



# GENDER AND POLITICAL PERSECUTION IN IRAN

**PUBLIC REDACTED VERSION**

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



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*Public Redacted Version*

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A submission has been prepared by Human Rights Activists (HRA) with the legal support of [Uprights](#) and was filed with the United Nations Fact-Finding Mission on the Islamic Republic of Iran (FFMI) in December 2023. This is the public redacted version.

The submission argues that the facts provided to the FFMI by HRA and two partner organizations 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. The submission has been presented in five parts: 1.) Methodology on the collection and verification of the information presented. 2.) The background against which the “Woman, Life, Freedom” protests took place, highlighting the existence of a discriminatory legal framework against women, girls and LGBTQI+ individuals, as well as relevant structural issues in the relationship between the Iranian State and its population 3.) The facts surrounding the protests, shedding light on the increased restrictions imposed on women and girls, and the violent response of Iranian authorities to these otherwise peaceful protests 4.) A legal analysis of the facts focussing on the crime against humanity of persecution on gender and political grounds 5.) Recommendations in light of the facts presented.

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 Mahsa Zhina Amini, and other violations related to the protests since September 2022, constitute a widespread and systematic attack against the civilian population. The submission delves into specific acts of violence by the Iranian government’s repression of the “Woman, Life, Freedom” protests, such as arbitrary arrest and detention, sexual violence, and murder, qualifying them as underlying acts of crimes against humanity and severe deprivations of fundamental rights. The submission then shows that agents of the Iranian government intended to discriminate against women and girls especially on the basis of gender, having been singled out for persecutory treatment such as the use of derogatory language, and acts of sexual violence including rape. At the same time, the submission recognises that others have been targeted on political grounds.

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## I. INTRODUCTION

1. In September 2022, the death of Mahsa (Zhina) Amini in police custody – following her arrest for wearing an “improper” *hijab* – led to a massive popular uprising against the government of the Islamic Republic of Iran (Iran). This popular uprising was repressed with violence by the Iranian security apparatus, resulting in thousands of arrests and hundreds of people killed and injured. Given the deteriorating situation of human rights in Iran, the United Nations (UN) Human Rights Council (HRC) established the Independent International Fact-Finding Mission on the Islamic Republic of Iran (FFMI) on 24 November 2022. The FFMI is notably mandated to investigate alleged human rights violations relating to protests in Iran since 16 September 2022, especially with respect to women and children.<sup>1</sup>

2. In light of the FFMI’s call for submissions, 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. This submission argues that the information available should lead the FFMI to reach 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.

3. While the mandate of the FFMI does not expressly mention international criminal law as a legal framework,<sup>2</sup> the FFMI Terms of Reference (ToR) outlines that, in addition to international human rights law, the FFMI shall also consider other international legal obligations held by Iran “including in relation to crimes under international law”.<sup>3</sup> The FFMI’s approach is consistent with the one adopted by other UN commissions of inquiry and fact-finding missions with similar mandates in relation to international crimes.<sup>4</sup>

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<sup>1</sup> HRC, [Deteriorating situation of human rights in the Islamic Republic of Iran, especially with respect to women and children](#), A/HRC/RES/S-35/1, 24 November 2022, para. 7.

<sup>2</sup> *Ibid.*

<sup>3</sup> FFMI, [Terms of Reference](#), paras. 9, 30.

<sup>4</sup> For instance, the mandate of the Team of international experts on the situation in Kasai only expressly mentions international human rights law and humanitarian law but the international experts also qualified the violations established as crimes against humanity and war crimes. *Compare* HRC, Technical assistance to the Democratic Republic of the Congo and accountability concerning the events in the Kasai regions, [A/HRC/RES/35/33](#), 29 June 2017, OP 10, *with* United Nations General Assembly (UNGA), [Report of the Team of International Experts on the](#)

4. This submission shows 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, as well as other violations relating to the protests since September 2022, constitute a widespread and systematic attacks against a civilian population. The underlying acts of crimes against humanity and other severe deprivations of fundamental rights identified in this report would qualify as political and/or gender persecution. The information available suggests that political and gender elements deeply intersect as grounds of persecution. Firstly, persecution by members and agents of the Iranian government target perceived political opponents. Such opposition seems to be 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. In this sense, women, girls and LGBTQI+ individuals<sup>5</sup> are perceived as opposing the government when they challenge established gender norms and discriminatory policies. Secondly, numerous acts and conducts from the perpetrators display an intent to discriminate against women, girls and 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.<sup>6</sup> In addition, while beyond the scope of this submission, ethnicity and

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Situation in the Kasai Regions, [A/HRC/38/31](#), 3 July 2018, paras. 96-103. Similarly, the mandate for the Group of Eminent Experts on the situation of human rights in Yemen was set up to investigate “all alleged violations and abuses of international human rights law and all alleged violations of international humanitarian law” (HRC, Human rights, technical assistance and capacity-building in Yemen, [A/HRC/RES/36/31](#), 3 October 2017, OP 12), but the experts eventually also considered whether “violations amounting to international crimes may had been committed in the territory” (Report of the Group of Eminent International and Regional Experts on Yemen, [A/HRC/45/6](#), 28 September 2020, para. 13). The Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, was mandated “to investigate gross violations of human rights” (HRC, Situation of human rights in the Bolivarian Republic of Venezuela, [A/HRC/RES/42/25](#), 8 October 2019, para. 24) but in its report also “assessed facts in the light of international human rights law and international criminal law” (Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, [A/HRC/45/33](#), 25 September 2020, para. 11). The Independent Fact-Finding Mission on Libya’s stated that the resolution establishing its mandate ([A/HRC/RES/43/39](#)) “made no mention of crimes under international criminal law (“ICL”); however, IHRL and IHL underpin this body of law, and the Mission considered it crucial to the fulfilment of its mandate to additionally investigate crimes punishable under ICL” (Report of the Independent Fact-Finding Mission on Libya, [A/HRC/48/83](#), 1 October 2021, Annex I, para. 1. The Group of Human Rights Experts on Nicaragua, mandated to “conduct thorough and independent investigations into all alleged human rights violations” (Promotion and protection of human rights in Nicaragua, [A/HRC/RES/49/3](#), 7 April 2022, para. 14) also relied on international criminal law in its final report (Report of the Group of Human Rights Experts on Nicaragua, [A/HRC/52/63](#), 2 March 2023, paras. 109-110, 118-119).

<sup>5</sup> This submission incorporates the definition of LGBTQI+ used by the International Criminal Court (ICC)’s Office of the Prosecutor (OTP) in its Policy on the Crime of Gender Persecution. See OTP, [Policy on the Crime of Gender Persecution](#), 7 December 2022 (OTP Policy), p. 3.

<sup>6</sup> The importance of intersectionality is underlined on numerous occasions in the OTP Policy. See paras. 10 (“The perpetrators’ discriminatory intent may intersect with other grounds for persecution prohibited under the Statute, and also reflect existing social constructs or criteria used to define targeted groups based on, for example, race, ethnicity or culture, or impose new ones.”); 33 (“Apply an intersectional approach to gender persecution with, when relevant, persecution based on political, racial, national, ethnic, cultural, religious or other grounds that are universally recognised as impermissible under international law in consideration of charging strategies, and hold perpetrators

religion may also have played a role in the regime's repressive campaign. For example, Baluch and Kurdish people were overrepresented in the total number of killings following the September 2022 protests.<sup>7</sup>

5. This submission is divided in five parts. First, the undersigned presents its methodology on the collection and verification of the information presented. Second, it sets the background against which the "Woman, Life, Freedom" protests (also referred to herein as the 2022-2023 protests) took place, highlighting the existence of a discriminatory legal framework against women, girls and LGBTQI+ individuals, as well as relevant structural issues in the relationship between the Iranian State and its population. Third, it delves into the facts surrounding the 2022-2023 protests, shedding light on the increased restrictions imposed on women and girls, and the violent response of Iranian authorities to these otherwise peaceful protests. Fourth, it engages in the legal analysis of the facts focussing on the crime against humanity of persecution on gender and political grounds. Finally, the undersigned presents recommendations to the FFMI.

## II. METHODOLOGY

6. This submission relies on information collected by HRA and two of HRA's trusted partner organisations. The cases presented herein, which were collected by the undersigned and the partner organisations, have been verified following each organisation's methodology.<sup>8</sup> The present report 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.

7. The submission does not intend to provide a complete picture of the human rights situation in Iran since September 2022. Rather, it first and foremost aims at assisting the FFMI in its legal characterisation based on the information available to the undersigned. The focus of this submission is whether the alleged human rights violations relating to the protests since September 2022 in Iran can amount to crimes against humanity and in particular persecution

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accountable for multiple or intersecting forms of persecution recognised under the Statute."); 67 ("When assessing gravity, the Office will take into account whether there were multiple forms of persecution, the multi-faceted character of the act or acts, and the resulting suffering, harm and other impacts of such acts or crimes. The Office will apply an intersectional approach to its assessment of the discriminatory basis for such acts."); 81 ("The Office will further apply an intersectional analysis to gender persecution conduct, recognising that such acts or crimes may also be motivated by additional and intersecting persecutory grounds under article 7(h)").

<sup>7</sup> See *infra* para. 43.

<sup>8</sup> More information on their methodologies can be found in the confidential case files shared with the FFMI.



on political and gender grounds. Conclusions are reached applying a standard of proof of ‘reasonable grounds’, as defined by the FFM in its ToR.<sup>9</sup>

8. The undersigned highlights specific examples that relate to the situation of women, girls and LGBTQI+ individuals. This is because, as noted by the International Criminal Court (ICC)’s Office of the Prosecutor (OTP), “[r]ecognition of gender persecution not only helps to unearth the discriminatory intent that can drive such crimes or entire conflicts, it can also shed light on victims who are vulnerable because of multiple and intersecting forms of discrimination”.<sup>10</sup>

### III. BACKGROUND

9. Understanding the death of Ms Amini and the violent crackdown on peaceful protesters requires placing the 2022-2023 protests in the broader context of how the Iranian authorities rule the country. Of particular relevance to the situation under scrutiny by the FFMI are: (1) the existence of a discriminatory legal framework specifically affecting women, girls and LGBTQI+ individuals; (2) a pre-existing pattern from the Iranian government of violently repressing peaceful protests; (3) a recurring practice of harassment, arbitrary arrest, prosecution and detention of women and girls, including women’s rights defenders, who peacefully oppose compulsory veiling; and (4) structural issues within the Iranian judicial system that lead to unfair trials and heavy reliance on the death penalty.

10. *A discriminatory legal framework against women, girls and LGBTQI+ individuals.* Although Iran is party to the International Covenant on Civil and Political Rights (ICCPR), which sets out the prohibition of discrimination on the basis of gender,<sup>11</sup> its legal framework contains a myriad of provisions that impose discriminatory restrictions on women, girls and LGBTQI+ individuals’ rights, affecting all aspects of their life.

11. For instance, girls can get married as early as 13 years-old and even younger if authorised by a judge.<sup>12</sup> Once married, the husband is empowered by law to impose restrictions on his spouse’s right to work, freedom of movement and bodily autonomy.<sup>13</sup> The New Islamic

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<sup>9</sup> See ToR, para. 32.

<sup>10</sup> OTP Policy, p. 5.

<sup>11</sup> Art. 2(1) of the ICCPR.

<sup>12</sup> Against 15 years-old for their male counterparts. See Art. 1210, Note 1 of the [Civil Code of the Islamic Republic of Iran](#), 23 May 1928 (unofficial translation) (Civil Code).

<sup>13</sup> For instance, the husband is defined by law as the “head” of the household and may prevent the wife from working in jobs he deems to be “against family values” (Arts. 1105 and 1117 of the Civil Code). In addition, Art. 1108 of the Civil Code specifies that women lose their right to spousal maintenance if they refuse to “perform her spousal duties

Penal Code of the Islamic Republic of Iran (Penal Code) in force since 2013 establishes different minimum ages of criminal responsibility for boys and girls, at 15 and nine lunar years respectively, placing children and especially girls in a position of vulnerability for criminal prosecution.<sup>14</sup> Not wearing or improperly wearing the *hijab* in public can lead to criminal prosecution for women and girls under Art. 638 of the Penal Code, which establishes that any public conduct deemed to be religiously forbidden (*haram*) or ‘offensive’ to public decency carries the penalties of imprisonment of 10 days to two months, or 74 lashes – in the case of *hijab* non-compliance, the flogging is substituted by a fine.<sup>15</sup>

12. The Iranian legal framework further relies on a binary conception of gender by considering that certain conducts and characteristics are inherently male or female.<sup>16</sup> LGBTQI+ individuals are stigmatised and oppressed because they do not conform to traditional gender roles.<sup>17</sup> For instance, transgender individuals must obtain a medical diagnosis of “gender identity disorder” and subsequently undergo sexual reassignment surgeries in order to have their gender identity legally recognised.<sup>18</sup> LGBTQI+ individuals may be coerced into sexual reassignment surgery and ‘corrective treatments’ including electric shock therapy, prescription of psychoactive drugs, and forced masturbation to images of people of the opposite sex.<sup>19</sup> Moreover, military regulations provide for an exemption to military service for individuals with “perversions that are contrary to social and military values (including sexual perversions and homosexuality)”. Not only does this discriminatory provision equate homosexuality and gender non-conformity to a mental disorder, but its implementation has also allowed

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without a legitimate excuse”. The Iranian Passport Law also sets out that a wife needs her husband’s permission to obtain a passport and travel outside the country. The state has also outlawed sterilisation procedures and the distribution of contraceptives in public healthcare. See Human Rights Watch (HRW), [Trapped: How Male Guardianship Policies Restrict Women’s Travel and Mobility in the Middle East and North Africa](#), July 2023 (Trapped), pp. 35 *et seq.*; HRW, [Human Rights Watch Submission to the Inquiry into the Human Rights Implications of Recent Violence in Iran](#), 17 November 2022 (Submission), p. 4.

<sup>14</sup> The equivalent in Gregorian years is 14.5 and 8.7 respectively. Art. 147 of the [New Islamic Penal Code of the Islamic Republic of Iran](#), 21 April 2013 (unofficial translation) (Penal Code).

<sup>15</sup> See explanatory note to Art. 638 of the Penal Code. Art. 638 has also served as the basis for prosecuting LGBTQI+ individuals for acts that would be deemed ‘traditionally’ feminine or masculine, such as ‘cross-dressing’, using make-up, and using mannerisms typically associated with one gender or another. See Iranian Lesbian and Transgender Network (6Rang), [War on Bodies and Minds: Gender Persecution of LGBTQI+ Protestors in the Context of the 2022-23 Iran Uprising](#), September 2023 (War on Bodies and Minds), p. 16.

<sup>16</sup> War on Bodies and Minds, p. 15.

<sup>17</sup> See Human Rights Committee, Concluding observations on the fourth periodic report of the Islamic Republic of Iran, [CCPR/C/IRN/CO/4](#), 3 November 2023, paras. 13-16.

<sup>18</sup> War on Bodies and Minds, p. 17.

<sup>19</sup> United States Department of State, [2022 Country Reports on Human Rights Practices: Iran](#), 20 March 2023 (DoS Country Report), pp. 65-67; HRA, [Five Transgender Individuals Arrested and Coerced into Confession](#), 26 June 2023.

authorities to identify LGBTQI+ individuals, putting them at risk of being violently targeted.<sup>20</sup> Beyond that, Iranian law criminalises a range of same-sex sexual behaviours.<sup>21</sup>

13. ***Pattern of violent repression of protests.*** While the scale of the uprising that followed the death of Ms Amini has been framed as unprecedented, the crackdown on protesters orchestrated by the Iranian government is not new. The Iranian government routinely resorts to violence as a response to peaceful protesters raising grievances against the authorities' policies.

14. As recent examples, in November 2019, protests emerged following a government announcement on the rise of fuel prices. The government responded with the use of lethal force against the population, killing several hundred protesters and bystanders alike, and detaining thousands.<sup>22</sup> The security forces also resorted to electric shocks, beatings and sexual violence, with some witnesses saying "children were singled out for particularly humiliating treatment".<sup>23</sup> According to the UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (UNSR), many are still detained for their participation in these protests, including some on death row.<sup>24</sup> More recently, in May 2022, changes in the government's policies on food subsidies led people to the streets.<sup>25</sup> Once again, the UNSR reported the excessive use of force against protesters and the lack of investigations, which included the deaths of at least five people in Khuzestan Province and Chaharmahal and Bakhtiari Province.<sup>26</sup>

15. ***Harassment of women peacefully opposing compulsory veiling.*** Some women and girls have individually protested the compulsory dress code – in particular veiling – for years. They routinely face governmental harassment for their opposition.<sup>27</sup> For example, human rights defender Atena Daemi was convicted in 2016 to seven years in prison on national-security charges for peacefully protesting against mandatory *hijab*, with the judge highlighting that

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<sup>20</sup> Amnesty International (AI), [Iran: Murder of 20-year-old gay man highlights urgent need to protect LGBTI rights](#), 17 May 2021, p. 3.

<sup>21</sup> Art. 234 of the Penal Code criminalises consensual sexual intercourse between men (*livat*), potentially carrying capital punishment. In line with Art. 238 of the Penal Code, sexual acts between women (*mosahegheh*) are also criminalised and punished by up to 100 lashes. Other conducts such as non-penetrative sexual conduct between men (*tafkhez*) and conduct that falls short of *livat* or *tafkhez*, such as kissing and 'lustful touching' (applicable to both men and women), are also prohibited by the Penal Code. Art. 236 *et seq.* of the Penal Code. If an individual is convicted for a fourth time of crimes such as *mosahegheh* and *tafkhez*, then the death penalty is applicable. See Art. 136 of the Penal Code.

<sup>22</sup> International People's Tribunal on Iran's Atrocities, [Judgement](#), 1 November 2022 (Aban Judgment), paras. 1-3.

<sup>23</sup> *Ibid.*, para. 41.

<sup>24</sup> HRC, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javaid Rehman, [A/77/81](#), 18 July 2022, para. 62.

<sup>25</sup> See *ibid.*, para. 66.

<sup>26</sup> *Ibid.*, para. 31.

<sup>27</sup> For further examples, see HRC, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javaid Rehman, [A/HRC/43/61](#), 28 January 2020, paras. 35-37.



Daemi's opposition to 'religious sanctities' would have warranted the death penalty.<sup>28</sup> In 2017, women's rights defender Shima Babaei was threatened, interrogated and detained by the Tehran Morality Security Police for protesting against compulsory veiling by standing in a public space without wearing *hijab* and waving a white flag.<sup>29</sup> Nasrin Sotoudeh, a lawyer, was arrested in 2018 after filing a case on behalf of a woman arrested for removing her *hijab*. She was sentenced to 38 years in prison and 148 lashes.<sup>30</sup> Ms Sotoudeh was on medical furlough from July 2021 until 29 October 2023, when she was arrested again while attending the funeral of Armita Geravand.<sup>31</sup> Ms Sotoudeh's husband has also been summoned to serve a sentence of six years imprisonment for a Facebook post supporting the end of gender discriminatory laws.<sup>32</sup>

16. *Unfair trials and heavy reliance on the death penalty.* Unfair trials are a structural issue in Iran. In his January 2021 report, the UNSR concluded that the judiciary cannot be considered independent from the other powers, in particular from the Supreme Leader.<sup>33</sup> In addition, he highlighted the central role of the Revolutionary Courts in the criminal justice system, which are responsible for the majority of death sentences issued in the country.<sup>34</sup> Other fair trial issues

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<sup>28</sup> *Ibid.* While serving her sentence, Ms Daemi was subsequently tried and convicted another two times on other charges brought before different branches of the Revolutionary Courts in Tehran, leading to a total sentence of 14 years of imprisonment. She was imprisoned in the notorious Evin Prison until 16 March 2021, when she was transferred to Lakan Prison to serve the rest of her sentence in exile. On 24 January 2022, Ms Daemi was finally granted early release. See HRA, [Atena Daemi on a Hunger Strike in Lakan Prison in Rasht in Gilan Province](#), 12 August 2021; [Concerns Increase about Atena Daemi's Condition in Rasht Prison After Two Months Incommunicado](#), 25 October 2021; [Civil Activist Atena Daemi Released from Lakan Prison in Rasht City](#), 25 January 2022.

<sup>29</sup> AI, [Iran: Compulsory veiling is abusive, discriminatory and humiliating; end the persecution of women for peacefully protesting against it](#), 24 January 2018 (Compulsory veiling), p. 2.

