

EXECUTIVE SUMMARY

# SUBMISSION TO THE INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE ISLAMIC REPUBLIC OF IRAN ON THE CRIME AGAINST HUMANITY OF PERSECUTION ON POLITICAL AND GENDER GROUNDS

DECEMBER 2023

HUMAN RIGHTS ACTIVISTS IN IRAN

# Introduction

On December 8, 2023 Human Rights Activists (HRA) with the legal support of Uprights,  filed a joint 60 page submission to the United Nations Fact-Finding Mission on the Islamic Republic of Iran (FFMI). The submission argues that the facts provided to the FFMI by HRA and two partner organisations should lead the FFMI to conclude that crimes against humanity, and in particular persecution on political and gender grounds, have taken place in the Islamic Republic of Iran since at least 16 September 2022.

# Methodology

This submission relies on information collected by HRA and two of HRA trusted partner organisations: Kurdpa and Haalvsh. The cases presented herein, which were collected by the HRA and the partner organisations, have been verified following each organisation's methodology. The submission is also based on information and analysis compiled from publicly available sources, including UN agencies, states, civil society organisations and the media where HRA was able to independently verify the information. The full submission has not been made available to the public.

# EXECUTIVE SUMMARY

1.In September 2022, the death of Mahsa (Zhina) Amini in police custody – following her arrest for wearing her hijab "improperly" – led to a massive popular uprising against the government of the Islamic Republic of Iran (Iran). This uprising was repressed with violence by the Iranian security apparatus, resulting in thousands of arrests and hundreds of people killed and injured. In light of the call for submission published by the Independent International Fact-Finding Mission on the Islamic Republic of Iran (FFMI), Human Rights Activists in Iran (HRA – the undersigned), with the legal support of UpRights, presents a submission with the purpose of bringing information to the FFMI's attention and to provide a legal analysis of the facts presented. The submission argues that the information contained therein supports the conclusion that there are reasonable grounds to believe that crimes against humanity, and in particular persecution on political and gender grounds, have taken place in Iran since at least 16 September 2022.

2. This submission relies on information collected and verified by HRA and partners organisations, highlighting specific examples that depict the situation of women, girls and LGBTQI+ individuals in Iran. It is also based on information and analysis compiled from publicly available sources, including UN agencies, states, civil society organisations and the media, where HRA was able to independently verify the information.

3. While the submission argues that persecution on gender grounds has occurred, it recognises that such grounds deeply intersect with political ones. First and foremost, the information available to the undersigned shows that members and agents of the Iranian government targeted perceived political opponents – an opposition which is understood by the members and agents of the government in a broad sense, encompassing any conduct that does not abide by the regime's ideologies and their interpretation of Islamic law. Second, numerous acts and conducts from the perpetrators display an intent to discriminate against women, girls and potentially LGBTQI+ individuals by reason of their gender. As such, in order to accurately reflect the situation in Iran, it is vital to take an intersectional approach to persecutorial grounds when analysing the violations different individuals faced. In addition, while beyond the scope of this submission, ethnicity and religion may also have played a role in the regime's repressive campaign.

## I. STATEMENT OF FACTS

4. ***Restrictions imposed on women and girls who do not comply with mandatory hijab*.** Iran's legal framework contains a myriad of provisions that impose discriminatory restrictions on women, girls and LGBTQI+ individuals' rights, affecting all aspects of their life. In particular, Art. 638 of the New Islamic Penal Code of the Islamic Republic of Iran (Penal Code) establishes that any public conduct deemed to be religiously forbidden (*haram*) or 'offensive' to public decency, including non-compliance with the *hijab* (compulsory dress code and veiling), is subject to criminal sanctions.

5. In addition to Art. 638 of the Penal Code, practices and state policies have reinforced the compulsory veiling and led to the violent enforcement thereof. Police and security forces reportedly arrested and detained tens of thousands of women on this basis, often assaulting them in the process. The implementation of compulsory veiling has led to restrictions on women's participation in public life, including being denied entry to public spaces and being barred from working in the public sector or running for office.

