Trial Judgment, para. 692; *Prosecutor v. Ruto et al.*, ICC-01/09-01/11, Decision on the confirmation of charges, 23 January 2012 ('*Ruto et al.* Decision on the confirmation of charges'), para. 179; *Kordić & Čerkez* Appeal Judgment, para. 94; *Blagojević & Jokić* Trial Judgment paras 545-546. *See also*, *Prosecutor v. Blaškić,* IT-95-14-T, Trial Judgment, 3 March 2000, para. 658; *Prosecutor v. Brdanin*, IT-99-36-T, Trial Judgment, 1 September 2004, para. 135; *Kunarac et al.* Trial Judgment, para. 429; *Kunarac et al.* Appeal Judgment, para. 94; *Prosecutor v. Blaškić,* IT-95-14-A, Appeal Judgment, 29 July 2004, para. 101.

[869] *Katanga* Trial Judgment, para. 1162.

[870] ICC Elements of Crimes, Introduction to Article 7, para. 3.

[871] See ICTY, *Prosecutor v. Kordić and Cerkez*, Judgement, IT-95-14/2-T, 26 February 2001, para. 182; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Judgement (TC), 30 May 2013, para. 963. See also ICC Rome Statute, Art. 7(2)(a).

[872] *Ruto et al.* Decision on the Confirmation of Charges, para. 210; *Gbagbo* Decision on Confirmation of Charges, para. 214.

[873] *Ongwen* Trial Judgment, para. 2679; *Ntaganda* Trial Judgment, para. 674.

[874] *Katanga* Trial Judgment, para. 1106.

out within the context of (or as part of) the attack against a civilian population. The conduct must also be similar to other acts committed during that attack.[875] In other words, an act in question must not be isolated criminal conduct that "clearly differ[s]" from other constituent acts of the attack.[876] This can be determined by consideration of the characteristics, aims, nature and consequence specific act.[877]

III.2.2 Widespread nature of the attacks against the protesters

476. Based on the totality of the evidence assessed above, the Panel concludes that there was an attack against the civilian population in Iran in November 2019, and this attack was widespread. The undisputed evidence, consisting of eye-witness testimony, expert reports, video and press reports established that protests and the Government's violent acts in response to those protests, took place throughout the country during November 2019.

477. The Iranian Government, using its security forces, pursued a plan or policy to commit serious criminal acts against large scale protests that amounted to a widespread attack on the civilian protesters, including the commission, primarily, of the following acts:

a. Murder;

b. Imprisonment;

c. Sexual assault;

d. Enforced disappearances;

e. Torture; and

f. Persecution (as found by the Panel by a Majority (Rohan dissenting)).

478. Indeed, while protests were recorded in 29 of 31 provinces, in at least 20 of these provinces, the Iranian security forces engaged in murder; in at least 20 provinces, the Iranian security forces engaged in wrongful arrests and imprisonment; and in at least 11 provinces, the Iranian security forces engaged in beatings and torture against the civilian population involved in the protests.[878] The number may even be higher considering that some of the evidence received by the Panel related to undisclosed provinces. Expert Shadi Sadr's report also quotes Yadollah

[875] *Katanga* Trial Judgment, para. 1124; *Bemba* Trial Judgment, para. 165.
[876] *Katanga* Trial Judgment, para. 1124; *Bemba* Trial Judgment, para. 165; *Kunarac et al.* Appeal Judgment, para. 100.
[877] *Ongwen* Trial Judgment, para. 2688; *Ntaganda* Trial Judgment, para. 696; *Katanga* Trial Judgment, para. 1124; *Bemba* Trial Judgment, para. 165.
[878] See sections II.4.2, II.4.3 and II.4.5 above. See also W Shadi Sadr, STMT, pp. 7, 15; W Bahar Saba, STMT, p. 34; and W Robert Heinsch, STMT, p. 20.

Javani, the Political Deputy of the IRGC, as noting that while "the protests took place in hundreds of cities, yet only videos from 86 cities are available on public domain that it was only able to gather evidence".[879]

479. The Panel has noted experts Robert Heinsch and Shadi Sadr's evidence that the Iranian security officials arbitrarily arrested and detained over seven thousand individuals during the five days of the protests, in at least twenty-eight out of Iran's thirty-one provinces.[880]

480. The total number of civilians recorded as being killed is above three hundred, based on the expert evidence of Robert Heinsch and Raha Bahreini.[881] Robert Heinsch, in his expert report, also noted that according to Reuters News, the total number of civilians killed could be as high as one thousand five hundred.[882] The testimony offered by other witnesses before the Panel also indicates a much higher number of casualties. Witness 185 testified that one hundred and twenty people were killed in his town alone.[883] Witness 600 testified that four hundred and twenty seven people were killed in Khuzestan and four hundred and twenty to four hundred and seventy in Tehran.[884] Witness 232 testified that a total of one hundred and seventy to one hundred and eighty bodies would have been found across all hospitals in the area of Shahriar.[885] Witness 424, an insider witness who obtained his information from Sepah forces, testified that 700 to 800 protesters were killed (location protected).[886] Though the numbers cannot be confirmed before the Panel, it appears that hundreds of people were killed, perhaps as many as 1,000-1,500 or more.

481. The Panel also heard evidence, from witnesses from at least five provinces, that the Iranian security forces had committed, or threatened to commit, sexual assault against the civilian detainees arrested from the protests.[887] There is a report of rape by witness 436.[888]

482. Jurisprudence from the International Criminal Court (ICC) confirms that the 'widespread' nature of the attack encompasses the large-scale nature of the attack, which should be massive, frequent, carried out collectively with considerable seriousness and directed against a

[879] W Shadi Sadr, STMT, p. 8; W Robert Heinsch, 13 November 2021, pp. 12-14.
[880] W Robert Heinsch, STMT, p. 126; W Shadi Sadr, STMT, p. 5.
[881] W Raha Bahreini, STMT, p. 4.
[882] W Robert Heinsch, STMT, p. 126.
[883] W185, 10 November 2021.
[884] W600, 6 February 2022.
[885] W232, 13 November 2021.
[886] W424, STMT.
[887] See W110, 13 November 2021; W303, 14 November 2021; W225, STMT; W314, STMT; W436, 5 February 2022.
[888] W436, 5 February 2022.

multiplicity of victims.[889] The Panel also notes that, according to the ICC and the *ad hoc* tribunals, a "widespread" attack may be the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude".[890]

483. Only the attack against the civilian population, not the individual acts of the accused, must be widespread.[891] The acts of the perpetrators need only be a part of this attack, and all other conditions being met, a single or limited number of acts on his or her part would qualify as a crime against humanity, unless those acts may be said to be isolated or random.[892]

484. The Panel considers that the sexual assault and threats to (and actual commission of) rape against detained protesters were acts that can be classified as torture. They formed part of the Iranian security forces' attack on the civilian population and were part of the course of conduct designed to silence the protesters and force confessions from them.

485. The Panel further notes ancillary acts of the Iranian security forces, for example, posing as civilians to incite violence amongst the protesting crowds; the use of tear gas or water cannons against the protesters; as well as the delay or refusal to return dead bodies and allow proper public burials by the families. While these acts may not on their own rise to the level of a crime against humanity under international law, they provide crucial context to the other ongoing acts of killings, torture, imprisonment, enforced disappearance and persecution (as found by a Majority, Rohan dissenting)

486. The cumulative nature of these acts - murders, torture, imprisonment, enforced disappearances and persecution ((as found by a Majority, Rohan dissenting) - indicates that the attacks were widespread.

487. Therefore, the Panel concludes that, having regard to the large geographical scope of the crimes committed across Iran, the seriousness of the crimes, as well as the large number of

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[889] ICC, *Situation in the Republic of Kenya,* Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 95; *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey And Joshua Arap Sang*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ICC-01/09-01/11-373, 23 January 2012 ('*Ruto* Decision'), para. 176.

[890] ICC, *Situation in the Republic of Kenya,* Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 95; *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Judgement, 17 January 2005, para. 545. See also *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05- 01/08-424, 15 June 2009, para. 83; *Prosecutor v. Blaskic*, IT-95-14-T, Judgement, 3 March 2000, para. 206; *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Appeal Judgement, 17 December 2004, para. 94; *Prosecutor v. Blaskic*, Case No. IT-95-14-A, Appeal Judgment, 29 July 2004, para. 101.

[891] *Prosecutor v. Kunarac et al.,* IT-96-23 & 23/1, Appeal Judgement, 12 June 2002, para. 96; *Prosecutor v. Tihomir Blaškić*, IT-95-14-A, Appeal Judgement, 29 July 2004, para. 101.

[892] *Prosecutor v. Tihomir Blaškić*, IT-95-14-A, Appeal Judgement, 29 July 2004, para. 101.

victims involved, the test of 'widespread' attack has been met.

III.2.3 Systematic nature of the attacks against the protesters

488. Further, the Panel considers that the evidence established that the crimes that occurred were part of a systematic attack on the civilian population in Iran.

a. Crimes followed a pattern of non-accidental acts

489. The crimes across the different provinces were remarkably uniform and reflected a similar pattern of acts across the provinces. The civilian protests in most provinces began on 16 November 2019 to protest against the Iranian Government and its policies (particularly its oil and gas price policy). The protests were generally peaceful in nature until the Iranian security forces used violence against the protesters.[893] Witnesses from several different provinces testified that plain-clothed officials were deliberately planted in the protest crowds to incite violence, including by attacking and burning buildings and banks.[894] Whether this is true or not, the evidence establishes that thereafter the Iranian security forces, including the IRGC, the police, the special units, the army, as well as the Basij forces:

(a) started assaulting the protesters with batons and truncheons, or hitting them with water cannons and tear gas, as recorded in the provinces of Islam Shahr, Karaj, Fardis, Isfahan, Mashad, Qom, Kermanshah, Sanandaj, Andimieshkt, Ahvaz, Arak, Khuzestan;[895] or,

(b) directly shot at the protesters using machine guns or other war weapons, as recorded in the provinces of Tehran, Shahriar, Shahr-e-Qods, Alvand, Shiraz, Mahshahr, Behbahan, Marivan, Omidiyeh.[896]

490. This patten of physical assault and/or the use of water cannons or tear gas soon turned to the

[893] See W216, 14 November 2021; W83, 5 February 2022; W173, 13 November 2021. See also W119, 14 November 2021; W232, 13 November 2021; W175, 12 November 2021; W503, 4 February 2022; W337, 14 November 2021; W303, 14 November 2021; W255, 13 November 2021; W245, 14 November 2021. See also W Shadi Sadr, STMT, pp. 4-5; W Raha Bahreini, STMT, p. 3.
[894] See W451, 4 February 2022; W5, 13 November 2021; W216, 14 November 2021; W367, 14 November 2021; W119, 14 November 2021; W183, 13 November 2021; W175, 12 November 2021; W426, 5 February 2022; W190, STMT; W227, 12 November 2021.
[895] W253, STMT; W194, STMT, p. 2; W451, 4 February 2022; W5, 13 November 2021; W216, 14 November 2021; W255, 13 November 2021; Witness Statement 137; Witness Statement 240; W175, 12 November 2021; W125, 14 November 2021; W279 STMT; W190, STMT; W226, STMT; W281, STMT.
[896] W245, 14 November 2021; W232, 13 November 2021; W Shadi Sadr, STMT, pp. 19, 29-30, 36-37; W86, 4 February 2022; W337, 14 November 2021; W503, 4 February 2022; W12 STMT; W179, 13 November 2021; W195, 11 November 2021; W220 STMT; W8, STMT; W312, STMT.

indiscriminate shooting of the protesters, either on 16 November itself, or by 17 November.[897] The manner of shooting followed a pattern: security forces were often stationed on the rooftops of buildings, including police stations, and fired indiscriminately at the crowds.[898]

491. There was a similar pattern of arrests and detentions of protesters across all three main days of the protests (16-18 November) in the provinces of Tehran, Islam Shahr, Karaj, Fardis, Shahriar, Qom, Mashad, Shiraz, Kermanshah, Behbahan, Marivan, Sanandaj, Omidieh, Ahvaz, Arak, Urmia, Gorgan, and Khuzestan.[899] Several witnesses stated that security forces, especially the Basij and IRGC forces, stationed themselves at hospitals in order to monitor the wounded being brought in from the protests and to arrest them, sometimes even forcibly dragging away the protesters from their hospital beds; similarly, security forces also seized wounded protesters from the streets and took them away to detention centres in vans, ambulances, taxis, and other vehicles.[900] Ambulances were for the most part not permitted in the protest areas; indeed security forces attacked individuals who were attempting to assist the wounded on the streets.[901]

492. Those arrested were then taken to detention centres run by different security forces, particularly the IRGC, the police, and the Ministry of Intelligence, and there was cooperation amongst the forces in running the different detention centres, with some prisoners even being transferred across different forces' detention centres.[902] According to insider testimony, detention centres were set up by the various forces to avoid having to meet or be responsible for maintaining conditions of detention and confinement required in existing Iranian detention centres which included, among other things, reporting any deaths that occurred while in confinement.[903]

493. Once in detention, a number of witnesses gave evidence as to the use of torture and sexual assault as well as threats of rape and death against detained protesters in order to obtain

[897] W175, 12 November 2021; W17, 12 November 2021; W28, 13 November 2021; W190, STMT; W362, 5 February 2022; W281, STMT; W279 STMT; W225, STMT; W255, 13 November 2021; W216, 14 November 2021; W451, 4 February 2022; W5, 13 November 2021; W194, STMT, p. 2.
[898] See for e.g. W194, STMT, p. 2; W337, 14 November 2021; W Shadi Sadr, STMT, p. 19; W Shadi Sadr, 12 November 2021; W179, 13 November 2021; W225, STMT; W287, STMT; W300, STMT.
[899] See section II.4.3 above.
[900] W407, 4 February 2022; W109, 12 November 2021; W245, 14 November 2021; W5, 13 November 2021; W216, 14 November 2021; W173, 13 November 2021; W225, STMT; W183, 13 November 2021; W175, 12 November 2021; W194, STMT, p. 2; Witness Statement 040, p. 2; W220 STMT; W99 STMT; W260, STMT; W115, STMT; W299, STMT; W182, 14 November 2021; W233, STMT; W287, STMT; W303, 14 November 2021.
[901] W255, 13 November 2021; W179, 13 November 2021; W Bahar Saba, STMT, p. 26.
[902] W Mohammad Nayyeri, 13 November 2021; W Raha Bahreini, 11 November 2021; W175, 12 November 2021; W303, 14 November 2021.
[903] W407, 4 February 2022.

confessions that they had caused disruptions, vandalism and anarchy; killed security officers or generally sought to destabilise the Iranian regime.[904] Many signed false confessions to obtain release.[905]

494. The torture included stripping prisoners naked and putting them outside in the cold of the November nights.[906] Women who were sexually assaulted described being forced to strip naked, being questioned only by men, and being interrogated separately while being threatened with rape, again while in rooms with groups of men.[907] These activities reflect a pattern of conduct in which security forces were enabled to engage in torture, sexual assault and rape, as a means to obtain confessions to justify the mass, otherwise illegal detentions occurring during the protests and to deter future protests.

495. These attacks clearly followed the same pattern across the majority of Iran's provinces. This regular pattern resulted in the continuous commission of, or the non-accidental repetition of, criminally injurious acts.[908]

b. Existence of an organisational plan or policy

496. In addition to the evidence already outlined herein, the Panel was presented with evidence from members of the Iranian Security Forces, among other witnesses, on the structure and activities of the various groups, which comprised the security forces at the time of the November 2019 protests. That evidence established beyond a reasonable doubt that a strict command structure existed within and between the Iranian Government and the security forces allowing, if not demanding, cooperation between and amongst them dictating the manner in which the response to the protests was implemented throughout the country.

497. Also, as found by the Panel above, the evidence shows that the assaults, arrests, detention, disappearances, torture, ill-treatment and (as found by a Majority, Rohan dissenting) persecution were supported, directly or indirectly, and coordinated by a range of these Government and security actors and followed similar patterns across the majority of the provinces across the country. The inference that these crimes resulted from a criminal plan, whether pre-conceived or arising extemporaneously, is extremely strong and beyond

[904] W175, 12 November 2021; W110, 13 November 2021; W225, STMT; W303, 14 November 2021; W314, STMT; W300, STMT; W26, 13 November 2021; W253, STMT; W190, STMT.
[905] See for e.g. W225, STMT; W303, 14 November 2021; W227, 12 November 2021.
[906] W225, STMT; W227, 12 November 2021; and see W235, STMT.
[907] W303, 14 November 2021; W458, 5 February 2022; W110, 13 November 2021.
[908] *Katanga* Trial Judgment, para. 1162.

reasonable doubt.[909] The Panel considers the following evidence, *inter alia*, to be highly relevant and probative of this criminal plan.

Shooting order from the Commander-in-Chief, further relayed to the security forces by the provincial councils

498. The Panel heard evidence that 'shooting orders' came from "the Commander in Chief", that is, the Supreme Leader, Ayatollah Khamenei, Mr. Khalafi and Mr. Haghanian, both of whom worked closely with the Supreme Leader, disseminated these orders to the IRGC commanders at Headquarters. The IRGC commanders sent the orders to those under their command. These local forces then implemented the order as they thought appropriate. There was no protocol as to how to carry out the orders; no prosecutor monitored the execution of the orders for legality.[910]

499. As Witness 424 explained, the order for use of lethal force was issued directly by the provincial commander of operations: "[t]hey authorised us to fire or not to fire in coordination with the police commander of the province, the Intelligence Department of the province, and the Security Council of the province. On 15 November they told us to shoot if our commander ordered us to do so, that is, it was okay if we opened fire in coordination with and at the order of our direct commander."[911]

500. Another insider witness, well placed to observe the events, stated that the Governor Generals of all the provinces were only following the orders of the Ministry of Interior.[912] This was contrary to the usual practice of the Governor Generals chairing Security Council meetings to arrive at a decision.[913] These orders were referred to the field commanders, which were the IRGC commanders. The provincial judges, who could have otherwise had a say in the Security Councils in normal conditions, had no permission to intervene at the Council during the times of the protests.[914]

501. The Panel heard evidence that at least five governors of provinces in Iran (Shahr-e-Qods, Sirjan, Bushehr, Marivan, and Masjid Suleiman in Khuzestan province) had received the shooting order from the "top" and had accordingly allowed the security forces at the provincial level to use firearms at will.

[909] See sections II.4.2-II.4.6 above.
[910] W600, 6 February 2022.
[911] W424, STMT.
[912] W407, 4 February 2022.
[913] W407, 4 February 2022.
[914] W407, 4 February 2022.

502. In Shahr-e-Qods, the erstwhile governor Leila Vaseghi publicly announced that she had given a "shooting order" to the representatives of the IRGC, the prosecutors and other officials, allowing the security forces to use firearms against protesters.[915] Similarly, the governor of Sirjan stated in an interview that the provincial Security Council had allowed security forces to shoot at protesters.[916]

503. In Bushehr, the Province's Security Council allowed the special unit forces and the police of the province to use whatever force they required to end the protests.[917] The Security Council was comprised of Governor of Bushehr, Abdolkarim Garavand; Deputy Governor Abbas Barzgarzadeh; Governorate's Deputy Director for Development Mehrdad Sotoudeh; Deputy Director for Economy Saeed Zarrinfar; Political Deputy Director of the Governorate Majid Khorshidi; the Chief of Police of Bushehr and a number of officials from the Intelligence Department. Witness 256 explained that all the security officers of the province attend Security Council meetings, which were presided over by the Governor or one of the senior deputies.[918]

504. In Marivan, according to Witness 195, a senior police officer of the provincial police forces, the Governor of the Provincial Security Council ordered the suppression of the protests by any means possible, including by shooting protesters. The Security Council is comprised of the representative of the province, the head of the prosecutor's office, the commanders of the military forces including the IRGC, army, and the police.[919] Finally, in Masjid Suleiman in Khuzestan province, Witness 287 personally saw the Commander of the Sepah, Mr. Hosseini, order his forces to shoot protesters, based on an order from Governor Hojjati Nia.[920]

505. Using these chains of command and reporting structures, the shooting order, that emanated from the Supreme Leader's office, was transmitted to the Provincial Councils, who in turn ordered their various security forces and local Government authorities, including prosecutors, to use any means, including shooting at protesters, to end the protests.

