



IRAN

**Disciplining Bodies, Diagnosing
Identities**

**Mandatory Veiling, Mandatory
Sterilization, Sexual Torture and the
Right to Bodily Integrity in the Islamic
Republic of Iran**

**SUBMISSION TO THE UN UNIVERSAL PERIODIC
REVIEW OF IRAN**

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INTRODUCTION

1. The present submission, which has been prepared by Justice For Iran (JFI) for the 20th session of the Universal Periodic Review (UPR) of the Islamic Republic of Iran in November 2014, is concerned with a range of distinct but interrelated criminal laws and other legal restrictions and practices that infringe the dignity and autonomy of women and transgender people, on grounds of sex, sexual orientation, gender identity and gender expression, particularly in respect of bodily integrity, sexual and reproductive health and decision-making. It is also concerned with patterns of sexual torture and other cruel, inhuman and degrading treatment or punishment (hereafter “other ill-treatment”) against women prisoners of conscience, and with the culture of impunity by which such long-standing patterns of abuse are characterized.

2. The submission focuses on three core sets of practices that are paradigmatic examples of impermissible barriers to the realization of the right of women and transgender people to control their body and sexuality. These are mandatory hijab [veiling] laws, reparative therapy and mandatory sex reassignment surgeries, and sexual abuse and torture of women prisoners of conscience. JFI submits that these practices constitute state interference with the control of women and transgender persons over their body, potentially placing them on the frontlines of severe human rights abuse not only in detention centers and prisons but also in a vast array of public spaces ranging from schools and hospitals to workplaces and recreation centers.

FOLLOW UP TO THE PREVIOUS REVIEW

3. JFI is deeply concerned about the failure of Iran to give effect to the recommendations that it accepted during the first course of its UPR, namely to “ensure the equal treatment of women and girls in law and practice”, to “adopt measures to guarantee women's equality under the law”, to “develop a legal framework for protecting and promoting the rights of women”, and to “bring its national legislation into conformity with international obligations on women's rights.”

4. JFI notes with concern that serious human rights violations continue to be perpetrated by state and private actors against women in all areas of public and private life. For the purposes of this submission, it focuses on those abuses that are committed in the name of enforcing hijab laws considering that these laws are not only discriminatory in nature but also engage a wide range of indivisible, interdependent and interrelated human rights including the right to self-determination, freedom from interference with one’s body, security and dignity of the human person, freedom of thought and expression, freedom of religion and belief,

freedom from arbitrary arrest and detention, and, finally, freedom from torture and “other ill-treatment”.

5. JFI is also concerned with Iran’s lack of progress in implementing the recommendations that it accepted to investigate, prosecute and punish allegations of torture and other ill-treatment, and to establish effective complaint mechanisms and reparation programs for victims of these violations. Since the last UPR of Iran in 2010, the organization has produced two extensive reports on credible patterns of torture and other ill treatment, including rape and sexual abuse that women prisoners of conscience have suffered at the hands of security forces and prison authorities.¹ Investigations are yet to take place into these allegations of sexual abuse and torture, while perpetrators remain in influential positions of power. There remains a persistent culture of impunity, leading to continued intimidation and abuse against those struggling for truth and justice.

6. JFI regrets that at the time of its UPR in 2010, Iran rejected the recommendations to decriminalize consensual same-sex activity between adults, and eliminate, in law and practice, all forms of discrimination against lesbian, gay, bisexual and transgender persons. JFI’s research in the intervening period shows that the criminalization of homosexual and transgender persons on the basis of sexual orientation and gender identity is being increasingly accompanied by a range of legal and medical practices intended to coerce homosexual and transgender people into “reparative or conversion therapies”, hormone treatments and sterilization surgeries. Some of these concerns are detailed below.

HUMAN RIGHTS CONCERNS

MANDATORY HIJAB

7. Article 638 of the Islamic Penal Code provides that “women who appear without Islamic hijab in public will be sentenced to imprisonment between 10 days and two months or payment of 50,000 to 500,000 Rials.” The same article authorizes judges to sentence whoever violates Sharia laws to 74 lashes. This law applies to all women regardless of their personal religious beliefs, including to Christian, Jewish, Zoroastrian, Baha’i and atheist women, none of whose belief systems require hijab.