6 Although the implementation of this law has deeply marked the relationship between the state and women and girls in Iran throughout the years, a noticeable shift came around June 2022. At that time, the Iranian Guidance Patrol, also known as the morality police, expanded their enforcement patrols, subjecting women to verbal and physical harassment for their perceived non-compliance with the hijab legislation. On 15 August 2022, President Ebrahim Raisi issued a decree intensifying the enforcement of mandatory veiling in the public space. On 4 September, a government official announced that more than 300 people had been arrested for opposing compulsory veiling. It was in the context of this renewed wave of repression that Ms. Amini lost her life.

7.On 20 September 2023, the Iranian parliament signalled approval a new hijab law imposing further restrictions on women and girls. The new legislation comprises 71 articles, a substantial increase from the previous version, and imposes harsher penalties, both financial and custodial. Since the introduction of the new legislation, reports have emerged underlining how women and girls considered non-compliant with the mandatory dress code have had their access to public services and spaces further constrained. Hundreds of businesses have also been closed for refusing to enforce the *hijab* in their premises.

8. ***The violent repression in the context of the 2022-2023 protests***. Ms Amini's death in police custody ignited a wave of protests. While the first demonstrations related specifically to this event, protests soon shifted to addressing broader grievances in support of women's rights and against the Iranian government's political and ideological foundations. Unlike in previous mass demonstrations, protesters included diverse segments of the population, irrespective of class, ethnicity, or gender. By 7 December 2022 – that is, after 82 days of protests –, they had spread over 160 cities and 143 universities.

9. Although protests were largely peaceful, they were met with brutal violence by state security forces, who resorted to a variety of weapons, including lethal ones. Statements and documents from Iranian government officials further evidenced the authorities' intent to violently repress protests. In this vein, the governmental response has resulted in widespread loss of life and serious injuries. HRA has reported that 481 civilian deaths had been alleged until 7 December 2022 – 251 of which were directly verified and confirmed by HRA. From the deaths that have been verified, 68 were children. Among the total alleged deaths, 8% are women and 14% are children.

10. Women and girls also suffered gender-specific acts of physical violence. They were often slapped across the face, beaten, had their hair pulled, and were sexually assaulted. Doctors have reported that women were commonly targeted with shotgun fire to their faces, breasts, and genitals. Despite women's protagonism in the 2022-2023 protests, men accounted for the majority of reported victims of death and injury, which some believe to be an intentional tactic of the Iranian regime to intimidate them and stop them from supporting women's protests.

11. ***Arbitrary arrest and detention, and conditions thereof.*** HRA estimates that about 22,000 people were arrested in connection with the 2022-2023 protests. Among the 6,832 people whose identity and gender have been determined by HRA, at least 1,238 were women and 199 were under the age of 18. These arrests were routinely carried out with extreme violence, including beatings, verbal abuse, and other forms of physical and psychological mistreatment. Women, girls, and LGBTQI+ individuals were particularly vulnerable to the nationwide crackdown due to their perceived transgression of social norms. In detention, living conditions were harsh and often life-threatening. Besides sub-standard living conditions, physical and psychological abuse were a daily occurrence, with security forces often using threats and coercion against detainees, including in the context of interrogations.

12. ***Rape and other forms of sexual violence.*** Rape and other forms of sexual violence are a tool commonly employed by the Iranian authorities to stifle dissent. In the context of the 2022-2023 protests, sexual violence has been used in many different instances, especially against women and girls. During protests, women have been grabbed by their breasts, had their hair pulled by security officers, and were shot in their genitals. In some cases, government forces also assaulted children during raids to schools through the use of body searches. Sexual violence is also rife in detention settings, where women and girls have been sexually assaulted by having their breasts touched by interrogators, raped (repeatedly in some instances), including with objects, and have been coerced into sexual relations in exchange for better treatment.