The organisation of the different security forces involved in the attacks

- **Supreme Leader, Ayatollah Khamenei**

506. The evidence established that the coordinated attacks across Iran were highly likely to have been conducted under a command hierarchy controlled by the Supreme Leader, Ayatollah

[915] W Shadi Sadr, 12 November 2021; W Shadi Sadr, STMT, p. 14.
[916] W Shadi Sadr, 12 November 2021; W Shadi Sadr, STMT, p. 15.
[917] W256, 12 November 2021.
[918] W256, 12 November 2021.
[919] W195, 11 November 2021.
[920] W287, STMT.

Khamenei, in Tehran and leading systematically down through various governmental and security forces to the local levels.[921] Witness 600 testified that a "reliable source" had relayed that an order was issued from the Supreme Leader's office on the first days of the protests directing that the protests were to be supressed by any means and that it was time to "wrap" them up.[922] The order specifically authorised the targeted and random shooting of unarmed protesters. This order followed a fatwa issued a few months earlier by the Ayatollah Khamenei, in response to student protests, providing that anyone who stood against the Islamic State in the streets was in fact standing against the 12 Imams of the Shi'ih; meaning it was permissible to shed that person's blood.[923]

- **The Iranian National Police (NAJA)**

507. The NAJA were under the command of Mr. Ashtari. The Minister of the Interior, Mr. Rahmani Fazli is beneath Ashtari in the command structure. The Ayatollah Khamenei, as the Commander-in-Chief, is the superior commander to them both.[924]

508. Witness 601, a member of the Iranian National Police Forces, was in a unit armed with Kalashnikovs, Colts, shockers and other weapons. His unit received the order to shoot anyone who tried to climb on a building. No limit was placed on the discretion to shoot unarmed protesters. This order came from "the top." He knew this to be true because no one else in the command structure had the authority to issue an order like this. The Commander of the Police would never act to shoot at people without an order. The only time it was permitted to shoot was if the police were attacked by individuals with weapons. But that never happened during the protests.[925]

509. Witness 256, testifying about Bushehr, stated that as of 16 November, anti-riot forces in Bushehr "put down" the protests using water cannons, plastic bullets, and ultimately by injuring people. He testified that "[f]ull authority" was given to his Special Unit and the police by the Governor of Bushehr and the province's Security Council to shoot people "as they deemed fit," with no protocol or direction on the use of force.[926]

- **The IRGC ('Sepah')**

[921] See W Ali Ansari, STMT, pp. 2, 8; W Ali Ansari, 11 February 2022.
[922] W600, 6 February 2022.
[923] W458, 5 February 2022.
[924] W601, 6 February 2022.
[925] W601, 6 February 2022.
[926] W256, 12 November 2021.

510. The command structure of the Sepah followed a pattern similar to other Iranian security forces. Witness 458 was a member of the Revolutionary Guards, a special group of the Sepah Pasdaran Imam Ali Battalion. The Commander of the Imam Ali Battalion was appointed by the Sepah Commander of the region. The Commander of the Region was appointed by the Sepah Commander of the province. The Commander of the Province was appointed by the Commander General of the Sepah. The Commander General of the Sepah was appointed by the Ayatollah Khamenei.[927]

511. When Witness 458 was ordered to report to a school area in response to the Aban protests his unit was told to kill or injure protest leaders whenever possible by the Commander of the Sepah who said: "Shoot them. We have been told to put down the rebellion."[928] When an order to shoot is issued "everyone is authorised to shoot."[929]

512. IRGC Unit Two are known at the barracks. In every city, there is a barracks and in times of crisis, the Commander of the local IRGC forces becomes the military commander for that city.[930] During the Aban protests many members of the security forces refused to take part in suppressing the peaceful protests including Iranian police forces.[931] Accordingly, foreign forces including Hashad Shaabi, who are from Iraq, Fatamiyoun forces from Afghanistan, and Zainabiyoun from Pakistan, were permitted to enter the scene as reinforcements.[932]

513. The IRGC maintains Prison 66 in Tehran. This is a prison for people accused of espionage or for Basij or IRGC forces who have refused to obey orders. They are taken to Prison 66 and court martialed. Some are executed.[933] Psychological and political pressure is applied to prisoners as the IRGC has an "open hand" in these places. They need no warrants. They can do whatever they want. People are lucky to make it out of Prison 66 alive.[934] Witness 601, who refused to join police unit colleagues in shooting unarmed protesters, was arrested, held in Prison 66, beaten and tortured for three days. He was forced to sign a paper confessing to his actions.[935]

514. Detention Centre 5000 is another specific IRGC Intelligence Section detention centre for people accused of espionage. It is used for arrests and interrogation outside the legal system.

[927] W458, 5 February 2022.
[928] W458, 5 February 2022.
[929] W424, STMT.
[930] W458, 5 February 2022.
[931] W458, 5 February 2022.
[932] W458, 5 February 2022; W600, 6 February 2022.
[933] W600, 6 February 2022; W458, 5 February 2022.
[934] W600, 6 February 2022.
[935] W601, 6 February 2022.

The Intelligence Section of the IRGC responds only to Khamenei. Witness 600 described it as a "very frightening organisation."[936]

- **The Basij forces**

515. The Basij forces played a significant role in the brutality inflicted on protesters throughout the country. The Basij is the resistance force of the IRGC and unofficial member of the IRGC.[937] They are also subordinate to the Sepah.[938] All members of the IRGC have previously been members of the Basij and have proved their loyalty to the Supreme Leader and their willingness to engage in violence. Witness 458 pointed out that the IRGC was about total loyalty to the Supreme Leader.[939]

516. The Basij were mostly young people, with approximately 70% of the forces being under the age of eighteen.[940] The Basij forces were not recruited, and instead, were promised privileges of bank loans, avoiding conscription into the Army and potential future jobs.[941]

517. During the Aban protests, Basij forces, who often had little to no training particularly in the use of weapons, were given authority to use military weapons "from the Commander in Chief."[942] There was a shortage of security forces when the countrywide protests erupted, hence permission to shoot was issued to contain the crisis at any price. [943]

c. Attacks by the security officials were made pursuant to the plan/policy, and the allocation of State resources for the attacks

518. The testimony of insider witnesses established that the oppressive and often lethal response to the protests was planned in advance of any unrest. Witness 600, a senior officer in the Tehran IRGC testified he was told a week before the announcement of the increase in gas prices, to "be ready". This announcement, which came from "the top", surprised his unit. There was no time for appropriate planning which is what led, in his view, at least in part, to the brutality, arrests and killings. Subsequently, the 'fire at will' order came; forces were told they were free to fire as they chose, whenever they felt it necessary, with no guidelines or restrictions. Forces were free to shoot people, arrest people, and search houses without judicial

[936] W600, 6 February 2022.
[937] W600, 6 February 2022.
[938] W424. STMT.
[939] W458, 5 February 2022.
[940] W600, 6 February 2022; W458, 5 February 2022; and see W453 STMT [hospital worker, given orders by a 13-14-year-old Basij member and noting: "I just want to make clear that they had used even 10-12-year-old kids."]
[941] W600, 6 February 2022; W458, 5 February 2022.
[942] W458, 5 February 2022.
[943] W458, 5 February 2022.

warrant. They could detain a car or people without cause. They could do anything.[944] Witness 600 testified that the IRGC were "ordered, that we should do whatever possible to end this unrest and they had brought semi heavy weapons and they had brought duska… a semi heavy weapon and it shouldn't be used in fighting in the cities, it is war weapons but they were used in these protests."[945]

519. Different witnesses testified to the presence of different security forces involvement in the suppression of the protests of which they had knowledge, however the evidence clearly established that the security forces mobilised across the country included police,[946] police in black uniforms;[947] police in green uniforms,[948] and plainclothes forces.[949] The IRGC was prevalent throughout the country and involved in the responses to the protests.[950] Basij were also prevalent throughout the country,[951] operating under the control of the IRGC, as part of the local responses to protests,[952] as were the Sepah.[953] Individuals from the Ministry of Justice[954] and the Ministry of Intelligence[955] were involved in the detention, abuse and torture of arrested protesters, as well as participation in Security Council meetings at the provincial level and higher, in which orders authorising the use of lethal force against protesters were formulated and then disseminated.

520. As the Panel heard, "[v]iolent criminals" mixed with the protesting crowds beginning on Friday 15 November. These individuals committed assault and battery against protesters, set banks on fire, tore up flags of Iran, and attacked government buildings.[956] Every group of seven to ten prisoners had a leader who was monitored electronically. They were directed by officers of higher rank about what to do and whether they had the right to use firearms.[957]

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944 W600, 6 February 2022.
945 W600, 6 February 2022.
946 W366, 11 November 2021; W5, 13 November 2021; W110, 13 November 2021.
947 W366, 11 November 2021.
948 W366, 11 November 2021; W31, 12 November 2021; W83, 5 February 2022.
949 W366, 11 November 2021; W28, 13 November 2021; W110, 13 November 2021; W601, 6 February 2022.
950 W28, 13 November 2021; W185, 10 November 2021; W110, 13 November 2021; W82, 4 February 2022; W86, 4 February 2022; W50, STMT; W436, 5 February 2022; W80, 5 February 2022; W83, 5 February 2022; W601, 6 February 2022.
951 W28, 13 November 2021; W32, 10 November 2021; W5, 13 November 2021; W110, 13 November 2021; W86, 4 February 2022; W451, 4 February 2022; W503, 4 February 2022; W436, 5 February 2022; W494, 5 February 2022; W83, 5 February 2022.
952 W503, 4 February 2022; W600, 6 February 2022; W458, 5 February 2022.
953 W32, 10 November 2021; W5, 13 November 2021; W110, 13 November 2021; W82, 4 February 2022; W86, 4 February 2022; W503, 4 February 2022; W436, 5 February 2022.
954 W32, 10 November 2021.
955 W32, 10 November 2021; W185, 10 November 2021; W80, 5 February 2022.
956 See W348, STMT; W423, STMT; W451, 4 February 2022; W5, 13 November 2021; W216, 14 November 2021; W367, 14 November 2021; W119, 14 November 2021; W183, 13 November 2021; W175, 12 November 2021.
957 W348, STMT; W423, STMT.

521. The criminals were supplied with non-organisational weapons; weapons no longer used by police. The Intelligence Department or the Sepah gave them these weapons so that crimes committed by these criminals could not later be attributed to the military or security forces. Then it could be said that the Mujahedin or some political group killed the people; not a member of the Iranian security forces.[958]

522. The Panel heard testimony from witnesses that the various security forces were working in collaboration with each other. For instance, Witness 337 and Witness 503 testified that they had seen military forces and Basij forces (who could be easily distinguished from each other on the basis of their clothing) were working together, and borrowing each other's forces.[959] Similarly, buses filled with Basiji forces were spotted alongside police force vehicles.[960] Moreover, protesters were easily transferred between the IRGC detention centres and those separately run by the Ministry of Intelligence,[961] showing that the detention of prisoners and the treatment of detained protesters were coordinated between the two security forces and the related government bodies.

523. Some unit members of the Sepah took off their uniforms to allow infiltration into the protesters to enable the leaders of the protests to be identified and targeted. They were told they could shoot protesters at will and could shoot them above the hip. The shooting was indiscriminate. The IRGC and Basij joined them in the attacks on protesters; firing guns and throwing tear gas. They were armed with Kalashnikovs and Colts, and set banks and gas stations on fire in some areas. They removed CCTV cameras to remove evidence to avoid detection. This was done in order to blame it on protesters thereby justifying the violent attacks against the protesters.[962]

524. The Basij forces, on the other hand, wore uniforms, had batons and wore helmets to cover their face and eyes in case anyone threw acid on them.[963] When engaged in burning banks and petrol stations, however, the Basij were ordered to dress in plain clothes.[964] Untrained "trigger happy" Basij were overly excited and shooting when there was no threat to security forces. The order to "wrap it up" meant that if "you need to kill it wouldn't matter." No one will be

[958] W348, STMT.
[959] W337, 14 November 2021; W503, 4 February 2022.
[960] W183, 13 November 2021.
[961] W175, 12 November 2021; W303, 14 November 2021. See also W Mohammad Nayyeri, 13 November 2021; W Raha Bahreini, 11 November 2021.
[962] W458, 5 February 2022.
[963] W458, 5 February 2022.
[964] W458, 5 February 2022.

questioned about it. Basij units often changed the names of the units and the names of the individuals in the units so that in any future inquiry the Basij could say that a questioned unit did not exist.[965]

525. Witness 424, a member of a specialised police force, was given an order to shoot at protesters. He was armed with a pellet gun. He explained that a pellet cartridge, fired from a distance of fifty metres or less, can seriously injure "at least thirty to forty persons." If aimed at the head, face or heart of someone and fired from a distance of twenty to thirty metres, a pellet gun will kill. On 17 November he was in a line of police on the street when unarmed protesters attacked them trying to "push back the police." His commander ordered him to shoot. He refused. He stated "I had realised that I was doing the wrong thing. If I tried to shoot them, I would be shooting my own brothers as they were protesting against something that related to me too. I too was involved in the problems of livelihood and expensive gas." His commander took his weapon from him and fired it himself, felling forty to fifty people.[966]

526. Iranian security forces, including the Sepah and plainclothesmen also used "two level bullets." These are bullets that contain TNT and explode on impact, and their purpose is to kill. One clip of two-level bullets was issued to each roof top sniper. These bullets are illegal world-wide.[967]

527. There were special, trained units that could be sent into some areas to augment local forces. Two special units were the Saberian Unit and the Imam Ali Unit, which were not held accountable for their actions, unlike the police forces, which were generally questioned and held accountable for shooting any individual.[968]

528. Members of the Sepah and Ministry of Intelligence were not similarly treated. "They could shoot whenever they wanted to shoot and kill and injure at will."[969] If a complaint was filed "if you were a Sepah member you would be acquitted. But if you were up against a policeman, they won't let you go until they gave you hell."[970]

529. Some IRGC and the other security force members willingly engaged in torture and some were sadistic. Yet others did not wish to - but no one had a choice. If someone refused to follow an order, such as to inflict torture on a detainee, they would be punished even more severely

[965] W458, 5 February 2022.
[966] W424, STMT.
[967] W348, STMT p 2.
[968] W600, 6 February 2022.
[969] W424, STMT.
[970] W424, STMT.

than the detainee, and considered to be an enemy of God. Resistance was therefore rare, as it would usually mean punishment to the individual as well as their family who would lose everything; their jobs, civil services and perhaps even their physical safety.[971] Witness 458 estimated that a large number of Basij members did not want to be there; they were threatened as means to join the Basij although they did follow orders after that. Some, in his view, were brainwashed.[972]

530. The evidence also established that security forces employed convicted criminals, in a country wide program, to act as agent provocateurs during the protests. Witness 348, a major in the Anti-Riot Unit, testified that convicted criminals were released from prison to assist in "suppressing uprisings and protests." These criminals are rewarded by having their sentences commuted.[973] The Ministry of Intelligence and Sepah Pasdaran instructed these individuals how to guide people protesting in the streets. Sometimes they were given weapons.[974]

531. When the protests were over, about twenty-seven of the violent criminals in the program were killed in staged accidents; killed by the same forces which had freed them, in order to avoid them becoming witnesses.[975]

532. The bodies of people killed by non-organisational weapons or two-level bullets were buried immediately so that their families and friends would not discover the use of such ammunition. Families were told they could not hold burial ceremonies in such cases. Written undertakings were obtained from families and the Sepah, Intelligence Department and Police put pressure on families not to create problems at burial ceremonies. They were required to bury their dead at night if they wanted to bury them at the place of their choice.[976]

533. Plainclothes members of the security forces were also used to provoke violence. Witness 424 stated that his commander selected members of his unit to dress in plain clothes, go out among the protesters and shout slogans; and change the slogans: "[i]f the people are coming towards us, tell them to go to that alley so we could surround them, besiege them." Members of Sepah also dressed in plain clothes. They wanted to identify the leaders. Plainclothes men often carried handcuffs. They would go into the crowd calmly and when the opportunity arose, drag

[971] W600, 6 February 2022.
[972] W458, 5 February 2022.
[973] W348, STMT; and see W399, 12 November 2021.
[974] W348, STMT.
[975] W348, STMT.
[976] W348, STMT.

the wounded out and carry them away.[977]

534. Finally, the judiciary was involved in the cover-up of the actions of the security forces. Most cases were brought before the Revolutionary Court, which sentenced protesters to prison, lashes and exile.[978] The IRGC and Ministry of Intelligence were heavily involved in cases raising any issues of crimes and killings committed by the police.[979] Expert Mohammed Nayyeri testified:

> "Most judicial authorities are very cooperative to say the least, sometimes very obedient to the demands of security forces… It is very unlikely, very unusual for judicial authorities to disagree or disallow something that is demanded - whether it is renewing the detention order or rejecting the request by the individual, for example to have access to the court file or access to a lawyer or visitation. Whatever that request is from the individual, whether the judicial authorities would agree with that almost always depends on what is the view or opinion of those security and intelligence forces. If they agree, the security forces, it is very unlikely that the judicial authority would disagree."[980]

535. Witness 110 testified that in Tehran, she was taken to the Evin Court, where she was handcuffed and denied the basic rights as an accused, including the right to defend herself before the judge, on the basis of her having "opposed the Islamic regime".[981] The witness's parents had gone to Rozonei, the prosecutor, and the witness herself approached her judge, Mojtabasalgi, for an explanation on why the IRGC had decided on the prosecution and the rights accorded to the witness on behalf of the court, and why the courts were not willing to hear her allegations of abuse during detention.[982] However, the judge responded with, "[t]his has got nothing to do with me".[983] The witness was subsequently sentenced in absentia to one year of prison and seventy four lashes of the whip.[984]

536. Witness 175 from Kermanshah recounted that, on asking the judge whether the torture suffered by the witness in the detention centres had been ordered by the judge, the judge replied, "No, this is based on their own discretions, the discretions that they have. But my

[977] W424, STMT.
[978] See e.g. W26, 13 November 2021.
[979] W Mohammad Nayyeri, 13 November 2021. See also W26, 13 November 2021.
[980] W Mohammad Nayyeri, 13 November 2021.
[981] W110, 13 November 2021.
[982] W110, 13 November 2021.
[983] W110, 13 November 2021.
[984] W110, 13 November 2021.

tortures would be much greater. You have been using arms, weapons, and you are considered the enemy of God." The witness asked Mr Shahabazi, who was the deputy governor, if the State authorities had any video to prove that charge that the witness had been involved in any armed conflict, and the deputy governor responded, "No, you and your family are all anti-revolution. And you and your family are all against the Government and you should all be destroyed, you and your family."[985]

537. The evidence is clear that even the judiciary collaborated with the Iranian security forces and the Ministry of Intelligence in ensuring that the security officials could continue to commit crimes against civilians without any legal repercussions.

538. The Panel concludes that the attacks by the various Iranian security forces followed a State or organisational policy conceived by the Iranian Supreme Leader, various ministers in the Government, and the various authorities at the provincial levels, and the crimes were 'systematic' in nature.

d. Conclusions: A Plan or Policy to Commit Crimes Against Humanity

539. The Panel finds beyond a reasonable doubt that the Iranian security forces launched an attack against the civilian protesters across several provinces in Iran, which included the commission of the crimes of murder, enforced disappearances, imprisonment, sexual violence, torture and ill-treatment and, as found by the Majority (Rohan dissenting), persecution. The totality of the circumstances of the attack demonstrate that this attack was widespread in nature. The attack encompassed an overwhelming majority of the provinces affected and resulted in thousands of crimes and victims. While the Panel has assessed that the attacks occurred in at least 20 provinces across Iran, the evidence suggests that the number of provinces impacted was likely higher. Although the evidence does not establish the precise number of victims killed, the total number of victims killed was more than three hundred and may have been as high as one thousand to one thousand five hundred. The evidence establishes that the number of victims of imprisonment, torture, and (as found by the Majority (Rohan dissenting)) persecution, is considerably more.

540. The evidence also established that the crimes were systematic; that is, part of a pattern, pursuant to or in furtherance of a State or organisational plan to commit these attacks. The plan, as clearly seen by the close coordination of the Government and various security forces on the ground, was to commit the crimes of murder, enforced disappearances, imprisonment,

[985] W175, 12 November 2021.

sexual violence, torture and ill-treatment and, as found by the Majority (Rohan dissenting), persecution, in order to suppress the protests.