8. The criteria of Islamic hijab enforced in Iran is characterized by a series of ever-changing requirements covering choices of clothing colour, style, or tightness of women’s outfits. Its determination and enforcement often depends upon the whim of patrol officers recruited by the police to monitor public spaces and identify, reprimand, arrest and detain women who exhibit “bad-hejabi” [improper veiling]. This uncertainty alone has blemished Iran’s mandatory hijab laws with an obvious lack of legal security.²

¹ Justice For Iran, *Crime and Impunity: Sexual Torture of Women Prisoners in Islamic Republic Prisons*, Part 1: 1980s (2012), online: <http://justiceforiran.org/crime-and-impunity/>; Justice For Iran, *Raped Out of Paradise: Women in Prisons of the Islamic Republic of Iran* (June 2013), online: <http://justiceforiran.org/wp-content/uploads/2013/06/CWP-2th-EN.pdf>.

² In February 2005, the Ministry of Islamic Guidance approved the “Implementation procedures for promotion of a culture of chastity”. This document mandated the police with the task of “Declaring the limits and legal definition of modesty and standards of improper hijab in society with the aim of recognizing its manifestations” as well as “taking legal steps to confront individuals with improper hijab.”

9. While the number of arrests and judicial convictions have varied from year to year and province to province, government officials have stated that between 2003 and 2013, at least 30,000 women faced arrest throughout Iran. In 2007, a deputy chief of Tehran police stated that in the capital alone an average of 150 women were arrested on a daily basis. Official reports also point to at least 460,432 warnings issued against women and subsequently 7,000 women having been forced to pledge to observe Islamic hijab laws. A further 4,358 cases were referred to the judiciary.³

10. JFI's research indicates that these incidents of arbitrary arrest and detention have been frequently accompanied by excessive use of force, acts of verbal and physical abuse against women and court ordered monetary fines. In some instances, women have been also subjected to the cruel, inhuman and degrading punishment of lashing following unfair trials. Existing reports indicate that this pattern of abuse has continued unabated since the coming into office of President Rouhani in June 2013 as all the laws pertaining to mandatory hijab are still in place.⁴

11. JFI is deeply concerned that in their application, mandatory hijab laws have not only violated women's human right to liberty, security of person and freedom from torture and other ill-treatment but also impaired the enjoyment of their human rights, on an equal basis with men, to education⁵, work⁶, the highest attainable standard of physical and mental health,⁷ freedom of movement in public spaces, and participation in recreational activities and sports⁸. Examples of abuse include expulsion from university, exclusion from on-campus dormitories, termination of employment, and bans on entry into public spaces such as parks, cinemas, sports facilities, mountains, beaches, islands, free trade zones, airports and terminals, all on grounds of "bad hejrab" [improper veiling].

³ Justice for Iran, *Thirty-Five Years of Forced Hijab: The Widespread and Systematic Violation of Women's Rights in Iran* (March 2014), online: <http://justice4iran.org/english/wp-content/uploads/2014/03/Hejab-Report-JFI-English.pdf>.

⁴ Ibid.

⁵ Examples of abuse include expulsion from university, physical assaults against female students by members of the *basij* in the name of combatting improper hijab, exclusion from on-campus dormitories, summons to disciplinary committees and contacting students' families as a way to exert pressure.

⁶ Women have received warnings and expulsion orders on grounds of *bad hejabi* and been denied employment in schools, universities, government offices and management positions which require the wearing of *chador*. Their right to work has been also adversely affected as a result of promotional policies that favor women who wear the *chador* and penal practices that require convictions for improper or lack of hijab to form part of women's criminal record.

⁷ Several cases have been reported of women being denied access to public services as a means of enforcing full hijab and/or mandatory *chador* at some public hospitals or state-run medical care facilities. In some instances, women who do not have a *chador* are required to temporarily borrow one from the authorities at the door in exchange for their ID cards and women with makeup and nail polish are asked to remove everything at the door.