13. ***Unfair trials and reliance on corporal punishment and the death penalty.*** By 24 October 2022, over 1,000 indictments had been issued against protesters and 315 people had been charged. Most protesters were tried in the Revolutionary Courts, with restricted access to lawyers or case files. Coerced confessions also appear to be commonplace. Women activists, lawyers and journalists have faced trials on various bogus charges for participating in or covering the protests. LGBTQI+ individuals have faced further difficulties, due to the lack of understanding on the part of the judicial authorities about their gender expression. The death penalty, in turn, has so far only been used against male protesters, in what has been interpreted by some as an attempt to intimidate men but also their female relatives from taking part in the protests.

## II.LEGAL QUALIFICATION: PERSECUTION AS A CRIME AGAINST HUMANITY

14.The submission provides a detailed legal analysis to demonstrate how the conducts in the context of the 2022-2023 protests, described above, may amount to the crime against humanity of persecution. It concludes that there are reasonable grounds to believe that the crime against humanity of persecution on political and gender grounds has taken place in Iran since at least September 2022.

15.The analysis has been conducted with reference to the definition of the crime against humanity of persecution under Arts. 7(1)(h) and 7(2)(g) of the Rome Statute of the ICC (Rome Statute). Although Iran is not party to the Rome Statute, persecution has long been recognised as an underlying act of crimes against humanity under customary international law, and the adoption by the International Law Commission of the Rome Statute definition of this offence weighs in favour of the view that it reflects customary international law.

### Severe Deprivation of Fundamental Rights Contrary to International Law

16. Art. 7(2)(g) of the Rome Statute defines persecution as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity. Other underlying acts of crimes against humanity listed in Art. 7 of the Rome Statute – such as murder, imprisonment or other severe deprivation of physical liberty, torture, rape, other forms of sexual violence and other inhumane acts – can be considered as constitutive of a severe deprivation of fundamental rights. Nevertheless, acts of persecution are not confined to the other underlying acts of crimes against humanity. They may not require the use of physical violence; relevant elements of the crime may be met with the infringement of individual freedoms.

17. ***Murder/Violation of the right to life.*** The information reviewed by the undersigned reveals hundreds of intentional killings of civilians – men, women, girls, boys and LGBTQI+ individuals – by Iranian security forces in relation to the 2022-2023 protests. HRA estimates that around 8% of the total alleged deaths are of women and girls. The existence of official documents and statements from agents of the Iranian regime calling on security forces to decisively “deal with” protesters, coupled with their conduct, make it possible to infer that perpetrators intended to cause the death of the victims.

18. ***Imprisonment/Violation of the right to liberty and security***. Overall, the information available suggests that the arrests and related detentions that have taken place in the context of the 2022-2023 protests are inconsistent with fundamental rules of international law. Arrests and detentions have been carried out without legal basis under international human rights law, as the deprivation of liberty was based on the protesters' legitimate exercise of their human rights as reflected in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), notably the rights to freedom of expression, association, assembly, public participation, equal protection and non-discrimination, and privacy. Harsh conditions of detention, torture and other forms of ill-treatment have repeatedly been reported. In addition, in many instances the procedural rights of detainees recognised under international human rights law have not been respected.

19.***Torture/Prohibition of torture and the right not to be subjected to cruel, inhuman or degrading treatment***. The absolute prohibition of torture has been routinely violated in the context of the 2022-2023 protests. Women and girls in particular have been exposed to severe pain or suffering, whether physical or mental, while in custody, as demonstrated for instance by violent conducts during interrogation and acts of rape and sexual violence.

20. ***Rape and other forms of sexual violence.*** The information available suggests a pattern of sexual violence in the context of the 2022-2023 protests specifically targeting women and girls, either in the context of arrests or while in detention. The use of sexual violence by agents of the Iranian government, especially against women and girls, aims at creating "shame and taboo" at all levels: individual, familiar, and societal, to discourage participation in the protests. The circumstances of the incidents presented by the undersigned reveal that rape and other forms of sexual violence have been committed by force, coercion or by taking advantage of a coercive environment.

21. ***Other inhumane acts***. At least to two types of conduct, if proven to have inflicted great suffering or serious injury to the bodies or to the mental or physical health of the victims, could reach the threshold to constitute other inhumane acts as a crime against humanity: the violent means employed by security officers to supress protests, and the imposition of inhuman conditions of detention.