<sup>30</sup> HRW, Submission, p. 3. Ms Sotoudeh had already been arrested in 2010 for "acting against national security" and convicted to 11 years in prison, a 20-year ban from the bar association, and 20-year travel ban. An appeals court reduced these sentences to six years in prison and a 10-year ban from the bar, of which she served three years. See HRA, [Profiles: the Women's Section of Evin Prison](#), 30 September 2018. Concerning her arrest after filing a case on behalf of another woman arrested for removing her *hijab*, Ms Sotoudeh was reportedly charged with: "gathering and colluding with the intent to act against national security", "propaganda against the regime", "inciting and providing the means for moral corruption", "appearing at an interrogation branch without proper Islamic Hijab", "disturbing public peace and order", "publishing false information with the aim of disturbing public opinion" and "being an effective member of the unlawful group the Defenders of Human Rights Center (DHRC), LEGAM (Step by Step to Abolition Death Penalty) and the National Peace Council". Her trial and detention featured the infringement of several minimum procedural guarantees, including access to a lawyer of her choosing and not being provided with notice of all charges or a copy of the final verdict. See HRA, [Nasrin Sotoudeh's charges: A closer look](#), 7 September 2018 (HRA, Nasrin Sotoudeh's charges); HRW, [Iran: Harsh Sentence for Rights Lawyer Threatens Activism](#), 20 March 2019; HRA, [Rouhani 8 Years On: The Situation of Women's Rights in the Islamic Republic of Iran](#), 5 March 2021.

<sup>31</sup> HRA, [Multiple Arrests Made at Armita Geravand's Funeral](#), 1 November 2023. For further details, see *infra* para. 30.

<sup>32</sup> International Bar Association Human Rights Institute, [Iran: IBAHRI condemns prison sentence against Reza Khandan and calls for charges to be dropped](#), 21 February 2023. Mr Khandan was charged with "colluding with the intent to act against national security", "propaganda against the regime", and "propagation of unveiling in public". See HRA, Nasrin Sotoudeh's charges.

<sup>33</sup> HRC, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javid Rehman, [A/HRC/49/75](#), 13 January 2022, paras. 52 *et seq.*

<sup>34</sup> *Ibid.*, paras. 55-56.

identified by the UN include the lack of access to a lawyer and the use of forced confessions in proceedings.<sup>35</sup>

17. With regard to the death penalty, the UNSR has consistently highlighted several concerns in addition to the unfairness of trials: (i) that it is applied to crimes which are not among the “most serious” under international law and to conduct which should not be criminalised or for vague and broadly formulated criminal offences; (ii) the execution of child offenders, once they turn 18 years-old; and (iii) the imposition of mandatory death sentences by law.<sup>36</sup> In light of these structural shortcomings, which fall short of the requirements of the right to a fair trial and the right to life under the ICCPR, the mandate-holder concluded that they “would render most if not all executions in the Islamic Republic of Iran an arbitrary deprivation of life”.<sup>37</sup>

18. The UN regularly expresses serious concerns about the high rate of executions in the country.<sup>38</sup> Iran is the country that executes the most women in the world, with 17 women executed between October 2022 and October 2023.<sup>39</sup> Women were most commonly sentenced with the capital punishment in cases of murder, some of them having been child brides who suffered domestic violence by their partners.<sup>40</sup> The death penalty disproportionately affects minorities, in particular in connection with charges of alleged involvement in political opposition groups.<sup>41</sup> It is also common that executions are not announced by official sources.<sup>42</sup>

## IV. STATEMENT OF FACTS

### A. RESTRICTIONS IMPOSED ON WOMEN AND GIRLS WHO DO NOT COMPLY WITH MANDATORY *HIJAB*

19. Under the Iranian legal framework, women and girls are obliged to wear the *hijab* in public. According to the explanatory note to Art. 638 of the Penal Code, women who are seen in public without *hijab* are to be punished with imprisonment or a fine. Although by law

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<sup>35</sup> A/HRC/43/61, paras. 46-48.

<sup>36</sup> HRC, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javaid Rehman, [A/76/160](#), 16 July 2021, para. 2. For further information on these concerns, *see ibid.*, paras. 41-69.

<sup>37</sup> A/77/81, para. 13.

<sup>38</sup> *See e.g.* A/76/160, para. 46; UNGA, Report of the Secretary General on the Situation of human rights in the Islamic Republic of Iran, [A/78/511](#), 6 October 2023, para. 4.

<sup>39</sup> According to HRA, from 1 January 2022 to 31 December 2022, 11 women were executed, and six women were sentenced to death. From 1 January 2023 to 21 November 2023, 19 women have been executed and another five women have been sentenced to death. HRA, [Annual Report on Execution in Iran](#), October 2023. *See also* Iran Human Rights, [Annual Report of the Death Penalty in Iran 2022](#), 13 April 2023 (2022 Annual Report), p. 41.

<sup>40</sup> Iran Human Rights, [Women and the Death Penalty in Iran: a 12 Year Analysis](#), 8 October 2021.

<sup>41</sup> A/76/160, para. 68.

<sup>42</sup> 2022 Annual Report, p. 41.

compulsory *hijab* applies to girls from the age of nine years-old (irrespective of their religion), in practice it has been observed from the age of seven, when children enter elementary school.<sup>43</sup>

20. Beyond that, practices and state policies have reinforced the compulsory veiling and led to violent enforcement thereof. Police and paramilitary forces reportedly arrested and detained tens of thousands of women on the basis of Art. 638 of the Penal Code throughout the years, often assaulting them in the process.<sup>44</sup>

21. The implementation of compulsory veiling has led to restrictions on women's participation in public life. Women and girls have been denied entry to public spaces such as university campuses, hospitals, and government offices for not complying with the mandatory dress code –for example by having hair stick out of the headscarf, wearing ‘heavy’ make-up, or wearing tight or colourful clothes. Amnesty International (AI) has reported that “[s]ome public spaces and government institutions have gone further and imposed an outright ban on the entry of women who do not wear a black chador”.<sup>45</sup> In fact, women who refuse the imposed dress code are barred “in law and in practice” from working in the public sector or running for office.<sup>46</sup>

22. 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.<sup>47</sup> HRA documented this “frightening uptick in crackdowns against women in Iran”, which featured a spike in the number of forced confessions by women's rights activists.<sup>48</sup> The emblematic case of artist Sepideh Rashnoo, who was arrested on 16 July 2022 after protesting compulsory veiling and subsequently hospitalised

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<sup>43</sup> Compulsory veiling, p. 3.

<sup>44</sup> *Ibid.*, p. 2; AI, [Iran: Urgent international action needed to ensure accountability for Mahsa Amini's death in custody](#), 27 September 2022 (Urgent international action needed), p. 5. It should be noted that, because the bases of charges are often not included in the formal legal proceedings, it is not possible to ascertain with more accuracy the number of individuals arrested and charged on the basis of Art. 638.

<sup>45</sup> Compulsory veiling, p. 3.

<sup>46</sup> Trapped, p. 36; AI, [Iran: Presidency of Ebrahim Raisi a grim reminder of the crisis of impunity](#), 19 June 2021, p. 2.

<sup>47</sup> HRC, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javaid Rehman, [A/HRC/52/67](#), 7 February 2023, para. 15.

<sup>48</sup> HRA, Spreading Justice, [From Forced Veiling to Forced Confessions](#), 4 August 2022.



while in detention for internal bleeding, showed the increasing violence employed against women in the context of the enforcement of the mandatory dress code.<sup>49</sup>

23. On 6 July 2022, Iranian President Ebrahim Raisi addressed the issue of *hijab* and chastity during the meeting of the Supreme Council of the Cultural Revolution. He directed the council's secretariat, in collaboration with various cultural and executive bodies, to enforce the *hijab* law ratified by the Islamic Council and the 2004 law of the Supreme Council. The President stated that there was a need for “necessary and preventive measures” to be taken against an “organised and widespread attack” by enemies of the Iranian nation to promote “corruption in the Islamic and revolutionary society”.<sup>50</sup>

24. On 15 August 2022, in keeping with his previous call for action before the Supreme Council, President Raisi issued a decree intensifying the enforcement of mandatory veiling in the public space.<sup>51</sup> This included sanctions for women and girls showing their hair on social media, as well as female government employees facing dismissal for having profile pictures where they did not wear the *hijab*. The government also announced plans for digital surveillance of *hijab* observance.<sup>52</sup> On 4 September, a spokesman for the Headquarters for the Promotion of Virtue and Prevention of Vice announced that more than 300 people had been arrested for opposing compulsory veiling.<sup>53</sup> It was in the context of this renewed wave of repression that Ms. Amini lost her life while under the custody of the morality police, arrested for improperly wearing her *hijab*.<sup>54</sup>

25. The judiciary has also played a fundamental part in the government's wider crackdown against women defying compulsory veiling. On 15 June 2023, a police spokesperson stated that at least 108,211 reports had been recorded of women violating compulsory veiling since April 2023 and that 300 offenders had been referred to the judiciary.<sup>55</sup> At least since June 2023, courts have started employing alternative sentencing for women not wearing the veil in public. This included degrading practices like washing corpses in morgues, undergoing psychological

<sup>49</sup> Ms Rashnoo was then charged and convicted on national security offences and “encouraging (moral) corruption and prostitution” and is currently subject to a suspended sentence. See A/HRC/52/67, para. 15; HRA, [A Comprehensive Report of the First 82 Days of Nationwide Protests in Iran](#), September-December 2022 (82 Days Report), p. 9. Further information on Ms Rashnoo's case was shared with the FFMI on a confidential basis.

<sup>50</sup> Ensafnews, [A head of the Supreme Council of Cultural Revolution ordered the implementation of the hijab and chastity law](#), 7 October 2022 (in Farsi).

<sup>51</sup> Women and Family Research Institute, [بیتنکامل قتل و زنگنه ترش را کنار های اجرایی عفاف و حجاب](#).

<sup>52</sup> HRW, [World Report 2023: Iran](#); HRC, [Report of the Secretary General on the situation of human rights in the Islamic Republic of Iran](#), Advanced unedited version, A/HRC/53/23, 15 June 2023, para. 40.

<sup>53</sup> VOA News, [۳۰۰ مخالف حجاب اجباری، بیتنکامل اد ارب ه معروف: بهن رشیکه نیار زبا حجاب بیوند](#).

<sup>54</sup> See *infra* para. 32.

<sup>55</sup> A/78/511, para. 32 referring to [حجاب وعفاف طرح اجرای دنفر ۳۰۱ بینگیری](#) (etemadonline.com). See also A/78/511, paras. 34, 39 (“On 14 June 2023, a police spokesperson confirmed that almost 1 million women had received SMS warnings for not veiling and were threatened with having their vehicle confiscated if they were caught driving unveiled. As a result, 2,000 cars were confiscated for a period of at least two weeks and more than 4,000 women were referred to the judicial authorities”). Further information is provided in the confidential case files.

counselling and providing ‘certificates of healthiness’.<sup>56</sup> Judges have further issued complementary sentences that restrict women’s freedom of movement, freedom of expression and right to work: from imposing travel bans to forbidding the use of telephones and social media.<sup>57</sup> In July 2023, the head of the judiciary called on intelligence services to strengthen the judicial response against those protesting mandatory *hijab*.<sup>58</sup>

26. One exemplary case was that of actress Leila Baloukat, who was convicted on 18 July 2023 for removing her headscarf in public and publishing pictures without the *hijab* on social media.<sup>59</sup> Not only did she receive an imprisonment term, but the court also imposed: “a two-year ban on international travel; a two-year prohibition on involvement in streaming platforms, acting, performance activities and promotional work in offline or online spaces; and a five-year ban on engaging directly or indirectly in social media. Moreover, Leila Baloukat was required to study a specified book and prepare a handwritten copy within a month”.<sup>60</sup>

27. Another example documented by one trusted partner is the case of a Kurdish women’s rights activist. The activist has been arrested twice: first in September 2022, for participating in protests and again in August 2023.<sup>61</sup> She was accused of ‘propaganda against the regime’ for a post made on social media. While she has been released on bail awaiting trial, she remains under intense pressure.<sup>62</sup>

28. On 20 September 2023, the Iranian parliament signalled forthcoming approval of a new *hijab* law imposing further restrictions on women and girls.<sup>63</sup> The new legislation comprises 71 articles, a substantial increase from the previous version, and imposes harsher penalties, both financial and custodial. It also classifies improper *hijab* as its own crime as opposed to relying on Art. 638 of the Penal Code. Additionally, the bill introduces the use of artificial intelligence and other technologies to monitor compliance with mandatory veil standards, empowering

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<sup>56</sup> AI, [Iran: Authorities doubling down on punishments against women and girls defying discriminatory veiling laws](#), 26 July 2023 (Authorities doubling down on punishments), pp. 6-7.

<sup>57</sup> Art. 23 of the Penal Code authorises judges to impose complementary punishments “proportionate to the committed crime and character of the offender”.

<sup>58</sup> A/HRC/52/67, para. 16.

<sup>59</sup> HRA, [Actress Leila Bolukat Receives Sentence for Violating Hijab Regulations](#), 19 July 2023; [قرار تحريمه دادرسى](#)؛ [آزادهمص ددى ولى اللى كاتص ادرش د](#).

<sup>60</sup> Authorities doubling down on punishments, p. 7. A trusted source conveyed to HRA that Ms Baloukat was mandated to transcribe the book ‘The Fall of Andalusia’, by Ahmad Raef. This book delves into the final years of Arab and Islamic governance in Andalusia (Spain), attributing the collapse of Andalusian civilisation to “infiltration”, a concept akin to the Iranian government officials’ statements that enemies of the nation are seeking to infiltrate the country and promote corruption of Islamic and revolutionary values, as explained above.

<sup>61</sup> See confidential case files.

<sup>62</sup> See confidential case files.

<sup>63</sup> Islamic Republic News Agency, [The full text of the Judicial Commission’s report on the Hijab and Chastity Bill](#), 29 September 2023 (in Farsi). For a full text, see [گزارشك هيروى ون قضاى و ترقى](#) (in Farsi).

citizens to report violations.<sup>64</sup> Moreover, this new legislation extends its reach into both legislative and executive domains. It mandates businesses, schools, and hospitals to adjust their policies to align with the new regulations, including enforcing gender segregation in specific areas of their operations.<sup>65</sup> Ministries are also tasked with executing various functions: for instance, the Ministry of Science, Research, and Technology is responsible for ensuring that universities incorporate teachings on modesty and *hijab* principles.

29. Since the introduction of the new legislation, reports have emerged that women and girls considered non-compliant with the mandatory dress code have had their access to public services and spaces denied, for example being barred from public transport and banks, and being prevented from sitting exams, suspended, or expelled from universities, explicitly for failing to comply with the *hijab* regulations.<sup>66</sup> Due to the strengthening of third party obligations under the new law, hundreds of businesses have been prematurely closed for refusing to enforce the *hijab* in their premises.<sup>67</sup>

30. Shortly after the passing of the new law, another case emerged which, if confirmed, would have striking similarities to that of Ms Amini. Armita Geravand, a 16-year-old girl, died allegedly after an encounter with a female *hijab* enforcer on the Tehran metro on 1 October 2023. The Iranian government has so far failed to launch an independent and impartial investigation into the incident,<sup>68</sup> which would be essential to determine whether this incident is in fact related to the conduct of members or agents of the Iranian government. Journalists have reported that during Ms Geravand's funeral on 29 October, security officers allegedly attacked, beat, and arrested mourners and protesters who had gathered outside the cemetery.<sup>69</sup>

31. Similarly, Nobel Peace Prize winner Narges Mohammadi, who is currently detained at the Evin Prison in Tehran, has faced renewed prosecution for her opposition to mandatory veiling. On 30-31 October 2023, Ms Mohammadi was summoned by prison authorities to be transferred to a hospital for medical examinations. When she refused to wear the *hijab*, prison authorities denied her transfer. After repeated denials, Ms Mohammadi went on hunger strike,

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<sup>64</sup> The government has since rolled out a surveillance application (*Nazer*) for citizen's reporting. More than a million women have also received SMS warnings threatening the confiscation of their vehicles for driving while unveiled, thousands of which have already been executed. See Iran International, [Mobile App Designed By Iranian Regime For Reporting Unveiled Women](#), 9 April 2023; HRA, [HRA calls for urgent action in response to humiliating and disproportionate sentences against Iranian women](#), 24 July 2023.

<sup>65</sup> See e.g. HRA, [Iran's New Hijab Bill Stirs Controversy and Concern](#), 7 September 2023, p. 7.

<sup>66</sup> Authorities doubling down on punishments, p. 3. See also A/78/511, paras. 10, 33.

<sup>67</sup> A/78/511, para. 31; Authorities doubling down on punishments, p. 1.

<sup>68</sup> HRA, [Multiple Arrests Made at Armita Geravand's Funeral](#), 1 November 2023; OHCHR, Iran: [UN experts shocked by new wave of attacks on girls and women](#), 2 November 2023.

<sup>69</sup> D. Parent, [Iran arrests lawyer at funeral of girl who died after metro incident](#), The Guardian, 30 October 2023. See also HRA, [Multiple Arrests Made at Armita Geravand's Funeral](#).



until prison authorities finally allowed her transfer on 9 November.<sup>70</sup> On 12 November, Ms Mohammadi was informed that she had been summoned to the Evin court for a hearing on new charges brought against her but was banned from attending due to her refusal to wear a *hijab*. Therefore, the nature of these charges remains unknown.<sup>71</sup> It should be noted that Ms Mohammadi had reportedly already been beaten by a warden in September 2023 for not complying with the mandatory veiling in prison.<sup>72</sup>

## B. THE VIOLENT REPRESSION IN THE CONTEXT OF THE 2022-2023 PROTESTS

32. On 13 September 2022, Mahsa Amini, a 22-year-old Kurdish woman, was visiting Tehran with her 13-year-old brother when she was stopped and arrested by the morality police. She was taken to the Vozara detention centre, allegedly to undergo an “educational class” to “reform” the behaviour of women and girls who do not comply with the strict dress code.<sup>73</sup> Ms Amini was beaten in detention to a point that landed her in a coma. She subsequently perished on 16 September.<sup>74</sup> Despite the regime’s efforts to claim that Ms. Amini’s cause of death was natural, doctors at Kasra hospital told her family that she presented damage to her brain tissue, as well as kidney and heart failure. Ms Amini’s family was denied access to her medical records and the autopsy report.<sup>75</sup> Numerous members of the medical community in Iran have also publicly raised concerns over the official conclusions of the Legal Medicine Organisation in relation to Ms Amini’s cause of death.<sup>76</sup>

33. Ms Amini’s death ignited a wave of protests.<sup>77</sup> 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.<sup>78</sup> Unlike in previous mass demonstrations, protesters included diverse segments of the population, irrespective of class, ethnicity, or gender.<sup>79</sup> As described by the UN Secretary General, banners like “*Zan, Zendegi, Azadi*” (“Woman, Life, Freedom”) showed that “women’s

<sup>70</sup> See confidential case files; HRA, [نگس محمدی از زندان اهریب می‌داریت ان اعزام شد](#).

<sup>71</sup> Front Line Defenders, [Narges Mohammadi Faces New Charges After Ending Hunger Strike](#), 14 November 2023.

<sup>72</sup> HRA, [بہ لہل عدم رعیت حجاب ایجاری؛ نگیس محمدی از تلیق الیب می‌داریت ان محروم شد](#).

<sup>73</sup> Urgent international action needed, p. 1; HRA, [Woman in Coma in Custody by Hejab Enforcement Causes Uproar in Iran](#), 15 September 2022.

<sup>74</sup> *Ibid.*, p. 2; A/HRC/52/67, para. 20; HRA, [Masha Amini Died in Hospital at Moral Police Custody](#), 16 September 2022.

<sup>75</sup> *Ibid.*, p. 2. See also A/HRC/52/67, para. 18.

<sup>76</sup> A/HRC/52/67, para. 19.

<sup>77</sup> HRA, [Mahsa Amini’s Death Sparks Nationwide Protests](#), 19 September 2022.

<sup>78</sup> HRA, [Woman, Life, Freedom: Detailed Report of 20 Days of Historical Protest in Iran](#), September-October 2022 (20 Days Report), p. 4.