⁸ To provide a few examples among many, one could refer to bans on the entry of women with improper hijab into public spaces such as parks, cinemas, sports facilities, mountains, beaches, islands, free trade zones, airports and terminals, directives to government organs to refuse service to women with improper hijab, arrest and expulsion of women with improper hijab from cultural events such as concerts, constant surveillance of recreational areas such as beaches, restaurants and coffee shops, photographing and filming of women by the police in public spaces, confiscation of vehicles belonging to women with improper hijab, and denial of boarding permission to women with improper hijab at the whim of airport security forces.

12. JFI is further concerned that girl children have not been spared the abuses of Iran's discriminatory hijab laws. Under current laws, all girls as young seven – the age girls begin their formal education, are required to observe full hijab.⁹ It is beyond cavil that this stands in direct contradiction of Iran's own voluntary pledge, during the last UPR, to ensure equal treatment of girls in law and practice.¹⁰

REPARATIVE THERAPIES AND MANDATORY SEX REASSIGNMENT SURGERIES RESULTING IN IRREVERSIBLE STERILIZATION

13. JFI is concerned that criminal laws and other official policies are being increasingly used as a tool to coerce gay, lesbian and transgender persons into reparative therapies and unwanted sterilization surgeries, in order to “cure” them of their homosexual attraction and make them “legal” under Islamic Republic laws. These include, particularly, penal laws and other practices that proscribe and punish consensual homosexual acts between adults with flogging and death;¹¹ criminalize cross-dressing and forms of gender expression thought to be incompatible with mandatory Islamic dress codes including hijab; and make adoption of transgender behaviors, dress and mannerisms contingent on the fulfillment of sterilization and other invasive and potentially harmful gender reassignment surgeries which run counter to respect for the physical integrity of the person.¹² They also include policies such as the one recently announced by the Chair of Iran's Football Federation medical team that bar women from taking part in games on grounds of gender identity and expression unless they undergo “sex/gender determination tests”¹³ and “are able to

⁹ It is noteworthy that under Sharia, girls below the age of 9 are not indeed required to observe hijab.

¹⁰ A report published by the police in June 2010 notes that 80% of those arrested are generally between the ages of 16 and 30.⁸⁸ Although it does not point out the ratio of those below 18 years of age, it does mention that 0.8% are below 15 and above 30 and that 46.9% are between 16 and 20.

¹¹ According to Article 234 of the new Islamic Penal Code, which came into effect in 2013, the passive partner in sodomy will be sentenced to death while the active partner will be sentenced to death if he is married and to one hundred lashes if he is not married. Sodomy is defined in Article 233 of the Islamic Penal Code as “penetration of a man's sex organ, up to or beyond the point of circumcision, into the anus of another man.” If penetration does not take place, the lesser crime of *tafkhez* may apply, which is defined, in Article 235 of the Islamic Penal Code, as “placing a man's sex organ between the thighs or the buttocks of another man”. Sexual acts between two women can constitute *mosaheqeh* when, as discussed in Article 238 of the Islamic Penal Code, “a woman places her reproductive organ on another woman's reproductive organ.” Article 239 of the Islamic Penal Code provides that *mosaheqeh* is punishable by one hundred lashes. Under Article 136 of the Islamic Penal Code, women convicted of *mosaheqeh* may be put to death after their fourth conviction. Beside sodomy, *tafkhez* and *mosaheqeh*, the Islamic Penal Code criminalizes, under article 237, homosexual acts of kissing and touching for pleasure, and prescribes a penalty of 31 to 74 lashes.

¹² There is no specific legislation in Iran that allows transgender people to change their sex on official documents. The practices followed by the Legal Medicine Organization of Iran, that is responsible for dealing with requests pertaining to sex change require, however, that transgender people who wish to obtain legal recognition of their gender to receive a psychiatric diagnosis and undergo medical treatments, including sex reassignment surgeries that result in irreversible sterilization.