22. ***Other severe deprivations of fundamental rights.*** The information available suggests that several other fundamental rights have been violated: the rights to peaceful assembly; freedom of thought, conscience and religion, expression, and movement; to privacy; to participation in public affairs; to work; to education; and to a fair trial, as enshrined in the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It should be noted that the limitations to these rights imposed in the context of the 2022-2023 protests cannot be justified according to the relevant human rights instruments, as they did not serve a legitimate purpose, not least due to the fact that they are inherently discriminatory and were excessive and unnecessary in relation to their goal.

**Victims are being targeted because of their identity as members of a group or collectively on political and gender grounds**

23.The crime of persecution requires a specific intent on the part of the perpetrator to discriminate against the targeted persons on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law. In this sense, the perpetrator must have targeted the person or persons due to their actual or perceived identity as a member of a group or collectivity, or have targeted the group or collectivity as such.

24. In the context of the 2022-2023 protests, the information available suggests that the perpetrators intended to discriminate against the victims on political and gender grounds. Overall, the violent crackdown conducted by the security forces in the context of the 2022-2023 protests suggests that the perpetrators intended to discriminate against anyone who was perceived as not conforming with or adhering to the political ideology of the regime, including with respect to norms around gender and discriminatory policies against women and girls. Women and girls, and LGBTQI+ individuals, are two gender groups that may also be considered to have been discriminately targeted by the perpetrators, namely agents of the Iranian government, in relation to the 2022-2023 protests.

25. ***Women and girls***. Women and girls face severe limitations and restrictions of their fundamental rights, which are imposed both by the Iranian legal and by governmental policies. It is noteworthy that, despite the large-scale protests demanding respect for women's rights, the Iranian government passed in September 2023 a yet more restrictive hijab law. The gender element of the Iranian authorities' persecutory intent against women and girls is further evidenced by the overtly gendered ways in which the regime's violent response manifested itself, with women and girls being singled out for persecutory treatment such as shooting at their genitals, the use of derogatory language, and acts of sexual violence.

26. ***Men and boys.*** In relation to men and boys who participated in or supported the 2022-2023 protests, or were perceived as such by the security forces, the perpetrators' intent to discriminate on political grounds is undeniable. However, the undersigned believes that a deeper gender analysis is required in order to understand the gendered dimensions of the perpetrators' intent.

27. ***LGBTQI+ individuals.*** The Iranian legal framework also explicitly identifies LGBTQI+ individuals as a group subjected to limitations and restrictions of their fundamental rights. They are thus stigmatised and oppressed because they do not conform to traditional gender roles. Notwithstanding the paucity of cases which the undersigned has been able to verify, they are unlikely to be isolated acts, given the context of LGBTQI+ individuals in Iranian society and domestic legislation. In this sense, further investigation regarding LGBTQI+ victims is needed, in order to determine the extent to which they have been discriminately targeted on gender grounds.

**In connection with other underlying acts of crimes against humanity**

28. In order to constitute a crime against humanity under Art. 7 of the Rome Statute, the acts of persecution must be committed 'in connection with' other crimes under the Court's jurisdiction, or any act referred to in Art. 7(1) of the Rome Statute. As the analysis above has demonstrated, numerous severe deprivations of fundamental rights amounting to persecution on political and gender grounds can also qualify as underlying acts of crimes against humanity. These crimes are instrumental in enforcing the restrictions imposed on women, girls and LGBTQI+ individuals, as well as in suppressing any form of opposition to the Iranian authorities, including protests and demonstrations. This suggests that the connection element required by Art. 7(1)(h) of the Rome Statute is met.

**As part of a widespread or systematic attack directed against any civilian population**

29. All crimes against humanity are characterised by a certain context: the conduct in question must have been committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Under the ICC framework, to constitute crimes against humanity, the underlying acts must have been committed pursuant to or in furtherance of a state or organisational policy.