<sup>79</sup> 20 Days Report, p. 5; T.S. Far, [Unveiling Resistance: The Struggle for Women’s Rights in Iran](#), Clingendael, 26 June 2023; F. Parsa, [Mahsa Amini’s Legacy: A New Movement for Iranian Women](#), Carnegie Endowment for International Peace, 19 September 2023.

rights were central to the larger struggle for human rights” in Iran.<sup>80</sup> In the 20 days following Ms Amini’s death, protests were reported across 105 cities in all 31 provinces, as well as at 69 major universities.<sup>81</sup> By 7 December 2022 – that is, after 82 days of protests –, they had spread to 160 cities and 143 universities.<sup>82</sup>

34. Although protests were largely peaceful and attended mostly by unarmed civilians,<sup>83</sup> they were met with brutal violence by state security forces: among others, the *Faraja*, the country’s main law enforcement agency, and the *Basij*, Iran’s anti-riot forces.<sup>84</sup> Security forces resorted to both anti-riot equipment, such as pellets and teargas, and lethal weapons such as handguns, shotguns and assault rifles. Furthermore, they commonly beat protesters and bystanders with batons; used electric shocks against them; and even resorted to paintball guns to target individuals in the face, causing injuries especially to the eyes.<sup>85</sup>

35. The Iranian authority’s intent to violently repress protests is further evidenced by a leaked official document from 21 September 2022. According to AI, the document was issued by the General Headquarters of the Armed Forces. It gave an ‘order to the commanders of armed forces in all provinces instructing them to “severely confront” protesters who were described as “troublemakers and anti-revolutionaries”’.<sup>86</sup> That same night, AI recorded 34 protesters or bystanders killed by security forces.<sup>87</sup> Iranian government officials repeatedly referred to protests as the product of “rioters” and “enemies of the nation”, who have “created insecurity” and “insulted the sanctities of the people, including women’s *hijab*”, and emphasised that they would be decisively “dealt with” for “shedding the blood of [the] martyrs”.<sup>88</sup> The situation escalated further in April 2023, when Ahmadreza Radan, Iran’s Chief of Police, announced the intensification of the nationwide crackdown on the uprising, unveiling

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<sup>80</sup> A/HRC/53/23, para. 39.

<sup>81</sup> 20 Days Report, p. 4.

<sup>82</sup> HRA, [A Comprehensive Report of the First 82 Days of Nationwide Protests in Iran](#), September-December 2022 (82 Days Report), p. 5.

<sup>83</sup> A/HRC/52/67, para. 8; 20 Days Report, p. 5. *See also* A/HRC/53/23, paras. 6-9.

<sup>84</sup> HRA, [Spreading Justice: Iran Protests Weapons Analysis](#), 17 October 2022.

<sup>85</sup> *Ibid.*; 20 Days Report, pp. 6, 18, 45, 46; A/HRC/52/67, para. 23. *See also* HRA, [HRA Urges Tippmann Sports LLC To Condemn The Iranian Government’s Use Of Its Equipment In The Repression Of Protests](#), 25 October 2022. HRA also reported that security forces used ambulances and city buses to move their officers in urban areas and used schools as operational and storage bases, which, as a result of protester’s defensive actions against officer’s violence, have led to major infrastructural damage. *See* 20 Days Report, p. 18.

<sup>86</sup> AI, [Iran: Leaked official documents ordering deadly crackdown highlight need for international action](#), 30 September 2022 (Leaked official documents), p. 1.

<sup>87</sup> *Ibid.*, p. 3.

<sup>88</sup> These included statements by Ayatollah Khamenei, the Minister of Interior, the Commander-in-Chief of the Army, and a statement by 233 members of the Islamic Council, among others. For a compilation of such statements, *see* confidential case files. *See also* [Council Implementing Regulation \(EU\) 2022/2231 of 14 November 2022 implementing Regulation \(EU\) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran](#), Official Journal of the European Union, L 293I, v. 65 (Regulation (EU) 2022/2231).

an approach based on mass surveillance and widespread arrests to suppress perceived anti-regime activities.<sup>89</sup> In May 2023, the Ministry of Interior called for a continued crackdown on protests.<sup>90</sup>

36. In this vein, the governmental response to protests since September 2022 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.<sup>91</sup> In his statement to the HRC, the UNSR related that at least three young boys were shot dead during the demonstration in Izeh and at least four girls aged 16 and 17 had been beaten to death during the protests.<sup>92</sup> The statement also mentions 500 people injured.<sup>93</sup> Despite women’s protagonism in the 2022-2023 protests, men have been the majority of reported victims of death and injury – including through the imposition of capital punishment –, which some believe to be an intentional tactic of the Iranian regime to intimidate them and stop them from supporting women’s protests.<sup>94</sup>

37. The government also used force indiscriminately against bystanders and people who were running away.<sup>95</sup> One such case was that of the 10-year-old girl Dina Zahraian, who was shot 15 times while passing by a protest in the city of Bukan on 28 September 2022. Ms Zahraian survived but 10 to 11 pellets could not be removed from her stomach and skull due to risks of further harm.<sup>96</sup> Another case happened on 18 September, when a group of protesters were ambushed by security forces after taking shelter in a nearby house: “After some time when we felt that it was safe, we left the house, but security forces were hiding behind the trees at the end of the street and started shooting at us from behind as we were running away”.<sup>97</sup> On 21 September, in the city of Sanandaj, a woman was shot with ‘less lethal’ ammunition directly on her chest while trying to protect a 13-year-old boy from detention, causing her superficial injuries.<sup>98</sup>

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<sup>89</sup> Authorities doubling down on punishments, p. 1.

<sup>90</sup> Regulation (EU) 2022/2231, p. 20.

<sup>91</sup> 82 Days Report, p. 56. For a full list of the 481 reported deaths, including confirmation status, *see ibid.*, pp. 62 *et seq.*

<sup>92</sup> HRC, [Statement by Javaid Rehman, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and on behalf of the Coordination Committee of Special Procedures](#), 35th Special Session of the Human Rights Council, 24 November 2022, p. 3 (UNSR HRC Statement). The Special Rapporteur has further recounted multiple cases of the use of excessive force. *See* A/HRC/52/67, paras. 24-25.

<sup>93</sup> UNSR HRC Statement, p. 3.

<sup>94</sup> S. Malekian & C. Alcini, [Men targeted by Iranian regime as women protest for equal rights](#), ABC News, 19 September 2023.

<sup>95</sup> A/HRC/52/67, paras. 8, 23.

<sup>96</sup> Kurdpa, [Buchan: A story of shooting 15 bullets at Dina Zahraian, a 10-year-old child, and the bullets that are still in her head and body](#), 25 September 2023 (in Farsi).

<sup>97</sup> HRW, [Iran: Security Forces Fire On, Kill Protesters](#), 5 October 2022 (Security Forces Fire On).

<sup>98</sup> *Ibid.*

38. 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.<sup>99</sup> Doctors have reported that women were commonly targeted with shotgun fire to their faces, breasts, and genitals.<sup>100</sup> According to one report, a physician recounted treating a 20-year-old woman who was shot with 12 pellets in her genitals and her inner thighs. The woman said she was protesting when a group of 10 officers ambushed her and started shooting. The doctor stated that two pellets were lodged between the woman's urethra and her vaginal opening, suggesting she was shot at close range.<sup>101</sup> HRA sources have also reported that, during protests in Bukan, a woman was shot in her genitals in a way that caused a permanent impairment, and another had parts of her face burned by an undetermined substance thrown at her by security officers, leading to a visual impairment.<sup>102</sup> Another woman recounted being assaulted during a protest in Sanandaj by presumably security officers in plain clothes, who hit her with a metal tow cable.<sup>103</sup> During the protests that swept Javanrud, one boy reported that his pregnant mother was violently shoved to the ground by a police officer, which resulted in her suffering a miscarriage.<sup>104</sup>

39. **Schools.** Schoolchildren and students have featured prominently in protests. According to an Iranian government source, the average age of individuals detained during the protests is 15 years old.<sup>105</sup> As a result, schools have also been raided and principals arrested for not cooperating with security forces, while school children have been sent to 'psychological centres' after their arrests.<sup>106</sup>

40. The regime's violence also led to deaths inside schools. On 14 October 2022, plainclothes officers raided Shahed High School in Ardabil and reportedly beat to death Asra Panahi, a female student, simply for refusing to sing the pro-regime anthem.<sup>107</sup>

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<sup>99</sup> A/HRC/52/67, para. 41; Leaked official documents, p. 6; B. Currin, [Mahsa Amini – The Seismic Tragedy That Is Triggering A Tsunami That Should Not Be Ignored](#), HRA, February 2023 (Currin Report), p. 8.

<sup>100</sup> A/HRC/52/67, para. 32; Currin Report, p. 8; D. Parent & G. Habibiazad, [Iranian forces shooting at faces and genitals of female protesters, medics say](#), The Guardian, 8 December 2022.

<sup>101</sup> Currin Report, p. 8.

<sup>102</sup> See confidential case files.

<sup>103</sup> Security Forces Fire On.

<sup>104</sup> CHRI, [Massacre in Javanrud: State Atrocities Against Protesters in Iran's Kurdish Regions](#), September 2023 (Javanrud Report), p. 19.

<sup>105</sup> A/HRC/52/67, para. 38.

<sup>106</sup> UN General Assembly, [Statement by Javaid Rehman Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran](#), 77th session of the General Assembly, 26 October 2022 (UNSR UNGA Statement), p. 5.

<sup>107</sup> 82 Days Report, p. 31; Regulation (EU) 2022/2231, p. 26.



41. **Universities.** Several reports have emerged of government crackdowns at university rallies and protests.<sup>108</sup> At Sharif University in Tehran, students had been peacefully protesting since Ms Amini's death. On the night of 2 October 2022, security forces stormed the campus, closing the entrance doors and then shooting at students. At least 30 to 40 students were arrested, and several were injured.<sup>109</sup> The Islamic Association of Sharif University Students issued a statement confirming the attack and highlighting that plainclothes officers shot plastic bullets and pellets from close range "especially towards the girls".<sup>110</sup> Following this attack, protests intensified at Khajeh Nasir University and different campuses of Tehran University, which also experienced mass arrests, shootings and the use of tear gas.<sup>111</sup> According to the Student Councils, out of every five protesting students, three to four were female.<sup>112</sup>

42. **Zahedan and the 'Bloody Friday'.** On Friday, 30 September 2022, Zahedan, a city in the province of Sistan and Baluchistan, experienced the deadliest episode in the context of the protests, which came to be known as the 'Bloody Friday'. On 1 September 2022, a report surfaced about Ibrahim Kochzai – a colonel and the police commander in Chabahar – being accused of raping a young Baloch girl at the Chabahar police headquarters. Maulvi Abdul Qafar Naqshbandi, the Imam of Juma Rask and a native of the region, publicised this violation. Following the news release, the Sistan and Baluchistan governorate and security officials remained silent for a week.<sup>113</sup>

43. This incident coinciding with the events related to Ms Amini, sparked widespread protests in Baluchistan. Protesters and bystanders were met with fire from security forces. A majority of victims have been shot in the head, heart, neck and torso.<sup>114</sup> The government indicated that many citizens had been killed as they were caught in the crossfire between some attackers and the security forces, and that some negligence was found from the authorities' side and sanctions taken. Nevertheless, OHCHR noted that footage analysis revealed that security forces and other security elements in plain clothes appear to be firing indiscriminately from rooftops at a gathering of protestors.<sup>115</sup> Around 90-100 people lost their lives on Bloody

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<sup>108</sup> See 82 Days Report, p. 27; DoS Country Report, p. 37; Student Union Councils of the Country, [University and uprising: University of Tehran](#), 30 July 2023 (University of Tehran Report); [University and uprising: Khajeh Nasir University](#), 8 August 2023 (Khajeh Nasir University Report).

<sup>109</sup> DoS Country Report, p. 37.

<sup>110</sup> 82 Days Report, p. 27.

<sup>111</sup> University of Tehran Report; Khajeh Nasir University Report.

<sup>112</sup> Khajeh Nasir University Report, p. 3.

<sup>113</sup> See confidential case files. Eventually, Colonel Kochzai was dismissed from his post and faced trial. The military court in Sistan and Baluchistan province convicted Ebrahim Kochzai under several charges, but none of rape. See Etemad Newspaper, [مجازات نیکم نام دیکریلیوج](#); [Conviction of the former police chief of Chahabar to 15 months of imprisonment and dismissal from service](#) (in Farsi).

<sup>114</sup> A/HRC/52/67, para. 29.

<sup>115</sup> See A/HRC/53/23, para. 10.

Friday, including at least 15 children.<sup>116</sup> It should be noted that Iran's ethnic minorities, especially Kurdish and Baloch citizens, have witnessed the bloodiest crackdowns in the 2022-2023 protests: more than half of the total number of people killed are from Baluch and Kurdish provinces, and children from these minority groups constitute 63% of the recorded child victims.<sup>117</sup>

44. *Javanrud*. Iran's western and north-western Kurdish-majority provinces have experienced intensive repression, including the killing of at least 125 Kurdish protestors, among which were 13 children and 8 women.<sup>118</sup> In particular, a wave of protests in the city of Javanrud starting in mid-November 2022 led to many deaths and injuries.<sup>119</sup> On 21 November 2022 alone, five people were killed and at least 60 were injured.<sup>120</sup> A 24-year-old woman recounted that she was shot at close range by Revolutionary Guards, severely injuring her left leg. Due to fears that she could be arrested at the hospital, she was reluctant to seek medical help at first, but had to do so in order to have surgery. She has since undergone multiple procedures and is likely to be left with a permanent disability.<sup>121</sup>

### C. ARBITRARY ARREST AND DETENTION, AND CONDITIONS THEREOF

45. The regime's violent response to protests also manifested itself in thousands of arrests and episodes of ill-treatment during detention.<sup>122</sup> HRA estimates that about 22,000 people were arrested in connection with the 2022-2023 protests.<sup>123</sup> Among the 6,832 people whose identity and gender have been verified by HRA, at least 1,238 were women and 199 were under the age of 18. Although law enforcement officials estimated the average age of detainees to be 15 years old, the average age among those arrestees whose identities were confirmed is 22 years old.<sup>124</sup>

46. These arrests were routinely carried out with extreme violence, including beatings, verbal abuse, and other forms of physical and psychological mistreatment.<sup>125</sup> In the protests at Sharif University described above, security forces trapped the protesters in the university campus, assaulting them with batons and shooting at them with plastic bullets to stop them

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<sup>116</sup> *Ibid.*; HRA, [زادگان خورشید جمعه: زنگارهای خونی و گریه‌های بی‌پایان در سراسر کوی و محله‌های تهران](#); HRW, [Iran: 'Bloody Friday' Crackdown This Year's Deadliest](#), 22 December 2022.

<sup>117</sup> A/HRC/52/67, para. 28.

<sup>118</sup> *Ibid.*, para. 30.

<sup>119</sup> For a detailed account of these events, see *Javanrud Report*.

<sup>120</sup> *Ibid.*, p. 31.

<sup>121</sup> *Ibid.*, pp. 44-45.

<sup>122</sup> AI, [Annual Report 2022/2023 – The State of the World's Human Rights](#), 2023 (2022/2023 AI Report), pp. 197-198.

<sup>123</sup> HRA estimates that, until 7 December 2022, 18,242 individuals had been arrested. See *82 Days Report*, p. 161. In turn, the UN Secretary General placed this number at 20,000. See A/HRC/53/23, para. 21.

<sup>124</sup> Internal verification by HRA.

<sup>125</sup> DoS Country Report, p. 20. See also Section IV.B.

from leaving the premises.<sup>126</sup> As described in the previous section,<sup>126</sup> security forces have used intimidation, as well as physical violence, to disperse and detain protesters and bystanders.

47. Women, girls, and LGBTQI+ individuals were vulnerable to the nationwide crackdown due to their perceived transgression of social norms. For instance, in one incident, five transgender individuals were arrested by a self-proclaimed religious enforcer, citing the religious duty of “enjoining good and forbidding wrong”. Although the circumstances surrounding their arrest and prosecution remain unclear, a video of these individuals’ forced confessions portrays them expressing “regret for their type of behaviour and way of dressing”.<sup>127</sup> According to the UN Secretary General, “[m]any women who have expressed their public support for the protests by dancing or removing their hijab have reportedly faced arbitrary arrests”.<sup>128</sup> HRA recorded the arrest of Varisheh Moradi, near Sanandaj, whose whereabouts remain unknown.<sup>129</sup> Another case recorded by HRA is that of Raha Ajoudani, a 17-year-old trans girl and activist, who was arrested twice for her support of the protests on 26 October and 17 December 2022.<sup>130</sup> At the time of her second arrest, she was charged with allegedly inciting people to disrupt national security and spent a month in solitary confinement in a clandestine, all-male detention centre before being released on bail.<sup>131</sup>

48. In detention, living conditions were harsh and often life-threatening.<sup>132</sup> At Tehran’s Evin prison’s women’s ward, cells were reported to be overcrowded and access to cleaning supplies and clean water was severely limited.<sup>133</sup> Soheila Khalidian, a female teacher in Sanandaj’s Education District, was arrested on 21 November 2022 at her home.<sup>134</sup> During her 22 days of detention, she described being kept in precarious conditions and being deprived of clean water.<sup>135</sup> She also stated that wounds she had suffered during a recent student protest were not treated during her detention.<sup>136</sup>

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<sup>126</sup> 82 Days Report, pp. 27-28.

<sup>127</sup> HRA, [Five Transgender Individuals Arrested and Coerced into Confession](#), 26 June 2023; [بخش اعترافات اجباری؛ نواز نش تمییز چشم خون تن من در بی درگی ریا “آمریه معزوف](#)

<sup>128</sup> A/HRC/53/23, para. 21.

<sup>129</sup> HRA, [بروز دج فتداو باز نشت ویی ضری از وضعت و پیشه مرادی](#), [بروز دج فتداو باز نشت ویی ضری از وضعت و پیشه مرادی](#)

<sup>130</sup> HRA, [رها آجودانی و بی غورار فقه آزدش](#)

<sup>131</sup> War on Bodies and Minds, pp. 31-32; HRA, [گزارشی از باز نشت رها آجودانی، جوان ترین س دت در ان](#) See also para. 61.

<sup>132</sup> A/HRC/53/23, para. 30 (“Prison conditions in the Islamic Republic of Iran remain of serious concern as highlighted in previous reports of the Secretary-General, including the denial of medical care, dire sanitary conditions, contaminated drinking water, overcrowding and the lack of independent oversight”).

<sup>133</sup> DoS Country Report, p. 12.

<sup>134</sup> Coordinating Council of Cultural Associations of the Country, Telegram post titled [گزارش تک‌گویی در خصوص وضعت](#) [برایال خلدی](#)، [مقیباز نشت سرن دج](#) #Kurdpa, Telegram post of 13 November 2022.

<sup>135</sup> See confidential case files.

<sup>136</sup> Ms Khalidi was reportedly hit from behind with around 100 bullets. See Coordinating Council of Cultural Associations of the Country. Kurdpa has also published a video showing the removal of some of the pellets from Ms Khalidi’s body. See Kurdpa, Telegram [video](#) (warning: graphic images). See also confidential case files.

49. Besides sub-standard living conditions, physical and psychological abuse are a daily occurrence in the Iranian prison system, with security forces often using threats and coercion against detainees, including in the context of interrogations.<sup>137</sup> For instance, a 17-year-old girl, whose experience was reported by the CHRI and by the Kurdistan Human Rights Network, was arrested following her participation in a protest in the city of Javanrud and threatened during interrogation with having her legs broken to “educate her”.<sup>138</sup>

50. Another example, documented by a trusted partner organisation, involved the arrest of a journalist due to her coverage of protests. The journalist was subjected to prolonged solitary confinement, harassment during interrogations, and a security officer tried to force the journalist to physically assault another detainee. Her denial to do so led to her being physically assaulted herself. She was also subject to inhuman conditions of detention, which led to her hospitalisation.<sup>139</sup>

51. Another emblematic case of the violence against women and girls in detention was that of Nika Shakarami, a 16-year-old girl who was allegedly killed by security forces in Tehran on 20 September 2022.<sup>140</sup> Ms Shakarami was protesting on that day and is allegedly seen on a video burning her headscarf. She disappeared after telling a friend that the police were chasing her, and her body was located only 10 days later. Her family subsequently found out that Ms Shakarami had been detained by the Revolutionary Guards for five days, before being handed over to prison authorities.<sup>141</sup> While the official government narrative was that Ms Shakarami likely fell off a building after being pushed by construction workers, it appears that she was more likely beaten to death.<sup>142</sup>

52. Among the different instances of mistreatment and abuse, female inmates – among which protesters and human rights defenders – were often attacked with batons, tear gas, and electroshock weapons, and generally once in detention lacked access to medical care.<sup>143</sup> As exemplified by the case of Ms Khalidi and others mentioned above, consequences of these abuses were often tragically reflected in detainee suicides. A trusted partner organisation reported that “many of the detained protestors from recent protests who were released from the Revolutionary Guards’ intelligence detention centres in Sistan and Baluchistan have become severely depressed, cut off ties with their families and acquaintances, and even many

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<sup>137</sup> A/HRC/52/67, para. 15.

