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Iran Press Watch

Documenting the Persecution of the Baha'i Community in Iran

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Irani Irony

February 28th, 2009

International War Crimes vis-a-vis Internal Peace Crimes

By Dr. Christopher Buck

Editor's Note: The following essay is an invited editorial and *Iran Press Watch* is deeply grateful to Dr. Buck for this remarkably brilliant piece.

On Sunday, February 22, 2009, Iranian President Mahmoud Ahmadinejad presented a bill to the Majlis (Iranian Parliament) to grant the Iranian Judiciary power to invest special courts in Tehran with jurisdiction to prosecute individuals charged with committing war crimes and crimes against humanity, especially against Muslims, anywhere in the world: http://tehrantimes.com/index_View.asp?code=189890.



If the Majlis enacts, the Guardian Council endorses, and the Iranian regime enables this new bill, the newly created war crimes courts will enforce a law that was previously promulgated in January—which commands, in substantive part:

Massacring people or *depriving them of basic necessities* and blocking the supply of humanitarian assistance *with the aim of exterminating all or part of a population because they practice a particular religion* or inhabit a particular region *are all considered genocide* and those convicted of such offenses will be sentenced to death or receive a prison sentence ranging from 15 years to life.

Ayatollah Seyed Mahmoud Hashemi Shahroudi, Iran's judiciary chief, tasked the Islamic Republic's general prosecutor to commence lawsuits filed by more than 5,700 Iranian lawyers against Israeli leaders for allegedly committing war crimes in the Gaza Strip. Taking the lead in prosecuting Israel rather than individual Israelis, Tehran, in early March, will host a conference of prosecutors from across the Islamic world to consult on how best to effectively seek judicial redress for the putative "genocide" in Gaza Strip.

Jurisdictional issues apart, a grim irony obtains here: If depriving persons of the bare necessities of life—with intent to exterminate a population because it practices a disfavored religion—is tantamount to genocide, then what Iran proposes to prosecute *internationally* should first be prosecuted *internally*.

The reason is simple: Iran, for the past 30 years, has prosecuted a systematic campaign to deny Baha'is rights in what independent scholar, Dr. Moojan Momen, has termed, "suspended genocide." See Moojan Momen, "The Babi and Baha'i community of Iran: a case of 'suspended genocide'?" *Journal of Genocide Research* 7.2 (June 2005): 221–241.

If Dr. Momen's thesis has merit, which I believe it does, then, as Iran looks *outside* its borders, Iran should also consider the "suspended genocide" taking place *inside* its borders—in what may be thought of as ongoing "endo-genocide" concomitant with the "exo-genocide" allegedly being perpetrated against Muslims abroad.

While Iran wishes to prosecute the alleged perpetrators of exo-genocide, it continues to

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perpetrate its own “endo-genocide” by prosecuting its systematic persecution *against its own citizens*, the Baha’is.

Under Iran’s juridical standard setting forth the requisite elements of the “war crime” of “genocide,” those responsible in the government of Iran should arguably prosecute themselves for their own role in the “peace crime” of “suspended genocide” or “endo-genocide.”

Prosecutors can make out a *prima facie* case by matching the facts with the essential elements of a viable claim of internal genocide, to wit: the accused allegedly have engaged in (1) the act of “depriving” the Baha’is “of basic necessities”; (2) “with the aim of exterminating all or part of a population”; (3) “because they practice a particular religion”—the Baha’i Faith.

Presumably, *state immunity* permits state actors to persecute Baha’i citizens and leaders *with impunity*, even though, under Iranian law, these same actors could arguably be charged with the crime of genocide. The following objection will be raised: How can Iranian state actors be charged with genocide, when their actions do not constitute “war crimes? Iran, after all, is not in a state of war.

Although Iran is technically in a state of peace, the Republic’s actions, taken together, represent an internal campaign against the Iranian Baha’i community. True, this is not an overt war. But, to the extent that Iran is executing a systematic campaign to eradicate the Baha’i community—or at least to make life miserable for them—such a campaign may be analyzed as a *covert* war. This covert war is an open secret.

Here, *context* (of “depriving” the Baha’is “of basic necessities”) and *pretext* (“because they practice a particular religion”—the Baha’i Faith) combust with element #2, which is the *mens rea*, the criminal mind, the culpable intent.

If prosecuted for its own persecution of the Baha’is, those in the Iranian regime “convicted of such offenses” should, *under their own proposed penalties*, be “sentenced to death or receive a prison sentence ranging from 15 years to life.”

If consistency is a criterion of credibility, then this proposed system of justice is incredible. How can a government prosecute “international war crimes” while perpetrating what may be characterized as “internal peace crimes” or what alternatively—and perhaps more accurately— may be described as “war crimes” in the course of a *covert war* against the Baha’is? This is a *non sequitur*.