30. The undersigned has identified a course of conduct that includes multiple instances of underlying acts of crimes against humanity, which appear collectively to amount to an attack. This includes the excessive use of force by members or agents of the Iranian regime; deplorable conditions of detention and abuses committed against protesters at the time of arrest and against detainees; arbitrary arrest and detention without due process of law; and other violations of fundamental rights such as that to peaceful assembly, to freedom of expression, and to work.

31. The underlying acts described above were directed at a specific subset of the civilian population of Iran based on their perceived opposition to the regime, namely protesters, thus amounting to an attack against a civilian population for the purposes of crimes against humanity. In the context of the 2022-2023 protests, the number of individuals killed, injured, arrested and detained rests in the thousands, which makes clear that the attack was widespread. Bearing in mind the repeated pattern of assault, murder, imprisonment, torture and sexual violence, it is also clear that these were not isolated acts. These events were planned and coordinated, and involved the substantial use of public resources, which evidence the systematicity of the attack. The manner of commission, the context and the purpose of the crimes demonstrate that the attack has been carried out by agents of the Iranian state in furtherance of or pursuant to a state policy. These agents acted under state authority and hierarchy, without any official reprimand for their conduct, as evidenced by public statements and orders by high-ranking Iranian government officials.

## III.CONCLUSION AND RECOMMENDATIONS

32. The submission demonstrates that there are reasonable grounds to believe that the crackdown by the Iranian authorities on the peaceful protests that followed the death of Ms Amini, and other violations related to the protests since September 2022, constitute a widespread and systematic attack against the civilian population. The underlying acts of crimes against humanity and other severe deprivations of fundamental rights identified in this report may constitute persecution on political and gender grounds.

33. Based on the submission, HRA presents the following recommendations to the FFMI:

**On the crime against humanity of gender and political persecution:**

- Given the legal analysis of the facts presented, the undersigned urges the FFMI to recognise the potential commission of crimes against humanity, specifically that the crime of persecution on political and gender grounds has taken place in the Islamic Republic of Iran since at least 16 September 2022, in relation to the “Woman, Life, Freedom” protests. The undersigned suggests that based on the information and analysis submitted, these findings should be an integral part of the FFMI's report to the HRC in March 2024. The FFMI’s conclusions should emphasise that women, girls and LGBTQI+ individuals perceived as not conforming with or opposing the established gender norms and discriminatory policies have been specifically targeted by the Iranian authorities, their agents and security forces.

- Recognising the political and gender dimension of the persecutory acts that have taken place in the context of the 2022-2023 protests, the undersigned encourages the FFMI to conduct further analysis on the participation of men and boys in the protests, and the perception and intent of the perpetrators for targeting them. The undersigned emphasises the importance of applying a gender lens to such analysis.

- Acknowledging the inherent challenges and security constraints in documenting violations taking place in Iran, the undersigned urges the FFMI to continue investigating alleged violations against LGBTQI+ individuals in the context of the “Woman, Life, Freedom” protests. These instances, while more difficult to document extensively, do exist, and lend to the discriminatory intent on the part of the perpetrators.

***On documentation and accountability:***

- The commission of international crimes by the Iranian authorities triggers individual criminal responsibility going beyond State responsibility under the international human rights law framework. While the present submission does not focus on the conduct of specific individuals, the undersigned submits that the FFMI should ensure that its March 2024 report includes a section on the lack of accountability for widespread and systematic violations that have taken place in Iran since at least 16 September 2022, as well as the need for redress and ensuring that justice is achieved for women, girls and LGBTQI+ victims.

- Given the FFMI's mandate to collect and preserve potential evidence with a view to cooperate with legal proceedings, the FFMI should ensure that, following its March 2024 report, where possible, and where consent has been given, it cooperates with investigators, prosecutors, and relevant national jurisdictions building case files against alleged Iranian perpetrators across the globe with a view to closing the accountability gap.

- Given the current uncertainty surrounding the renewal of the mandate of the FFMI mandate beyond March 2024, the FFMI should, while finalising and preparing its March report, continue to receive submissions of information and maintain open lines of communication with those individuals and members of civil society documenting ongoing violations in relation to its mandate.




December 2023