<sup>138</sup> Javanrud Report, pp. 71-72.

<sup>139</sup> See confidential case files.

<sup>140</sup> P. Ghobadi, [Nika Shakarami: Videos show Iran teenager protesting before death](#), BBC News, 10 October 2022.

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*

<sup>143</sup> United States Department of the Treasury, [Marking International Women’s Day – Treasury Sanctions Iranian Officials and Entities for Serious Human Rights Abuses](#), 8 March 2023 (Marking International Women’s Day). See also *supra* paras. 48-50.



of the detained student girls and boys who were arrested during widespread protests in Sistan and Baluchistan have abandoned their university studies after being freed. Many fear that the behaviour of the released detainees might be a psychological result of the treatment they received from the Revolutionary Guards' intelligence officers and interrogators during their detention".<sup>144</sup>

#### **D. RAPE AND OTHER FORMS OF SEXUAL VIOLENCE**

53. Rape and other forms of sexual violence are a tool commonly employed by the Iranian authorities to stifle dissent.<sup>145</sup> According to Azadeh Devachi, a women's rights defender interviewed by the BBC, "[u]sing sexual violence and assaulting imprisoned women is one of the long-standing tools of the Islamic Republic to put pressure on women and their families. This issue is important because sexual assault on women always creates a kind of shame and taboo in the individual, family and society. Victim women (*sic*) and their families do not have much desire to tell what happened to them, and recounting it is considered a taboo and shame both in the family and in the society. Knowing this, women's bodies become a tool to put pressure on, a tool that shows its effectiveness in a large part of society's layers and can influence the suppression of women to continue protests" (unofficial translation).<sup>146</sup>

54. In the context of the 2022-2023 protests, sexual violence has been used in many different instances. Women's rights defenders and journalists have been threatened with it to prevent them from covering the demonstrations and the regime's repression.<sup>147</sup> During protests, women have been grabbed by their breasts and had their hair pulled by security officers.<sup>148</sup> In some cases, government forces also assaulted children during raids to schools through the use of body searches.<sup>149</sup> Ms Mohammadi stated that she has witnessed in the past few months the physical effects of sexual assault of detainees arrested in relation to the protests at the women's ward. She notably recounted the experience of a girl who was forcefully taken by security guards on a motorbike and subjected to harassment and sexual assault during the ride, as well

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<sup>144</sup> See confidential case files. According to the Kurdistan Human Rights Network and the United States' Department of State, there were numerous reports of attempted prisoner suicides throughout the year in response to prison conditions or mistreatment. The almost-complete lack of accountability of authorities only exacerbates the suffering of prisoners. See DoS Country Report, p. 14.

<sup>145</sup> Haalvsh, Telegram posts of [11 February 2023](#); [13 February 2023](#); [18 February 2023](#); [19 February 2023](#). The use of sexual violence against protesters was also recorded in the final judgment of the People's Tribunal. See Aban Judgment, para. 41.

<sup>146</sup> BBC News, [بهنرگس محمدی: بهعرض جنسیبهنرگان معروض بلزارس کوب حکومت لرت](#).

<sup>147</sup> A/HRC/52/67, para. 48.

<sup>148</sup> Leaked official documents, pp. 6-7; A/HRC/52/67, para. 41.

<sup>149</sup> 82 Days Report, p. 37.

as of another woman who, during transfer to the prison, hung from one leg and one hand tied to a clamp above her head, and was sexually assaulted.<sup>150</sup>

55. Sexual violence against women and girls is also rife in detention settings. In an open letter regarding sexual assault against female detainees at Evin, Ms Mohammadi – herself a victim of physical violence for non-compliance with *hijab* regulations inside the prison –<sup>151</sup> recounted the story of a woman then-detained with her at the women’s ward at Evin, who was physically assaulted on her breasts during an interrogation in a cell in Qarchak prison.<sup>152</sup> One investigation found that security officers filmed sexual assaults and used them to blackmail protesters into staying silent – a practice which was prevalent in Kurdish areas.<sup>153</sup> Likewise, the United States’ Department of Treasury reported that female inmates at the Orumiye Central Prison in the West Azerbaijan Province – a predominantly Kurdish area – were frequently coerced into having sexual relations in exchange for better treatment.<sup>154</sup> IranWire, a news agency, reported that a 22-year-old woman detained during the protests had been repeatedly raped during her interrogation, and reportedly died by suicide after being released.<sup>155</sup> The newspaper The Guardian also interviewed a young woman who described how she was raped in detention under the guise of a medical examination, with officers saying she would be seen by a female doctor when, in fact, a man came into the room and used an object to penetrate her repeatedly. She was left with serious physical injuries and, months later, the woman is still experiencing deep psychological distress.<sup>156</sup>

56. One of the trusted partner organisations documented and verified at least four cases of sexual assaults and rapes of young women in the Zahedan detention centre by Revolutionary Guard intelligence officers, after their arrest for their participation in the so-called “Bloody Friday”. Such cases depicted a pattern of behaviour against children and young women which entailed beatings to ‘sensitive areas’, the use of derogatory language against them (for instance calling them ‘whores’ and inquiring about their sexual lives), and rape.<sup>157</sup>

<sup>150</sup> BBC News, [نرگس محمدی: متعرض چھریبہ زنان مہر ضیلزار سیکوب حکومت لیت](#). See also CHRI, [Political Prisoner Narges Mohammadi: I Will “Testify” About Sexual Assault Against Protesters](#), 3 March 2023.

<sup>151</sup> HRA, [Prominent Activist Narges Mohammadi Assaulted in Evin Prison](#), 12 September 2023. See also HRA, [نرگس محمدی از زندان اوین بی ماریتوان اعزاشد](#).

<sup>152</sup> HRA, [نرگس محمدی: متعرض چھریبہ زنان مہر ضیلزار](#) BBC News, [نرگس محمدی: متعرض چھریبہ زنان مہر ضیلزار](#), 12 September 2023. See also HRA, [نرگس محمدی: متعرض چھریبہ زنان مہر ضیلزار](#).

<sup>153</sup> A/HRC/52/67, para. 42.

<sup>154</sup> Marking International Women’s Day.

<sup>155</sup> DoS Country Report, p. 10.

<sup>156</sup> D. Parent & G. Habibiazad, [‘They used our hijabs to gag us’: Iran protesters tell of rapes, beatings and torture by police](#), The Guardian, 6 February 2023.

<sup>157</sup> See confidential case files.

57. Victims' lives have been deeply affected by the sexual violence they suffered. Some had suicidal thoughts and one of them attempted to take her own life as a result of the rape.<sup>158</sup>

#### E. UNFAIR TRIALS AND RELIANCE ON CORPORAL PUNISHMENT AND THE DEATH PENALTY

58. On 24 October 2022, only a month after protests started, the Iranian government announced that trials against protesters were already underway. In Tehran alone, over 1,000 indictments had been issued and 315 people had been charged with 'gathering and colluding with the intent to act against national security', 'propaganda against the regime', 'disturbing public order' and *moharebeh* ('enmity against God').<sup>159</sup> Most protesters are tried in the Revolutionary Courts,<sup>160</sup> with restricted access to lawyers or case files, with defendants not receiving official copies of their verdicts but only being allowed to transcribe the issued verdict with pen and paper when it is read to them in court.<sup>161</sup> These courts are also reported to have more latitude for subjectivity in their judgments.<sup>162</sup> Coerced confessions also seem to be commonplace: according to the United States' Department of State, courts have at times relied solely on confessions obtained through torture or coercion to convict defendants.<sup>163</sup>

59. Women activists, lawyers and journalists have also faced trials on various bogus charges for participating in or covering the protests. For instance, Niloufar Hamed and Elahe Mohammadi, the two journalists that first reported on Ms Amini's death, have been prosecuted with 'collaborating with a hostile government', 'gathering and colluding with the intent to act against national security' and 'propaganda against the regime'.<sup>164</sup> The journalists did not have access to their lawyers before trial.<sup>165</sup> On 22 October 2023, they were sentenced to 13 and 12

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<sup>158</sup> *Ibid.*

<sup>159</sup> A/HRC/52/67, para. 54; HRW, [Iran: Thousands of Detained Protesters and Activists in Peril](#), 3 November 2022 (Thousands in Peril). See also A/HRC/53/23, para. 23.

<sup>160</sup> The Revolutionary Courts, established in 1979 by Seyyed Ruhollah Khomeini, were initially created to handle cases related to the 1979 Iranian Revolution. They later became an integral part of the Islamic Republic's judiciary, with authority detailed in Article 303 of the Criminal Procedure Code. Their jurisdiction covers a wide range of cases, notably those involving crimes against internal and external security, which are found under Arts. 498 to 512 of the Penal Code. Further, they also handle drug-related offenses and foreign espionage. The Revolutionary Courts play a crucial role in the legal framework, addressing issues related to social order, serious criminal cases, human rights, public and fair trials, protests, social changes, and social justice.

<sup>161</sup> HRA has reported that a 2018 law restricted defendants' rights of access to a lawyer in national security cases, with defendants only allowed to choose counsel from a pre-approved list. HRA, [Nasrin Sotoudeh's charges](#). Generally, see also A/HRC/52/67, para. 55; A/HRC/49/75, paras. 55-56; CHRI, [Open letter of political prisoners of Evin: "Judges of the Revolutionary Court are representatives of the security apparatus"](#), 1 May 2009.

<sup>162</sup> The Revolutionary Courts can impose the death penalty for crimes not included in the Penal Code, as long as they are encompassed by authoritative Islamic sources, the *fatwa*, on the basis of Art. 220 of the Penal Code and Art. 167 of the Iranian Constitution.

<sup>163</sup> DoS Country Report, p. 6. See also UNSR UNGA Statement, p. 3.

<sup>164</sup> A/78/511, para. 19; Thousands in Peril; FFMI, Iran: [On one-year anniversary of Jina Mahsa Amini's death in custody, heightened repression of women and girls and reprisals against protesters and victims' families is deeply troubling, UN Fact-Finding Mission says](#), 14 September 2023. See also A/HRC/53/23, para. 33.

<sup>165</sup> A/78/511, para. 19.





which Sharia or Islamic law has specifically set out punishment, including the death penalty – and are criminalised in Iran’s Penal Code.<sup>173</sup> Executions were often carried out only days after the trial. According to the UN Secretary General, as of the end of July 2023, seven men had been executed in relation to or for their involvement in the 2022-2023 protests.<sup>174</sup> HRA has documented 7 cases including the case of Majid Reza Rahnavard, a 23-year-old man who was found guilty of *moharebeh* for the alleged killing of two security officers on 17 November. His trial opened just 10 days after his arrest on 19 November, and Mr Rahnavard was executed 13 days after the trial closed.<sup>175</sup> As reported by the UN Secretary General, “[i]n all seven cases, information received by OHCHR consistently indicated that the judicial proceedings did not fulfil the requirements for due process and a fair trial under international human rights law. Access to adequate and timely legal representation was frequently denied, with reports of coerced confessions, which may have been obtained as a result of torture”.<sup>176</sup>

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

63. This section provides a detailed legal analysis to demonstrate how the conduct 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.<sup>177</sup> It is important to emphasise that this submission focuses on persecution, which does not preclude the possibility that other underlying acts of crimes against humanity may have been committed. Moreover, while this submission focuses on persecution on political and gender grounds, persecutorial acts may also intersect with other grounds, such as religion and ethnicity.<sup>178</sup>

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<sup>173</sup> Art. 286 of the Penal Code, which defines ‘spreading corruption on earth’, covers a broad base of acts that are seen as compromising public order ‘to an extensive level’, without however defining such level. In turn, pursuant to Art. 279, ‘enmity against God’ means ‘drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity’. The broad concepts employed in these provisions render it malleable to judges’ discretion. Whereas both crimes can carry the death penalty, Art. 282 sets out alternative punishment for ‘enmity against God’, namely crucifixion, amputation of right hand and left foot, and exile. Pursuant to Art. 91, children may also receive the death penalty for *hudud*, which in practice has been carried out once they turn 18. See 2022 Annual Report, p. 16.

<sup>174</sup> A/78/511, para. 7.

<sup>175</sup> HRA, [م. محمدرضای فرورد در حال عام اعدام شد](#).

<sup>176</sup> A/78/511, para. 7. See also A/HRC/53/23, para. 18.

<sup>177</sup> This conclusion is reached by applying the standard of proof of ‘reasonable grounds’, as defined by the FFM in its ToR. See ToR, para. 32.

<sup>178</sup> See OTP Policy, paras. 29, 55.

64. The analysis has been conducted with reference to the crime against humanity of persecution under Arts. 7(1)(h) and 7(2)(g) of the Rome Statute of the ICC (Rome Statute). This is the most comprehensive definition of the crime of persecution to date, and is the first international treaty that articulates the crime against humanity of persecution on gender grounds.<sup>179</sup> Furthermore, the International Law Commission (ILC) substantially included this definition of the offence in its Draft Articles on Prevention and Punishment of Crimes Against Humanity (Draft Articles) adopted in 2019.<sup>180</sup> 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,<sup>181</sup> and the adoption by the ILC of the Rome Statute definition of this offence weighs in favour of the view that it reflects customary international law.<sup>182</sup>

65. Under the Rome Statute and the ICC Elements of Crimes, the crime against humanity of persecution requires that:

- i. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
- ii. 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.
- iii. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law.
- iv. The conduct was committed in connection with any underlying acts of crimes against humanity or any crime within the jurisdiction of the ICC.
- v. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
- vi. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>183</sup>

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<sup>179</sup> *Ibid.*, p. 4.

<sup>180</sup> ILC, [Draft Articles on Prevention and Punishment of Crimes Against Humanity](#), 2019 (Draft Articles), Arts. 2(1)(h), 2(2)(g). *See also* K. Ambos (ed.), Rome Statute of the International Criminal Court, Article by Article Commentary (4<sup>th</sup> ed. 2022), p. 224, mn. 144.

<sup>181</sup> *See* Art. 6(c) of the [Charter of the Nuremberg Tribunal](#), Art. 3(h) of the [Statute of the International Criminal Tribunal for Rwanda](#) (ICTR) and Art. 5(h) of the [Statute of the International Criminal Tribunal for the Former Yugoslavia](#) (ICTY); International Military Tribunal, [Judgment and Sentences](#), 1 October 1946, pp. 76, 119; ICTR, *Prosecutor v. Nyiramasuhuko et al. (Butare)*, ICTR-98-42-A, [Judgment](#), 14 December 2015, paras. 2135-2136, 2138; ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, [Judgment](#), 14 January 2000 (*Kupreškić et al.* Trial Judgment), paras. 567-568. *See also* OTP Policy, paras. 24, 91.

<sup>182</sup> *See* Ambos (ed.), p. 224, mn. 144.

<sup>183</sup> ICC, [Elements of Crimes](#), Art. 7(1)(h). *See also* ICC, *The Prosecutor v. Ongwen*, ICC-02/04-01/15, [Trial Judgment](#), 4 February 2021 (*Ongwen* Trial Judgment), paras. 2733-2738; ICC, *The Prosecutor v. Ntaganda*, ICC-01/04-02/06-2359, [Judgment](#), 8 July 2019 (*Ntaganda* Trial Judgment), paras. 988, 991-994, 1009-1011, 1023-1024.

## A. SEVERE DEPRIVATION OF FUNDAMENTAL RIGHTS CONTRARY TO INTERNATIONAL LAW

66. 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. The fundamental rights whose infringement may constitute acts of persecution can be identified from international customary or treaty law.<sup>184</sup> The ICC framework requires the deprivation of fundamental rights to be *severe*.<sup>185</sup> The severity of the human rights violation is assessed on a case-by-case basis, considering the cumulative effect of the relevant acts in order to ascertain whether, taken alone or in conjunction, they reach the severity threshold.<sup>186</sup>

67. According to ICC jurisprudence, persecution may involve the severe deprivation of a variety of fundamental rights, including the right to life, the right not to be subjected to arbitrary arrest and detention, the prohibition of torture or cruel treatment and inhuman or degrading treatment, the right to liberty and freedom of movement, the right to freedom of expression and assembly, and the right to education.<sup>187</sup> In addition, other international criminal tribunals have considered the following acts, either individually or cumulatively, as persecutorial acts when committed on discriminatory grounds: (1) forcing detainees to sign false and coerced confessions;<sup>188</sup> (2) denial of access to public services;<sup>189</sup> (3) denial of

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<sup>184</sup> See *Ongwen* Trial Judgment, para. 2733; *Kupreškić et al.* Trial Judgment, para. 621. See also *Ntaganda* Trial Judgment, para. 991, referring to the “Universal Declaration of Human Rights (UDHR), the two UN Covenants on Human Rights, and other international instruments on international human rights, as well as the rights reflected in international humanitarian law”. The ICC OTP has highlighted that, in accordance with Art. 21(1)(b) of the Rome Statute, it will recourse to customary law, as well several treaties, in assessing the deprivation of fundamental rights. Such treaties include: the UDHR; the ICCPR; the International Covenant of Economic, the Social and Cultural Rights (ICESCR); the Convention on the Rights of the Child (CRC); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention for the Elimination of Racial Discrimination; and the Convention on the Rights of Persons with Disabilities. See OTP Policy, para. 37.

<sup>185</sup> *Ntaganda* Trial Judgment, para. 991; *Ongwen* Trial Judgment, para. 2733; ICC, *The Prosecutor v. Al Hassan*, ICC-01/12-01/18-461-Corr-Red, [Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#), 13 November 2019 (*Al Hassan* Confirmation Decision), para. 664; *Situation in the Republic of Burundi*, [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, ICC-01/17-9-Red, 9 November 2017 (*Burundi* Article 15 Authorization Decision), para. 132. At the ICTY and ICTR the requirement was that that the persecutory acts be of an equal gravity to other underlying acts of crimes against humanity. See ICTR, *The Prosecutor v. Laurent Semanza*, ICTR-97-20-T, [Judgement and Sentence](#), 15 May 2003 (*Semanza* Trial Judgment), para. 347; ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, [Appeal Judgement](#), 17 December 2004 (*Kordić and Čerkez* Appeal Judgment), paras. 102, 671-673.

<sup>186</sup> *Ntaganda* Trial Judgment, para. 992.

<sup>187</sup> *Ntaganda* Trial Judgment, para. 991; *Ongwen* Trial Judgment, para. 2733; *Al Hassan* Confirmation Decision, para. 664; *Burundi* Article 15 Authorization Decision, para. 132.

<sup>188</sup> ICTY, *Prosecutor v. Simić et al.*, IT-95-9-T, [Judgment](#), 17 October 2003, para. 69.

<sup>189</sup> ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, [Public Redacted Version of Judgement Issued on 24 March 2016](#), 24 March 2016 (*Karadžić* Trial Judgment), paras. 535-536.

employment;<sup>190</sup> (4) invasion of privacy through arbitrary searches of homes;<sup>191</sup> and (5) denial of the right to due process of law.<sup>192</sup>

68. 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 – are considered by the jurisprudence as constitutive of a severe deprivation of fundamental rights.<sup>193</sup> Nevertheless, acts of persecution are not confined to the other underlying acts of crimes against humanity. Further, they may not require the use of physical violence; relevant elements of the crime may be met with the infringement of individual freedoms or the destruction or seizure of property.<sup>194</sup>

69. The following sections analyse the severe deprivations of fundamental rights relevant to the 2022-2023 protests. When the severe deprivation of fundamental rights could also constitute an underlying act of crime against humanity, it is primarily analysed under the latter.

#### 1. Murder/Violation of the right to life

70. Under Art. 7(1)(a) of the Rome Statute, murder is defined as an act or omission that killed or caused the death of one or more persons.<sup>195</sup> According to international jurisprudence, this objective element requires proof of the following: the death of a victim (or victims)<sup>196</sup> and a causal link between the perpetrator's act or omission (the conduct) and the victim's death

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<sup>190</sup> *Karadžić Trial Judgment*, paras 535-536; ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, [Judgement](#), 1 September 2004 (*Brđanin Trial Judgment*), paras. 1032-1041, 1049; IT-99-36-A, [Judgement](#), 3 April 2007 (*Brđanin Appeal Judgment*), paras. 292-297; *Karadžić Trial Judgment*, paras 535-536; *Prosecutor v. Stakić*, IT-97-24-T, [Judgement](#), 31 July 2003 (*Stakić Trial Judgment*), paras. 770-773.

<sup>191</sup> *Karadžić Trial Judgment*, paras. 535-536.