¹³ These tests often involve questions pertaining to the athletes' interest in attending women gatherings, details of their marriage and sexual desires, and justification for short hair cuts. If their test results come positive, female athletes are required to undergo breast and vaginal examinations by a medical team composed of three female and three male doctors. In some cases female athletes are subjected to ultrasound of their uterus and ovaries. Receipt of a medical certificate testifying to athletes' “female identity” is the final goal of these examinations, and the main requirement for participation in games. 6Rang interviewed a female football player who knew at least two athletes who were diagnosed with “gender identity disorder” or “transsexualism” following these tests and forced to undergo sex reassignment surgery. A female football player told the Iranian Transgender and Lesbians Network

solve their problems through sex reassignment surgery and proper medical procedures.”¹⁴ According to a report by the Iranian Transgender and Lesbians Network (6Rang), officials repeatedly refer to women players whose appearance is not typically feminine as bisexed, and subject them to harassment and bans from participation in games simply based on their gender identity

14. JFI observes that through these laws and policies, Iran is increasingly placing gay, lesbian and transgender persons in an invidious situation in which they have to forgo some human rights to enjoy others. The choices are stark. Undergo reparative therapies, hormone treatments and sterilization surgeries in order to obtain legal gender recognition, which would then ensure the right to have privacy, marry and found a family, and access education and employment without discrimination on grounds of gender identity and sexual orientation? Or preserve the right to sexual and reproductive health by refusing to undergo hormone treatments and sterilization surgeries, resulting in lack of legal gender recognition and continuous exposure to discrimination, arbitrary arrest and detention, torture and other cruel, inhuman and degrading treatment and punishment?

15. By pressuring gay, lesbian and transgender persons to decide between these fundamental human rights, Iran is in effect violating its negative obligation to respect the full and equal enjoyment of all human rights by individuals within its jurisdiction, without discrimination on grounds of sexual orientation and gender identity. It is also violating its positive obligation to act with due diligence to protect gay, lesbian and transgender persons from ill-treatment at the hands of doctors, health-care professionals and other private actors working in hospitals, medical clinics and other institutions engaging in the care of transsexual and transgender people.¹⁵

16. JFI has received deeply troubling reports of gay, lesbian and transgender persons subjected by health care professionals, including those working in public hospitals, to electroshock treatment, mind-altering and nausea-inducing drugs, non-consensual sterilization, and grossly negligent sex reassignment surgeries resulting in horrific scarring, loss of sexual sensation, debilitating infectious diseases, incontinence, chronic chest pain and severe back pain. The physical and psychological injuries suffered by lesbian, gay, and transgender persons as a result of these treatments violate the right of everyone to the highest attainable standard of physical and mental health which contains “the right to control one’s health and body, including sexual

(6Rang) that she knows at least two athletes who were diagnosed with “gender identity disorder” or “transsexualism” following these tests and forced to undergo sex reassignment surgery.

¹⁴ In February 2014, Ahmad Hashemian, the Chair of Iran’s Football Federation medical team, stated that they have barred seven women from taking part in games “because of gender ambiguity”. According to the Iranian Transgender and Lesbians Network (6Rang), the same policy was relied upon in August 2013 to exclude a female member of the national rugby team whose dress, voice and mannerisms did not conform to gender stereotypes. For more information, see Iranian Transgender and Lesbians Network (6Rang), “Blatant Discrimination in Football: Gross Gender-Based Measures against Female Players in Iran” (February 2014), online: <http://6rang.org/en/6rang-statements/english-blatant-discrimination-football-gross-gender-based-measures-female-players/>; Iranian Transgender and Lesbians Network (6Rang), “Islamic Republic football officials and gender-based discrimination against female athletes” (February 2014), online: <http://6rang.org/en/news/report-and-activities/english-islamic-republic-football-officials-gender-based-discrimination-female-athletes/>.