International law is informed by a set of universal norms. These norms are transnational, that is, beyond the state, and are constituted in the United Nations and emerging regional human rights systems. By setting up separate Islamic courts to do the job of the International Court of Justice in The Hague, however, Iran, seeks to impose its own code of retrograde and communalistic traditionalism in the name of justice.

The International Covenant on Civil and Political Rights, which was adopted and opened for signature, ratification, and accession in December 1966, was ratified by Iran in June 1975. As a signatory state, Iran entered the Covenant into force in March 1976. While the Iranian government, under the Shah, was subsequently overthrown in the Islamic Revolution of 1979, at no time has the Islamic Republic of Iran sought to revoke its ratification of the treaty. Nor has Iran promulgated any official declarations or expressed any reservations about any of the Covenant’s clauses. Thus, as the signatory’s successor state, the Islamic Republic of Iran remains fully bound by the terms of the International Covenant on Civil and Political Rights, which protects, *inter alia*, freedom of religion.

In contrast, Article 13 of the Constitution of the Islamic Republic of Iran recognizes Zoroastrians, Jews, and Christians as the only legally “recognized religious minorities” and, as such, these are the only religious minorities who “are free to perform their religious rites and ceremonies,” “within the limits of the law.” By specifying that Zoroastrians, Jews, and Christians are the only protected people, people from other faiths

are, both in principle and in practice, without constitutionally mandated protections.

This is particularly true in the case of the Baha'is, Iran's largest non-Muslim religious minority. The naked truth is that Baha'is are outside the penumbra of constitutional protections and rights. Not only are the Baha'is not "free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and *religious education*," they are not free even to pursue *university education*.

Article 14 purportedly protects the human rights of non-Muslims who do not engage in "conspiracy or activity against Islam and the Islamic Republic of Iran." In principle, non-Muslims are entitled to be treated in conformity with the canons of Islamic justice. But the Islamic regime can easily circumvent Article 14 by declaring that Baha'is have engaged in "conspiracy or activity against Islam and the Islamic Republic of Iran." By invoking this exception to Article 14, Baha'is may thereby be stripped of their human rights.

This twisted logic helps explain recent events. On February 11, 2009, the deputy prosecutor-general of Tehran announced that the Revolutionary Court trial of seven Baha'i leaders was imminent.

The charges against the seven members of a national Baha'i coordinating committee—who were arrested in March and May of 2008 and have been held in Tehran's Evin Prison—are pretextual. They are transparently actuated by religious hatred, pure and simple. Baha'is are ideologically despised—not because they are *anti-Islamic*—but because they are *post-Islamic*.

While the International Covenant on Civil and Political Rights protects freedom of religion (without any stated exception), the Constitution of the Islamic Republic of Iran protects freedom of religion only if the religion in question is a recognized religion. By design, under the council of 75 experts who originally drafted the document, the Constitution of the Islamic Republic of Iran fails to enumerate the Baha'i religion. To make matters worse, the human rights provision of the same Constitution provides for the suspension of constitutional protections under the anti-Islam/anti-Islamic Republic conspiracy/activities exception.

Thus there is a clear conflict between the Constitution and the Covenant. With respect to international law, those powerful Iranian clerics who sanction state action against the Baha'is are Covenant-breakers—violating the very Covenant to which Iran is a signatory. (For the preceding analysis, I relied heavily on Jennifer F. Cohen, "Islamic Law in Iran: Can It Protect the International Legal Right of Freedom of Religion and Belief?" *Chicago Journal of International Law* 9 (Summer 2008): 247–274.)

Ironically, Baha'is are strong and vocal supporters of international law.

Baha'is champion peace among all nations, religions and races. Baha'is are strong advocates of interfaith ecumenism and in what scholars call "transconfessional affinity"—and would be the first to defend the rights of Muslims wherever they exist as religious minorities.

Iran wants to prosecute Israel for genocide, yet President Ahmadinejad has consistently denied the genocide called the Holocaust. This retrospective negationism is complemented by a proscriptive negationism. While Iran wants to prosecute Israel for genocide, President Ahmadinejad turns a blind eye to the endemic and pandemic genocide of the Baha'i minority under his watch, if not under his auspices.

This is the Irani irony.

Persian translation: [Irani Irony](#)

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Omar Khan | February 28th, 2009 - 11:58 pm

Unfortunately as far as Ahmadinejad and his boss Khamanei are concerned, they are above all human made domestic and international laws. Khamanei considers himself to be “infallible.” He is Ayatollah (the word of God) and Ahmadinejad is here to cause chaos and bloodshed in the world so his 12 imam can come and kill ALL the infidels including two billion+ followers of Buddha and Krishna in countries like China, Japan and India (Iran’s main trading partners) as well as one billion+ Sunni Muslims, one billion “pagans”, one billion+ “non-Armanian Christians” and two billion+ Protestants and Evangelicals and Jews and various other religions in Africa, South America, Asia, Russia and other parts of the planet that are not recognized as “protected” under Islamic Republic’s constitution.