<sup>192</sup> *Brđanin Appeal Judgment*, paras. 292-297; *Karadžić Trial Judgment*, paras. 535-536; *Stakić Trial Judgment*, paras. 770-773.

<sup>193</sup> *Ntaganda Trial Judgment*, para. 994. See also OTP Policy, para. 39. See also ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1, [Judgement](#), 2 November 2001 (*Kvočka et al. Trial Judgment*), para. 194.

<sup>194</sup> *Al Hassan Confirmation Decision*, para. 668.

<sup>195</sup> Elements of Crimes, Art. 7(1)(a); *Ongwen Trial Judgment*, para. 2696; *The Prosecutor v. Bemba*, ICC-01/05-01/08-424, [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 Confirmation Decision*), para. 132; *The Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, [Judgment pursuant to Article 74](#), 7 March 2014 (*Katanga Trial Judgment*).

<sup>196</sup> The victim's death can be established either by direct evidence (such as identifying the victim's corpse) or circumstantial evidence, "provided that the victim's death is the only reasonable conclusion that can be drawn" from the evidence. See *Katanga Trial Judgment*, para. 768. See also *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-3343, [Judgment pursuant to Article 74 of the Statute](#), 21 March 2016, (*Bemba Trial Judgment*), para. 88; *Bemba Confirmation Decision*, para. 132; ICTY, *Prosecutor v. Kvočka et al*, IT-98-30/1-A, [Judgement](#), 28 February 2005 (*Kvočka et al. Appeal Judgment*), para. 260 ("the only reasonable inference from the evidence is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible."); *Prosecutor v. Martić*, IT-95-11, [Judgement](#), 12 June 2007 (*Martić Trial Judgment*), para. 59; *Prosecutor v. Lukić & Lukić*, IT-98-32/1, [Judgement](#), 20 July 2009 (*Lukić & Lukić Trial Judgment*), para. 904; *Prosecutor v. Krnojelac*, IT-97-25, [Judgment](#), 15 March 2002 (*Krnojelac Trial Judgment*), para. 326; *Prosecutor v. Halilović*, IT-01-48, [Judgement](#), 16 November 2005 (*Halilović Trial Judgment*), para. 37.



(the result).<sup>197</sup> To prove death, it is not required to have recovered the body of the victim<sup>198</sup> or to demonstrate “the [specific] identity of the victim and the direct perpetrator” for each individual killing.<sup>199</sup>

71. Under the ICC framework, Art. 30 of the Rome Statute sets out the general intent requirement and governs the subjective element of murder as a crime against humanity, requiring that the perpetrator committed the conduct “with intent and knowledge”.<sup>200</sup> It must be established that the perpetrator intended to cause the death of the victim or was aware that the death would occur in the ordinary course of events.<sup>201</sup>

72. The information reviewed by the undersigned reveals hundreds of killings of civilians – men, women, girls, boys and LGBTQI+ individuals – by Iranian security forces in relation to the 2022-2023 protests. HRA alone directly verified 251 deaths until 7 December 2022, 68 of which were children. Members of the security forces deliberately used lethal force against peaceful protesters and passers-by, often shooting live ammunition at civilians from close range. Events such as the ‘Bloody Friday’ in Zahedan led to at least 90-100 dead, including at

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<sup>197</sup> See e.g., *Ongwen Trial Judgment*, para. 2696; *Katanga Trial Judgment*, para. 767; *Bemba Trial Judgment*, para. 87; *Bemba Confirmation Decision*, para. 132; ICTY, *Prosecutor v. Krajišnik*, IT-00-39, [Judgement](#), 27 September 2006 (*Krajišnik Trial Judgment*), para. 715; *Prosecutor v. Blagojević et al.*, IT-02-60, [Judgement](#), 17 January 2005 (*Blagojević et al. Trial Judgment*), para. 556; *Prosecutor v. Blaškić*, IT-95-14, [Judgement](#), 3 March 2000 (*Blaškić Trial Judgment*), para. 217; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2, [Judgement](#), 26 February 2001 (*Kordić and Čerkez Trial Judgment*), para. 236; ICTR, *The Prosecutor v. Jean Paul Akayesu*, ICTR-96-4-T, [Judgement](#), 2 September 1998 (*Akayesu Trial Judgment*), para. 589; *The Prosecutor v. Georges Rutaganda*, ICTR-96-3, [Judgement and Sentence](#), 6 December 1999 (*Rutaganda Trial Judgment*), para. 80.

<sup>198</sup> See e.g., *Bemba Trial Judgment*, para. 88; *Bemba Confirmation Decision*, para. 133; *Lukić & Lukić Trial Judgment*, para. 904; *Martić Trial Judgment*, para. 59; *Kvočka et al. Appeal Judgment*, para. 260; *Krnojelac Trial Judgment*, para. 326; *Halilović Trial Judgment*, para. 37.

<sup>199</sup> *Bemba Confirmation Decision* (ICC), para. 134. See also *Ongwen Trial Judgment*, para. 2698; *Bemba Trial Judgment*, para. 88; ICC, *The Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07, [Decision on the confirmation of charges](#), 30 September 2008 (*Katanga Confirmation Decision*), para. 422. Factors relevant to proving a victim’s death include but are not limited to: (1) proof of incidents of mistreatment directed against the victim; (2) patterns of mistreatment and disappearances of other victims; (3) the coincident or near-coincident time of death of other victims; (4) the fact that the victims were present in an area where an armed attack was carried out; (5) the time, location, and circumstances in which the victim was last seen; (6) the behaviour of soldiers [or other relevant perpetrator group] in the vicinity, as well as towards other civilians, at the relevant time; and (7) the lack of contact by the victim with others whom he/she would have been expected to contact, such as his/her family. These factors come from judgments in which the offence of murder was also charged as a violation of the laws or customs of war under Art. 3 of the ICTY Statute. See e.g., *Karadžić Trial Judgment*, para. 446, fn. 1476; *Lukić & Lukić Trial Judgment*, para. 904; *Martić Trial Judgment*, para. 59, fn. 112; *Halilović Trial Judgment*, para. 37; *Krnojelac Trial Judgment*, para. 327. ICTY chambers found that “the elements of the offence of murder are the same under both Article 3 [as a violation of the laws or customs of war] and Article 5 of the Statute [as a crime against humanity]” except for their contextual elements. See e.g., *Lukić & Lukić Trial Judgment*, para. 903; *Martić Trial Judgment*, para. 58; *Krnojelac Trial Judgment*, para. 323; *Kordić & Čerkez Trial Judgment*, para. 236.

<sup>200</sup> Rome Statute, Article 30(1). See e.g., *Bemba Trial Judgment*, para. 89; *Bemba Confirmation Decision*, para. 138; *Katanga Trial Judgment*, para. 780; *Katanga Confirmation Decision*, para. 423.

<sup>201</sup> See Rome Statute, Article 30. See e.g., *Katanga Trial Judgment*, para. 781.

least 15 children. In November 2022, in Javanrud, at least 125 Kurdish protestors were killed, including 13 children and 8 women.<sup>202</sup>

73. While men constituted the majority of those who lost their lives in the context of the protests, women and girls have also been killed by the security forces. HRA estimates that around 8% of the total alleged deaths are of women and girls. Examples presented in this submission include the cases of Asra Panahi and Nika Shakarami, as well as other girls who were allegedly beaten to death by security officers.<sup>203</sup> In addition, the case of Ms. Amini, who was beaten in detention to the extent that she became comatose and subsequently died, may also amount to murder on the basis that the nature of the violence inflicted on her provides reasonable grounds to believe that the perpetrators were aware that their deaths would occur in the ordinary course of events.<sup>204</sup>

74. In addition to the Iranian security forces' conduct itself, the existence of the official document from 21 September 2022 ordering commanders of all armed forces in the country to "severely confront" protesters, as well as the public statements of member of the Iranian government to the effect that security forces should decisively "deal with" protesters, also supports the inference that the perpetrators intended to cause the death of the victims, or were at least aware that the deaths would occur in the ordinary course of events.<sup>205</sup>

75. The information available indicates that hundreds of men, women, girls, boys and LGBTQI+ individuals have been intentionally killed by Iranian security forces in the context of the 2022-2023 protests, amounting to the underlying act of murder. These acts also constitute violations of the right to life guaranteed under Art. 6 of the ICCPR and thus amount to severe deprivations of a fundamental right.

## 2. Imprisonment/Violation of the right to liberty and security

76. Under Art. 7(1)(e) of the Rome Statute, the crime of imprisonment requires that the perpetrator imprisoned one or more persons and that "[t]he gravity of the conduct was such that it was in violation of fundamental rules of international law".<sup>206</sup> According to ICC jurisprudence, "imprisonment" encompasses unlawful deprivation of liberty of a person "in an enclosed environment, such as a prison or psychiatric institution".<sup>207</sup> Factors relevant to

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<sup>202</sup> See *supra* Section IV.B.

<sup>203</sup> See *supra* paras. 40, 51.

<sup>204</sup> See *supra* para. 32.

<sup>205</sup> See *supra* para. 35.

<sup>206</sup> Elements of Crimes, Art. 7(1)(e).

<sup>207</sup> *Burundi* Article 15 Authorization Decision, para. 68. Art. 7(1)(e) of the Rome Statute also covers "other severe deprivation of physical liberty" which according to the ICC jurisprudence "denotes the unlawful restriction of the person's movements to a specific area, such as a ghetto, camp or a house". See *ibid.*

determining the existence of deprivation of liberty include “the type, duration, effects, and the manner of implementation of the measures allegedly amounting to deprivation of liberty”. This determination “will depend on the circumstances of each particular case”.<sup>208</sup> The fact that the duration of captivity or restriction of movement may have been brief does not necessarily mean the deprivation of liberty was not sufficiently severe; there is no requirement that the imprisonment be for a prolonged period of time.<sup>209</sup>

77. The ICC requires that the deprivation of liberty be in violation of fundamental rules of international law, that is, “the person must have been deprived of his or her physical liberty without due process of law”.<sup>210</sup> The conduct of the perpetrator “is in violation of fundamental rules of international law if, for example, there is no legal basis to detain a person or the person is denied any procedural rights”.<sup>211</sup> Furthermore, the ICTY found that “serious disregard of fundamental procedural rights of the person deprived of his or her liberty as provided for under international law” might render “an otherwise justified deprivation of physical liberty” arbitrary.<sup>212</sup>

78. The relevant procedural rights include the guarantees arising mainly from the prohibition of arbitrary detention and the right to a fair trial enshrined under human rights instruments,<sup>213</sup> such as “the right to counsel, the right to have the lawfulness of their detention promptly determined, the right to be informed of the charges against them and to appear before a judge, and the right to have access to family and to medical care”.<sup>214</sup> This may also include circumstances in which the deprivation of liberty is imposed in response to the victim’s

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<sup>208</sup> ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, [Judgement](#), 29 November 2017 (*Prlić et al.* Appeals Judgment), para. 473. See also Ambos, p. 195, mn. 68.

<sup>209</sup> *Burundi* Article 15 Authorization Decision, para. 68 (“[t]he brevity of detention alone [could not] be brought forward as an argument to deny the severity of the deprivation of physical liberty” “article 7(1)(e) of the Statute [did] not require the imprisonment or the deprivation of liberty to be for a prolonged period of time...”); ICC, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, ICC-01/14-01/18-403-Corr-Red2, [Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaissona](#), 14 May 2020, para. 119 (“neither the duration of the imprisonment nor the number of persons imprisoned denies, as such, the severity of the deprivation of liberty”).

<sup>210</sup> *Burundi* Article 15 Authorization Decision, para. 68. The ICTY and ICTR Chambers similarly defined imprisonment as “arbitrary imprisonment, that is to say, the deprivation of liberty of the individual without due process of law” and “arbitrary or otherwise unlawful detention or deprivation of liberty”, respectively. See e.g., *Kordić & Čerkez* Appeals Judgment, para. 116, 1043; *Kordić & Čerkez* Trial Judgment, para. 302; *Krnjelac* Trial Judgment, paras 110, 113; *Prlić et al.* Appeals Judgment, para. 471; ICTR, *The Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, [Judgement and Sentence](#), 25 February 2004 (*Ntagerura et al.* Trial Judgment), para. 702.

<sup>211</sup> *Burundi* Article 15 Authorization Decision, para. 68.

<sup>212</sup> *Krnjelac* Trial Judgment, para. 117, fn. 347.

<sup>213</sup> See *Burundi* Article 15 Authorization Decision, para. 68 footnote 169; *Krnjelac* Trial Judgment, para. 113. See e.g., UDHR, Arts. 9-11, ICCPR, Arts. 9-11, 14-15; African Charter on Human and Peoples’ Rights, Arts. 6-7; American Convention on Human Rights, Arts. 7-9; European Convention on Human Rights, Arts. 5-7; CRC, Art. 37. See also Ambos, p. 196, mn. 69.

<sup>214</sup> *Burundi* Article 15 Authorization Decision, para. 89.

exercise of the rights and freedoms guaranteed by human rights instruments such as the ICCPR.<sup>215</sup>

79. In assessing the legality of imprisonment, one must consider both the legality of “the initial arrest” and “the continued detention”.<sup>216</sup> Lawful practices of imprisonment under national and international law are excluded from the scope of this crime.<sup>217</sup> However, “[w]hen a national law is relied upon to justify a deprivation of liberty, this national law must not violate international law”.<sup>218</sup> In particular, the national law itself must not be arbitrary and the enforcement of this law in a given case must not take place arbitrarily.<sup>219</sup> Therefore, even if permitted by national law, imprisonment may still be considered arbitrary and unlawful under international law.<sup>220</sup>

80. With regard to the Iranian context, the ICC Pre-Trial Chamber’s decision in *the Situation in the Republic of Burundi* may be of particular relevance. In that decision, the Pre-Trial Chamber found that Burundian security forces arbitrarily and systematically arrested and detained civilians “who opposed, or were perceived to oppose the ruling party and/or President Nkurunziza’s third term” in violation of fundamental rules of international law.<sup>221</sup>

81. Finally, Art. 30 of the Rome Statute governs the subjective elements of imprisonment or other severe deprivation of physical liberty as a crime against humanity before the ICC, requiring intent and knowledge.<sup>222</sup> In addition, the ICC Elements of Crimes require that “[t]he

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<sup>215</sup> C.K. Hall, C. Stahn, “Article 7 Crimes against humanity” in O. Triffterer and K. Ambos (eds.) *The Rome Statute of the International Criminal Court. A Commentary*, 3rd Ed., 2016, p. 200.

<sup>216</sup> *Ntagerura et al.* Trial Judgment, para. 702.

<sup>217</sup> See Ambos, p. 193, mn. 67.

<sup>218</sup> *Ntagerura et al.* Trial Judgment, para. 702. See also *Krnojelac* Trial Judgment, para. 114.

<sup>219</sup> *Krnojelac* Trial Judgment, para. 114, fn. 346.

<sup>220</sup> See UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of person), [CCPR/C/GC/35](#), 16 December 2014 (General Comment 35), para. 12. See also Ambos, p. 192, mn. 65.

<sup>221</sup> *Burundi* Article 15 Authorization Decision, paras. 69, 89-90. In its reasoning, the ICC Pre-Trial Chamber explained “three main trends” that the arrests and detentions followed: (1) targeted persons were those “who participated in or were suspected of having participated in the protests” that started on 26 April 2015 against the candidacy of President Nkurunziza in the 2015 presidential elections; (2) “mass arrests were carried out in the course of cordon and search operations in neighbourhoods [...] considered to be associated with the opposition”; and (3) the arbitrary arrests and detentions continued in the followings years and allegedly became “a daily occurrence” in 2016 and 2017. The ICC Pre-Trial Chamber concluded that there was a reasonable basis to believe that the Burundian security forces committed the crime of imprisonment or other severe deprivation of physical liberty as a crime against humanity under article 7(1)(e) of the Rome Statute “against civilians who opposed or were perceived to oppose the ruling party, as part of a widespread and systematic attack against the Burundian civilian population.” In reaching this conclusion, the Pre-Trial Chamber took into account, among others, that individuals were detained without any legal basis, with many of the arrests being carried out without an arrest warrant”; “some of those arrested were seemingly held in pre-trial detention beyond the legally allowed time limits”; and “they were denied any procedural rights, such as the right to counsel, the right to have the lawfulness of their detention promptly determined, the right to be informed of the charges against them and to appear before a judge, and the right to have access to family and to medical care.”

<sup>222</sup> Art. 30 of the Rome Statute.

perpetrator was aware of the factual circumstances that established the gravity of the conduct”.<sup>223</sup>

82. As established in Section IV.C, thousands of individuals perceived as opposing government policies, including in relation to restrictions imposed on women and girls – in particular the compulsory dress code –, have been arrested and deprived of liberty by the Iranian authorities. Most cases have concerned individuals being deprived of liberty in official prisons, with some detentions taking place outside of official settings, such as in non-official detention centres run by the Iranian Revolutionary Guards Corps.<sup>224</sup>

83. 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. Inhumane conditions, torture and other forms of ill-treatment have been reported. In addition, the procedural rights of detainees under international human rights law have not been respected. There are thus reasonable grounds to believe that these deprivations of liberty meet the criteria of “imprisonment” under Art. 7(1)(e) of the Rome Statute.

84. **Absence of legal basis or justification under international law for the detention.** The information reviewed by the authors reveals thousands of arrests and related detentions of civilians, including women, children, and LGBTQI+ individuals, by Iranian security forces in relation to the 2022-2023 protests. The undersigned estimates that approximately 22,000 people were arrested for their alleged participation in protests.

85. People were arrested and detained in the context of the 2022-2023 protests for opposing or being perceived to oppose the government, including human rights activists, journalists, and women and girls who opposed the imposed dress code. Individuals have been charged with offenses such as “gathering and colluding with the intent to act against national security”, ‘propaganda against the regime’, ‘disturbing public order’, *moharebeh*, and ‘collaborating with a hostile government’. In addition, some women and girls who opposed the mandatory *hijab*, during or in parallel to the protests, were arrested and detained specifically under Art. 638 of the Penal Code. These detentions would appear to be inconsistent with fundamental rules of international law, as the deprivation of liberty was based on the protesters’ legitimate exercise of their human rights as reflected in the UDHR and the ICCPR, notably the rights to freedom of expression, association, assembly, public participation, equal

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<sup>223</sup> ICC Elements of Crimes, Art. 7(1)(e), para. 3.

<sup>224</sup> See *supra* Section IV.C.



protection and non-discrimination, and privacy.<sup>225</sup> The Human Rights Committee has concluded that detention based on the legitimate exercise of these rights violates Art. 9 of the ICCPR on liberty and security of persons, and is thus impermissible under international law.<sup>226</sup>

**86. Inhumane conditions of detention and torture and ill treatment inflicted on detainees.** As outlined below in section 3, detainees have been subjected both to inhumane conditions of detention, and to torture and ill-treatment during their detention. The infliction of such suffering runs counter to the right to liberty and security of the person under Art. 9 of the ICCPR, as well as the prohibition of torture under Art. 7 of the ICCPR, and would therefore render the detention unlawful under international human rights law.

**87. Lack of judicial guarantees.** For detention to be lawful and not arbitrary under international law, a number of minimum guarantees, consistent with Art. 9 of the ICCPR, must be met. Detainees must have access to legal counsel; be promptly charged with a recognisable criminal offense or released; be brought to a judicial body to confirm any charges; and have access to a court at all times through *habeas corpus* or equivalent procedures to challenge the basis for their detention or complain about torture or other ill-treatment.<sup>227</sup> As demonstrated, it is widely recognised that the Iranian judiciary not only structurally lacks the independence and impartiality needed to conduct fair trials, but the information available also shows that when individuals were brought to court, they were often denied their fair trial rights and due process of law, which rendered their detention unlawful under international law.<sup>228</sup>

**88.** In sum, there is a reasonable basis to believe that the detention of people arrested in the context of the 2022-2023 protests for opposing or being perceived to oppose the government, including women, girls and LGBTQI+ individuals, meets the requirements of imprisonment as a crime against humanity under Art. 7(1)(e) of the Rome Statute. The information demonstrates that, through such acts, the Iranian authorities have also severely deprived individuals of the right to liberty and security and of guarantees against arbitrary arrest and detention under Art. 9 of the ICCPR. In addition, through the arrest and detention of protesters for the legitimate exercise of their fundamental rights, the authorities have deprived individuals of the rights to freedom of expression and peaceful assembly under Arts. 19 and 21 of the ICCPR.

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<sup>225</sup> Arts. 2(1), 17, 19, 21, 22, 25, 26 of the ICCPR; Arts. 7, 12, 19, 20 of the UDHR.