541. The implementation of this plan was displayed in the patterns of non-accidental acts across most provinces. There was a similar pattern of attacks across all the provinces assessed by the Panel.

542. This evidence, taken as a whole, establishes beyond a reasonable doubt that the Government of Iran designed, at least extemporaneously, a criminal plan to use their security forces to engage in the violent and lethal suppression of the peaceful protests which occurred in November 2019 and did so use.

543. The Panel has also heard evidence that an Order was issued from the office of the Supreme Leader Ayatollah Khamenei permitting security forces to shoot protesters at will and permitting them to shoot to kill.[986] The evidence suggests that the order was passed on to the provincial councils, following which the governors of the provinces further ordered the IRGC forces, and other security forces to use any force possible, including shooting, to suppress the protests. The provincial prosecutor's offices were also likely involved in the provincial level decision-making.[987]

544. As noted above by the Panel in sections II.4.2-II.4.6, the various security forces carried out attacks across Tehran, Islam Shahr, Karaj, Fardis, Isfahan, Mashad, Qom, Shahriar, Shah-e-Qods, Mashad, Shiraz, Kermanshah, Behbahan, Marivan, Sanandaj, Omidieh, Ahvaz, Arak, Urmia, Gorgan, and Khuzestan, as well as other unidentified provinces in Iran.

545. The manner in which the shootings took place strongly suggests planning. In cities throughout the country security forces, following similar patterns, stationed themselves on rooftops and fired indiscriminately into the crowds. Many of the forces dressed in plainclothes. Those in uniform usually wore masks and/or helmets or both, which served to hide their individual identities. Members of the security forces who refused to participate in shooting protesters were relieved of their duties and prosecuted; some tortured.[988] There was no evidence that security forces who engaged in the shootings suffered any similar punishment.

546. In sum, the use of force, firearms, arrests and detentions of the protesters were carried out by the following, either together or separately: the IRGC officials, the police, the special unit, the

[986] W600, 6 February 2022.
[987] W Shadi Sadr, 12 November 2021.
[988] W601, 6 February 2022; W195, 11 November 2021.

Basij forces, and the Ministry of Intelligence officials.[989]

547. The evidence suggests that the plan involved the engagement of criminals released from prison to act as agent provocateurs to burn banks, burn gas stations and otherwise incite the civilian crowds or create justification for security forces to attack the protesters.

548. The evidence also shows that the aforementioned security forces were responsible for the perpetration of enforced disappearances,[990] including numerous unaccounted arrests and detentions, failures to investigate and prosecute cases of enforced disappearances, and to remedy situations of enforced disappearances by informing families of the whereabouts of their loved ones.

549. Similarly, the evidence showed a clear pattern of forcible and arbitrary arrests of wounded protesters from the protest sites and hospitals in designated vans, ambulances and other vehicles. The protesters were arbitrarily detained in detention centres run by the various security forces, particularly the IRGC, the Ministry of Intelligence, and the police. Thereafter, the detained protesters were almost uniformly subjected to torture, sexual assault, and threats of rape or death in order to elicit confessions from them to the effect that they had deliberately incited violent protests, committed vandalism, were responsible for the deaths of security officials, and/or had otherwise sought to destabilise the Iranian regime.[991] There was no evidence of any member of the security forces being investigated, prosecuted or punished for their role in these crimes or for obtaining these false confessions.

550. Witness testimony provided clear and convincing evidence that established that security forces did not release the bodies of individuals who died in their custody without exacting undertakings and other promises from family members, including not to hold a public burial, not to report the manner in which their loved one died, or not to file a complaint.[992]

551. Similarly, the judicial authorities refused to investigate or prosecute any of the security forces

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[989] See sections II.4.2-II.4.3 above.

[990] This refers to the crime against humanity in the form of enforced disappearances, distinct from enforced disappearances prohibited under international human rights law. The Rome Statute extends the crime to the conduct of 'political organisations' and also requires that the intention to remove the victim from the protection of the law include a minimum time period. Article 7(2)(i) of the Rome Statute states: "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"* [emphasis added].

[991] See sections II.4.3-II.4.6 above.

[992] W86, 4 February 2022; W81, STMT; W337, 14 November 2021; W451, 4 February 2022; W494, 5 February 2022; W83, 5 February 2022; W32, 10 November 2021; W31, 12 November 2021; W18, STMT; W407, 4 February 2022; W80, 5 February 2022; W348, STMT.

for the crimes inflicted on the protesters. Instead, the evidence shows that the judicial authorities acted in concert with the IRGC and the Ministry of Intelligence to prevent the protesters receiving a fair trial and to ensure that they were punished by lengthy prison sentences and/or brutal physical abuse by way of lashes.[993]

552. Accordingly, the Panel unanimously finds that the totality of these findings establishes beyond a reasonable doubt that the Iranian Government and the security forces (including Ministry of Interior, the Supreme Council of National Security, Provincial Security Councils, police forces (NAJA), the IRGC, the paramilitary Basij, Ministry of Intelligence, other plainclothes forces and the Ministry of Justice) designed and implemented a plan to commit crimes against humanity of murder, imprisonment, enforced disappearances, torture and sexual violence in order to quell the protests and conceal the crimes committed.

553. The Majority (Rohan dissenting) also finds beyond a reasonable doubt that this criminal plan included the crime of humanity of persecution, that is the protesters and bystanders were discriminately targeted for their collective involvement in the protests and/or their perceived association with that group and their rights severely curtailed or denied.

III.2.4 The Crime Against Humanity of Persecution

554. Article 6(2)(f) of the Statute of the Aban Tribunal provides the Tribunal jurisdiction over the crime against humanity of persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in paragraph 2. Article 6(3)(g) states that "persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.

555. The evidence must first show that the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights, which may include a variety of rights, including the right to life, the right to personal liberty and security of the person, the right not to be subjected to torture or cruel, inhumane or degrading treatment, the right not to be subjected to arbitrary arrest, detention or exile, and the right to private property.[994] Additionally, it must be demonstrated that the deprivation was severe,[995] that is, a serious,

[993] See W110, 13 November 2021; W175, 12 November 2021; W226, STMT.
[994] *Ongwen* Trial Judgment, para. 2733; *Ntaganda* Trial Judgement, para. 991. See also *Blaškić* Trial Judgment, para. 220.
[995] *Ongwen* Trial Judgment, para 2733.

gross or blatant denial of fundamental rights.[996] Any act which, in and of itself, constitutes a crime against humanity will be considered a severe deprivation of fundamental rights.[997]

556. The perpetrator must have targeted the victims due to the identity of a group or collectively,[998] or by reason of the group or collectivity itself.[999] The members of the group or collectivity must be merely 'identifiable', based either on objective criteria or the subjective notions or beliefs of the perpetrator regarding the victim's membership to the relevant group or collectivity. [1000] It is immaterial whether the victim(s) actually belonged to the group/collectivity in question, as long as they have been subjectively perceived to have been and targeted by the perpetrator for that reason.[1001] Ultimately, it is the perpetrator who defines the group and its members, and it may well be that persecution as a crime against humanity might target aggregated groups without any common identity or agenda.[1002]

557. Political grounds are most relevant in the present case. The ICC and the Extraordinary Chambers in the Courts of Cambodia ('ECCC') have both found that a group can be described as political if its participants share membership in a political party, ideological political beliefs, an actual or perceived opposition, or dissenting views (including political protesters), to a particular political regime.[1003] This ground includes targeting by reason of personal political affiliations, whether actual or merely perceived by the perpetrator.[1004] The ICC Pre-Trial Chamber has issued arrest warrants based on the existence of "reasonable grounds to believe

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996 *Ntaganda* Trial Judgement, para. 992; *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Trial Judgment, 14 January 2000 ('*Kupreškić et al.* Trial Judgment'), paras 619-621

997 *Ntaganda* Trial Judgement, para. 991; *Ntaganda* Decision on the Confirmation of Charges, para. 58.

998 *Ongwen* Trial Judgment, para. 2734; *Ntaganda* Trial Judgment, para. 988.

999 *Ongwen* Trial Judgment, para. 2734; *Ntaganda* Trial Judgment, para. 988.

1000 *Ongwen* Trial Judgment, para. 2736; *Ntaganda* Trial Judgment, paras 1010-1011; *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, ICC-01/19, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, 14 November 2019 ('*Situation in Bangladesh/Myanmar* Authorisation Decision'), para. 102; Triffterer & Ambos, *Commentary*, p. 221.

1001 *Ntaganda* Trial Judgment, para. 1011; *Situation in the Republic of Burundi*, ICC-01/17-X, Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi", ICC-01/17-X-9-US-Exp, 25 October 2017, 9 November 2017 ('*Situation in Burundi* Authorisation Decision'), para. 133; *Prosecutor v. Ruto et al.*, ICC-01/09-01/11, Decision on Confirmation of Charges, 23 January 2012 ('*Ruto et al.* Decision on Confirmation of Charges'), para. 273; *Prosecutor v. Laurent Gbagbo*, ICC-02/11-01/11, Decision on the Confirmation of Charges against Laurent Gbagbo, 12 June 2014 ('*Gbagbo* Decision on the confirmation of Charges'), para. 204; Triffterer & Ambos, *Commentary*, p. 221.

1002 See ECCC, *Samphân & Chea*, Case File/Dossier No 002/19-09-2007-ECCC/SC, Appeal Judgement, 23 November 2016, para. 678.

1003 ICC Pre-Trial Chamber, *Situation in the Libyan Arab Jamahiriya*, ICC-01/11, Decision on the "Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi", 27 June 2011, para. 60-65; *Prosecutor v. Samphân & Chea*, 002/19-09-2007-ECCC/SC, Appeal Judgment, 23 November 2016, para. 669.

1004 *Ongwen* Trial Judgment, para. 2737 (citing *Situation in Burundi* Authorisation Decision, para. 133; *Prosecutors v. Kaing Guek (alias Duch)*, 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012 ('*Dutch* Appeal Judgment'), para. 272).

that inhuman acts that severely deprived the civilian population of its fundamental rights were inflicted on it because of its opposition" to a political regime.[1005] Much of the evidence presented in this case pertained to attacks against political protesters.

558. The evidence must demonstrate that the perpetrator deliberately targeted the victim *based on,* or *because*, they perceived the victim as belonging to a particular group or collectivity.[1006] In other words, the severe deprivation of fundamental rights must have been carried out with the *intent* to discriminate against the person(s) based on one of the aforementioned grounds.[1007] This intent may be inferred from the general behaviour of the perpetrator, as well as the circumstances surrounding the commission of the crime.[1008]

559. Finally, according to Rome Statute principles, the conduct of the perpetrator that deprived the victims of their fundamental rights must have been committed *in connection* with another act enumerated in Article 7(1) (that is, another crime against humanity listed in the Rome Statute) or any crime within the jurisdiction of the Court (i.e., genocide, war crimes or aggression).[1009] This means that an act which, in and of itself, is not a crime within the Rome Statute, but is carried out in connection with (or via) the crimes, may still amount to persecutory conduct.[1010]

560. The Panel notes that it has found above in sections II.4.1-II.4.8 that the Iranian security forces severely deprived civilian protesters across Iran of their fundamental human rights, including violations of the right to life, the right to personal liberty and security of the person, the right not to be subjected to torture or cruel, inhumane or degrading treatment, and the right not to be subjected to arbitrary arrest, detention or exile. In this connection, the Panel has already found that security forces committed the crimes of murder, torture, imprisonment, and rape

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[1005] ICC Pre-Trial Chamber, *Situation in the Libyan Arab Jamahiriya*, ICC-01/11, Decision on the "Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi", 27 June 2011, para. 65.

[1006] *Ongwen* Trial Judgment, para. 2739 (citing *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, ICC-01/12-01/18-461-Corr-Red, Decision on the Confirmation of Charges, 13 November 2019 ('*Al Hassan* Decision on the Confirmation of Charges'), para. 671; *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Judgement Volume I, 10 June 2010 ('*Popović et al.* Trial Judgement Volume I'), para. 968). See also Schabas, *ICC: Commentary*, p.172; *Karadžić* Trial Judgment, para. 500; *Prosecutor v. Duško Tadić*, IT-94-1-A, Appeal Judgment, 15 July 1999, para. 305; *Blaškić* Appeal Judgment, para. 129.

[1007] *Ongwen* Trial Judgment, para. 2739.

[1008] *Ongwen* Trial Judgment, para. 2739 (citing *Al Hassan* Decision on the Confirmation of Charges, para. 671; *Popović et al.* Trial Judgement Volume I, para. 969; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeal Judgement, 28 February 2005 ('*Kvočka* Appeal Judgment'), para. 460).

[1009] Rome Statute, Art. 7(1)(h); ICC Elements of Crimes, Art. 7(1)(h), Element 4. See also *Situation in Burundi* Authorisation Decision, para. 131; *Ongwen* Trial Judgment, para. 2730; *Ntaganda* Trial Judgment, para. 1023.

[1010] Schabas, *ICC: Commentary,* pp. 199-200; *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Appeal Judgment, 28 November 2007 ('*Nahimana et al.* Appeal Judgment'), paras 985-988; *Kvočka* Appeal Judgment, para. 321; *Kupreškić et al.* Trial Judgment, paras 615€, 622.

or sexual violence.[1011] The Panel by a Majority (Rohan dissenting) further finds, as discussed below, that the various protesters across the provinces in Iran relevant to this judgement were protesting against the Iranian Government's fuel hike and latterly a range of broader, shared grievances about Government policy *and* were identified as a political group by the security forces. These protesters, as well as other individuals who were mistakenly identified as protesters by the security forces, were clearly bound together by their immediate opposition to the fuel hikes and/or their opposition to the Government and were targeted as such by the Iranian Government. The Panel by a Majority (Rohan dissenting) finds that anybody identified by the security forces as being opposed to the Supreme Leader's regime formed part of the political group which was thereafter persecuted by the security forces.

Tehran

561. The Panel by a Majority (Rohan dissenting) notes the testimony that the group of people who had gathered to protest in Tehran from 16 November 2019 were motivated by the rises in the price of fuel, as well as to raise a voice against the Iranian regime in general.[1012] Therefore, the groups or assemblies of protesters in Tehran were political in nature, and/or were perceived to be so by the regime.

562. Further, the Panel notes that the Iranian authorities killed, beat up, forcibly arrested and detained protesters in Tehran owing to their political protests. As noted, it was in direct response to the protests that the special units of the police used tear gas on the protesters, started shooting at the crowd of protesters with machine guns, attacked those wounded during the protests, denied wounded protesters hospital attention, and dragged protesters away to the police station.[1013] Further, in detention centres of Tehran, arrested protesters would be locked up, beaten up aggressively, interrogated endlessly, and forced to confess to instigating violent protests.[1014]

563. A witness before the tribunal who had been a senior officer of IRGC in Tehran testified that the IRGC "had to come up with their normal readiness" to counter the protests against the petrol price hike, and that once it became clear that the forces were unable to diffuse the critical situation, a "fire at will order was issued as a result, and the forces were told that

[1011] See sections II.4.2-II.4.6 above.
[1012] W80, 5 February 2022; W245, 14 November 2021.
[1013] W245, 14 November 2021. See also W109, 12 November 2021.
[1014] W110, 13 November 2021.

whenever you felt necessary, you can just choose to fire".[1015]

564. The witness further confirmed that the IRGC forces targeted the protesters despite facing no violence or threat from the protesters, and instead, their goal was simply to ensure that the protesters were neutralised:

> "[T]he forces were notified and that they had a free hand to shoot up people, arrest people and even enter the houses of those who the protesters might resort to. So, there was no need for any warrant from the judiciary. You could detain the car. You could detail people. You could do anything so that you could overcome this unrest because the country was at risk…
>
> … a reliable source who had been working along with me that Mr. Khalafi and Mr. Haghanian at the Supreme Leader's office had said that you should come and wrap it up. Wrap it up at whatever price, at any price. So, that was an order to the military and the military knew what it meant. When they say wrap it up, they know exactly what it meant. It means that if you need to kill everyone, it wouldn't matter. There would be no questioning."[1016]

565. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Tehran was based on the protesters' collective political identity.

Karaj

566. The Panel notes that the protesters who had gathered in Karaj from 16 November 2019 were protesting the rise of petrol prices, as well as the dire economic situation in the country, with one witness stating:

> "People were unhappy because of the dire economic situation in the country, and they were ready to start a protest because of further economic pressure. And the increase in the petrol prices could have put greater pressure on poor strata of the country. If you pay attention to the number of the people who died, they were mainly poorer, from the poorer classes of people. They were living in the suburbs and they were objecting to the increase in the petrol prices. And that was the reason they turned out in the streets. We all turned out in the streets to object, to protest the increase in the prices of petrol. And we wanted

[1015] W600, 6 February 2022.
[1016] W600, 6 February 2022.

to express our objection in a very peaceful manner…

… People were just protesting against the increase in the petrol prices and economic hardship…

…When they realised that this price increase will affect their life and they will have more hardship, they decided to go to the streets and to protest, and to as the Government to listen to what they had to say, a little bit at least. But something different happened. Instead of listening to the people, the Government decided to suppress the protests using batons and weapons."[1017]

567. The Panel notes from witness testimony that the Iranian security forces arrived at the protest scene to dissolve the protests, and this was why they brought in large armoured tanks and vehicles, and began first beating up the protesters and using water cannons on them, and subsequently shooting them.[1018] As one witness described:

"They wanted to implement the instructions of the supreme leader. They suppressed people. They wanted to use brutality. They had no emblems, they had no uniforms. We wouldn't know who they were. They just attacked people."[1019]

568. The Panel also notes that the police force also abducted protesters from the ground and forced them into vans "to prevent them from participating in any further protests".[1020] The security forces were similarly abducting wounded protesters from hospitals,[1021] which the Panel again considers was done as retribution for having participated in the protests.

569. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Karaj was based on the protesters' collective political identity.

Fardis

570. The Panel notes that after the protests began on 16 November, security forces started attacking at protesters with water cannons and eventually lethally shooting at them to defuse the protests.[1022] The Iranian security forces also arrested and abducted injured protesters.[1023]

[1017] W5, 13 November 2021.
[1018] W451, 4 February 2022; W5, 13 November 2021.
[1019] W5, 13 November 2021.
[1020] W5, 13 November 2021.
[1021] W451, 4 February 2022.
[1022] W216, 14 November 2021; W83, 5 February 2022.
[1023] W216, 14 November 2021.

571. Given that the Panel has already found that the protesters were not committing serious violence, if any violence at all,[1024] the only other justification for attacks against the protesters was to neutralise them and put an end to their protests. Therefore, the Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Fardis was based on the protesters' collective political identity.

Shahriar

572. The Panel has heard evidence that the protests against the rise of petrol prices, and the Iranian regime in general, started on 16 November 2019:

> "So, people were there, the crowd was there. Something else I have to tell you over here, the main reason of the misery of Iran, is this; Iran is being destroyed. I consider that the main reason is for it is Khamenei. And people don't like Khamenei. The ring of Khamenei, that they have put in the cities, people have set it to fire because so angry about him and therefore what we can say is that, the militia, the Basij and the other forces they are in the pockets of Khamenei. They don't look at setting fire to things very comfortably. Therefore, they start arranging themselves to attack civilians. The area I come from, we could see people who had masks on and they were in black, they had shockers in their hands, they had tear gas in their hand. You could see that they are deploying and they are prepared to attack us. Until that moment, nothing that happened in Shahriyar."[1025]

573. Protesters were merely chanting slogans, when the Basijis, police, and the IRGC started trying to first disperse people using baton, tear gas and other weapons, and then shooting at the protesters without any violence or other provocation from the protesters.[1026]

574. The Panel also notes that the security officials were forcibly arresting protesters from the streets and the hospitals, and detaining them in detention centres.[1027] These detained protesters were given electric shocks, and forced to confess in front of a camera and also in writing for participating in the protests, causing arson, destroying public property, provoking people to come to the streets to riot, and disrupting the order and security of the country.[1028] The Panel by a Majority (Rohan dissenting) concludes that the basis for the Iranian security forces'

[1024] See section II.4.2 above.
[1025] W173, 13 November 2021. See also W119, 14 November 2021; W232, 13 November 2021.
[1026] W119, 14 November 2021; W232, 13 November 2021; W Shadi Sadr, 12 November 2021; W Shadi Sadr, STMT, p. 25.
[1027] W367, 14 November 2021; W173, 13 November 2021.
[1028] W26, 13 November 2021.

treatment of the protesters was their political beliefs, perceived or otherwise, and their public display thereof. Since there was no proper judicial process for assessing the crimes that the protesters were charged with, it is confirmed that there was no real legal basis for this treatment of the protesters, who were considered by the Iranian regime as being political dissenters aiming to destabilise the regime.

575. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Shahriar was based on the protesters' collective political identity.

Shar-E-Qods (Qods)

576. The Panel has had sight of witness testimony discussing that individuals in Qods began to protest against the rise in petrol prices:

> "When on Friday, when we were coming back, the news announced that the prices of fuel will increase, has increased. And when the fuel prices increase, everybody's life depended on it. The prices of bread and all other goods will increase. So, people turned out on the streets on the Friday night. And people started protesting on the streets. On Saturday, the same continued. The people turned out protesting about a week before the Government had announced that there would be no increase in fuel prices and that was the reason that people turned up."[1029]

577. The Panel notes that in response to these protests, the Governor of Qods, Layla Vaseghi, publicly declared that she had given a "Shooting Order" to the representatives of the IRGC, the prosecutors and other officials, allowing the security forces to use firearms against protesters.[1030] The Panel notes that the police units subsequently started shooting at the assembled protesters, and several individuals died as a result.[1031] The Panel notes that IRGC officials threatened family members to not publicly discuss the circumstances of the shootings,[1032] which also confirms that the attacks and the treatment against the protesters were not based in legality.

578. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights

[1029] W82, 4 February 2022.
[1030] W Shadi Sadr, 12 November 2021; W Shadi Sadr, STMT, p. 14.
[1031] W Shadi Sadr, STMT, pp. 29-30; W82, 4 February 2022.
[1032] W82, 4 February 2022.

of the protesters in Qods was based on the protesters' collective political identity.

Isfahan

579. The Panel notes evidence that the protests in Isfahan began on 16 November 2019 to protest against the Government's policies, including the rise in petrol prices, and its other polices more generally, as one witness states:

> "The big river, unfortunately, has gone dry and because of the wrong policies of the Government, it was dry also then. Therefore, people were gathering there to protest. They were surrounded by officials and, once again, this special unit and other officials who were both armed and had shields came and surrounded them".[1033]

580. The Panel notes that the protests were peaceful until forces from the special units, both in military clothing and in Basij clothing, as well as anti-riot forces started beating people up with batons and truncheons, and eventually started shooting them.[1034] The Panel by a Majority (Rohan dissenting) considers that, like other provinces discussed herein, it appears that the attacks by the security forces against the protesters were because of the political identity of the protesters assembles and their perceived political agenda against the regime.

581. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Isfahan was based on the protesters' collective political identity.

Qom

582. With respect to Qom, the Panel has had sight of a witness statement from a witness who did not testify before the Tribunal. The witness stated that the security forces sought to break up a peaceful protest forcibly, without any provocation from the protesters:

> "People would shout slogans here and there and would go away; they (the security forces) would not let the people assemble in one place. About 9:00 – 10:00 at night the crowd increased, so did the pressure. Mostly they blocked the road and would not let the people assemble. They beat up and arrested many people...
>
> The Police, those in uniforms, mostly blocked the roads and broke up and dispersed the people. There were the Basijis, the Special Unit and the security men there, too."[1035]

[1033] W255, 13 November 2021.
[1034] W255, 13 November 2021; W81, STMT.
[1035] W253, STMT.

583. The witness stated that the security forces "slapped", "kicked", used pepper spray on protesters, and beat them up with batons.[1036] Wounded individuals were also arrested from the streets, hospitals and pharmacies.[1037]

584. Finally, in detention centres, a witness,confirmed that the reason for detaining the protesters was to obtain forced confessions purporting to establish that the detainee was trying to destabilise the regime:

> "The beatings began from the next day. They would take me at night for interrogation that lasted for hours. They would tie my hands from behind and would hang me from the ceiling. The said that: 'You accepted money from adversary groups and countries; you are organised. If you make an admission, we would help you.' I said that I didn't do anything; I just protested against the existing conditions. They beat me up really bad. No matter how much resistance you put up, they would force you to make a confession."[1038]

585. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Qom was based on the protesters' collective political identity.

Mashad

586. The Panel has only had sight of two witness statements from witnesses who did not testify before the Tribunal.[1039] One of the witnesses wrote in his statement that:

> "About 100 people had gathered there, with men outnumbering women. Most protesters were between 20 to 40 years old. There were some elderly individuals as well. The crowd barely chanted any slogan. They were sitting in the middle of Vakilabad Blvd. and cars were behind them...
>
> People chanted "Police, Support Us, Support Us." The police couldn't calm the situation, and suddenly the special forces on heavy motorbikes attacked the people. We were sitting in the middle of the boulevard. They suddenly stormed towards us. People panicked and rose up. The security forces hit them in the head and neck with batons...
>
> …we heard that a number of people were violently beaten on Sajjad Blvd., as soon as the protest had broken out, the security forces suppressed them. I don't know if anybody was

[1036] W253, STMT.
[1037] W253, STMT.
[1038] W253, STMT.
[1039] W137, STMT; W240, STMT.

killed there or not."[1040]

587. The other witness confirmed the nature of the protests as well as the brutal attacks by the security forces against the protesters, stating that the "forces that committed assault and battery and dispersed the people from their demonstrations were anti-riot forces".[1041]

588. Again, it appears to the Panel that the security forces had no lawful basis to target the protesters. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that they were targeted for the mere fact that they were protesting against the Government. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Mashad was based on the protesters' collective political identity.

Shiraz

589. With regards to Shiraz, again the Panel notes that protests started on the 16th of November against the rise of petrol prices by the Government, and that the protests were peaceful until the Basij and military forces started attacking the protesters and shooting at them.[1042] The Panel notes from witness testimony that the protests were politically charged, and the protesters were motivated by their desire to "finish with the 40 years of corruption and murders of this regime".[1043]

590. Again, it appears to the Panel by a Majority (Rohan dissenting) that the security forces had no lawful basis to target the protesters other than the fact that they were protesting against the Government. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Shiraz was based on the protesters' collective political identity.

Mahshahr

591. Again, similar to other provinces, protests began in Mahshahr on 16 November against the rise of petrol prices. The protests were peaceful until the IRGC forces started shooting at the protesters and abducting them in vans.[1044]

592. It appears to the Panel that the security forces had no lawful basis to target the protesters. The

[1040] W137, STMT.
[1041] W240, STMT.
[1042] W337, 14 November 2021; W303, 14 November 2021.
[1043] W303, 14 November 2021.
[1044] W503, 4 February 2022. See also W Shadi Sadr, STMT, p. 39.

Panel by a Majority (Rohan dissenting) accordingly concludes that they were targeted because they were protesting against the Government. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Mahshahr was based on the protesters' collective political identity.

Kermanshah

593. In Kermanshah, protests began on 16 November against the rise of petrol prices and against the Government regime more broadly, as one witness testified:

> "Every day for our poor citizens is Aban 98. We all see Aban 98 every day. It's not just during the protests that took place for the increase in the price of petrol. That was just an excuse, a pretext. The main reason for the objection of the people was to overthrow the horrific regime of the Islamic Republic."[1045]

594. Without any provocation by the protesters, the police and special forces started beating up the protesters, using tear gas and water cannons, and finally shooting at the protesters.[1046]

595. The Panel notes that in detention centres, the detained protesters were forced to falsely confess to committing crimes:

> "They had certain demands. They brought certain papers to individuals. I was accused of a lot of things. I did not accept any of the charges or any of the accusations. They brought me papers, they asked me to sign them, they brought cameras, they asked me to talk before the camera, to accept my charges and say that I wanted to cause disruptions and vandalism, anarchy, but I never accepted to talk before the camera. They wanted me to confess to things that were not true.
>
> Days passed. I didn't have anything to say or to confess. I had a wounded body. I may rather say that I had lost my soul, I was just a body there. They started torturing me afterwards. They said if I did not confess to what they wanted, then I would be killed under torture. During days and nights, I was tortured to confess to what I had not done. And I did not have any armed revolt and I was among the thousands of people. I had at most picked up a stone. And they wanted a number of 30 people who had died, who had been killed in our neighbourhood, to be shouldered by us."[1047]

[1045] W175, 12 November 2021.
[1046] W175, 12 November 2021; W28, 13 November 2021.
[1047] W175, 12 November 2021.

596. The evidence noted above indicates that the attacks on the protesters as well as their subsequent arrest and detention was not for legally justifiable purposes, but rather to either kill the perceived political dissenters, or to falsely implicate them of serious crimes and convict them.

597. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Kermanshah was based on the protesters' collective political identity.

Behbahan

598. As in other parts of the country, demonstrations which erupted in Behbahan were in protest to the fuel price increase.[1048] The protesters were peaceful.[1049] Security forces armed with lethal weapons, including the Basij, the police, and the IRGC,[1050] surrounded the protesters and ultimately began shooting directly into the crowds.[1051] Many people were wounded. Many were shot and killed.

599. The families of people injured or killed during the protests were also abused, threatened and harassed by security forces. Some were arrested.[1052] Families were warned not to hold mourning ceremonies.[1053] Sepah intelligence threatened families not to speak to the media or they would be arrested.[1054]

600. Protesters arrested in Behbahan were often mistreated. Witness 179 was tortured after he was arrested and forced to provide a sham video stating that the protests were started by terrorist groups.[1055]

601. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Behbahan was based on the protesters' collective political identity.

[1048] W179, 13 November 2021; W12 STMT; W Amin Ansarifar, 10 November 2021.
[1049] W12 STMT; W179, 13 November 2021.
[1050] W179, 13 November 2021.
[1051] W12 STMT.
[1052] W12 STMT; W179, 13 November 2021; W Amin Ansarifar, 10 November 2021.
[1053] W179, 13 November 2021.
[1054] W Amin Ansarifar, 10 November 2021; W179, 13 November 2021; and see W32, 10 November 2021; W31, 12 November 2021; W110, 13 November 2021; W82, 4 February 2022; W86, 4 February 2022; W451, 4 February 2022; W83, 5 February 2022; W185, 10 November 2021; W19, STMT; W503; W80, 5 February 2022.
[1055] W179, 13 November 2021, and see W436, 5 February 2022; W26, 13 November 2021; W84, 5 February 2022; W366, 11 November 2021; W26, 13 November 2021; W185, 10 November 2021.

Marivan

602. At the time of the Aban protests in Marivan, the Provincial Security Council issued an order from the Governor ordering the suppression of the protests by any means possible including by shooting. Rules regarding the use of lethal force no longer applied.[1056]

603. Security forces there began firing indiscriminately into the air and randomly at protesters, with no purpose or aim.[1057]

604. Snipers stationed on roof tops fired randomly into the crowd but also at times apparently shot at specific people.[1058] The people who were protesting included "everyone;" the elderly, children, rich and poor.[1059]

605. Police vehicles waited outside hospitals to arrest the wounded as they arrived.[1060]

606. Victims' families were told by security forces not to speak about what happened to the media. Some were filmed; some harassed; some subjected to political pressure.[1061] Families were also not permitted to select where their family members would be buried as the authorities did not want trouble from having local burials.[1062]

607. Detainees were tortured in the Sepah garrison in Marivan where over 200 to 300 people were detained. As occurred in other detention centres, detainees were held outside, naked in the nighttime, after cold water had been poured over them.[1063] Others were beaten.[1064]

608. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Marivan was based on the protesters' collective political identity.

Sanandaj

609. About half the city's population was out in the streets engaging in peaceful protests on

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[1056] W195, 11 November 2021.
[1057] W195, 11 November 2021; W220 STMT; W260, STMT.
[1058] W99, STMT.
[1059] W99 STMT; W220 STMT; see also W366, 11 November 2021; W28, 13 November 2021; W31, 12 November 2021; W5, 13 November 2021; W110, 13 November 2021; W18, STMT; W82, 4 February 2022; W86, 4 February 2022; W451, 4 February 2022; W84, 5 February 2022; W436, 5 February 2022; W494, 5 February 2022; W80, 5 February 2022; W83, 5 February 2022.
[1060] W220 STMT; W99 STMT; W260, STMT, and see W32, 10 November 2021; W31, 12 November 2021; W451, 4 February 2022; W436, 5 February 2022; W80, 5 February 2022.
[1061] W17, 12 November 2021; W15, 14 November 2021; W99 STMT.
[1062] W17, 12 November 2021; W426, 5 February 2022, and see W32, 10 November 2021; W31, 12 November 2021; W18, STMT; W407, 4 February 2022; W80, 5 February 2022; W19, STMT; W86, 4 February 2022; W451, 4 February 2022; W494, 5 February 2022; W83, 5 February 2022.
[1063] W220 STMT.
[1064] W260, STMT.

November 16.[1065] Security forces were present in large numbers. They had also received the order permitting use of lethal force on protesters. Protesters were viciously beaten, including[1066] women, children and the elderly. The firing of weapons was indiscriminate.[1067]

610. Injured people taken to the hospital were often arrested there.[1068] People injured during the protests were also arrested on the street and driven away.[1069] No one "dared" to send an injured person to a hospital.[1070]

611. People who had been detained were threatened about statements made as to what happened to them.[1071] Families of victims were also threatened and told not to contact the media and not to have funerals or memorial services.[1072]

612. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Sanandaj was based on the protesters' collective political identity.

Omidiyeh

613. In Omidiyeh, as in other areas, the protests began peacefully. About four thousand to five thousand people were out on the streets on the first day of protests.[1073] The protesters closed the roads, shouted slogans and threw stones.[1074]

614. On the second and third day, security forces, who had received an order to fire at anyone who was there and "not to give a damn" began firing recklessly injuring many people.[1075] The firing was scattered and random; bullets were "everywhere."[1076]

615. Basij and Sepah forces fired tear gas into people's homes and fired guns at protesters. Many people were arrested, including young teenagers.[1077] Security forces were stationed at hospitals

[1065] W125, 14 November 2021.
[1066] W125, 14 November 2021; W225, STMT; W422, 6 February 2022, and see W110, 13 November 2021; W351, STMT [regarding Bushehr province].
[1067] W499, 6 February 2022, and see W497, STMT; W28, 13 November 2021; W31; W5, 13 November 2021; W407, 4 February 2022; W436, 5 February 2022; W80, 5 February 2022; W83, 5 February 2022.
[1068] W225, STMT.
[1069] W225, STMT.
[1070] W225, STMT.
[1071] W11 STMT.
[1072] W499, 6 February 2022.
[1073] W8, STMT.
[1074] W8, STMT.
[1075] W8, STMT; W312, STMT.
[1076] W312, STMT.
[1077] W497, STMT; W31, 12 November 2021.

causing injured people to be afraid to go there for treatment.[1078]

616. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Omidiyeh was based on the protesters' collective political identity.

Andimieshkt

617. In Andimieshkt, similar tactics were used by security forces. Peaceful protesters were met with lethal force from Government security forces. Uniformed police stationed on roof tops and near the Governate fired assault rifles randomly into the air. Security forces wearing helmets and Plexiglas masks, attacked the crowd with tear gas and batons.[1079]

618. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Andimieshkt was based on the protesters' collective political identity.

Ahvaz

619. The demonstrations in Ahvaz, taking place in response to the gas price hike, were initially peaceful until security forces instigated disruption.[1080]

620. Protesters blocked the streets with their cars. Security forces tear gassed the crowd in response, set cars on fire and set banks on fire.[1081] Several people were killed.[1082]

621. Many people were arrested in the streets on the first day of the protests and detained by the Sepah and Ministry of Intelligence in Takhti Stadium.[1083] Security agents also raided houses and arrested people in their homes.[1084]

622. People who had been arrested were often tortured. Witness 190 was arrested after giving an interview to the media.[1085] He was beaten, accused of being a political activist, and told he had to confess to working with the foreign media in order to end the abuse.[1086] He saw the bodies of several women who appeared to have been tortured and witnessed one man being tortured to death. He said that people were arrested "in bulk," detained and then tortured so that they

[1078] W8, STMT; W312, STMT.
[1079] W279, STMT.
[1080] W501, STMT.
[1081] W190, STMT.
[1082] W190, STMT; W362, 5 February 2022.
[1083] W190, STMT.
[1084] W190, STMT; W362, 5 February 2022.
[1085] W190, STMT.
[1086] W190, STMT p 3.

would confess to being anti-revolutionary.[1087]

623. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Ahvaz was based on the protesters' collective political identity.

Arak

624. Peaceful, unarmed protesters in Arak were beaten indiscriminately by Basij and Sepah forces. They were tear gassed and, in some instances, security forces threw knives at them. Some security forces were armed with assault rifles.[1088]

625. Detained protesters were also subjected to torture and coercive techniques to obtain false confessions. Each detainee was taken before a judge, but they were denied fair trials.[1089]

626. Witness 299 was accused of being a leader of the protests, which he denied. Witness 226, who was arrested on the street, was interrogated, along with several other detainees, by a prosecutor. He did not confess to anything. He and about 700 to 800 others were forced to remove all clothing and then were kept in an outside yard for several hours in the cold. He was detained for 8 days before being released.[1090]

627. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Arak was based on the protesters' collective political identity.

Urmia

628. Peaceful protesters chanting slogans against the rise in gas prices were attacked by security forces in Urmia, beaten with truncheons and tear gassed.[1091] The Special Forces attacking the protesters were dressed in black uniforms, with helmets and face masks. Some were dressed in green but did not appear to be military forces.[1092]

629. As with other protesters and witnesses, Witness 182 saw people being arrested and taken away even though the protesters were not being violent. They were simply chanting slogans about the increase in the price of gas.[1093]

[1087] W190, STMT.
[1088] W226, STMT.
[1089] W226, STMT.
[1090] W226, STMT.
[1091] W182, 14 November 2021.
[1092] W182, 14 November 2021.
[1093] W182, 14 November 2021.

630. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Urmia was based on the protesters' collective political identity.

Gorgan

631. Evidence regarding the protests in Gorgan was similar. Witness 233, who was in the city centre during the protests saw about 300 to 400 people assembled there, protesting the price of gas. The protesters were unarmed and peaceful. The Police Special Unit nonetheless engaged in skirmishes with protesters and aimed their guns into the crowds. Some police in uniform were carrying war weapons like Kalashnikovs.[1094]

632. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Gorgan was based on the protesters' collective political identity.

Khuzestan

633. In Khuzestan, a large number of protesters in Sheiban City began blocking the roads on November 16. About 30 to 40 security forces on motorbikes surrounded them and fired tear gas at them at close range. The threw stones at the protesters and beat some of them. A 17-year-old boy was badly beaten, causing him to fall and fracture his skull.[1095]

634. Security forces were "armed to the teeth." Additional forces, carrying AK-47s, shot at protesters. Two young boys, both under 18 years of age, were shot by Basij forces. Basij tracer bullets also set the City Hall on fire.[1096]

635. Security forces, armed with tear gas, batons and guns, were dressed in plain clothes and covered their faces. Some fired on protesters from the rooftop of the Governate. No one was killed but several people were wounded.[1097] These forces had received an order to shoot protesters from their local commander based on an order from Governor Hojjati Nia.[1098]

636. Protesters were shot at random including people who were hiding in a large reed bed. Officers fired mercilessly into the reed beds. No one knew how many people died there. [1099]

637. As in other areas, detainees were subjected to abuse and torture. Witness 287 was beaten and

[1094] W233, STMT.
[1095] W281, STMT.
[1096] W281, STMT.
[1097] W287, STMT.
[1098] W287, STMT.
[1099] W360, STMT. See also W503, 4 February 2022.

kicked after his arrest, then transferred to a central prison where he was interrogated. He was asked why he was in the protests. Young people were also arrested. Witness 287 saw a 13-year-old boy being beaten and kicked. A number of people were arrested in their homes.[1100]

638. As some witnesses described it, security and non-security forces attacked people in their homes without judicial authority and arrested people in groups. Raids on private homes occurred in the day and the night without legal warrants.[1101] "Basically orders were taken from the security council, were transferred to them [local authorities] and they willfully did whatever they wanted to do, without any supervision whatsoever."[1102] Arrestees were taken to places which were not legitimate detention centres. The proper detention centres did not have the capacity to hold the number of people arrested in November 2019.[1103]

639. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Khuzestan was based on the protesters' collective political identity.