As you can see Mollahs have given the word Shar (evil) in Sharia a whole new meaning and yet they want to prosecute others for “genocide”. They don’t even know what that word means.

Isaac | March 1st, 2009 - 3:48 am

Omar Khan,
Imagine what the Koran would have looked like if it was the Shiias who had written it instead of the Sunnis.
Isaac

Omar Khan | March 1st, 2009 - 5:00 am

Good grief, they would have altered the Word of God to make it look like their constitution. And we all would have been jailed and shot like they do to Bahais, Suffis and others. No Cricket either.

I would rather live under the Taliban than Mollahs. At least with Taliban you know where you stand.

WorldCitizen | March 1st, 2009 - 11:50 am

Very nice article. In fact, this is not a true Islamic government that has been established but a sort of so-called Islamic sovereignty. In the name of Islam, they are committing displeasing acts against the Bahais and any other groups that have norms and perspectives, values, and thought patterns different from those of themselves. The day has come that every human-being is capable of standing on one’s own feet and independently understanding the truth without the aid of clergies. It is time for the independence of thinking and reasoning, indeed, along with consultation with others.

David | March 1st, 2009 - 4:14 pm

A brilliant article indeed. I wonder, however, if it is correct to characterize Dr. Moojan Momen as an “independent scholar” when he is a well-known member of the Baha’i community in the UK.

Ahang | March 1st, 2009 - 4:23 pm

Dear David,

The term “independent scholar” refers to a scholar who is not affiliated with an academic institution. For that reason, Dr. Buck himself is an independent scholar, as I am. Regards, Ahang.

Terry | March 1st, 2009 - 7:06 pm

the ultimate irony is that they [the Iranian government] are saving Islam by destroying Islam

Ali | March 1st, 2009 - 8:17 pm

Before these Mollahs came to power, Islam had a meaning and value. After these Mollahs came to power, with their own actions, they detonated a nuclear bomb under Islam. Now there is nothing left of Islam in Iran except a name, a few mosques, a few Mollahs and a few thousand thugs. No one in Iran believes Islam can solve our problems or lead us to any where good. If it did, believe me Mollahs would have done it by now. Their only solution is to kill people and now turn our universities into cemeteries by burrying Mollazadehs in them and kill you Bahais and other minorities in Iran. After these, who knows what they'll come up with to stay on power. But whatever it is, it's not going to amount to much. No one in Iran wants the Mollahs any more. People have already begun writing the Mollahs out of their memories like a bad theater and everyone now is hungry for new ideas to save us from this horrible horrible nightmare the Mollahs had taken the country through in the past 30 years. That's why they are afraid and are killing people. But they can't kill millions of people. It is over for them and they know it too. It's just a matter of time before their last bip bip becomes biiip.

Soheil | March 1st, 2009 - 11:09 pm

Ali Agha,
Amir Kabir ordered the execution of the Bab. Soon thereafter, NasiroldinShah Qajar ordered Amir Kabir killed. Soon thereafter, Mirza Kanani killed NasiroldinShah. Soon thereafter others followed in their foot steps killing each other untill now that as you said, Mollahs are turning Amir Kabir University into a cemetery. Looks like we've gone a full circle. Perhaps things will calm down, Mollahs will realize their mistakes and prescribe the complete implementation of the Bill of Rights of Cyrus (Korosh Kabir) the Great in Iran and end this cycle of violence.

Everything Iran needs to start the process of healing itself is in there. From freedom of religion to equality and freedom of speech to justice. Hopefully before Mollahs go from biip bip biip bip biip biiiip bip bip biiiip biip bip biiiip to a sustained biiip, as you said, they'll use Cyrus' perscription that had made Persia to be the envy of the world and reserve a name for themselves among the people who value what Persia and Iran truly stand for. Marde nekonam namirad hargrz. Mordeh an hast keh namash beh nikoey nabarand.

Mark Obenauer | March 2nd, 2009 - 4:00 am

I don't know too much about international law, but could high ranking Iranian officials be summoned to the World Court for genocide? Like what happened to Serbia in the aftermath of what happened in Bosnia? Has what is happening in Iran to religious minorities– Christians, Sufis, dissident Itha-Ashariyyah, Baluchi Sunnis, Ismailis, Zoroastrians, Jews, and Bahai's — been taken before the World Court? Iranian officials can brush it off the pressure, but it doesn't make it any easier for them in the court of international opinion.

David | March 2nd, 2009 - 5:33 am

Thanks, Ahang, for the clarification.

David