<sup>226</sup> General Comment 35, para. 17 (“Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17)”) (footnotes omitted).

<sup>227</sup> See General Comment 35, paras. 15, 18, 21, 24, 29-30, 32-36, 39, 41, 44, 46, 56, 58-59.

<sup>228</sup> See *supra* para. 16 and Section IV.E.

### 3. Torture/Prohibition of torture and the right not to be subjected to cruel, inhuman or degrading treatment

89. Under the Rome Statute, torture is defined 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. Torture does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.<sup>229</sup> While severity implies an important degree of pain and suffering (met by a single act or by a combination of acts), it is not necessary to establish that the pain or suffering caused specific physical injury, impairment of a bodily function or death. The consequences of torture do not have to be visible, nor must the injury be permanent.<sup>230</sup> Finally, Art. 30 of the Rome Statute governs the subjective elements of torture as a crime against humanity before the ICC and requires that the perpetrator committed the objective elements “with intent and knowledge”.<sup>231</sup>

90. The absolute prohibition of torture has been consistently violated in the context of the 2022-2023 protests.<sup>232</sup> Women and girls in particular have been exposed to severe pain or suffering, whether physical or mental, while in custody. A particularly illustrative example of the use of torture is the case of the journalist who was subjected to prolonged solitary confinement, physical violence and harassment in detention, and her subsequent hospitalisation due to the harsh conditions of detention inflicted upon her.<sup>233</sup> Acts of rape and sexual violence inflicted on women and girls, described in more detail in the next section, also amount to torture.

91. The information available thus indicates that protesters or persons arrested and detained in relation to the 2022-2023 protests have had severe pain or suffering, whether physical or mental, inflicted upon them while in the custody or under the control of the Iranian security forces. This conduct amounts to torture as a crime against humanity. By violating the absolute prohibition of torture and the right not to be subjected to cruel, inhuman or degrading treatment, guaranteed notably by Art. 7 of the ICCPR and Art. 5 of the UDHR, such acts and omission also constitute a severe deprivation of a fundamental right.

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<sup>229</sup> Arts. 7(1)(f) and 7(2)(e) of the Rome Statute; Elements of Crimes, Art. 7(1)(f). *See Ongwen Trial Judgment*, paras. 2700-2703; *Al Hassan Confirmation Decision*, para. 230; *Bemba Confirmation Decision*, para. 193.

<sup>230</sup> *See Ongwen Trial Judgment*, para. 2701; *Al Hassan Confirmation Decision*, para. 231.

<sup>231</sup> *Ongwen Trial Judgment*, para. 2703. It is not necessary to prove any specific intent behind the act of the perpetrator or that he was aware that the pain or injury inflicted was severe. *See also Bemba Confirmation Decision*, para. 194. Contrary to the war crime of torture, there is no requirement for torture as crimes against humanity that the perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind. *See Ongwen Trial Judgment*, para. 2705; *Bemba Confirmation Decision*, para. 195.

<sup>232</sup> *See supra* Sections IV.C and D.

<sup>233</sup> *See supra* para. 50.

#### 4. Rape and other forms of sexual violence

92. The Rome Statute and the Statutes of the ICTY and ICTR recognise rape as a crime against humanity.<sup>234</sup> The ICC Elements of Crimes characterises the objective elements of rape as the invasion of the body of a person by the perpetrator's conduct "resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body", which is committed (1) "by force"; (2) "by threat of force or coercion [...] against such person or another person"; (3) "by taking advantage of a coercive environment"; or (4) "against a person incapable of giving genuine consent".<sup>235</sup>

93. The invasion of a person's body through penetration includes same-sex penetration, and persons of any gender identity may be perpetrators or victims.<sup>236</sup> The ICC Elements of Crimes specifies that the notion of invasion is intended to be gender-neutral.<sup>237</sup> Any form or degree of penetration, "however slight", will be enough to demonstrate this element of the crime.<sup>238</sup>

94. Rape also requires demonstration of coercion.<sup>239</sup> The coercion may result from behaviour directed at, or an environment that impacts, the victim or another person.<sup>240</sup> There is no requirement to demonstrate that the victim resisted.<sup>241</sup> Before the ICC, it is neither required to prove the victim's lack of consent,<sup>242</sup> nor to show the use of physical force to

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<sup>234</sup> Art. 7(g) of the Rome Statute; Art. 5(g) of the ICTY Statute; Art. 3(g) of the ICTR Statute.

<sup>235</sup> Elements of Crimes, Art. 7(1)(g)-1, paras. 1-2.

<sup>236</sup> See Women's Initiatives for Gender Justice, [The Hague Principles on Sexual Violence](#), Part 1: General Principles (The Hague Principles on Sexual Violence), para. 3. See also *Ntaganda* Trial Judgment, para. 933; *Bemba* Trial Judgment, para. 100.

<sup>237</sup> ICC Elements of Crimes, Art. 7(1)(g)-1, fn. 15. See also *Ntaganda* Trial Judgment, para. 933; *Bemba* Trial Judgment, para. 100.

<sup>238</sup> ICC Elements of Crimes, Art. 7(1)(g)-1, para. 1. See also *Semanza* Trial Judgment, paras. 344-345; ICTY, *Prosecutor v. Anto Furundžija*, IT-95-17/1-T, Judgment, 10 December 1998 (*Furundžija* Trial Judgment), para. 185; *Prosecutor v. Kunarac et al.*, IT-96-23/1-A, [Judgement](#), 12 June 2002 (*Kunarac et al.* Appeal Judgment), para. 127; ICTR, *The Prosecutor v. Juvénal Kajelijeli*, ICTR-98-44A-T, [Trial Judgement and Sentence](#), 1 December 2003 (*Kajelijeli* Trial Judgment), paras. 912-913.

<sup>239</sup> ICC Elements of Crimes, Art. 7(1)(g)-1, para. 2; *Ntaganda* Trial Judgment, para. 934; *Bemba* Trial Judgment, para. 102; *Semanza* Trial Judgment, para. 344; *Akayesu* Trial Judgment, paras. 598, 688.

<sup>240</sup> See ICC Elements of Crimes, Art. 7(1)(g)-1, para. 2; *Ntaganda* Trial Judgment, para. 944. See also *Kunarac et al.* Appeal Judgment, para. 130; ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23-T, [Judgement](#), 22 February 2001 (*Kunarac et al.* Trial Judgment), para. 711; ICTR, *The Prosecutor v. Emmanuel Rukundo*, ICTR-01-70-T, [Trial Judgement](#), 27 February 2009 (*Rukundo* Trial Judgment), para. 384.

<sup>241</sup> *Ongwen* Trial Judgment, para. 2709; *Kunarac et al.* Appeal Judgment, para. 128. The European Court of Human Rights (ECtHR) has recognised that it is common for victims of rape not to resist because of a number of psychological factors or fear of further violence. See ECtHR, *M.C. v. Bulgaria*, App. No. 39272/98, [Judgement](#), 4 December 2003, para. 164.

<sup>242</sup> *Ongwen* Trial Judgment, para. 2709; *Ntaganda* Trial Judgment, para. 934; *Katanga* Trial Judgment, para. 965.

demonstrate coercion:<sup>243</sup> “threats, intimidation, extortion, and other forms of duress which prey on fear or desperation may constitute coercion”.<sup>244</sup> A threat thus suffices to demonstrate coercion if it creates a “reasonable fear” in the victim that they or another person will be harmed.<sup>245</sup> Importantly, the ICC, as well as the *ad hoc* tribunals, has recognised that situations of detention and captivity create a coercive environment, which fulfils this requirement.<sup>246</sup>

95. In addition, the Rome Statute prohibits any form of sexual violence of comparable gravity to the other offences listed in Art. 7(1)(g). The objective elements of the crime against humanity of other forms of sexual violence require that:

- “The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature [1] by force or [2] by threat of force or coercion [...] against such person or persons or another person, or [3] by taking advantage of a coercive environment or [4] such person’s or persons’ incapacity to give genuine consent”.<sup>247</sup>
- The conduct must also be of “a gravity comparable to the other offences in article 7, paragraph (1)(g), of the [Rome] Statute” *i.e.*, rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilisation.<sup>248</sup>

96. There is no exhaustive list of what constitutes an “act of sexual nature”. While it must constitute an infringement on the victim’s physical or moral integrity, physical contact is, however, not required for an act to be qualified as sexual in nature. Therefore, “act[s] of a sexual

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<sup>243</sup> See ICC Elements of Crimes, Art. 7(1)(g)-1, para. 2; *Ongwen* Trial Judgment, para. 2710; *Ntaganda* Trial Judgment, para. 934; *Bemba* Trial Judgment, para. 103; *Kunarac et al.* Appeal Judgment, para. 129; *Akayesu* Trial Judgment, para. 688; *Furundžija* Trial Judgment, paras. 82-83; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-T, [Trial Judgement](#), 29 May 2013 (*Prlić et al.* Trial Judgment), para. 70; *Prosecutor v. Delalić et al.*, IT-96-21-T, [Judgement](#), 16 November 1998 (*Čelebići* Trial Judgment), para. 937.

<sup>244</sup> *Ongwen* Trial Judgment, para. 2710. See also *Ntaganda* Trial Judgment, paras. 934-935; *Katanga* Trial Judgment, para. 965; *Kunarac et al.* Appeal Judgment, para. 130; *Rukundo* Trial Judgment, para. 382; *Akayesu* Trial Judgment, para. 688.

<sup>245</sup> *Furundžija* Trial Judgment, para. 174. See also *Kunarac et al.* Appeal Judgment, para. 130; *Kunarac et al.* Trial Judgment, para. 711; *Rukundo* Trial Judgment, paras. 384, 388.

<sup>246</sup> See *Kunarac et al.* Trial Judgment, paras. 464, 542; *Furundžija* Trial Judgment, para. 271; Special Court for Sierra Leone (SCSL), *Prosecutor v. Brima et al.*, SCSL-04-16-T, [Trial Judgement](#), 20 June 2007 (*Brima et al.* Trial Judgment), para. 694. In *Ntaganda* Trial Judgment, the judges recognised that the deprivation of personal liberty of one victim who was ‘kept captive in a state of extreme vulnerability’ in a UPC/FPLC training camp gave the member of the group at the camp ‘powers over her attaching to the right of ownership,’ and that ‘the conduct of the UPC/FPLC soldiers who subjected P-0883 to sexual violence was committed by threat of force or coercion.’ See paras. 976 and 978.

<sup>247</sup> ICC Elements of Crimes, Arts. 7(1)(g)-6, para. 1.

<sup>248</sup> *Ibid.*, para. 2.

nature” may be physical or non-physical.<sup>249</sup> They include same sex acts.<sup>250</sup> Forcing a person to perform or witness certain acts may be sufficient, so long as the acts humiliate and/ or degrade the victim in a sexual manner.<sup>251</sup>

97. Additionally, in assessing whether a conduct is of “comparable gravity” to the other offences under Art. 7(1)(g), one may look to: the manner and means of commission, including the targeting of multiple victims; the particular circumstances of the victim, including their gender, age and vulnerability; the harm caused to the victims or their family; abuse of power; and the existence of a discriminatory motive.<sup>252</sup>

98. Examples of conduct that may be considered to constitute acts of a sexual nature where they occur with coercion include injuring a sexual body part;<sup>253</sup> inspecting someone’s sexual body parts;<sup>254</sup> forced nudity;<sup>255</sup> threats of sexual violence or intimidation, or causing someone to form a reasonable apprehension, or fear, of acts of sexual violence;<sup>256</sup> and touching a person’s sexual body parts.<sup>257</sup>

99. In terms of the subjective element applicable to rape and other forms of sexual violence, in addition to the requirement pursuant to Art. 30 of the Rome Statute that the perpetrator act with intent and knowledge,<sup>258</sup> they must also be aware of the coercive circumstances surrounding their conduct.<sup>259</sup> This requires awareness of the relevant facts that demonstrate coercion or coercive circumstances.

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<sup>249</sup> *Akayesu* Trial Judgment, para. 688; *Furundžija* Trial Judgment, para. 186; *Rukundo* Trial Judgment, para. 379; ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-T, [Judgement](#), 26 February 2009 (*Milutinović et al.* Trial Judgment), paras. 195, 199.

<sup>250</sup> *Ntaganda* Trial Judgment, para. 933; *Bemba* Trial Judgment, para. 100.

<sup>251</sup> See e.g., ICTY, *Prosecutor v. Đorđević*, Case No. IT-05-87/1-A, [Judgement](#), 27 January 2014 (*Đorđević* Appeal Judgment), para. 852.

<sup>252</sup> Ambos, p. 220, mn. 132.

<sup>253</sup> The Hague Principles on Sexual Violence, Part 4: Examples of acts of sexual violence, para. 4(a), pp. 39-40, 79; SCSL, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, [Trial Judgment](#), 2 March 2009 (*Sesay et al.* Trial Judgment), para. 1307 (in relation to the war crime of outrages on personal dignity).

<sup>254</sup> The Hague Principles on Sexual Violence, p. 73; *Milutinović et al.* Trial Judgment, paras. 631, 632, 689 (in relation to crime against humanity of persecution).

<sup>255</sup> *Brđanin* Trial Judgment, para. 1013; *Akayesu* Trial Judgment, para. 688; *Kunarac et al.* Trial Judgment, paras. 766-769, 772; ICTY, *Kvočka et al.* Trial Judgment, para. 170; SCSL, *Prosecutor v. Brima et al.*, SCSL-04-16-A, [Appeal Judgment](#), 22 February 2008 (*Brima et al.* Appeal Judgment), para. 184.

<sup>256</sup> See *Brđanin* Trial Judgment, paras. 1013, 1018; *Kvočka et al.* Trial Judgment, paras. 98, 104; The Hague Principles on Sexual Violence, p. 71.

<sup>257</sup> The Hague Principles on Sexual Violence, Part 4: Examples of acts of sexual violence, para. 4(n), pp. 47, 74.

<sup>258</sup> Art. 30 of the Rome Statute. See also *Katanga* Trial Judgment, para. 969; *Bemba* Trial Judgment, para. 110.

<sup>259</sup> *Katanga* Trial Judgment, para. 970; *Bemba* Trial Judgment, para. 112. See also *Semanza* Trial Judgment, para. 346; *Kunarac et al.* Appeal Judgment, para. 127; ICTR, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, [Trial Judgement and Sentence](#), 18 December 2008 (*Bagosora et al.* Trial Judgment), paras. 2199-2200.



100. Women and girls have been victims of rape and other forms of sexual violence in the context of the 2022-2023 protests. The information available suggests a pattern of sexual violence specifically targeting women and girls, either in the context of the crackdown on the protests or while in detention following protest-related arrests. During protests, women and girls have been grabbed by their breasts, shot at in their genitals, and otherwise sexually assaulted while being arrested by members of the security forces. In detention, 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. Additionally, security forces have conducted body searches of children during raids to schools, which also amount to a form of sexual violence and which, since directed at children, can be considered particularly grave. As previously noted, the use of sexual violence by agents of the Iranian government, especially against women and girls, can be seen as a long-standing tool to create “shame and taboo” at all levels: individual, familiar, and societal, to discourage participation in the protests.<sup>260</sup> It is also driven by a gender discriminatory intent, as explained below in Section V.B.

101. The circumstances of the incidents described above reveal that rape and other forms of sexual violence have been committed by force, coercion or by taking advantage of a coercive environment. Such conduct amounts to rape or, in light of existing jurisprudence, other forms of sexual violence of comparable gravity under Art. 7(1)(g) of the Rome Statute.

## 5. Other inhumane acts

102. Other inhumane acts is a “residual category” of crimes against humanity, which addresses acts inflicting great suffering or serious injury to body or to mental or physical health that are of a similar character to any other act referred to in Art. 7(1) of the Rome Statute.<sup>261</sup> The inhumanity of the conduct can be established in relation to the perpetrated acts and their effects.<sup>262</sup> The similarity in character to other acts referred to in Art. 7(1) of the Statute must be assessed in view of the nature and gravity of the acts, which the ICC has interpreted to encompass serious violations of customary international law and of human rights.<sup>263</sup> International jurisprudence has recognised that “beatings and other acts of violence, serious

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<sup>260</sup> See *supra* Section IV.D.

<sup>261</sup> Elements of Crimes, Art. 7(1)(k). *Ongwen* Trial Judgment, para. 2745.

<sup>262</sup> Hall & Stahn, p. 246.

<sup>263</sup> Elements of Crimes, Art. 7 (1)(k), fn. 30; *Katanga* Confirmation Decision, paras. 448-451. For instance, in the *Ongwen* case, ICC Trial Chamber IX invoked the “fundamental right to enter a marriage with the free and full consent of another person” in finding forced marriage to be an inhumane act. *Ongwen* Trial Judgment, para. 2748. In the *Kenyatta* case, the Prosecutor pled “a serious violation of international human rights law” in relation to Art. 7(1)(k). ICC, *Situation in the Republic of Kenya, The Prosecutor v Francis Kirimi Muthaura 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 (*Kenyatta* Confirmation Decision), para. 268.

bodily and mental injury”,<sup>264</sup> “subjection to deplorable conditions of detention”,<sup>265</sup> and “requiring persons to witness the beatings or killings of others”<sup>266</sup> may constitute other inhumane acts.<sup>267</sup>

103. In the situation under discussion, 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 suppress protests, and the imposition of inhuman conditions of detention. Moreover, detainees were also forced to witness and at times engage in violence against others. In this regard, it should be noted that, to the extent that these acts fall short of the required standards of Art. 7(1)(a-j), they may nevertheless amount to other inhumane acts.

104. First, the use of live ammunition, pellets and teargas, as well as beatings with batons of protestors and passers-by by the security forces, have resulted in the injury of at least 500 people. In certain cases, this violence has led to temporary or permanent disability. These acts have taken place during the crackdown by the security forces in Zahedan and Javanrud, and at university rallies and protests.<sup>268</sup>

105. Women and girls have been direct victims of such violence. Examples that may amount to the infliction of great suffering or serious injury to body or to mental or physical health include the case of a woman who was assaulted and hit with a metal tow cable during a protest in Sanandaj; a pregnant woman who was violently shoved to the ground by a police officer, which resulted in her suffering a miscarriage; and a 24-year-old woman who was shot at close range by Revolutionary Guards in Javanrud, severely injuring her left leg. Some of the instances reported appear to have been gender-specific acts of violence. The information available suggests that women were often slapped across the face, beaten, had their hair pulled, were

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<sup>264</sup> *Prlić et al.* Trial Judgment, para. 79. See also ICTR, *The Prosecutor v. Tharcisse Muvunyi*, ICTR-2000-55A-T, [Judgement and Sentence](#), 12 September 2006 (*Muvunyi* Trial Judgment), para. 530.

<sup>265</sup> *Ongwen* Trial Judgment, para. 2744. See also *Krnojelac* Trial Judgment, para. 133; *Prlić et al.* Trial Judgment, para. 80; *Kvočka et al.* Trial Judgment, para. 209.

<sup>266</sup> *Ongwen* Trial Judgment, para. 2744. See also *Kenyatta* Confirmation Decision, paras. 274-277 (“brutal killings and mutilations in front of the eyes of the victims’ family members”).

<sup>267</sup> *Ongwen* Trial Judgment, para. 2744, referring to ICTY, *Prosecutor v. Tadić*, IT-94-1-T, [Opinion and Judgement](#), 7 May 1997 (*Tadić* Trial Judgment), paras. 726, 730; *Kenyatta* Confirmation Decision, paras 274-80; *Kupreškić et al.* Trial Judgment, para. 819; *Kvočka et al.* Trial Judgment, para. 209; ICTR, *The Prosecutor v. Ignace Bagilishema*, ICTR-95-1A-T, [Judgement](#), 7 June 2001 (*Bagilishema* Trial Judgment), paras. 490-494; Extraordinary Chambers in the Courts of Cambodia (ECCC), *Co-Prosecutors v. Kaing Guek Eav (alias Duch)*, 001/18-07-2007/ECCC/TC, [Trial Judgement](#), 26 July 2010 (*Duch* Trial Judgment), paras. 260-277, 372; *Co-Prosecutors v. Nuon Chea and Khieu Samphan*, 002/19-09-2007/ECCC/TC, Case 002/02 [Trial Judgement](#), 16 November 2018 (*Chea et al.* Trial Judgment), paras. 733-739.