Rasht

640. In Rasht unlawful arrests and abuse of detainees was also widespread. Witness 227, who was arrested and detained by Intelligence Service estimated 400 to 500 people were similarly arrested for allegedly protesting in the area. At the police station, he and the other detainees were stripped naked and kept outside at night, in the cold, and forced to stay there. Detainees received no food or water. There were constant beatings. Those who suffered visible injuries from the beatings were executed.[1104]

641. Witness 227 was told to sign a false confession, admitting to burning banks. He stated it was the security forces, however, who were burning the banks in his area.[1105] He learned that one detainee, charged with "fighting against God," because he had burned a Khamenei banner, was executed three months later.[1106] He heard other people were executed as well.[1107]

642. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights

[1100] W287, STMT.
[1101] W362, 5 February 2022; W436, 5 February 2022.
[1102] W407, 4 February 2022.
[1103] W407, 4 February 2022; W418, 6 February 2022.
[1104] W227, 12 November 2021. See also W235, STMT [regarding Gatchsaran].
[1105] W227, 12 November 2021.
[1106] W227, 12 November 2021, p 3.
[1107] W227, 12 November 2021.

of the protesters in Rasht was based on the protesters' collective political identity.

Baluchestan

643. In Zahedan, security forces began firing shots in the air in an attempt to disperse the people who were protesting the rise in gasoline prices by blocking a gas station. Ultimately about 30 people were arrested, including some children and an elderly man. Protesters were also beaten.[1108]

644. Security forces smashed parked cars and shot at unarmed protesters. Witness 300 saw a group of people who were not participating in the protests arrested and beaten for no reason. They had just been walking by the protest area.[1109]

645. Basij and Sepah forces were armed and stationed on the roof tops of buildings. Those forces shot and killed three people.[1110]

646. Security forces in Baluchestan also engaged in torture of detainees. Witness 300, who was arrested while visiting the courthouse, was blindfolded and driven to his home. Security forces searched his home and seized his computer, satellite dish and cell phone. He was taken then to the Ministry of Information where he was blindfolded, threatened and tortured for seven days.[1111] Again, the purpose of the beatings and torture was to coerce him into signing a false confession to criminal charges in order to obtain his release.[1112]

647. The Panel by a Majority (Rohan dissenting) accordingly concludes that the evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Baluchestan was based on the protesters' collective political identity.

Khorramabad

648. On 16 November, Witness 314 was present in the protests when she was grabbed by security forces, and sexually assaulted in the street by more than fifteen men.[1113]

649. She was transported, naked, along with another woman, by several men who took them to the Basij Resistance of Sepah. There she was held in a basement. School age boys and girls, also arrested by Sepah intelligence, were also in confinement there. There were easily 500 people

[1108] W300, STMT.
[1109] W300, STMT. See also W521, STMT [people on street arrested for no reason].
[1110] W300, STMT.
[1111] W300, STMT.
[1112] W300, STMT.
[1113] W314, STMT.

in her estimation. The boys were being flogged. [1114]

650. Witness 314 was kept in confinement for several days. She was repeatedly interrogated and asked to sign a statement saying she was working for the CIA. She was also told that if she had sexual relations with her interrogators, they would get her a lighter sentence.[1115]

651. The Panel by a Majority (Rohan dissenting) accordingly concludes that this and related evidence establishes beyond a reasonable doubt that the severe deprivation of the fundamental rights of the protesters in Khorramabad based on the protesters' collective political identity.

Conclusion: The Panel's Majority findings on Persecution

652. The Panel (by a Majority, Rohan dissenting) finds that the Government of Iran's plan to commit crimes against humanity included the crime of persecution contrary to Article 6(2)(f) and (g) of the Statute of the Aban Tribunal. The Government of Iran and their security forces severely deprived, contrary to international law, the protestors of a variety of rights, including the right to life, the right to personal liberty and security of the person, the right not to be subjected to torture or cruel, inhumane or degrading treatment, and the right not to be subjected to arbitrary arrest and detention on the basis of their perceived or actual political membership of the Aban protests. They were targeted on this basis and the inhuman acts that severely deprived their fundamental rights were inflicted on them because of their perceived opposition" to the Government of Iran's policies.

e. Individual Criminal Liability

653. The Prosecution has alleged that 160 Iranian Government and security officials are individually criminally responsible for the crimes against humanity which took place in Iran in November 2019. They have alleged a number of theories of liability including joint criminal entreprise, indirect perpetration, co-perpetration, and command and superior responsibility. They have provided the Panel with a written submission that describes the positions the alleged perpetrators held in the governmental and/or security structures in Iran. Some of these individuals were named in the testimony and written statements of witnesses presented to the Tribunal.

654. The Panel is asked to infer the personal criminal liability of these individuals from, *inter alia*, the positions they held in the hierarchy of the Government and/or security forces in Iran, as well as the evidence that the governmental and security forces, with which these individuals

[1114] W314, STMT. See also W110, 13 November 2021; W436, 5 February 2022.
[1115] W314, STMT.

were associated, participated in the November 2019 crimes. The Prosecution also rely upon the absence of any evidence that any of these individuals, holding positions of authority in the Iranian Government or security forces, took any action within the limits of their authority or at all, to prevent or punish the crimes of their subordinates.

655. The Panel has concluded that the evidence establishes beyond a reasonable doubt that the Iranian Government and the security forces designed and implemented a plan to commit crimes against humanity of murder, imprisonment, enforced disappearances, torture, sexual violence and, Rohan dissenting, persecution in order to quell the protests and conceal the crimes committed. Even though the Panel did not have the benefit of any participation in these proceedings by the Government of Iran or any of the named alleged perpetrators, it was able to do so based on the presentation of consistent, reliable evidence from a variety of independent witnesses located across the country who were themselves victims of those events or otherwise had personal knowledge of the events of November 2019.

656. The question of imposing individual liability on the named members of the Government and security forces for the criminal plan and the crimes found established cannot be similarly resolved. The available evidence, including: the position and function of these individuals in the governmental and security forces, and the wholesale failure to sanction or punish the actual perpetrators of the crimes against humanity, did raise the strong suspicion of the individual liability of many of these individuals. Suspicions constitute cause for the Iran Government as well as for the international community to agree to investigate what happened in Iran in November 2019, and to determine who is individually responsible for the commission of the crimes against humanity against the unarmed civilian population taking part in, or bystanders to, the protests.

657. The evidence does allow the Panel to unanimously conclude that in relation to fifteen of the named individuals – as discussed below – there is a case to answer that they are criminally liable for the crimes against humanity which took place *under one or more of these theories of individual criminal liability*. A case to answer is based upon the balance of probabilities, namely that the evidence establishes that these individuals are more likely than not to have significantly participated in the planning and implementation of the criminal plan to commit the aforementioned crimes against humanity discussed at section III.2.3(b) of this judgment.

658. A trial process is essential to allow these cases to be further considered to ascertain whether the evidence establishes, *beyond a reasonable doubt*, the individual criminal responsibility of these Iranian Government officials, and to ensure that the victims of these crimes have their rights

to due process, accountability and justice fully and transparently vindicated.

Modes of Liability

The Law on Direct and Indirect Perpetration

659. The Prosecution submits the named individuals are individually criminally responsible for the crimes which took place in November 2019 as actual perpetrators, co-perpetrators, as indirect perpetrators, and as superior or civilian commanders. The legal elements which comprise these discrete theories of liability vary, but all require direct or circumstantial proof of the actions and the intent of the individual accused.

660. For example, Article 11(a) of the Statute of the Aban Tribunal provides that a person who commits a crime "whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible" is individually criminally responsible as a direct perpetrator of that crime. Accordingly, direct perpetration is established by proof the accused physically committed the crime and had the requisite mental element required by the crime in question.[1116]

661. Additionally, co-perpetration occurs when an accused intentionally commits a criminal act by acting jointly with others in pursuance of a common plan.[1117] The plan need not be an express plan;[1118] its existence can be inferred from both direct and circumstantial evidence,[1119] including the subsequent conduct of the accused.[1120] The evidence must show that the plan had an element of criminality[1121] in that, if implemented, it would lead to the commission of a crime "in the ordinary course of events".[1122] However, it need not be proven that the plan itself was a crime or was specifically directed at the commission of a crime.[1123]

[1116] See *Lubanga* Decision on the Confirmation of Charges, para. 332(i); *Prosecutor v. Katanga & Chui*, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008 ('*Katanga & Chui* Decision on the Confirmation of Charges'), para. 488; *Prosecutor v. Lukić & Lukić*, IT-98-32/1-T, Judgment, 20 July 2009 ('*Lukić & Lukić* Trial Judgment'), para. 897; *Prosecutor v. Limaj et al.*, IT-03-66-T, Judgment, 30 November 2005 ('*Limaj et al.* Trial Judgment'), para. 509; *Prosecutor v. Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, Trial Judgement, 22 February 2001 ('*Kunarac et al.* Trial Judgement'), para. 390.

[1117] Rome Statute, Art. 25(3)(a). See also *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Prosecution Request for Notice to be Given of a Possible Recharacterisation Pursuant to Regulation 55(2), 9 March 2015, para. 16.

[1118] *Prosecutor v. Kilolo et al.,* ICC-01/05-01/13, Judgment pursuant to Article 74 of the Statute, 19 October 2016 ('*Kilolo et al.* Trial Judgment'), para. 66; Lubanga Trial Judgment, para. 988.

[1119] *Kilolo et al.* Trial Judgment, para. 66; Lubanga Trial Judgment, para. 988.

[1120] *Kilolo et al.* Trial Judgment, para. 66; *Katanga & Chui* Decision on the Confirmation of Charges, para. 301; *Prosecutor v. Kenyatta et al.*, ICC-01/09-02/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 400.

[1121] *Kilolo et al.* Trial Judgment, para. 67.

[1122] *Lubanga* Trial Judgment, para. 981.

[1123] *Kilolo et al.* Trial Judgment, para. 67; *Lubanga* Appeals Judgment, para. 447.

662. The accused perpetrator must also have provided an 'essential' contribution to the commission of the crime.[1124] It is not necessary to prove that the accused was directly or physically linked to the crime[1125] by proving, for example, that they were present at the location at the time that the acts were committed.[1126] It is enough to prove that the crime was committed, or was committed in a particular way, due to the contribution of the accused.[1127] Whether a particular contribution was 'essential' will depend upon the nature and centrality of the role and functions of the individual accused.[1128] The contribution of a co-perpetrator may have been performed before or during the actual commission of the crime.[1129]

663. The mode of liability of co-perpetration requires proof of two mental elements:[1130] (i) the accused and at least one other perpetrator intended to commit the physical elements of the crime, or they were aware that in implementing their common plan this consequence "[would] occur in the ordinary course of events";[1131] and (ii) the accused was aware that they provided an essential contribution to the implementation of the common plan.[1132] This means the accused must have been aware of the factual circumstances enabling them to control the crime with the other co-perpetrators.[1133]

664. The same is true regarding liability based upon indirect co-perpetration. Indirect co-perpetration occurs where an accused uses another individual to commit a crime by controlling the will of that individual to such a degree that the criminal act must be attributed to the accused as if it were their own.[1134]

665. The evidence must demonstrate that the accused exerted control over the crime.

[1124] The requirement that the accused's contribution be 'essential' is necessary to distinguish between those who commit crimes as principal perpetrators and those who are merely held to be accessories to those crimes. See, Lubanga Trial Judgment, paras 997-999; Lubanga Appeals Judgment, para. 469; *Prosecutor v. Ntaganda*, ICC-01/04-02/06 A A2, Appeal Judgment, 30 March 2021 ('*Ntaganda* Appeal Judgment'), para. 1041.
[1125] *Lubanga* Trial Judgment, para. 1004.
[1126] *Lubanga* Appeals Judgment, paras 469, 473; *Katanga & Chui* Decision on the Confirmation of Charges, para. 526; *Prosecutor v. Ruto et al.*, ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012 ('*Ruto et al.* Decision on the Confirmation of Charges'), para. 306; *Lubanga* Trial Judgment, paras 1004-1005.
[1127] *Lubanga* Appeals Judgment, para. 473; *Katanga & Chui* Decision on the Confirmation of Charges, para. 525; *Prosecutor v. Blé Goudé*, ICC-02/11-02/11, Decision on the Confirmation of Charges, 11 December 2014 ('*Blé Goudé* Decision on the Confirmation of Charges'), para. 135.
[1128] *Lubanga* Trial Judgment, paras 1000-1001.
[1129] *Lubanga* Appeals Judgment, paras 469, 473; *Katanga & Chui* Decision on the Confirmation of Charges, para. 526; *Ruto et al.* Decision on the Confirmation of Charges, para. 306.
[1130] *Lubanga* Trial Judgment, para. 1013
[1131] *Kilolo et al.* Trial Judgment, para. 70; *Katanga & Chui* Decision on the Confirmation of Charges, para. 533; *Lubanga* Decision on the Confirmation of Charges, paras 363-364.
[1132] *Lubanga* Trial Judgment, para. 1013
[1133] *Bemba* Decision on Confirmation of Charges, para. 371; *Ntaganda* Appeal Judgment, para. 1045.
[1134] Rome Statute, Art. 25(3)(a); *Katanga* Trial Judgment, para. 1399.

666. There are two circumstances in which an accused may exert control over a crime. The first is where the perpetrator exercises control over the will of someone who bears no criminal culpability for their actions,[1135] because, for example, they were "an inadvertent participant […] acting under duress or mistake".[1136] In these situations, those physically committing the criminal act only do so as an 'instrument' of the accused, who therefore retains criminal liability for those acts.

667. The second situation of control, more relevant to this proceeding, is where the accused has 'functional domination'[1137] over an organisational structure, within which they can use their authority and power to ensure compliance with their orders.[1138]

668. To establish that such control was present, the evidence must show:[1139] (i) a clear organisational hierarchy, within which compliance with orders was rendered nearly automatic; and (ii) that, within this hierarchy, the accused genuinely exerted "control over the course of events occasioning the crime" by conceiving the crime, overseeing its preparation at different hierarchical levels and/or controlling its performance and execution through the organisational apparatus.

669. A key feature of the organised and hierarchical apparatus of power is the automatic execution of the superior's orders.[1140] This is demonstrated in situations where, if one member of the organisation refuses to comply, another will be available to step in and secure the execution of the order(s) issued.[1141]

670. The perpetrator must have been aware of the factual circumstances enabling them to exercise control over the crime; that is, the accused was aware of the organisational structure that enabled them to use another person to realise the material elements of the crime.[1142]

The Law on Joint-Criminal Enterprise

[1135] *Lubanga* Decision on the Confirmation of Charges, para. 332; *Katanga & Chui* Decision on the Confirmation of Charges, para. 488.
[1136] R. Cryer et al. (eds), *An Introduction to International Criminal Law and Procedure* (3rd edn, CUP 2015) ('Cryer et al. (2015)'), p. 367.
[1137] Cryer et al. (2015), p. 368.
[1138] *Katanga & Chui* Decision on the Confirmation of Charges, para. 514. In these situations, although it is likely that those directly committing the crime will bear criminal culpability, it is possible that certain direct perpetrators could be absolved of criminal responsibility. See *Katanga* Trial Judgment, para. 1404.
[1139] *Katanga* Trial Judgment, para. 1412.
[1140] *Katanga* Trial Judgment, para. 1408; *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014 ('*Ntaganda* Decision on Confirmation of Charges'), para. 120.
[1141] *Katanga* Trial Judgment, para. 1408.
[1142] *Katanga* Trial Judgment, para. 1414-1415.

671. Joint criminal enterprise (JCE) is a mode of liability that may be used for assessing the individual liability of those charged with committing' crimes against humanity. The International Criminal Tribunal for the Former Yugoslavia (ICTY) Appeals Chamber first recognised JCE as a mode of liability under customary international law in *Prosecutor v. Tadić*.[1143] The Appeals Judgment in *Tadić* articulated three different forms of JCE: basic (JCE I), systematic (JCE II), and extended (JCE III).[1144]

672. To prove liability under basic or extended form JCE, the Prosecution must establish the following three objective elements beyond a reasonable doubt:

1. The existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute;[1145]
2. A plurality of persons acting in concert in pursuit of a common purpose;[1146]
3. Participation by the Accused, in the form of a 'significant contribution' to the common plan, design or purpose.[1147]

673. In addition to establishing these objective elements, a Prosecutor must also prove that the Accused possessed the requisite *mens rea* for the crimes charged. Convictions pursuant to JCE I liability require a different *mens rea* than convictions pursuant to JCE III. JCE I liability attaches when the Accused (together with the other members of the JCE plurality) intended the commission of a crime or crimes in pursuit of a jointly agreed common criminal plan in which the Accused participated.[1148] Under this basic form of JCE, 'an essential requirement in order to impute to any accused member of the JCE liability for a crime committed by another person is that the crime in question *forms part of the common criminal purpose*.'[1149] The trier of fact must be satisfied that the criminal intention of the accused is identical to that of the other JCE

[1143] *Prosecutor v. Tadić*, IT-94-1-A, Appeal Judgment, 15 July 1999 ('*Tadić*'), paras 189-229. On the customary nature of JCE, see also Amicus Curiae Brief of Professor Antonio Cassese and Members of the Journal of International Criminal Justice on Joint Criminal Enterprise Doctrine, *Case of Kaing Guek Eav, alias 'Duch'*, Criminal Case File No. 001/18-07-2007-ECCC/OCIJ (PTC 02), 27 October 2008, available at: http://www.antoniocassese.it/italiano/reports/Amicus_Curiae_Brief_27_October_2008.pdf.

[1144] *Tadić*, para. 190.

[1145] *Tadić*, para. 227.

[1146] *Tadić*, para. 227; See *Prosecutor v. Krajišnik*, IT-00-39-T, Judgment, 27 September 2006, para. 884.

[1147] *Tadić*, para. 227 ('Participation of the accused in the common design involving the perpetration of one of the crimes provided for in the Statute.'); Later cases elaborated upon the 'participation' requirement, clarifying that, 'although the contribution [to the common plan] need not be necessary or substantial, it should at least be a significant contribution to the crimes for which the accused is to be found responsible.' *Prosecutor v. Brđanin*, IT-99-36-A, Appeal Judgment, 3 April 2007 ('*Brđanin*'), para. 430.

[1148] See *Brđanin*, paras 365, 430-431; See also *Prosecutor v. Vasiljević*, IT-98-32-A, Judgment, 25 February 2004, para. 101.

[1149] *Brđanin*, para. 418.

participants, and encompasses the entire scope of the common purpose alleged.[1150]

The Law on Command and Superior Responsibility

674. Article 14(a) of the Statute of the Tribunal, in conformance with established international law, provides that military commanders are personally liable for crimes committed by forces acting under their command, authority or control, which occurred because of their failure to exercise proper control over those forces.

675. For a commander to incur such liability the relevant forces (i.e., an armed group or the military) must have committed an international crime.[1151] 'Commission' by subordinate forces includes modes of liability beyond direct perpetration. Consequently, commanders may incur liability where their forces plan, instigate, or aid and abet in the commission of a crime by another person.[1152]

676. A civilian superior, who is not a military commander or a person who acts as such, is also personally liable for crimes committed by subordinates when those subordinates are under their effective authority and control, and the crimes occurred as a result of the superior's failure to exercise proper control over such forces.

677. As with command responsibility, the evidence must show that the subordinates of the accused committed the crime in question. Superiors may also incur liability where their subordinates plan, instigate, or aid and abet the commission of a crime by another person.[1153]

678. The civilian superior must have a superior-subordinate relationship with the direct perpetrators. In contrast to command responsibility, which refers to the accused's command over military or quasi-military forces, superior responsibility relates to civilians who exercise similar hierarchical authority over individuals where a military or military-like structure cannot be established.[1154] Accordingly, non-military members of Governments, members of political parties or officials of corporations may incur liability under superior responsibility in relation to the criminal conduct of their civilian subordinates.[1155]

The evidence before the Panel

[1150] *Tadić*, para. 196.
[1151] *Prosecutor v. Bemba*, ICC-01/05-01/08, Trial Judgment, 21 March 2016 ('*Bemba* Trial Judgment'), para. 175.
[1152] *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-T, Judgment, 26 February 2001 ('*Kordić and Čerkez* Trial Judgment'), paras 370-371.
[1153] *Kordić and Čerkez* Trial Judgment, paras 370-371.
[1154] Triffterer & Ambos, *Commentary*, p. 1101.
[1155] Triffterer & Ambos, *Commentary*, p. 1102.