¹⁵ Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties* (2007), para. 17.

and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment.”¹⁶ They are sufficiently serious to amount to torture and other ill-treatment within the meaning of Article 7 of the International Covenant on Civil and Political Rights as they have been administered at the instigation of or at least with the consent and acquiescence of government officials and without the free and informed consent of the persons concerned.¹⁷

17. JFI recalls that informed consent is not “mere acceptance of a medical intervention”. It is rather “a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers.”¹⁸ There are serious concerns that the circumstances in which gay, lesbian and transgender persons in Iran accept to undergo reparative therapy and sex reassignment surgeries run afoul of the requirements of free and informed consent. Most gay, lesbian and transgender persons JFI spoke to recounted that their health-care providers did not provide them with accurate information about various crosscutting issues relating to sexual orientation and gender diversity.¹⁹ They also noted that they were given types of medical advice that assigned a diagnosis of disordered gender identity based on social nonconformity to gender stereotypes and misrepresented the efficacy and the potential for harm of sex reassignment surgeries resulting in sterilization. These practices represent serious violations of the right of gay, lesbian and transgender persons to informed consent, which is a fundamental feature of respecting their autonomy, self-determination and bodily integrity in an appropriate continuum of voluntary health-care services.²⁰

¹⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standards of health* (2000), para8.

¹⁷ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recognized that “medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. This is particularly the case when intrusive and irreversible, non- consensual treatments are performed on patients from marginalized groups.” See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, A/HRC/22/53 (1 February 2013), para. 31.

¹⁸ Principles 17 and 18 of the *Yogyakarta Principles* highlight the importance of safeguarding informed consent of sexual minorities. Principle 11 of the *United Nations Principles for the Protection of People with Mental Health Illness and the Improvement of Health Care* provide that free consent is “consent obtained freely, without threats or improper inducements, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on (a) The diagnostic assessment (b) The purpose, method, likely duration and expected benefit of the proposed treatment; (c) Alternative modes of treatment, including those less intrusive; and (d) Possible pain or discomfort, risks and side-effects of the proposed treatment.”

¹⁹ They were, for example, kept unaware that homosexuality had been removed from the Diagnostic and Statistical Manual of Mental Disorders in 1973; that the World Professional Association for Transgender Health has affirmed that gender variance is not in and of itself pathological and that the Standards of Care developed by the World Professional Association for Transgender Health recognize that not all transsexual, transgender and gender-variant people necessarily need or want surgery to change the genitalia and other sex characteristics.

²⁰ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272 (10 August 2009), para. 18.

18. JFI maintains that Iran bears direct responsibility for these violations considering that it has enacted laws that prohibit educators, doctors, journalists and members of the public from discussing homosexuality in a positive manner and from undertaking programs of peer training and public awareness that could address discrimination, prejudice and other factors which undermine the health of persons because of their sexual orientation or gender identity.²¹

SEXUAL TORTURE AND IMPUNITY

19. During the course of its first UPR, Iran accepted, *inter alia*, to investigate, prosecute and punish allegations of torture and other forms of ill-treatment, and to establish effective complaint mechanisms and reparation programs for victims of torture. JFI is concerned with Iran's significant lack of progress in implementing these recommendations, particularly in respect of credible allegations of sexual torture brought forward by multiple women prisoners of conscience throughout the past three decades.²²

20. Forms of sexual torture and other-ill-treatment reported include sexual harassment and assault, extraction of false confessions regarding women's sexual relationships, unjustified strip and body cavity searches, inappropriate touching of genitals and breasts, threats of rape, forced marriages, rape of young virgin girls before execution, deprivation of access to sanitary pads, deprivation of access to safe, hygienic conditions during pregnancy and delivery, and the use of women's newly born infants as a tool to inflict psychological pain.²³

21. In her latest report, the Special Rapporteur on Violence Against Women raised concern that while methods of torture such as forced marriages and the rape of virgin girls before execution largely ceased by the end of the 1980s, others have continued unabated, still shaping the experiences of large numbers of women prisoners of conscience.²⁴ This has been particularly the case for Baha'i women and women belonging to ethnic and religious minorities as they are more likely to be housed together with men in provincial facilities run by male authorities.

22. Iran is yet to conduct an independent and impartial investigation into the circumstances of these alleged human rights violations and bring those responsible to

²¹ See for example Article 6 of the Press Law and Article 15 of the Cyber Crime Law.