<sup>268</sup> See *supra* Section IV.B.

sexually assaulted, and were targeted with shotgun fire to their faces, breasts and genitals.<sup>269</sup> Likewise, cases of disappearances following arrests, point to the suffering inflicted also on victims' families.<sup>270</sup>

106. Second, protesters (and persons perceived as protesters) and those opposing the regime have been detained in deplorable conditions. In detention, individuals were subjected to prolonged solitary confinement and harsh conditions, such as lack of clean water, lack of access to medical care, and overcrowding. This was notably the case at the women's ward of Tehran's Evin prison.<sup>271</sup> A particularly illustrative case of such conditions is that of Ms Khalidi, a teacher in Sanandaj's Education District.<sup>272</sup> Likewise, Ms Ajoudani's case portrays the conditions to which LGBTQI+ individuals are subjected, namely by being detained with people of another gender and by spending a full month in solitary confinement.<sup>273</sup>

107. If proven that these acts have caused great suffering or serious injury to the bodies or to the mental or physical health of the victims but nevertheless fall short of the requirements under Art. 7(1)(a-j) of the Rome Statute, these acts would still amount to other inhumane acts under Art. 7(1)(k). As shown in previous sections, the examples contained herein also constitute severe deprivations of fundamental rights, for instance the right to be free from torture and ill-treatment, and the right to liberty and security, enshrined in Arts. 7 and 9 of the ICCPR, respectively.

## 6. Other severe deprivations of fundamental rights

- a. Violation of the rights to peaceful assembly, freedom of thought, conscience and religion, expression, and movement, and the rights to privacy and to participation in public affairs

108. The violent suppression of the 2022-2023 uprisings is inconsistent with the right to peaceful assembly under Art. 21 of the ICCPR. In different cities and universities, protesters have been harassed, assaulted, arrested, and subjected to ill-treatment while attempting to exercise this right.<sup>274</sup> Freedom of movement was also restricted in this context. For instance, students were held by security officers at Sharif University campus.<sup>275</sup> Additionally, authorities have routinely curtailed protesters' freedom of expression under Art. 19 of the ICCPR by

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<sup>269</sup> See *supra* Section IV.B.

<sup>270</sup> See *supra* para. 47.

<sup>271</sup> See *supra* Section IV.C.

<sup>272</sup> See *supra* para. 48.

<sup>273</sup> See *supra* para. 47.

<sup>274</sup> See *supra* Section IV.

<sup>275</sup> See *supra* para. 46.

arresting and prosecuting them due to their perceived opposition to the government and the exercise of their right to protest, and by undermining press activity and the work of human rights defenders and lawyers.<sup>276</sup> In many of these instances, women, girls and LGBTQI+ individuals were specifically targeted for expressing dissent.<sup>277</sup>

109. Restrictions on freedom of expression were often carried out by infringing on the right to privacy, as enshrined in Art. 17 of the ICCPR. LGBTQI+ individuals were particularly vulnerable to these practices because of the systematic criminalisation of their private life, such as on consensual same-sex conduct, as well as gender-specific violence based on their perceived gender identities and sexual orientation, as shown by the case of the five trans citizens arrested seemingly due to their way of dressing.<sup>278</sup>

110. Regarding the imposition of compulsory veiling, the criminalisation and prosecution of women and girls for actual or perceived non-compliance with the *hijab* infringes on their right to freedom of thought, conscience, and religion as described in Art. 18 of the ICCPR. In this respect, Art. 18 includes an unrestricted “freedom from *coercion* to have or to adopt a religion or belief” (emphasis added).<sup>279</sup> It also infringes on their freedom of opinion and expression under Art. 19 of the ICCPR. Moreover, the intensified crackdown on protesters, coupled with the imposition of further restrictions under the new *hijab* law, has led to multiple instances where women and girls considered to be non-compliant were denied access to public transport, university buildings, banking services, and public offices. This has fundamentally deprived them of their freedom of movement under Art. 12 of the ICCPR, as well as their right to participation in public affairs under Art. 25 of the ICCPR.<sup>280</sup> Further, the systematic confiscation of the vehicles of women driving unveiled constitutes an infringement on both their right to privacy and their freedom of movement.<sup>281</sup>

111. The cumulative effect of the restrictions imposed on women and girls could also be characterised a violation of their right to freely pursue their economic, social, and cultural development as outlined by Art. 1 of the ICESCR.<sup>282</sup> Indeed, the alleged expulsion of women and girls from schools, universities, and workplaces undoubtedly infringes the fundamental rights contained in the ICESCR.<sup>283</sup>

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<sup>276</sup> See *supra* Section IV.E.

<sup>277</sup> *Ibid.*

<sup>278</sup> See *supra* para. 47.

<sup>279</sup> Art.18(3) of the ICCPR; UN Human Rights Committee, General Comment No. 22 (48) (art. 18), [CCPR/C/21/Rev.1/Add.4](#), 27 September 1993, para. 8.

<sup>280</sup> See *supra* Section IV.A.

<sup>281</sup> *Ibid.*

<sup>282</sup> Art. 1(1) of the ICESCR (“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”).

<sup>283</sup> See *infra* Section V.A.6.b.

112. The limitations imposed in the context of the 2022-2023 protests cannot be justified according to the relevant human rights instruments. The relevant rights outlined in the ICCPR and ICESCR, in this case the rights to freedom of expression, movement, association, and peaceful assembly, as well as the right to freely pursue one's economic, social, and cultural development, may only be subject to restrictions in specific and well-defined situations.<sup>284</sup> These permissible limitations may be applied on grounds of national security, public safety and order, for the protection of public health or morals, or for safeguarding the rights and freedoms of others, provided they are established in law and adhere to the principle of legality.<sup>285</sup> Moreover, such measures must be proportional to the legitimate aim, meaning they should be the least intrusive means of achieving the intended objective.<sup>286</sup> In the current scenario, it is evident that the restrictions imposed by the regime on women, girls, and LGBTQI+ individuals' freedom of expression, thought, conscience or religion, and their right to privacy, as well as the use of force and harassment to curtail their freedom of movement, association, peaceful assembly, and right to participate in public life, fail to meet any of these criteria. These restrictions do not serve a legitimate purpose, not least due to the fact that they are inherently discriminatory, and are excessive and unnecessary in relation to their goal.

b. Violation of the right to work and to education

113. The violence in the context of the 2022-2023 protests has also taken place in schools and universities. Security officers have raided schools and even killed a student, Asra Panahi, during a raid.<sup>287</sup> At universities, women and LGBTQI+ individuals have been suspended and even expelled for not wearing the *hijab*.<sup>288</sup> The restrictions that women, girls and LGBTQI+ individuals faced concerning their education are inconsistent with their right to education under Art. 13 of the ICESCR and Art. 28 of the CRC.

114. In addition, women's right to work has been affected not only by restrictions on their freedom of movement and participation in public life and institutions, but also by judicial sentences which have prohibited women from continuing their work.<sup>289</sup> Such restrictions

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<sup>284</sup> Art. 4 of the ICESCR; UN Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement), [CCPR/C/21/Rev.1/Add.9](#), 2 November 1999 (General Comment 12), paras. 11-18; General Comment No. 34, Article 19: Freedoms of opinion and expression, [CCPR/C/GC/34](#), 12 September 2011 (General Comment 34), paras. 21-36; General comment No. 37 (2020) on the right of peaceful assembly (article 21), [CCPR/C/GC/37](#), 17 September 2020 (General Comment 37), paras. 36-69.

<sup>285</sup> General Comment 27, paras. 11-13, 16; General Comment 34, paras. 21, 23-32; General Comment 37, paras. 36, 39, 41-59.

<sup>286</sup> General Comment 27, paras. 14-16, 18; General Comment 34, paras. 22, 33-35; General Comment 37, paras. 36-38, 40, 69.

<sup>287</sup> *See supra* para. 40.

<sup>288</sup> *See supra* Section IV.A.

<sup>289</sup> *See supra* Sections IV.A and E.



contradict Arts. 6 and 7 of the ICESCR, which provide for the right of every person to freely choose their work and to enjoy just and favourable conditions thereof. Furthermore, the harassment and prosecution of journalists, lawyers and activists who have defended women, girls and LGBTQI+ individuals – as shown in the cases of Ms Baloukat and a Kurdish women’s rights activist –, have negatively impacted their enjoyment of this right.<sup>290</sup> Finally, the imposition of gender segregation in workplaces such as hospitals and health centres may also affect women’s ability to enjoy this right on an equal basis to men, as enshrined in Art. 3 of the ICESCR.<sup>291</sup>

115. As explained above, the restrictions imposed on women, girls, and LGBTQI+ individuals’ right to work and education cannot be considered lawful, as they lack a legitimate purpose and are discriminatory in nature. Thus, they constitute violations of such rights. Given the scale of such violations and their broad impact, affecting all women, girls and LGBTQI+ individuals in Iran, they would qualify as severe deprivations of fundamental rights.

c. Violation of the right to a fair trial

116. Art. 14 of the ICCPR enshrines the right to a fair trial. This right firstly entails the right to be tried by a competent, independent, and impartial tribunal established by law.<sup>292</sup> In this regard, the UNSR has concluded in the past that the Iranian judiciary does not fulfil the requirement of independence.<sup>293</sup> Secondly, in addition to the presumption of innocence, Art. 14 provides for minimal procedural guarantees that must be afforded to the accused.<sup>294</sup> Of particular relevance in the situation at hand are the right to defend oneself and to have access to counsel; to present and cross-examine witnesses; and the right not to be compelled to testify against oneself or confess guilt, all of which have been consistently violated in the context of the 2022-2023 protests.<sup>295</sup> While some further gender analysis could emphasise difference of treatment on the basis of gender, the violations of the right to a fair trial seem to have affected men, boys, women, girls and LGBTQI+ individuals alike.

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<sup>290</sup> *See supra* paras. 26-27.

<sup>291</sup> *See supra* Sections III and IV.A.

<sup>292</sup> Art. 14(1) of ICCPR. In this regard, the UNSR has concluded in the past that the Iranian judiciary does not fulfil the requirement of independence from the other powers. Additionally, impartiality comprises not only a subjective element of lack of bias, but also an objective requirement that courts appear impartial to any reasonable observer. *See* UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, [CCPR/C/GC/32](#), 23 August 2007 (General Comment 32), para. 21. Due to the great degree of subjectivity employed in the Revolutionary Courts’ judgments, for instance with the imposition of the death penalty for crimes not included in the Penal Code, these courts do not fulfil the impartiality requirement. Concerning other criminal courts, the lack of impartiality is also clear from the use of degrading punishments – which are not provided for by law – specifically against women who defied compulsory veiling. *See supra*-Sections IV.A and E.

<sup>294</sup> Arts. 14(2) and (3) ICCPR.

<sup>295</sup> *See supra* Section IV.E.

117. Concerning the death penalty, the Human Rights Committee has found that the violation of fair trial guarantees under Art. 14 of the ICCPR would render the imposition of capital punishment arbitrary, and thus violate the right to life under Art. 6 of the ICCPR. In this respect, the Committee has pointed out that relevant violations of fair trial guarantees include the use of forced confessions, lack of access to counsel during interrogation and trial, and lack of access to relevant case documents.<sup>296</sup> In light of the lack of impartiality of courts, as well as the absence of these basic judicial guarantees during trials of protesters, the imposition of the death penalty in the cases of protesters violates the right to a fair trial and to life.<sup>297</sup> To date, only male protesters have received the death penalty as punishment in relation to the 2022-2023 protests.

#### **B. VICTIMS ARE BEING TARGETED BECAUSE OF THEIR IDENTITY AS MEMBERS OF A GROUP OR COLLECTIVELY ON POLITICAL AND GENDER GROUNDS**

118. 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.<sup>298</sup> 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.<sup>299</sup> In general terms, the targeted group can be defined both in a positive or a negative manner (*i.e.*, the members of the group are targeted for being part of the group as such or because they did not belong to a certain collectivity).<sup>300</sup>

119. In the context of Iran, it is important to note that not all victims of the crime of persecution are required to be members, sympathisers, allies of, or in any other way related to, the targeted group.<sup>301</sup> As explained by the OTP Policy on Gender Persecution, the targeted group should be viewed broadly, including those who are not directly part of the group, such

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<sup>296</sup> UN Human Rights Committee, General Comment No. 36: Article 6: Right to Life, [CCPR/C/GC/36](#), 3 September 2019, para. 41. See also UN HRC General Comment 32, para. 59 and fn. 120.

<sup>297</sup> This conclusion was also reached by the UNSR in July 2022. See *supra* para. 17.

<sup>298</sup> *Ntaganda* Trial Judgment, para. 1009; *Ongwen* Trial Judgment, para. 2739; *Al Hassan* Confirmation Decision, para. 671.

<sup>299</sup> In addition, according to the *Ongwen* Trial Judgment, “the subjective perception of belonging of both the perpetrator and the victim” is an element that can be used to assess the alleged status of a collectivity as a protected group, together with particular political, social, and cultural features” (para. 2736). See also OTP Policy, para. 44.

<sup>300</sup> *Ongwen* Trial Judgment, para. 2735; *Ntaganda* Trial Judgment, para. 1010.

<sup>301</sup> *Ongwen* Trial Judgment, para. 2736; *Ntaganda* Trial Judgment, para. 1011; ICTY, *Prosecutor v. Krnojelac*, IT-97-25-A, [Judgement](#), 17 September 2003 (*Krnojelac* Appeal Judgment), para. 185.

as sympathisers or affiliates of targeted members.<sup>302</sup> What is relevant is not that the victim necessarily belonged to the targeted group, but rather how the perpetrator perceived the victim in relation to the group and that he/she targeted them on that basis.<sup>303</sup>

120. With respect to the grounds for persecution, the information available suggests that persecution on political and gender grounds are particularly relevant in the context of the 2022-2023 protests. Persecution on political grounds has been interpreted by the jurisprudence as encompassing the targeting of individuals based on their actual or perceived opposition to a political regime,<sup>304</sup> and is not therefore limited to membership in a particular political party or adherence to a particular ideology.<sup>305</sup>

121. Turning to gender, while the Rome Statute defines it as “the two sexes, male and female, within the context of society”, the ILC has not included this definition in its Draft Articles.<sup>306</sup> In its Policy on Gender Persecution, the OTP defines gender rather as “sex characteristics and social constructs and criteria used to define maleness and femaleness, including roles, behaviours, activities and attributes”.<sup>307</sup>

122. As noted by the OTP in this policy, all persons can be subjected to gender persecution as all persons have gender identities. Targeted groups may include women, girls, men, boys and LGBTQI+ persons. The OTP explains that “gender criteria assigned to groups relevant for discriminatory targeting include roles, behaviours, activities and attributes”.<sup>308</sup> For instance, women and men may be targeted for not following a certain dress code, and LGBTQI+ individuals can be particularly vulnerable to discrimination for not abiding by binary female-

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<sup>302</sup> OTP Policy, para. 43 (“For example, if a perpetrator targets a school to prevent girls from attending, men who are teachers and staff at that school may form part of the targeted group, where the grounds for targeting are based on gender”).

<sup>303</sup> *Ongwen* Trial Judgment, para. 2736; *Ntaganda* Trial Judgment, para. 1011; *Krnjelac* Appeal Judgment, para. 185; *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, [Judgement](#), 31 March 2003 (*Naletilić and Martinović* Trial Judgment), para. 636: “It is the perpetrator who defines the victim group while the targeted victims have no influence on the definition of their status”.

<sup>304</sup> ICC, *Situation in the Libyan Arab Jamahiriya*, [Decision on the "Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah ALSENUSSI"](#), ICC-01/11, 27 June 2011, para. 65. See also ICC, *Prosecutor v William Samoei Ruto et al.*, ICC-01/09-01/11-373, [Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#), 23 January 2012 (*Ruto et al.* Confirmation Decision), paras. 273, 347; *The Prosecutor v Laurent Gbagbo*, ICC-02/11-01/11-656-Red, [Decision on the confirmation of charges against Laurent Gbagbo](#), 12 June 2014 (*Gbagbo* Confirmation Decision), para. 204.

<sup>305</sup> Ambos, p. 229.

<sup>306</sup> Draft Articles, pp. 45-46, paras. 41 (“Since the adoption of the Rome Statute, several developments in international human rights law and international criminal law have occurred, reflecting the current understanding as to the meaning of the term ‘gender’...”), 42 (“allowing the term [gender] to be applied for the purposes of the present draft articles based on an evolving understanding as to its meaning”).

<sup>307</sup> OTP Policy, p. 3. See also ICC, [OTP Policy Paper on Sexual and Gender-Based Crimes](#), June 2014, p. 3.

<sup>308</sup> *Ibid.*

male social constructs.<sup>309</sup> As evidenced by the Pre-Trial Chamber in the *Al Hassan* case at the ICC, persecution can be gender-based when men or women of the same group are targeted in different ways or with different forms of violence depending on their gender (*i.e.* killing the men and raping the women).<sup>310</sup>

123. According to ICC jurisprudence, the intent to discriminate against the targeted group may be inferred from the general behaviour of the perpetrators and the circumstances surrounding the commission of the crime.<sup>311</sup> One aspect that may evidence the intent to discriminate based on gender is the fact that perpetrators seek to regulate every aspect of the individual's life and punish those perceived to transgress 'accepted' gender norms.<sup>312</sup> The discriminatory intent may thus "overlap with or exacerbate existing social constructs or criteria used to define gender, or may represent an effort to impose new ones".<sup>313</sup>

124. Importantly, while the existence of one discriminatory ground is sufficient for a finding of persecution, "a combination of more than one may equally form the basis of the discrimination".<sup>314</sup> In this respect, the OTP considers that persecution based on political and gender grounds may often intersect.<sup>315</sup> When findings have been made on the basis of several interlinked discriminatory grounds, international judges have not analysed the discriminatory intent separately but have rather reflected this intersectionality in their findings to accurately reflect the nuances in the facts under consideration.<sup>316</sup>

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<sup>309</sup> OTP Policy, para. 45.

<sup>310</sup> *Al Hassan* Confirmation Decision, para. 667. *See also* Ambos, p. 232.

<sup>311</sup> *See Ongwen* Trial Judgment, para. 2739; *Al Hassan* Confirmation Decision, para. 671. In the context of gender persecution, the OTP posits that "types of evidence of discriminatory intent can include the acts or statements of the direct perpetrators, legislation, policies or regulations promulgated by the perpetrator group or other authorities, the use of hate speech, slurs or discriminatory language against members of the target group, or public statements relating to the underlying crimes or persecutory acts. It can also be inferred from the pattern of targeting, such as crimes which are committed exclusively or predominantly against certain individuals or groups and/or not against others, or the separation of individuals based on their identifying gender characteristics. Intent and knowledge can also be inferred from prior or subsequent conduct". OTP Policy, para. 95.

<sup>312</sup> OTP Policy, p. 2; para. 91.

<sup>313</sup> *Ibid.*, para. 10.

<sup>314</sup> *Ntaganda* Trial Judgment, para. 1009. *See also* OTP Policy, para. 56 ("Perpetrators may also commit a persecutory act based on multiple or intersecting grounds of persecution. Gender persecution may, and frequently does, intersect with and constitute multiple forms of persecution based on political, racial, national, ethnic, cultural, religious or other grounds that are universally recognised as impermissible under international law"). *See also Al Hassan* Confirmation Decision, paras. 665 (religious and/or on the basis of gender), 702 (gender intersecting with racial grounds).

<sup>315</sup> OTP Policy, para. 55.

<sup>316</sup> *See Al Hassan* Confirmation Decision, paras. 665 (religious and/or on the basis of gender), 702 (gender intersecting with racial grounds); ICTR, *Prosecutor v. Nahimana et al.*, ICTR-99-52-T, [Trial Judgement and Sentence](#), 3 December 2003, para. 1071.

125. In the context of the 2022-2023 protests, the information available suggests that the perpetrators intended to discriminate against the victims on interlinked political and gender grounds.

126. 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. The wave of protests started with the death of Ms Amini in detention, subsequent to her arrest by the morality police for wearing the *hijab* improperly. Women and girls have played a prominent role in the protests. Banners such as “Women, Life, Freedom” and women’s protagonism in mobilising protests demonstrate that women’s rights are central to the wider expression of the protests against the government’s political and ideological foundations.

127. Concomitantly, the document issued by the General Headquarters of the Armed Forces on 21 September 2022, which instructs the commanders of armed forces in all provinces to “severely confront” protesters, as well as several public statements from Iranian authorities describing protesters as “rioters” and “enemies of the nation”,<sup>317</sup> support the existence of an intent to target protesters for their perceived opposition to the regime’s ideologies and values. In that sense, men, women, boys, girls and LGBTQI+ individuals alike who participated in or supported the 2022-2023 protests, or who were perceived as such by agents of the government, are the victims of the underlying acts that form the basis of the widespread or systematic attack against the civilian population in this case. This indicates that security forces and agents of the government intended to target first and foremost, and on a discriminatory basis, anyone perceived as not conforming with or adhering to their political ideology – including the established gender norms and discriminatory policies against women and girls. The group against which discriminatory acts have been perpetrated can therefore be defined by its political as well as its gender component.