679. The evidence established that the Iranian Government and security forces response to the November 2019 protests reflected a coordinated, countrywide effort. As discussed above, similar forces were deployed across the country including the IRGC, Sepah, Basij forces and the local police. In some areas forces from other countries were also present and assisted these local forces. As found by the Panel, in city after city, security forces responded to unarmed protesters in coordinated and similar ways; by use of water cannons, tear gas, batons, and, after the issuance of an order from the Supreme Leader's Office, lethal weapons.

680. Unarmed protesters were shot, beaten, arrested without legal cause, illegally detained under inhumane conditions, disappeared, tortured, sexually assaulted and, as found by the Majority (Rohan dissenting), persecuted.

681. There was credible, reliable evidence, in short, that an order permitting the use of lethal force on unarmed protesters was in fact issued, that it was disseminated around the country at the time of the protests, that it was implemented across the country by the security forces involved in the protests, and that an unknown number of protesters were, in fact, shot and killed and injured during and after the protests by those same security forces. There was no evidence that any member of the security forces was ever sanctioned or disciplined in any fashion as a result of killing or wounding a protester or for any other crimes committed during the November 2019 protests. There was evidence, to the contrary, that members of the security forces who refused to implement the criminal plan, for example, by carrying out the shooting order, were relieved of their duty, prosecuted and punished.

682. These activities, separate from any international legal principles, constituted a wholesale failure to follow the applicable law in Iran. Nonetheless these activities continued unabated over several days in November 2019 and many continue to this day. They occurred across the country. There was no evidence that the Government of Iran or its civil or military authorities did anything to stop them. To the contrary, the evidence was that the well-equipped and well-armed, security forces, who were present throughout the protests, were the primary instigators and perpetrators of the violence that took place.

683. As concluded above, the nature of the response to the protests including the active involvement of the national, provincial and municipal Government, their activation of the various security forces across the country, the intentional commission of crimes by those forces as part of that response, and the wholesale failure to sanction those who committed those crimes allowed the Panel to conclude beyond a reasonable doubt that the Iranian Government and the security forces) designed and implemented a plan to commit the various

crimes against humanity found established herein.

684. However, as noted above, the Panel does not consider that there is enough evidence to establish beyond reasonable doubt that any of the perpetrators named in the prosecution's brief satisfies the requirements of any particular mode of criminal liability. Assessment of the individual criminal liability of the listed perpetrators, under the aforementioned modes of liability necessarily depends upon clear identification of the role and circumstances of each individual before, during or after the time of the commission of the crimes, and the application of the evidence to the *actus reus* and *mens rea* of those varying elements of liability and the crimes. Additional investigation is required to objectively, fairly and comprehensively establish individual criminal liability, or lack thereof, of each individual identified by Counsel as responsible, and this must be to the beyond reasonable doubt standard.

685. Nonetheless, the Panel considers that there is strong evidence to indicate that the thirteen individuals outlined below, who at the relevant time held key positions of authority within the Government and security forces, personally participated in or participated with or through others to design and implement the plan to commit the various crimes against humanity. The Panel finds that they have a case to answer in relation to their significant contribution to the design and implementation of a criminal plan to commit murder, imprisonment, enforced disappearances, torture and sexual violence in order to quell the protests and conceal the crimes committed. As further outlined below, the Panel finds that it is more likely than not that they are responsible pursuant to one or more of these internationally recognised modes of liability.

686. The Majority (Rohan dissenting) also finds a case to answer in relation to their significant contribution to the crime of humanity of persecution, a crime that was within the scope of the criminal plan.

i) Ali Khamenei – Supreme Leader of the Islamic Republic of Iran (LIRI)

687. The Panel has heard evidence that Khamenei, the Supreme Leader of Iran "is on the top" in Iran, and "he has a representative in every province", that is, the governor of that province, who is appointed directly by the Supreme Leader, and is his authorised representative.[1156]

688. Ali Khamenei, in his speech on 19 November 2019, called the crackdown of people's protests "a security war" against the enemy and said, "the incidents over the past days were security

[1156] W185, 10 November 2021.

issues; they were not acts of ordinary people; it was a security challenge and we repelled it."[1157] Khamenei has consistently maintained that the 2019 protests were orchestrated by American and other foreign elements.[1158] On November 27, 2019, he said that the protests were a foreign plot to destabilise the Iranian regime, and declared that "the police force, Basij, the IRGC and others got involved in those days and carried out their duties in that difficult confrontation".[1159]

689. There was expert testimony and testimony from insider witnesses that the order to shoot protesters came from "the Commander in Chief"; that is, the Supreme Leader, Ayatollah Khamanei. According to insider witness testimony, Mr. Khalafi and Mr. Haghanian, both of whom worked closely with the Supreme Leader, disseminated these orders to the IRGC commanders at Headquarters. The IRGC commanders then sent the orders to those under their command. Local forces then implemented the order as they thought appropriate. There was no specific protocol as to how to carry such orders out. Notably, no prosecutors were monitoring the execution of the orders for legality.[1160]

690. Other senior leaders confirmed that Khamenei, as the Supreme Leader, was the highest position holder to push and support the security forces' handling of the protests. Hossein Ashtari, commander-in-chief of the Iranian Police, declared that Khamenei's speech in Parliament was critical to moving forward with the "plan" aimed at protecting the "security and protecting the system".[1161] Ashtari further stated that the Supreme Leader had remarked upon his contentment with the performance of the police, IRGC and Basij forces in shutting down the protests.[1162]

691. The Panel also notes the testimony of Witness 256, who claimed to have insider knowledge on security council meetings, that Khamenei never directly issued written orders in order to avoid a written trail, and instead passed on orders in Supreme National Security Council meetings attended by the Interior Minister and Khamenei's representative. The orders were then passed on by the Interior Minister to the provinces.[1163]

692. The Panel considers that there was clear, credible, and reliable evidence that the order to "wrap up" the November 2019 protests and the order permitting the use of lethal force on unarmed

[1157] OTE001_01_eng.
[1158] OS001_03; OS001_04.
[1159] OTE001_01_eng.
[1160] W600, 6 February 2022. See also W185, 10 November 2021.
[1161] OS007_20.
[1162] OS007_20.
[1163] W256, 12 November 2021.

protesters came from Tehran, from "the top" and is highly unlikely to have been issued by any lesser authority. The commanders of the security forces, the Security Councils, the Provincial Councils, and the civilian authorities operating within the governmental structure of Iran, were subordinated to Khamenei and, as the evidence showed, orders routinely flowed down that chain of command.

693. Khamenei's predominant role in deciding how the protesters were to be dealt with continued even after the protests stopped. In response to the report of Admiral Ali Shamkhani, the Secretary of the Supreme Council for National Security, about the policies and procedures of dealing with the cases of those injured and killed in the recent incidents, Khamenei announced his consent to the proposed measures of granting martyr status to those killed and paying blood money to their families, and stressed that "these measures should be carried out immediately, and the suspect individuals affiliated with any political group or party be treated with Islamic affection."[1164] The Panel further accepts the Prosecution's argument that Khamenei's approval of such policies and procedures proposed by the secretary of the Supreme National Security Council on the treatment of the victims' families obstructed the possibility of an independent, transparent and effective investigation at any level into the use of force against civilians and widespread violation of the right to life during the November 2019 protests.[1165]

694. Further, the Supreme Leader's unsubstantiated claim that the protests and violence originated from foreign plots or subterfuge appears to have encouraged, instigated or otherwise facilitated criminal behaviour throughout and after the protests. For example, the evidence suggested that interrogators in the detention centres were "obliged to force prisoners to confess that they were foreign agents; securing any other confession was out of the question."[1166] While this, and similar circumstantial evidence, is not direct evidence of Khamenei passing orders to torture detainees, it is illustrative of the scope of Khamenei's authority, his overwhelming responsibility for the design and implementation of the criminal plan, and his criminal intent in relation to the crimes.

ii) Hassan Rouhani - President of the Islamic Republic of Iran (then President)

695. Hassan Rouhani was the President of Iran at the time of the protests, as well as the Head of the Council of Ministers, to whom the Ministers of Intelligence and the Interior are

[1164] OS001_02.
[1165] See Counsel's Brief on Alleged Perpetrators of Aban 2019 Atrocities, p. 25, referring to OS001_02.
[1166] OTE001_02_eng.

subordinates.[1167] Hassan Rouhani also continues to head the Supreme National Security Council, which devised the policy that effectively treated the deaths as lawful death, as well as prevented proper investigations into the crimes committed and the prosecutions of those responsible.[1168]

696. Though the Panel did not hear evidence of any direct commands or instructions passed by Rouhani to the Iranian security forces to shut down the protests, Rouhani's function, *de jure* and *de facto* authority, and public endorsement of the Iranian Government, their security forces and the judiciary's subsequent targeting and identification of the protesters raises a serious case to answer concerning his design and implementation of the criminal plan to commit crimes against humanity.

697. As the entirety of the evidence strongly suggests, Rouhani's participation, as the head of the Supreme National Security Council, is highly likely to have extended to ordering provincial Security Councils and allied security forces, including the IRGC, the Basij and the police, to use force to shut down protests. These and other orders emanating from the Iranian Government were the driving force behind the excessive force used against the protesters, and the widespread and systematic commission of crimes against humanity.

698. On 18 November 2019, Rouhani indicated his support for the identification, targeting and prosecution of the protesters, stating that "[i]f anybody blocks the roads, our monitoring and surveillance cameras can easily identify the vehicle, its plate number, and the driver. I urge the Judiciary to act according to the law in this regard".[1169] Rouhani further stated, "we [i.e. the Iranian Government] do not allow insecurity in society".[1170]

699. Subsequently, Rouhani, on 16 February 2020, admitted to journalists that he had "ordered to identify the rioters involved in these incidents and distinguish the police, Basij forces and ordinary people from those who attacked the military bases".[1171]

700. As was clear to the Panel, the evidence shows that it is more likely than not that Rouhani significantly contributed to the criminal plan and the crimes and shared the criminal intent with other members of the Iranian Government and the various security forces responsible for the crimes against humanity.

[1167] W Robert Heinsch, STMT, p. 101.
[1168] W Robert Heinsch, STMT, p. 101.
[1169] OS002_6.
[1170] OS002_6.
[1171] OS002_5.

iii) Ali Shamkhani - The secretary of the Supreme National Security Council (SNSC), The Leader of the Islamic Republic of Iran (LIRI)'s representative in SNSC

701. On 21 November 2019, Mahmoud Shamkhani, then member of parliament and a member of Parliament's Internal Affairs Commission, called the protesters "hypocrites, thugs, monarchists and scums" and threatened that "every single rioter, wherever they might be in Iran, will be identified and punished for their acts".[1172]

702. The Panel further accepts Counsel's argument that Shamkhani prevented the transparent, independent and effective investigation into the killing of unarmed protesters through his statements in his official capacity and by proposing a "compensation without investigation policy" for approval to the Supreme Leader, which effectively suppressed any investigation at any level and sought to pay off victims and their families with blood money.[1173]

703. As a result of Shamkhani's policies, the Iranian authorities never conducted any effective investigation into the crimes committed by the security forces during the protests, and not a single individual was ever held accountable for the forces' actions.[1174] Indeed, the countless complaints filed by the victims and their families failed to initiate any real and honest investigation into the circumstances of the protests.[1175]

704. At the very least, the Panel considers that Shamkhani approved of the criminal plan and significantly contributed to it, *inter alia*, through acting to prevent investigation into the lawfulness of the suppression of protests and the crimes committed. The evidence shows that it is more likely than not that he significantly contributed to these crimes, shared the criminal intent with other members of the Iranian Government and the various security forces responsible for the crimes against humanity, and is responsible as a superior for failing to take steps within his authority to punish any of the perpetrators.

iv) Ebrahim Raisi – Head of Judiciary at the time of events (currently President)

705. The Panel has found beyond a reasonable doubt that protesters across Iran were assaulted, unlawfully killed, wrongfully imprisoned, and thereafter tortured to make false confessions admitting to involvement in violence during the protests. Criminal trials then ensued where Prosecutors and Judges coordinated their 'work' to assure that the accused were denied fair

[1172] OS003_09.
[1173] See Counsel's Brief on Alleged Perpetrators of Aban 2019 Atrocities, p. 21, referring to OS001_02.
[1174] See section II.4.7.
[1175] See section II.4.7.

trial rights in order to ensure wrongful convictions and punishment, including imprisonment and/or lashings.[1176]

706. Raisi showed his approval of this criminal plan by announcing that "the individuals who caused insecurity and riot in society will be put on trial".[1177] He repeated Khamenei's narrative that the protesters were "wicked rioters, adversaries and foreign intelligence services".[1178]

707. The Panel notes that Raisi's statements were made on 25 November 2019, a week after the November 2019 protests began and before any investigation or trial had taken place.[1179] The evidence suggests that Raisi, as the head of the judiciary, was playing his part in the criminal plan to deter and silence the protesters, including by refusing to countenance any independent and impartial investigation into the circumstances of the protests and the wrongful actions of the Iranian security forces.

708. In light of the arbitrary and judicially endorsed detentions, unpunished crimes and human rights violations, the Panel concludes that Raisi is highly likely to have significantly contributed to the criminal plan and the crimes, shared the criminal intent for all the crimes and is also responsible as a superior for failing to take steps within his authority to punish any of the perpetrators.

v) Abdolreza Rahmani Fazli - Minister of Interior

709. In an interview on 31 May 2020, Rahmani Fazli admitted that he personally ordered the Ministry of Communication to shut down the internet.[1180] Rahmani Fazli said, "during Aban protests, all American and opposition media including the monarchists, the Mujahedins, and ISIS were training armed combat through the internet. I am criticised for shutting down the internet, but I believe it was necessary because the enemies provided military training through the internet…We were vigilant, and closely monitored all these security threats. The fuel price hike was a pretext to create turmoil in society, otherwise the protests should have happened in much larger scale."[1181]

710. The Panel considers that Rahmani Fazli's statements align with Khamenei's branding of the protesters as a foreign destabilising force and signal his approval and endorsement of the plan and the crimes. They were designed to, and did, facilitate the implementation of the plan to

[1176] See section II.4.3.
[1177] OS004_11.
[1178] OS004_11.
[1179] OS004_11; Counsel's Brief on Alleged Perpetrators of Aban 2019 Atrocities, p. 22.
[1180] OS005_17.
[1181] OS005_17.

suppress the protests through the commission of crimes against humanity.

711. Further, on 17 December 2019, it was reported that Mahmoud Sadeqi, one of the parliamentarians tabled a motion to impeach Rahmani Fazli as the minister of interior owing to his "management of the unrest".[1182] Sadeqi claimed in an interview that in response to the allegations, Rahmani Fazli accepted that his men could shoot protesters in the heads and the legs. Ultimately, they succeeded in ending the protests in 48 hours.[1183]

712. The Panel also notes the statement of Sadeqi, as a parliamentarian and insider, that "the President had assigned the responsibility of implementation of the fuel price hike plan to the National Domestic Security Council", and that, as the head of this council and as the Minister of the Interior minister, Rahmani Fazli was "the main authority responsible for the management of the unrest following this decision".[1184]

713. Member of Parliament Mojtaba Zonnouri also stated, "the Ministry of Internal affairs and the Interior Minister did their utmost to prevent or minimise the problems which could happen after the implementation of the plan. The Interior Minister has acted under the orders of the President and the national security council."[1185] Witness 256 also testified that the Supreme Leader would give orders in the Supreme National Security Council meetings to the Interior Minister, who would then pass on the orders to the Governor Generals of the provinces.[1186]

714. As discussed through this Judgement, the implementation of the criminal plan followed a similar pattern in each locality. Governor Generals of the provinces convened provincial Security Council meetings attended by the security forces and prosecutors of that province, and passed orders to shut down the protests. Indeed, the evidence shows that some of the governor generals subsequently admitted to giving shooting orders in their respective provincial security council meeting.[1187]

715. The Panel therefore considers that it is more likely than not that Rahmani Fazli, as the head of the National Domestic Security Council and the Minister of Interior, by passing orders to the governor generals, who then passed on those orders to the security forces who handled the protests, made key contributions to the criminal plan to commit crimes against humanity

[1182] OS005_15.
[1183] OS005_15.
[1184] OS005_15.
[1185] OS012-31.
[1186] W256, 12 November 2021.
[1187] W256, 12 November 2021; W407, 4 February 2022; W195, 11 November 2021. See also W Shadi Sadr, 12 November 2021; W Shadi Sadr, STMT.

and shared the requisite criminal intent for the crimes.

716. There is also evidence to indicate that the law enforcement officers and security forces under Fazli's command and the local Government under his supervision were not adequately trained on dealing with the protests and completely disregarded the Law of Use of Force 1994 and acted recklessly and with brutality.[1188] Fazli took no actions during or after the crimes to control his subordinates or otherwise prevent or punish their crimes. Therefore, it is also equally likely that Fazli incurred command or superior responsibility for the crimes by his forces for failing to properly control or oversee their actions or punish them thereafter.

vi) Hossein Ashtari - Chief Commander of the Police of the Islamic Republic of Iran (NAJA)

717. Ashtari said he had been involved in meetings regarding the implementation of the fuel price hike plan, and that he had discussed therein that "the police would be ready if the officials reached a consensus to implement the decision."[1189] Ashtari said that "thugs and hooligans attacked and damaged public properties", and that "police were stationed everywhere and along with the IRGC and Basij forces thwarted this conspiracy in 48 hours".[1190] Ashtari discussed "the good performance of the police and security forces" and considered that the riots were contained "perfectly"[1191].

718. The Panel has already heard evidence that the police forces were involved in committing crimes against the unarmed protesters, including assaulting, shooting and killing them, unlawfully arresting and detaining them, and even torturing them in police detention centres.[1192]

719. In the circumstances, the Panel considers that it is more likely than not that Ashtari, as the Chief Commander of the NAJA at the time of the protests, was in charge of the police forces involved in the attacks against the protesters, and either encouraged them to act or approved of their use of excessive force and the commission of various crimes during the protests.

720. At the very least, Ashtari was aware of the widespread and systematic use of unlawful violence and despite this awareness endorsed the excessive use of force by his own subordinates, and declined to allow or facilitate any criminal investigation into the police forces acting under his

[1188] OS005_15.
[1189] OS007-20.
[1190] OS007-20.
[1191] OS007-20.
[1192] See sections II.4.2-II.4.5.

effective command. Accordingly, it is also equally likely that Ashtari is criminally responsible, pursuant to command or superior responsibility, for the commission of crimes by his forces; for failing to properly control or oversee their actions or punish them thereafter.

vii) Hossein Salami - Chief Commander of Islamic Revolutionary Guard Corps (IRGC)

721. In an interview on 25 November 2019, Salami told the press, "I reassure you that our opponents are defeated; you can see failure reflected in the depressed appearance of their leaders. We keep an eye on them everywhere and do not leave any of their mischievous acts unanswered. We will settle accounts with all of them at the time and in the manner we determine", and that "the enemy [had] received the coup de grace".[1193] Salami went on to claim that his forces tolerated the protesters and threatened the regime's opposition stating, "[w]e have so far behaved in a gentle manner, but be watchful because our patience is wearing thin. Respect the Iranian nation and behave yourselves, otherwise you will not be safe anymore anywhere".[1194]

722. The Panel has heard evidence that the IRGC forces did not, in fact, behave in a "gentle manner" with the protesters, and on the contrary were involved in committing crimes against humanity that were largely coordinated by the IRGC.[1195]

723. The IRGC chief also declared that the "ill-fated, Westernised domestic opponents sought to strengthen various hostile movements and activities including the recent riots", and that the IRGC sought to "reinforce 54000 Basij bases throughout the country and make ready to defend against the soft war by accomplishing cultural and social activities, building and attracting audience, and turning Basij into a strong, up to date and attractive organisation for all people especially the youth."[1196]

724. The Panel considers that: Salami's *de jure* role as head of the IRGC, the pivotal and coordinated role the IRGC played in the crimes, and Salami's repeated statements approving of the actions of his forces (and, by extension, the crimes committed by them) provides clear and convincing evidence that Salami was a participant in the criminal plan and shared the criminal intent for the crimes. The evidence also shows that it is also more likely than not that Salami, as Chief Commander of the IRGC at the time of the protests, is criminally responsible pursuant to

[1193] OS008-23.
[1194] OS008-23.
[1195] See sections II.4.2-II.4.5.
[1196] OS008-24.

command or superior responsibility for the commission of crimes by his subordinate forces; for failing to properly control or oversee their actions or punish them thereafter.

viii) Gholamreza Soleimani - Head of the Basij Organisation

725. Soleimani emphasised in a public statement that Basij forces "assisted the police and provided them with the consultative and preventive services", stating, "we supported the Government agencies during the recent unrest and we will do the same in future."[1197] Soleimani further declared that many of the riot inciters had been identified and arrested.[1198]

726. The Panel has found beyond a reasonable doubt that the Basij forces supported the police forces in committing crimes against humanity against the assembled protesters, including beating them up, shooting them, arresting and detaining them, and even torturing them in police detention centres.[1199]

727. The Panel considers that Soleimani's *de jure* role as head of the Basij, the pivotal and coordinated role the Basij played in the crimes, and repeated statements approving of the actions of his forces (and, by extension, the crimes committed by them) provides clear and convincing evidence that Soleimani was a participant in the criminal plan and shared the criminal intent for the crimes Soleimani's statements indicate that Salami, as the head of the Basij forces, was more likely than not a participant in the criminal plan, and commanded his forces to help the police in suppressing the protests.