²² Women prisoners of conscience are arrested for a number of reasons, including political affiliation which can include affiliation with political opposition, women's rights activists, student bodies, NGOs, members or defenders of the lesbian, gay, bisexual and transgender community or defenders of the rights of religious minorities; individual activities related to journalism, the media, blogging and human rights advocacy; participation in demonstrations or other forms of activism; religious crimes including affiliation with unrecognized minorities; and violations pertaining to laws linked to *hijab*.

²³ Justice For Iran, *Crime and Impunity: Sexual Torture of Women Prisoners in Islamic Republic Prisons*, Part 1: 1980s (2012), online: <http://justiceforiran.org/crime-and-impunity/>; Justice For Iran, *Raped Out of Paradise: Women in Prisons of the Islamic Republic of Iran* (June 2013), online: <http://justiceforiran.org/wp-content/uploads/2013/06/CWP-2th-EN.pdf>.

²⁴ Special Rapporteur on Violence against Women, *Pathways to, conditions and consequences of incarceration for women*, A/68/340 (21 August 2013), para. 38.

justice. Perpetrators remain in influential positions of power while victims and survivors groups face continued intimidation and abuse for their efforts to seek truth and justice.

RECCOMENDATIONS

JFI calls on the government of Iran to:

Mandatory Hijab

- Repeal all laws and other legislation used to criminalize women for failing to cover their hair and body;
- Cease the harassment, arrest, detention, prosecution and conviction of women based on offences against chastity including appearing in public without Islamic hijab;
- Prohibit the harassment, abuse, ill-treatment, torture and sexual assault of women thought to be in violation of Islamic hijab by police forces, and investigate and prosecute members of the police who engage in such actions;
- Eliminate, in law and practice, all forms of discrimination against women based on mandatory hijab laws which are discriminatory by nature;
- Ensure that women can exercise their rights to freedom of expression in safety and without discrimination on grounds of gender, religion, political and other opinion regarding desirable forms of clothing and fashion;
- Take all steps necessary to ensure that public and private actors do not impair women's enjoyment of human rights, including with respect to access to education, employment, health care, social services as well as participation in recreational activities and sports;

Reparative Therapies and Mandatory Sex Reassignment Surgeries Resulting in Irreversible Sterilization

- Decriminalize consensual same-sex activity between adults;
- Decriminalize cross-dressing;
- Eliminate, in law and practice, all forms of discrimination on the basis of sexual orientation, gender identity and gender expression;
- Ensure that gay, lesbian and transgender persons enjoy and exercise all their human rights and fundamental freedoms, including the right to legal gender recognition, without having to undergo psychiatric assessment and sterilization surgeries;
- Exercise due diligence to protect gay, lesbian and transgender persons from torture and other cruel, inhuman and degrading treatment, including "reparative therapies" and sterilization and sex reassignment surgeries administrated

without the free and informed consent of the persons concerned;

Sexual Torture and Impunity

- End torture and other ill-treatment, including rape and sexual abuse, of women prisoners during interrogation and in detention by security forces and prison authorities;
- Ensure that all allegations of sexual torture or other ill-treatment, specially the rape of virgin girls before execution during the 1980s, are effectively and promptly investigated by an independent and impartial body, and that those responsible are brought to justice in fair trials;
- Ensure reparation, including fair and adequate compensation, for victims of torture and other ill-treatment inflicted by state agents;
- Protect the safety and security of complainants and witnesses seeking truth, justice and reparation for violations suffered; and
- Improve conditions in all prisons and detention facilities in compliance with international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners.

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Mandatory Veiling, Mandatory Sterilization, Sexual Torture and the Right to Bodily Integrity in the Islamic Republic of Iran

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About Justice for Iran (JFI)

Established in July 2010, Justice for Iran (JFI) is a non-governmental, not-for-profit human rights organization. It aims to give a voice to the voiceless.

The mission of JFI is to address and eradicate the practice of impunity that empowers officials of the Islamic Republic of Iran to perpetrate widespread human right violations against their citizens, and to hold them accountable for their actions.

JFI unravels the truth and seeks justice for ethnic and religious minorities, LGBTs, women, and those who are persecuted because of their political beliefs.

To achieve its mission, JFI researches, documents, validates, and litigates individual cases. It further raises public awareness and participates in human rights advocacy through the United Nations.