128. Women and girls, and LGBTQI+ individuals, are two gender groups that may be considered to have been targeted by the perpetrators, namely agents of the Iranian government, in relation to the 2022-2023 protests. In particular, the information available suggests that, in challenging the established gender norms and the discriminatory policies against them, women, girls and LGBTQI+ individuals are perceived by the perpetrators as opposing the political views of the government. This intent can be described as both political and gender-based, since the fact that women, girls and LGBTQI+ individuals refuse to conform

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<sup>317</sup> See *supra* para. 35.



to cultural or social norms with respect to gender roles may be construed by the authorities as an expression of a political opinion with respect to such roles.<sup>318</sup>

129. **Women and girls.** The existing legal framework in Iran explicitly identifies women and girls as a group subjected to limitations and restrictions of their fundamental rights by, for instance, restricting their bodily autonomy, outlawing sterilisation procedures, providing for loss of spousal maintenance for not performing their “spousal duties”, and by imposing compulsory veiling and criminalising non-compliance therewith. It is clear that the Iranian government has sought to condition every aspect of women and girls’ lives to uphold the cultural or social norms associated with certain gender roles, including through the imposition of a dress code which limits their ability to work, to attend university, to participate in public life and to access public services such as banks and hospitals.<sup>319</sup>

130. As explained, these restrictions have been the subject of heightened enforcement at least since June 2022, leading to the increased arrest, detention, prosecution and punishment of women and girls for non-compliance with the *hijab* policies. The deprivations of fundamental rights imposed by government agents have targeted women and girls who refused, or were perceived as refusing, to conform to social norms with respect to gender roles as defined by the authorities. The intent to discriminate against women and girls based on their gender is further evidenced by the passing of the new *hijab* law in September 2023. Despite the massive uprisings against restrictions on women’s rights, this law imposes further restrictions on women and girls. Its implementation is already further affecting the fundamental rights of women and girls considered not to be compliant with the mandatory dress code.<sup>320</sup>

131. 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. For instance, perpetrators shot at women’s genitals and breasts at close range.<sup>321</sup> They also verbally harassed them with insults such as ‘whore’ and other derogatory language, which reflect a discriminatory attitude.<sup>322</sup> In this regard, rape and other forms of sexual violence also took a patently gendered dimension, as women and girls were the most often reported victims of such crimes in the context of the arrests and detentions that took place during the 2022-2023 protests, and because their targeting seems to aim at creating an environment of shame for

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<sup>318</sup> In this sense, *see* UN Division for the Advancement of Women, Report of the Expert Group Meeting on Gender-Based Persecution, Toronto, Canada, 9-12 November 1997, [EGM/GBP/1997/Report](#), para. 44.

<sup>319</sup> *See supra* paras. 10-12.

<sup>320</sup> *See supra* Section IV.A.

<sup>321</sup> *See supra* para. 38.

<sup>322</sup> *See supra* para. 56.

themselves and their families and thus discourage them for participating in or supporting protests.<sup>323</sup>

132. **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.

133. On the one hand, an argument can be made that men were targeted due to their perceived affiliation with the targeted group, namely women and girls. These protests were sparked by the regime's killing of a young woman based on her non-compliance with the compulsory dress code. Women and girls played a leading role in the protests, which explicitly sought to address violations of women's rights in Iran.<sup>324</sup> Although security forces have employed violence against protesters in the past, the 2022-2023 protests are unprecedented in terms of the heightened level of repression by the security forces, with thousands of people arrested and hundreds killed. Likewise, considering that not all victims of the crime of persecution are required to be members, sympathisers, allies of, or in any other way related to, the targeted group,<sup>325</sup> but that what is relevant is the perpetrator's intent – *i.e.*, how they perceived the victim in relation to the group, and that they targeted people on that basis,<sup>326</sup> it is possible for men and boys to be victims of persecutorial acts specifically targeting women and girls.<sup>327</sup>

134. On the other hand, and despite women's central role in the 2022-2023 protests, men and boys represent the majority of reported victims of death and injury – including through the imposition of capital punishment. While this could be an intentional tactic on the part of the Iranian government and the security forces to intimidate men and stop them from supporting women's protests, the statements of the Iranian authorities and the information about the conducts of the alleged perpetrators available to the undersigned are insufficient to draw this conclusion. In addition, the protests also raised broader grievances against the Iranian government's political and ideological foundations, which possibly went beyond

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<sup>323</sup> See *supra* para. 53.

<sup>324</sup> See *supra* paras. 33, 36.

<sup>325</sup> See para. 119.

<sup>326</sup> *Ongwen* Trial Judgment, para. 2736; *Ntaganda* Trial Judgment, para. 1011; ICTY, *Prosecutor v. Krnojelac*, IT-97-25-A, [Judgement](#), 17 September 2003 (*Krnojelac* Appeal Judgment), para. 185; *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, [Judgement](#), 31 March 2003 (*Naletilić and Martinović* Trial Judgment), para. 636: "It is the perpetrator who defines the victim group while the targeted victims have no influence on the definition of their status".

<sup>327</sup> This could for instance include cases where male friends or family members are targeted by the authorities as a punishment, in order to prevent women and girls from defending their rights or opposing compulsory veiling.

targeting women and girls. In this respect, it cannot be ignored that the security forces routinely resort to violence as a response to peaceful protests on any grievances raised against the authorities' policies. While recalling that a proper gender analysis of these protests may lead to a different conclusion, the information available to the undersigned suggests that, in the majority of the cases where men and boys were the victims, the political ground of the discrimination against them appears to have predominated.

135. **LGBTQI+ individuals.** The Iranian legal framework also explicitly identifies LGBTQI+ individuals as a group subjected to limitations and restrictions of their fundamental rights by, for instance, criminalising consensual same-sex sexual conduct and equating homosexuality to a mental disorder.<sup>328</sup> LGBTQI+ individuals are thus stigmatised and oppressed because they do not conform to traditional gender roles, as evidenced by the case of the five transgender citizens arrested by a religious enforcer and their forced confession.<sup>329</sup> Similarly, the case of Ms Ajoudani depicts the specific vulnerability that LGBTQI+ individuals may face in detention settings.<sup>330</sup> 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 LGBTQI+ individuals have been targeted on gender grounds.

#### **G. IN CONNECTION WITH OTHER UNDERLYING ACTS OF CRIMES AGAINST HUMANITY**

136. Pursuant to the ICC Elements of Crimes, in order to constitute a crime against humanity, 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.<sup>331</sup> While the ICTY has ruled that this is not a requirement under customary international law,<sup>332</sup> the ILC's Draft Articles have maintained the connection requirement "due to: (a) a concern that otherwise the text would bring within the definition of crimes against humanity a wide range of discriminatory practices that do not necessarily amount to crimes against humanity; and (b) a recognition that subparagraph 1(k) encompasses, in accordance with its terms, other inhumane acts".<sup>333</sup>

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<sup>328</sup> See *supra* para. 12.

<sup>329</sup> See *supra* para. 47.

<sup>330</sup> See *supra* paras. 47, 61.

<sup>331</sup> Elements of Crimes, Art. 7(1)(h). See also Ongwen Trial Judgment, para. 2739; Ntaganda Trial Judgment, para. 1023; *Al Hassan* Confirmation Decision, para. 669; *Burundi* Article 15 Authorization Decision, para. 131. In this sense, this element relates to the Court's jurisdiction, and is thus fulfilled by persecutory acts that are connected to any crime under ICC jurisdiction. See *Al Hassan* Confirmation Decision, para. 669; OTP Policy, para. 56.

<sup>332</sup> *Kupreškić et al.* Trial Judgment, paras. 580-581.

<sup>333</sup> Draft Articles, p. 44, para. 38.

137. In any event, 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 referred to in Art. 7(1) of the Rome Statute. These include murder, imprisonment, torture, rape, and other forms of sexual violence, as well as other inhumane acts.<sup>334</sup> 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.

#### **D. AS PART OF A WIDESPREAD OR SYSTEMATIC ATTACK DIRECTED AGAINST ANY CIVILIAN POPULATION**

138. 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”.<sup>335</sup> These constitute the contextual elements of crimes against humanity, which are analysed below. The information available suggests that these elements are fulfilled in the context of the repression of the protests that began on 16 September 2022, following the death of Ms Amini.

139. **Existence of an attack directed against any civilian population.** Pursuant to Art. 7(2)(a) of the Rome Statute, an attack consists of “a course of conduct involving the multiple commission of acts referred to in [Art. 7(1)]”.<sup>336</sup> This definition “denot[es] a campaign, an operation or a series of actions directed against the civilian population”.<sup>337</sup> To prove the existence of the course of conduct, it must be demonstrated that the acts were not “a mere aggregate of random or isolated acts” but a series or pattern of behaviour, namely “a series or overall flow of events”.<sup>338</sup> “The nature of [the] acts, the population that was targeted, the identity of the perpetrators and the chronology of the relevant events” may “establish that [...] multiple acts, viewed collectively, express a ‘course of conduct’ within the meaning of article 7(2)(a)”.<sup>339</sup>

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<sup>334</sup> See *supra* Section V.A.

<sup>335</sup> Art. 7(1) of the Rome Statute.

<sup>336</sup> *Ongwen* Trial Judgment, para. 2674. The “multiple commission of acts” reflects a quantitative threshold that requires a certain number of acts as part of the course of conduct. See also *Ntaganda* Trial Judgment, para. 668; *Katanga* Trial Judgment, para. 1104.

<sup>337</sup> *Katanga* Trial Judgment, para. 1101. See also *Bemba* Trial Judgment, para. 149.

<sup>338</sup> *Ongwen* Trial Judgment, para. 2674; *Ntaganda* Trial Judgment, para. 662.

<sup>339</sup> *Gbagbo* Confirmation Decision, para. 212.

140. According to ICC jurisprudence, civilians – hereby understood as non-combatants –<sup>340</sup> “must be the primary target” of the attack.<sup>341</sup> The civilian population targeted may be constituted by a State’s own citizens.<sup>342</sup> However, the civilian population requirement is not limited to populations “defined by common nationality, ethnicity, or other similar distinguishing features”,<sup>343</sup> “but such characteristics may be used to demonstrate that the enumerated act forms part of the attack”.<sup>344</sup> It is sufficient, as in the present case, that the individuals targeted by the attack constitute a *segment* of the population, as opposed to the whole civilian population.<sup>345</sup> Of particular relevance to the situation in Iran, a Pre-Trial Chamber of the ICC has held that the targeted civilian population can be “a group defined by its (perceived) political affiliation”.<sup>346</sup> The Pre-Trial Chamber found that post-election violence committed against a “specific subset of the civilian population”, based on their perceived political affiliation, could fulfil the requirement of an attack directed against any civilian population.<sup>347</sup>

141. 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. Iranian security forces carried out a series of multiple acts of violence against actual and perceived opponents of the regime in different cities of Iran in the context of the 2022-2023 protests. These underlying acts fall into the following categories:

- Excessive use of force (use of live ammunition, pellets and teargas, and beatings with batons) by state security forces against protesters and random passers-by that resulted in deaths and serious injuries, potentially amounting to murder and other inhumane acts;
- Deplorable conditions of detention and abuses committed against protesters at the time of arrest and against detainees, which caused great suffering or serious injury to the bodies

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<sup>340</sup> See e.g., ICC, *Situation in the Republic of Kenya*, ICC-01/09-19-Corr, [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 (*Situation in Kenya* Authorization Decision), para. 82.

<sup>341</sup> *Katanga* Trial Judgment, paras. 1103-1104; *Ongwen* Trial Judgment, para. 2675; *Bemba* Confirmation Decision, para. 76; *Kunarac et al.* Appeal Judgment, paras. 91-92; *Karadžić* Trial Judgment, para. 478; ICTY, *Prosecutor v Seselj*, IT-03-67-R77.2-A, [Judgement](#), 19 May 2010, para. 69.

<sup>342</sup> See *Kunarac et al.* Trial Judgment, para. 423.

<sup>343</sup> *Bemba* Trial Judgment, para. 155.

<sup>344</sup> *Semanza* Trial Judgment, para. 330.

<sup>345</sup> See *Situation in the Republic of the Philippines*, [Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15\(3\) of the Statute](#), ICC-01/21-12, 15 September 2021, para. 87 (holding that the targeting of “persons allegedly associated with the use and trafficking of illegal drugs” satisfies the civilian population criteria).

<sup>346</sup> See *Ruto et al.* Confirmation Decision, para. 164; *Gbagbo* Confirmation Decision, para. 209; *Kenyatta* Confirmation Decision, para. 110.

<sup>347</sup> *Ruto et al.* Confirmation Decision, paras. 168, 164-174. See also *Gbagbo* Confirmation Decision, paras. 209-212 (finding that acts of violence directed against perceived opposition supporters during the 2010-2011 post-election crisis in Côte d’Ivoire could qualify as such an attack).



or to the mental or physical health of the detainees, potentially amounting to torture, rape, sexual violence, and other inhumane acts;

- Arbitrary arrest and detention without due process of law that violated the fundamental procedural rights of the victims, potentially amounting to imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; and
- Violations of the rights to peaceful assembly, freedom of thought, conscience and religion, expression, and movement, the rights to privacy, to participation in public affairs, and the rights to work and education. These violations were committed primarily against women and girls for actual or perceived non-compliance with the *hijab*, amounting to persecutorial acts on political and gender grounds.

142. This attack targeted men, women, children and LGBTQI+ individuals who participated in the protests against the regime in different cities of Iran since at least 16 September 2022. The underlying acts 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.

143. **Widespread or systematic.** An attack can be characterised as widespread in light of its large-scale nature and the number of targeted persons.<sup>348</sup> For an attack to be considered widespread, neither a minimum number of victims nor a large geographical area are required.<sup>349</sup> A widespread attack may entail operations in various locations over a large area; or a small geographical area and a large number of victims.<sup>350</sup> Similarly, an attack can be widespread because of “the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude”.<sup>351</sup> In turn, “the term ‘systematic’ reflects the organised nature of the violent acts, referring often to the existence of ‘patterns of crimes’ and the improbability of their random or accidental occurrence”.<sup>352</sup> While ‘widespread’ and ‘systematic’ are disjunctive elements of the attack,<sup>353</sup> both elements are fulfilled in the case at hand.

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<sup>348</sup> *Ongwen* Trial Judgment, para. 2681; *Ntaganda* Trial Judgment, para. 691; *Katanga* Trial Judgment, para. 1123.

<sup>349</sup> Draft Articles, Commentary on Art. 2, pp. 32-33, paras. 12-13.

<sup>350</sup> *Bemba* Confirmation Decision, para. 83; *Katanga* Confirmation Decision, para. 395.

<sup>351</sup> *Blaškić* Trial Judgment, para. 206 (quoting ILC 1996 Draft Code of Crimes against the Peace and Security of Mankind, Commentary on article 18, p. 47 para. 4). See also *Blagojević et al.* Trial Judgment, para. 545; *Kordić & Čerkez* Trial Judgment, para. 179.

<sup>352</sup> *Ongwen* Trial Judgment, para. 2682; *Ntaganda* Trial Judgment, para. 692; *Katanga* Trial Judgment, para. 1123. See also *Kunarac et al.* Appeal Judgment, para. 94 (“patterns of crimes” understood as “the non-accidental repetition of similar criminal conduct on a regular basis”); *Akayesu* Trial Judgment (ICTR), para. 580 (“following a regular pattern”); *Blaškić* Trial Judgment, para. 203 (“the perpetration of a criminal act on a very large-scale” or “the repeated and continuous commission” of linked crimes); *Kordić and Čerkez* Appeal Judgment, para. 94; ICTR, *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, [Judgement](#), 28 November 2007, para. 920.

<sup>353</sup> *Situation in Kenya* Authorization Decision, para. 94. See also *Bemba* Confirmation Decision, para. 82; *Bemba* Trial Judgment, para. 162.

144. In the present case, the underlying acts were committed in both a widespread and systematic manner. In the context of the 2022-2023 protests, the number of individuals killed, injured, arrested and detained is in the thousands.<sup>354</sup> In addition, the government's campaign of repression has taken place across the whole country, though it was particularly deadly in the provinces where ethnic minority communities reside.<sup>355</sup> In this sense, the attack was clearly widespread, by virtue of the geographical scope and number of victims and potential crimes committed. The attack was also conducted in a systematic manner. The existence of repeated patterns of assault, murder, imprisonment, torture and sexual violence against protesters demonstrates that these acts were not random or accidental but were part of a systematic and organised campaign against protesters. Following a similar *modus operandi*, the state security forces carried out repeated waves of arrest and detention of protesters. These events were planned and coordinated, and involved the substantial use of public resources, which evidence its systematicity.<sup>356</sup>

145. **State or organisational policy.** To constitute crimes against humanity, the underlying acts must have been committed pursuant to or in furtherance of a state or organisational policy.<sup>357</sup> In essence, the function of this requirement is to filter out unconnected crimes by diverse individuals.<sup>358</sup> The policy element requires the active promotion or encouragement of an attack against the civilian population.<sup>359</sup> While it may consist of a pre-established plan or design, a policy does not need to be formalised.<sup>360</sup>

146. In the present case, 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 the order issued by the General Headquarters of the Armed Forces and other public statements by high-ranking Iranian government officials.<sup>361</sup> The existence of a State policy can further be inferred from the

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<sup>354</sup> See *supra* Sections IV.B and C.

<sup>355</sup> See *supra* paras. 42-44.

<sup>356</sup> *Akayesu* Trial Judgment, para. 580 (“thoroughly organised”, “involving substantial public or private resources”); *Blaškić* Trial Judgment, para. 203 (“the preparation and use of significant resources”).

<sup>357</sup> Art. 7(2)(a) of the Rome Statute.

<sup>358</sup> Cf. *Ongwen* Trial Judgment, para. 2678; *Bemba* Trial Judgment, para. 161.

<sup>359</sup> Elements of Crimes, Introduction to Article 7, para. 3; *Ongwen* Trial Judgment, para. 2676; *Ntaganda* Appeal Judgment, para. 1119; *Bemba* Trial Judgment, para. 159.

<sup>360</sup> *Ongwen* Trial Judgment, para. 2679; *Ntaganda* Trial Judgment, para. 674; *Katanga* Trial Judgment, para. 1110. At the evidentiary level, the policy may be inferred from a variety of factors, including (1) the organized nature of the attack; (2) a recurrent pattern of violence; (3) the use of public or private resources; (4) the involvement of the state or organizational forces in the commission of crimes; (5) statements, instructions or documentation attributable to the state or the organization condoning or encouraging the commission of crimes; and/or (6) an underlying motivation. *Ntaganda* Trial Judgment, para. 674; *Katanga* Trial Judgment, paras. 1108-1110.

<sup>361</sup> See *supra* para. 35.

following factors: the organised nature of the attack and the recurring pattern of violence employed against protesters; statements by senior political figures showing the existence of a policy to target protesters perceived as opposing the regime; repeated and coordinated state actions showing the existence of a policy of repression against protesters on the basis of their perceived political opposition; and the involvement of state actors in the commission of potential crimes.

147. **Knowledge of the attack.** This mental element does not require proof “that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization”.<sup>362</sup> This element “is satisfied if the perpetrator intended to further” a widespread or systematic attack directed against any civilian population.<sup>363</sup>

148. The question of individual criminal responsibility is not addressed in this submission. While the present analysis does not focus on the details of the conduct of specific individuals, the information available suggests that many of the alleged perpetrators would have been aware that their conduct was part of an attack against a civilian population.<sup>364</sup> The widespread and systematic nature of the alleged violent acts analysed above excludes the possibility that the perpetrators could have acted without knowledge of the wider context of the crackdown on protests and the recurring abuses.

## **VI. CONCLUSION AND RECOMMENDATIONS**

149. 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.

150. 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

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<sup>362</sup> ICC Elements of Crimes, Art. 7, Introduction, para. 3.

<sup>363</sup> *Ibid.*

<sup>364</sup> *Ongwen* Trial Judgment, para. 2691.

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.

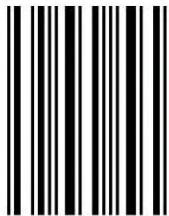
- Given the current uncertainty surrounding the renewal of the mandate of the FFMI mandate beyond March 2024, the FFMI should, while finalising and preparing its March report, continue to receive submissions of information and maintain open lines of communication with those individuals and members of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





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