728. The evidence also shows that it is also more likely than not that Soleimani, as Chief Commander of the Basij at the time of the protests, is criminally responsible pursuant to command or superior responsibility for the commission of crimes by his subordinate forces; for failing to properly control or oversee their actions or punish them thereafter.

ix) Hassan Karami - The Commander of the Special Units of Iran's Police

729. In an interview from 13 May 2020, Hassan Karami, the Commander of the Special Units of Iran's Police, expressly stated that his "special units have had a satisfying performance during the 2017-2018 and 2019-2020 protests".[1200] In another interview on 13 October 2021, Karami stated that his forces "succeeded to contain [the 2019 protests] within two days" across "over 150 points of conflicts in cities such as Tehran, Shiraz and Isfahan".[1201]

[1197] OS011-29.
[1198] OS011-29.
[1199] See sections II.4.2-II.4.3, II.4.5.
[1200] OS013_34.
[1201] OS013_33.

730. The Panel has accepted evidence as establishing beyond a reasonable doubt that the Special Unit forces of Iran's police were indeed supporting the police forces in committing crimes against humanity against the assembled protesters.[1202]

731. The Panel considers that Karami, as *de jure* head of the Special Units, was pivotal to and coordinated the role Special Units played in the crimes, and his repeated statements approving of the actions of his forces (and, by extension, the crimes committed by them) provides clear and convincing evidence that Karami was a participant in the criminal plan and shared the criminal intent for the crimes. Karami's statements indicate that, as the head of the Special Units, he was more likely than not a participant in the criminal plan, and commanded his forces to help the security forces suppress the protests through the crimes against humanity.

732. The evidence also shows that it is also more likely than not that Karami, as Head of the Special Forces at the time of the protests, is criminally responsible pursuant to command or superior responsibility for the commission of crimes by his subordinate forces; for failing to properly control or oversee their actions or punish them thereafter.

x. Habibollah Jan Nesari - The Deputy Commander of the Special Units of Iran's Police

733. Jannesari, in an interview on 26 November 2019, i.e. within days of the protests, admitted that his forces were involved in the suppression of protesters, and lauded their "patience, perfect management and intelligence in dealing with the protesters and riot inciters".[1203] In another interview soon after on 7 December 2019, Jannesari repeated the narrative spun by Khamenei and other high level officials that "the triangle of Israel-Saudi Arabia-Western countries had mobilised their media, intelligence service, and financial resources since a long time ago and were prepared to take advantage of people's protests to further their own interests and harm Iran's Government. However, thanks to the Supreme Leader's intervention and our people's vigilance, their sedition failed."[1204] Jannesari again admitted that the special forces took "prudent measures in dealing with" "rioters and thugs".[1205]

734. Given the timing of these interviews and the involvement of the special forces in the crimes committed during the protests,[1206] the Panel considers that Habibollah Jannesari, as the Deputy Commander of the special unit forces, knew of the criminal plan to violently shut

[1202] See sections II.4.2-II.4.5.
[1203] OS014-36.
[1204] OS14-35.
[1205] OS14-35.
[1206] See sections II.4.2-II.4.5.

down the protests through crimes, and allowed his forces to participate in the plan, and this was a significant contribution to the criminal plan.

735. The Panel considers that Jannesari statements and the action of his forces in committing the crimes against humanity indicate that Jannesari was more likely than not a participant in the criminal plan, commanded his forces in support of the crimes and shared the criminal intent at the core of the plan. It is also equally likely that Jannesari is criminally responsible pursuant to command or superior responsibility for the commission of crimes by his forces; for failing to properly control or oversee their actions or punish them thereafter.

xi. Leila Vaseghi - Governor of Shahr-e-Qods

736. The Panel heard testimony that the erstwhile governor of Qods, Vaseghi, publicly announced that she had given a "Shooting Order" to the representatives of the IRGC, the prosecutors and other officials, authorising the security forces to use firearms against protesters.[1207]

737. The Panel has accepted evidence that establishes beyond a reasonable doubt that the security forces in Qods, including the IRGC, indiscriminately shot at protesters and thereafter sought to suppress any complaints by the families of the victims through threats and other violent conduct.[1208]

738. The Panel considers that the evidence shows that it is more likely than not that Vaseghi was a participant in the criminal plan, and commanded forces under her effective control to use excessive force against the protesters and shared the criminal intent of the perpetrators.

739. It is also equally likely that Vaseghi is criminally responsible pursuant to command or superior responsibility for the commission of crimes by his forces; for failing to properly control or oversee their actions or punish them thereafter.

xii. Abdolkarim Geravand - Governor of the City of Bushehr

740. The Panel heard witness testimony, including from Witness 256, who had insider information regarding provincial security council meetings in Bushehr, that either on 15 or 16 November 2019, that is, immediately after the protests started, Geravand convened an emergency meeting in the provincial Security Council, with relevant security officers of the province present.[1209] According to Witness 256, a decision was made at the meeting to brutally suppress

[1207] W Shadi Sadr, 12 November 2021; W Shadi Sadr, STMT.
[1208] See sections II.4.2.
[1209] W256, STMT; W256, 12 November 2021; W351, STMT.

the protests through the intervention of the anti-riot Special Unit forces.[1210]

741. The witness stated that while the order had come from the Supreme Leader to quickly shut down the protests, the method of doing so was left to the governor general, and that Geravand, the governor of Bushehr, on the recommendation of his advisers, chose the most brutal way of doing so in his province.[1211]

742. The Panel has heard that the security forces in Bushehr were involved in the excessive use of force against protesters, including by using water cannons, tear gas, nightsticks, and firing plastic bullets, as well as in the wrongful arrests of the protesters.[1212]

743. The Panel considers that the evidence shows that it is more likely than not that Geravand was a participant in the criminal plan, commanded forces under his effective control to use excessive force against the protesters, and shared their criminal intent. It is also equally likely that Geravand is criminally responsible pursuant to command or superior responsibility for the commission of crimes by his forces; for failing to properly control or oversee their actions or punish them thereafter.

xiii. Mohammad Mahmoud-Abadi - Governor of Sirjan

744. The Panel heard testimony that the erstwhile governor of Sirjan, Abadi, confirmed in his interview with the State TV (IRIB), that the provincial security council had authorised security forces to shoot at protesters.[1213]

745. The Panel has heard evidence that the security forces in Sirjan had shot at protesters using weapons of war like Kalashnikovs, and had sought to suppress any investigation into the killings during the protests.[1214] The Justice Administration, acting on behalf of the Governorate, had also paid blood money to the families of the victims to suppress any complaints.[1215]

746. The Panel considers that the evidence shows that it is more likely than not that Mahmoud-Abadi was a participant in the criminal plan, commanded forces under his effective control to use excessive force against the protesters to commit crimes against humanity, and shared the criminal intent.

[1210] W256, STMT.
[1211] W256, 12 November 2021.
[1212] W351, STMT; W256, STMT.
[1213] W Shadi Sadr, 12 November 2021; W Shadi Sadr, STMT.
[1214] W031, STMT.
[1215] W031, STMT.

747. It is also equally likely that Mahmoud-Abadi is criminally responsible pursuant to command or superior responsibility for the commission of crimes by his forces; for failing to properly control or oversee their actions or punish them thereafter.

Conclusion

748. The Panel concludes that the entirety of the evidence establishes a strong case to answer that thirteen Iranian Government and security official are responsible for the crimes against humanity that the Panel found established beyond a reasonable doubt. Ali Khamenei, Hassan Rouhani, Ali Shamkhani, Ebrahim Raisi, Abdolreza Rahmani Fazli, Hossein Ashtari, Hossein Salami, Gholamreza Soleimani, Hassan Karami, Habibollah Jan Nesari, Leila Vaseghi, Abdolkarim Geravand and Mohammad Mahmoud-Abadi, acting in concert with a large number of Government and security officials, are more likely than not to have designed and implemented a criminal plan to commit widespread and systematic crimes against humanity against unarmed civilians during and after the November 2019 protests. As set forth in the Recommendations to follow, the Panel asserts that appropriate legal proceedings should be instituted against these individuals, drawing on the conclusions reached here, to determine their accountability and to seek justice for the victims of the crimes against humanity which took place.

749. In the event of findings concerning violations or crimes, the Panel was requested to make recommendations concerning accountability, redress and reparation. The Panel recommends the following.

IV. Recommendations

IV.1 Recommendations to the Islamic Republic of Iran

1) Conduct independent, impartial and transparent investigations, in line with international standards, into the human rights violations and crimes against humanity which occurred in connection with the protests of Aban 2019 and institute proceedings against all those reasonably suspected of human rights violations in the context of these protests, drawing on the conclusions reached by the Tribunal.

2) Institute criminal proceedings against persons reasonably suspected of murder, sexual violence, torture and other cruel, inhuman or degrading treatment or punishment, arbitrary detention, enforced disappearance and persecution, as well as other crimes against humanity.

3) Acknowledge fully its responsibility and liability for the human rights violations and crimes which occurred in connection with the Aban protests, issue a full and frank apology, and ensure appropriate reparation and compensation for victims and their families.

4) Immediately release all those held in arbitrary detention in relation to the Aban protests, and all individuals similarly arrested for the exercise of their rights to freedom of opinion, expression, association and peaceful assembly, including in relation to the most recent protests occurring in response to the death of Mahsa Amini after injuries sustained while in police custody.

5) Immediately reveal the fate and whereabouts of persons who were disappeared as part of the Aban protests.

6) Immediately cease all forms of intimidation, harassment and acts of reprisal against the protesters and bystanders in the Aban protests, and their families and associates, as well as witnesses and civil society actors participating in this Tribunal.

7) Ensure the legal system allows fully for individuals to protest in line with the International Covenant on Civil and Political Rights to which the Islamic Republic of Iran is party, including by reforming laws that limit or deny the rights of freedom of opinion, expression, association, and peaceful assembly.

8) Immediately cease the use of laws and practices which enable State violence, subvert due process and erode human rights, and put in place mechanisms to ensure that violations and crimes such as those outlined in this judgement do not recur.

9) Consult with the families of those who died in the protests, as well as community representatives, on how best to restore dignity to those who died and adopt the necessary measures to do so.

10) Take all reasonable steps to reform Government institutions, policy and practice to provide effective guarantees of non-recurrence, including by reference to any violations or crimes committed during the protests occurring in response to the death of Masha Amini.

IV.2 Recommendations to the international community

11) Urge, and take all necessary steps, to ensure that the Islamic Republic of Iran implements the recommendations made to it in this judgement. Provide any necessary support to enable its implementation of the recommendations.

12) Be reminded of their obligations and competencies to open investigations, including on the basis of universal jurisdiction, to gather information and prosecute those involved in relevant crimes.

13) The United Nations Security Council refer this situation to the International Criminal Court by a resolution of the Council, adopted under Chapter VII of the Charter of the United Nations.

14) States and international bodies with sanctions regimes such as the UN Security Council, the European Union, the United States and the United Kingdom, apply individual targeted sanctions against those responsible for violations and crimes committed in connection with the protests of Aban 2019 in a transparent manner, ensuring that any application of sanctions respect due process in line with international human rights standards and are applied in coordination with other relevant accountability mechanisms, to contribute to accountability for perpetrators and reparations for victims.

V. Separate Opinion of panel member Rohan

1. I agree with the Judgement of the Panel but write separately regarding the discrete finding that the evidence established the crime of persecution beyond a reasonable doubt.[1216]

2. The Majority has found that the people who gathered to protest the rise in fuel prices and to raise a voice against the Iranian regime in general constituted a "political group" because the protests were political in nature and/or were perceived as such by the Iranian Government.[1217] The Majority has concluded that the evidence established beyond a reasonable doubt that the serious crimes committed against the Iranian citizens during the November 2019 protests were committed against them due to their, perceived or actual, collective political identity.[1218]

3. I do not believe the evidence available to the Panel proved beyond a reasonable doubt that the violent suppression of the November 2019 protests constituted persecution of a political group or collectivity as contemplated under international law. I also do not believe the evidence

[1216] Judgement, paras 561-651; 652.
[1217] Judgement, paras 561 et seq.
[1218] Judgement para 652.

presented established the requisite discriminatory intent on the part of the perpetrators as required to find persecution under international law. The evidence did establish, beyond a reasonable doubt, the widespread and systematic commission of all the other crimes against humanity found to be proved in the Judgement.[1219]

The legal standards

4. There is no disagreement on the law which defines the crime of persecution. The disagreement arises from the interpretation of that law as applied to the facts in these proceedings.

5. The evidence established that when the Iranian Government announced the price hike for gas, tens of thousands of citizens, across the country, spontaneously took to the streets in protest. In some cities, citizens blocked the streets with their parked cars. In other places roads were blocked with burning tyres. Protesters also blocked streets by the sheer force of their numbers. The protesters chanted various slogans; some against the gas price hike and some against the Government and/or the clergy.

6. The protests were initially peaceful. In some cities when police and other security forces arrived protesters tried to convince them to join with them in the demonstrations.[1220] In others the presence or actions by security forces resulted in protesters throwing rocks and shouting slogans. As well summarised in the Judgement, security forces ultimately engaged in savage attacks against the citizens of Iran, by shooting and killing hundreds, tear gassing, beating and illegally arresting thousands, and then subjecting those detained by Iranian authorities to physical, psychological and sexual abuse.

7. Virtually every witness who provided evidence about the composition of the crowds of protesters agreed that the protesters were unarmed, and that "everyone" came out for the protests: men, women, the elderly and children. As Witness 5 put it: "One difference in the Aban protests with the others was that all the kids were of the 1380s (2000s). People had come with their children. They came from all classes and age groups."[1221]

8. Based on this evidence, I disagree with the majority's finding that the people in the protests constituted a "political" group or collectivity as that term is used in the law defining persecution. The evidence available to the Panel also does not support a finding, beyond a

[1219] For purposes of this Separate Opinion, and with the exception of the discussion of the crime of persecution, I adopt the summary of the law and facts already contained in the Judgement so there is no need to repeat it here.
[1220] W195, STMT; W503, STMT; W340, STMT [security force member who told his unit to keep things peaceful, no reason to hurt protesters].
[1221] W5, STMT.

reasonable doubt, that the perpetrators had the specific intent to discriminate against the protesters on political grounds as opposed to acting in obedience to the directive from Tehran to "wrap up" the protests by clearing the streets and to do it quickly.

9. Unfortunately, there is no reported case which defines a "political group" or collectivity in the context of spontaneous, nationwide protests such as those which took place in Iran in November 2019. What guidance exists does not support a finding that a large group of people comprised of like-minded citizens may automatically be defined as a "political" group or collectivity, as that term is meant in the law.

10. The Trial Chamber in the *Ongwen* case at the ICC defined the crime of persecution as conduct against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds recognised as impermissible under international law. It defined the term "persecution" as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.[1222] It held that the crime is committed when four material elements are established:

> "The first of these elements is that the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights. . .
>
> "The second and third elements of the crime of persecution are that the perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such, and that such targeting was based on political, racial, national, ethnic, cultural, religious, gender . . . or other grounds that are universally recognised as impermissible under international law.
>
> "In evaluating the alleged status as a protected group, the particular political, social, and cultural context are relevant, as are, in addition to the objective factors relevant to the discriminatory ground alleged, the subjective perception of belonging of both the perpetrator and the victim. . .
>
> "Of relevance to this judgment is discriminatory targeting on "political" grounds. In this regard, the Chamber observes that this includes targeting by reason of political affiliations, whether actual or only perceived by the perpetrator."[1223]

11. In *Ongwen*, the targeted group consisted of people in Northern Uganda housed in certain Government run camps who were perceived by the Lord's Resistance Army to be enemies of

[1222] *Prosecutor v. Ongwen*, ICC-02/04-01/15, Trial Judgement, 4 February 2021 ('*Ongwen*'), paras 2730-2731.
[1223] *Ongwen*, paras 2733-2736.

the LRA because of their support for the Ugandan Government. Ongwen was convicted of a number of crimes against humanity, including persecution on political grounds, based on LRA attacks motivated by that perception, directed against the inhabitants of four such Government camps.

12. In the case before the Tribunal, this kind of distinction does not exist. The attacks unleashed on the civilian population were directed at anyone and everyone. There is no evidence which suggests that the perpetrators had any basis for distinguishing between who was a member or likely member of a political group or collectivity or that the attacks were motivated by any such distinction. There is also significant evidence that the perpetrators did not distinguish between who was participating in the protests and who was not.

13. Persecution as a crime against humanity has a materially distinct element from other crimes against humanity in that it requires proof that an act or omission was committed with the specific intent to discriminate and proof that such acts or omissions in fact discriminate against the targeted group.[1224]

14. The crime of persecution "is a crime requiring a specific intent of the perpetrator. He or she must willingly commit the act or omission and must carry it out with the specific intent to discriminate on racial, religious or political grounds."[1225] It is not sufficient that the perpetrators are aware they are acting in a way that is discriminatory; they must consciously intend to discriminate.[1226] It is this specific discriminatory intent that sets the crime of persecution apart from other crimes against humanity.[1227] As explained in *Kupreskic:*

> "In this context the Trial Chamber wishes to stress that persecution as a crime against humanity is an offence belonging to the same genus as genocide. Both persecution and genocide are crimes perpetrated against persons that belong to a particular group and who are targeted because of such belonging. In both categories what matters is the intent to discriminate: to attack persons on account of their ethnic, racial, or religious characteristics."[1228]

15. In addition, the act or omission must have "discriminatory consequences." Discriminatory intent alone is not sufficient for a conviction for persecution. As the *Prlic* Trial Chamber

[1224] *Prosecutor v. Dordevic*, IT-05-87/1, Appeals Judgement, 27 January 2014, para. 840.
[1225] *Prosecutor v. Naletilic and Martinovic*, IT-98-34-T, Judgement, 31 March 2003, para. 638.
[1226] *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement, 15 March 2002, para. 435.
[1227] *Proescutor v. Kordic and Cerkez*, IT-95-14/2-T, Judgment, 26 February 2001, para. 212.
[1228] *Prosecutor v. Kupreskic et al,* IT-95-16-T, Judgement, 14 January 2000, para. 636

emphasised at the ICTY:

> "The Chamber adopts the clarification provided by the *Krnojelac* and *Vasiljevic* Chambers, namely, that discriminatory intent alone does not suffice, and that the act or omission must have 'discriminatory consequences' in fact and not merely be committed with discriminatory intent."[1229]

16. The Supreme Court Chamber in the *Duch* case at the ECCC, adopted and applied the same standards in reversing the persecution conviction of the accused, Duch, in that case. Duch was in charge of a prison camp established by the Khmer Rouge where individuals opposed to the Khmer Rouge were incarcerated due to that political opposition. Duch oversaw the torture and abuse of all those delivered to his custody by the Khmer Rouge, including the executions of many. As the war went on these detainees began to include people who had been indiscriminately apprehended. They were mistreated and eliminated without any attempt at rational justification on political grounds with no discernible criteria applied to targeting the victims. The Trial Court, in convicting Duch, found that Duch knew that some of the people sent to him were not, in fact, enemies of the Party but that he mistreated them primarily to show his loyalty and efficiency to the Khmer Rouge. That conviction was overturned on appeal. Regarding the intent requirement, the Supreme Court Chamber held:

> "In addition, the Supreme Court Chamber emphasises that the requirement of discrimination in fact is connected to the requirement that the victim actually belong to a sufficiently discernible political, racial or religious group. This latter requirement is articulated in the jurisprudence that accepts the 'discrimination in fact' approach and in the doctrine. It has also been expressly included in the ICC Statute, which defines persecution as an act that is perpetrated against a person belonging to an identifiable group or collectivity.[1230]
>
> "Consequently, the Supreme Court holds that, consistent with the requirement that the persecutory act must discriminate in fact, and that 'a victim is targeted because of the victim's membership in a group defined by the perpetrator on specific grounds, namely on political, racial or religious basis,' the requisite persecutory consequences must occur for the group, in that denying the individual victim's fundamental rights has an impact on the discrimination of the group as a whole. Conversely, where the act or omission undertaken

[1229] *Prosecutor v. Prlic et al*, IT-04-74-T, Trial Judgement, 29 May 2013, para. 73.
[1230] *Prosecutor v. Kaing Guek Eav (alias Duch),* 001/18-07-2007-ECCC/SC, Appeals Judgement, 3 February 2012 ('*Duch*'), para. 274.

with persecutory intent is committed against an individual who does not belong to the targeted group, the consequences of the act 'are real for the victim' in the sense of the denial of the fundamental right, but not discriminatory in fact as is required for persecution."[1231]

17. There is no discriminatory intent when the perpetrator targets victims irrespective of whether they fall under the discriminatory criterion, in other words, where the targeting is indiscriminate."[1232]

18. The evidence presented to the Panel established, beyond a reasonable doubt, the widespread and systematic commission of crimes against humanity against unarmed civilians in November 2019 as set forth in the Judgement of the Panel. Based on the legal standards applicable to the crime of persecution, however, I must conclude that the evidence did not additionally prove, beyond a reasonable doubt, that those crimes included the crime of persecution.

The evidence

19. The evidence before the Panel is undisputed that the Ayatollah issued an order to his subordinates in November 2019 directing that the protests must stop. As one witness described it, the order was to "wrap up" the protests and to do it quickly.[1233] There was also some evidence that a response to any potential protests when the gas price hike was announced was considered ahead of time. Witness 600, a senior officer in the Tehran IRGC, stated that he was told a week before the announcement of the increase in gas price, to "get ready." This announcement, which came from "the top" surprised his unit. There was no time for appropriate planning for any potential negative reaction to the gas price hike, which is what, in his view, lead in part to the brutality, arrests and killings in the subsequent protests.[1234]

20. Witnesses who gave evidence to the Panel were also in agreement that the protests were initially peaceful and allowed to go forward; a circumstance which tends to undermine a finding that the violent crimes which took place later were motivated by the specific intent to discriminate against protesters on political grounds as opposed to the desire by State

[1231] *Duch*, para. 276.
[1232] *Duch*, para. 277.
[1233] W601, STMT; and see W458, STMT.
[1234] W600, STMT. There was also evidence that the security forces included "amateur untrained people brought in for purposes of suppressing people" [W99, STMT], including young, untrained Basij forces [W195, STMT]. Basij forces included individuals as young as 10 to 12 years old [W453, STMT]. Witness 600 described the Basij, which were deployed across the country in response to the protests, as "trigger happy" poorly trained young people who did not care who they killed: W600, STMT.

authorities to return civil order to the streets.

21. Witness 12, from Behbahan province, stated, for example, that the police tried to pacify the situation and told protesters to go home as they wanted to resolve the situation without violence.[1235] Witness 220 and Witness 418, a police officer, said that shots were fired into the air in an effort to disperse people so they would leave the streets.[1236] Witness 340, a member of the military, kept things peaceful with the crowds; he told his men not to hurt people.[1237] Witnesses 299 and 235 both stated that there were loudspeakers on during protests constantly telling people to disperse.[1238] Witness 423 stated that security forces told people "not to stand in the streets" and to disperse.[1239] Witness 521 stated that security forces were intimidating protesters and did so in order to get people to leave the streets.[1240] Likewise Witness 182 stated that tear gas was fired as a means to disperse the people in the streets.[1241] Witness 287 agreed, stating that the people assembled in the streets were told to disperse but they refused to go. He heard a security force officer say that if the people would not go home, they would be dispersed by any means.[1242] Witness 453 testified that people were beaten in the streets "in order to disperse them" when they refused to leave.[1243]

22. Iranian citizens have the constitutional right to peacefully protest. The actions of the security forces, which were apparently done in violation of that right, nonetheless do not reflect the specific intent to discriminate against protesters based on their political beliefs. They constitute well-known strategies by State authorities, rightfully or wrongfully invoked, to regain civil control of the public streets.

23. The subsequent violence imposed on the citizens of Iran was also indiscriminate and random, strongly suggesting that the perpetrators were not motivated by the specific intent to discriminate due to protesters political views or affiliations, but were acting instead as perpetrators of a State sponsored crack-down against anyone in the streets given Tehran had ordered the streets to be cleared.

24. The evidence reflects that beatings, arrests, tear gassing and murder were not limited to individuals engaged in the protests. Such crimes were committed against anyone who

[1235] W12, STMT.
[1236] W220, STMT; W418, STMT.
[1237] W340, STMT.
[1238] W299, STMT; W235, STMT.
[1239] W423, STMT.
[1240] W521, STMT.
[1241] W182, STMT.
[1242] W287, STMT.
[1243] W453, STMT.

happened to be in the street, regardless of whether they were participating in the protests.[1244] They were committed, in fact, against people who were not in the street at all, but in their shops and homes, even children in school.[1245]

25. The *Prlic* Trial Chamber at the ICTY, in describing the *actus reas* of the crime of persecution, noted that there can be discrimination in fact even if the victim is not a member of the group discriminated against and is targeted because the perpetrator mistakenly identifies them with the group.[1246]

26. That was not the case here. The frequency with which individuals not involved in the protests were beaten, shot, and arrested undermines a finding that such people were targeted only by mistake or were mistakenly viewed as participating in the protests, when they were not. It instead reflects that the attacks by security forces were indiscriminate and wanton; not intended to discriminate against a political group or collectivity but as an illegal exercise of State authority.

27. Witness 179, the owner of a kebab shop located near the police station, was on a motorbike waiting for a stop light to change when he was shot in the neck. He was not part of the protests.[1247] Witness 12 testified that in Behbahan province security forces raided peoples' homes and took secondary school children from their classes. There was no evidence security forces had information on the political views of the teenagers taken from their school.[1248] Witness 338's brother was shot while getting into his car which was parked in front of a grocery store. His brother had just emerged from the store after shopping there and was not part of the protests.[1249] Witness 426 from Marivan, stated his nephew was shot in a station where he had gone to get his parked car. He was on his way to visit a friend and was not part of the protests.[1250] Witness 260 stated that security forces entered a barbershop and then brutally beat a man there who did not have an ID card.[1251] Witness 220 watched as a woman, who ran out of a building to go after a young child, was shot. This woman was not in the protests.[1252] Witness 11 saw a woman out shopping, who was not in the protests, beaten by security forces.

[1244] See W86, 4 February 2022 [testifying that security forces were killing people in the streets irrespective of whether they were participating in the protests or not].
[1245] W Raha Bahreini, 11 November 2021.
[1246] *Prlic,* para. 73.
[1247] W179, STMT.
[1248] W12, STMT.
[1249] W338, STMT.
[1250] W426, STMT.
[1251] W260, STMT.
[1252] W220, STMT.

An elderly man, who was on the street but not involved in the protests was also beaten.[1253] In Sanandaj, province shop keepers standing in front of their shops were targeted and beaten. One shopkeeper was shot as he was engaged in closing up his shop to go home. Security forces also raided shops and arcades, beating the shopkeepers there. They fired tear gas into homes, yards, and dining rooms.[1254] Witness 235 also reported that houses were randomly tear gassed, resulting in children and elderly persons inside being put in danger of suffocation.[1255]

28. Witness 225 stated that "no mercy" was shown to anyone including the young, the old, the elderly, women and children. He saw an 18-year-old boy on his way home from shopping being beaten.[1256] Witness 422 saw a mother, walking with her two children, beaten and arrested. A second female pedestrian, also not a protester, was shot.[1257] Witness 499 saw security forces beating people in cars even though they were not involved in the protests.[1258]

29. Security forces fired "recklessly" at everyone. Witness 312 saw a 12-year-old child and a 60-year-old senior citizen shot by security forces.[1259] Witness 501's sister was shot as she came out of a coffee house. She was not in the protests.[1260] In Mahshahr, security forces fired on people hiding in reed beds. No one yet knows how many people were killed in the reed beds as a result. Bullets passing through the reed beds were directed at homes located nearby killing women, children and the elderly as they were hit in their homes and yards. None of these people were in the protests.[1261] Witness 80's son was shot and killed while he was on his way home. He did not participate in the protests.[1262] Witness 32's brother was shot and killed while he was standing in an alleyway; not participating in the protests.[1263]

30. According to Witness 600, who had responsibility to carry out the Supreme Leader's commands, and was Executive Director of the Supreme Leader's office, the order to shoot was not limited in any fashion. It was an order to "shoot anyone you see on the street, in order to quell this unrest, do shoot anyone at will."[1264]

31. Witness 299 stated that people were being arrested "at random." He saw three children

[1253] W11, STMT.
[1254] W125, STMT.
[1255] W235, STMT.
[1256] W225, STMT.
[1257] W422, STMT.
[1258] W499, STMT.
[1259] W312, STMT.
[1260] W501, STMT.
[1261] W190, STMT.
[1262] W80, STMT.
[1263] W32, STMT.
[1264] W600, 6 February 2022.

arrested after they came out of their school, saw the protests and stopped to take pictures of them. They were not in the protests. A father out shopping with his 4-year-old daughter was arrested as well.[1265] They were not in the protests. Security forces fired tear gas into homes. When the inhabitants emerged, they were told they would be arrested. They were not in the protests.

32. Security forces also raided shops, some in what can be reasonably construed as an attempt to cover up the violence. According to Witness 235:

> "They had raided the shops at night and had obtained their cameras by threat and intimidation. I saw myself that they descended upon shops, removed the films, and confiscated the cameras and its films.
>
> "They would raid the shops and would throw some (shopkeepers) in their vehicles and take them away.
>
> "They would throw the shopkeepers in their vehicles in order to create fear and intimidation. They would arrest people in every neighborhood and would take them away."[1266]

33. There was no suggestion that these arrested shopkeepers were part of the protests or that the cameras in the shops recording activities in the streets were in any way related to or belonged to any political group or collectivity. It appears instead that the seizure of film of the protests was an ongoing focus of security forces who needed to destroy evidence of the widespread crimes being committed in the streets. Witness 260 stated that cameras were taken from anyone who was filming.[1267] Witness 300 was arrested at the courthouse because he had been filming and taking pictures of the protests. Two of his colleagues who had received copies of his photographs were subsequently arrested and disappeared.[1268]

34. Raids on private homes occurred in the day and the night without legal warrants.[1269] This kind of unchecked illegality was the result of the manner in which the order to wrap up the protests was implemented by local authorities. According to Witness 407: "[b]asically orders were taken from the security council, were transferred to them [local authorities] and they willfully did

[1265] W299, STMT.
[1266] W235, STMT.
[1267] W260, STMT.
[1268] W300, STMT.
[1269] W362, STMT; W436, STMT.

whatever they wanted to do, without any supervision whatsoever."[1270]

35. Witness 300 saw a group of people who were not participating in the protests arrested and beaten for no reason. They had just been walking by the protest area.[1271] As Witness 287 observed: "They showed no mercy to anyone. They would hit anyone, from an old man to a child, who was in front of them. It didn't matter for them whether someone had done something wrong or not. They fired tear gas directly on the bodies of children."[1272] Witness 227 reported the same thing: "They would beat up anyone who they got hold of. They would seize anyone who was passing by. I myself was a passer-by; I had nothing to do with them. I only wanted to get out and watch them. But they beat up anyone they got hold of."[1273]

36. The evidence, in sum, reflects that security forces arrested and shot children, arrested and shot the elderly, arrested people inside shops and homes, tear gassed shops and homes, and arrested and shot people who were present on the street but clearly not involved in the protests. These were not isolated incidents. The evidence available to the Panel, much of which is summarised in the Judgement, is replete with them.

37. Statements reportedly made by various Iranian authorities after the protests were suppressed, summarised in the Judgement, also suggest that those who planned and approved of that violent suppression did not do it because of the protesters' objections to the gas hikes or other political attitudes; they engaged in that violence to warn against any demonstrations in the future, regardless of the underlying cause.

38. One member of Parliament, Mahmoud Shamkhani, characterised the protesters as "hypocrites, thugs, monarchists and scums" in a statement he made on 21 November 2019. He promised that "every single rioter, wherever they might be in Iran, will be identified and punished for their acts."[1274] Ebrahim Raisi, then Head of the Judiciary, identified them as "the individuals who caused insecurity and riot in society".[1275] Mr. Khamenei referred to them, after the protests, as "wicked rioters, adversaries and foreign intelligence services."[1276] Habibollah Jannesari, speaking in December of 2019 stated "the triangle of Israel-Saudi Arabia-Western countries had mobilised their media, intelligence service and financial resources since a long time ago and were prepared to take advantage of people's protests to further their own interests

[1270] W407, STMT.
[1271] W300, STMT. See also W521, STMT [people on street arrested for no reason].
[1272] W287, STMT.
[1273] W227, STMT.
[1274] Judgment, para. 701.
[1275] Judgement, para. 706.
[1276] Judgement, para. 688.

and harm Iran's Government. He referred to the protesters as "rioters and thugs."[1277]

39. Whatever these statements reveal about the Government's perception of the protesters and other people in the streets in November 2019, they do not indicate that the violence visited upon them was done with the specific intent to discriminate due to the protesters' political views. Indeed, the views expressed identified the protesters as "thugs and wicked rioters" or "foreign intelligence services."

40. There is no question, based on the evidence before the Panel, that Iranian citizens of all ages and walks of life were viciously victimised by the attacks from security forces during the course of the November 2019 protests. I am compelled to conclude, however, based on the available evidence, that the citizens victimised by the security forces were not targeted with the specific intent to discriminate against them because of their affiliation with a political group or collectivity. They were targeted as part of a State reign of terror perpetrated by a Government at war with its own citizenry seeking to maintain its authority by any means necessary.

Crimes committed against detainees

41. The Panel was presented with extensive credible and reliable evidence that individuals detained and arrested during the course of the November 2019 protests were brutally treated while in the custody of security forces. The Judgement contains an extensive summary and discussion of that evidence, which is adopted here, as are the findings that those crimes constituted crimes against humanity and were proved beyond a reasonable doubt.

42. As with the security forces attack against the people in the streets, the question arises as to whether these crimes constituted persecution of these detainees, particularly since there is evidence that protesters were held in detention facilities separate from the established prison and/or detention facilities, were subjected to torture and cruel and inhumane treatment as a means to extract confessions from them, were accused of working with various foreign Governments, and were often harassed and mistreated even after their release, as were their families.

43. As discussed earlier, the fact that crimes against humanity were committed against the people detained during the course of the protests does not, in and of itself, establish the additional crime of persecution. A finding of persecution requires proof that an act or omission – in this case the acts of murder, torture, sexual assault and rape, physical assault and enforced

[1277] Judgement, para. 733.

disappearance – were committed with the specific intent to discriminate.[1278] It also requires proof of the requisite persecutory consequences for the group; that is, that denying the individual victim's fundamental rights had an impact on the discrimination of the group as a whole.[1279]

44. The *Duch* case is instructive on this point. The Supreme Court Chamber in *Duch* found that as the revolution wore on in Cambodia, and keeping in mind the discriminatory policy of the Khmer Rouge to target those it perceived to be its enemies, "individuals were indiscriminately apprehended, mistreated and eliminated without any attempt at rational or coherent justification on political grounds, in actions that were no longer persecution but constituted a reign of terror where no discernible criteria applied to targeting the victims."[1280]

45. The Court found that Duch knew that not all those held in prison were in fact enemies of the Party. Nonetheless, Duch continued to mistreat them and to provide the names of those detained to his superiors "whom he well understood would then inevitably be considered as traitors and political enemies."[1281] It concluded:

> "It follows that the Accused, in his criminal activity, consciously mistreated persons who did not fall under any persecutory category and did so, not in order to discriminate against political enemies, but to demonstrate his loyalty and efficiency to the Party. Absent any general criteria for targeting these victims, atrocities committed against them neither discriminate in fact nor originate from a discriminatory, persecutory intent."[1282]

46. In the case before the Panel, there is no question that people who were not part of the protests were detained and victimised as well as people who were. As with the crowds on the street, the people detained came from all ages and walks of life. Witness 84, for example, saw a group of boys in detention who had been tortured; some set on fire.[1283] Witness 190 saw the bodies of several women, lying dead in a hallway in detention, most bearing signs of having been tortured.[1284] A number of witnesses saw young girls and boys in detention. Witness 300 was arrested and abused because he had been filming the protests. Some people were detained for lengthy periods of time; some were not. Some were charged with crimes and later put on trial; some were not. These examples and more are contained in the evidence already summarised

[1278] *Dordevic*, para. 840.
[1279] *Duch*, para. 274.
[1280] *Duch*, para. 283.
[1281] *Ibid.*
[1282] *Ibid.*
[1283] W84, STMT.
[1284] W190, STMT.

in the Judgement. In the opinion of expert Robert Heinsch over 7,000 people were arrested countrywide. The treatment and fate of the majority of these detainees is simply unknown.

47. Based on the evidence available to the Panel, I am compelled to conclude that it is not possible to find, beyond a reasonable doubt, that the security forces who victimised people detained during the November 2019 protests, did so with the specific intent to discriminate against them due to their status as a member of a political group or collectivity. There are other reasonable inferences that other motivations were at work.

48. Those inferences include the need to cover up or try to cover up the violent excesses of the security forces by coercing false confessions to burning banks and gas stations as well as other crimes.

49. Witness 607 stated regarding his treatment after his arrest, for example, that he was told to sit down "and tell me what you did and why you disturbed and insulted the leader and set the bank on fire."[1285] On the third day of his interrogation in detention, he was told:

> "You must say that you set banks on fire and acted against the regime and national security, that you worked with this and that group and that you're connected to enemy TV stations. . . If you confess, I will release you, I promise."[1286]

50. Another inference is that members of the military and security forces acted according to the actual or perceived orders from Tehran to demonstrate their unquestioning loyalty to the regime by explicitly following those orders. As Witness 600 explained:

> "[T]he Supreme Leader's office had said that you should come and wrap it up. Wrap it up at whatever price, at any price. So that was an order to the military and the military knew what it meant. When they say wrap it up, they know exactly what it meant. It means that if you need to kill everyone, it wouldn't matter. There would be no questioning. If you even killed all the people. We knew the meaning as military personnel what he meant and exactly that was meant. When you put together the testimonies of other witnesses, you will see that from the same night, the harsh encounter started and the violent and brutal encounters against the protesters started from the same night when that order was issued."[1287]

51. The Judgment recommends, *inter alia*, that the U.N. Security Council refer this case to the

[1285] W607, STMT.
[1286] W607, STMT.
[1287] W600, 6 February 2022.

International Criminal Court. It also calls upon the Islamic Republic to conduct an independent, transparent and impartial investigation of the human rights violations and crimes against humanity which occurred in connection with the November 2019 protests.

52. Such investigations are necessary, as discussed in the Judgement, to resolve issues relating to the individual liability of the persons named as accused in these proceedings. They are also necessary, in my view, to gather what additional evidence is available to determine whether the security forces, in engaging in crimes against humanity against those detained by Iranian authorities, did so with the specific intent to discriminate against them on political grounds. The evidence available to the Panel in these proceedings did not, in my view, establish such intent beyond a reasonable doubt.