

Justice for Iran

Weapons of Mass Discrimination: The Islamic Republic Policies and the Economic, Social and Cultural Rights of citizens in Iran

Briefing to the UN Committee on Economic, Social and Cultural Rights on the occasion of the review of Islamic Republic of Iran in the 50th Session of UN Committee on Economic, Social and Cultural Rights

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OVERVIEW

Justice for Iran (JFI) is highlighting the concerns it has against violations by the Islamic Republic of Iran, specifically focusing on the discrimination in the following areas: Arab minorities, the Transgender community, Afghan refugees and migrants and Gender in the context of higher education

Each topic will then be discussed where relevant to the following: non discrimination, Right to work, right to primary education, right to adequate housing and the right to highest attainable standard of health.

I. Arab minorities

Article 26 of Iran's Constitution recognises the right to free gatherings and peaceful meetings for all, yet the Arabs within Iran face extensive discrimination in the areas of cultural practice in public places, the management of political and economic affairs in their region.¹ And a ban issued against speaking Arabic.²

The deprivation of the Arab minorities is by no means a new concept. During the 1970s, towns and cities around Iran were renamed from the original Arab word. An example of this can be seen in the city of Ramshir, a small town approximately 95km from Ahwaz which had its names changed from Khalafieh to Khalafabad and finally Ramshir, yet Arabs make up the majority of this town totalling approximately 60 thousand people.³ It is noted that approximately 95% of the population of those living in the outskirts of Ahwaz (the capital of Khuzestan) are Arabs and 75% have rural roots.⁴ The average unemployment rate of this area is eight percent higher than the average for the country; the second highest unemployment rate and is one of the poorest provinces in Iran, despite the highest oil reserve which provides 80 percent of the countries oil and other production.⁵

In the early years following Mohammad Khatami's 1997 presidential win, a group of Arab youth in the province of Khuzestan began promoting and teaching the Arabic language and culture in their small town of Ramshir (Khalafieh). The Arab language and culture had been denied and repressed in Iran for over three quarters of a century.⁶ In April 2005, the institute was pronounced as illegal following protest against discriminations on Arab ethnic groups; this is despite previously being able to obtain credentials to allow them to begin their work until a time when a permanent licence could be issued by the Ministry of the Interior. There is even evidence via recorded video from one of the Al-Hiwar celebrations showing this taking place in a school court yard and attendance by town government officials.⁷

Further evidence of discrimination against the Arab minority can be seen following the arrest of members of Al-Hiwar. On 16th January 2013, Justice for Iran (JFI) previously requested the UN special Rapporteurs to make an effort in facilitating the annulment of death sentences issued to 5 members of the scientific-cultural institute of Al-Hiwar. The request went further in seeking sanctions against the authorities in charge of torturing the Arab activists with the aim of extracting forced

¹ Seeking Rights to Cultural Identity: The Deathly Struggle of Ahwazi Arab Activists, Justice for Iran, February 2013

² Ibid at footnote 3 of page 6: based on statement of a teacher

³ Ibid at page 10

⁴ Those living on the outskirts of Ahwaz, Mehdi Hashemi, Akhbar Rooz, 10 January 2013, access at <http://www.akhbar-rooz.com/article.jsp?essayId=50272> as reported in Seeking Rights to Cultural Identity: The Deathly Struggle of Ahwazi Arab Activists, Justice for Iran, page 7

⁵ Parliament Proceedings, Islamic Parliament, cycle 8, session 96, page 11

⁶ Seeking Rights to Cultural Identity: The Deathly Struggle of Ahwazi Arab Activists, Justice for Iran, February 2013, Introduction, page 4

⁷ Mohammed-Ali Amouri and Hashem Sha'abani in the Eid-Al-Fatr 2002 via <http://www.youtube.com/watch?v=g4sVItFpg-8> as reported in Seeking Rights to Cultural Identity: The Deathly Struggles of Ahwazi Arab Activists, Justice for Iran, February 2013.

confessions. The men were accused of supposedly combating against God, proceeding with armed activities and threatening national security. The sentences were passed despite numerous announcements by the men at their hearings and being subjected to months of torture, obligated to make false confessions to armed activities and attempting to overthrow the Islamic Republic of Iran.⁸

In stark contrast JFI report that Al-Hiwar was in fact inspired by President Khatami's government to promote a 'dialogue among civilisations' with events including: conferences, poetry recital gatherings and educational and art classes which were all conducted in Arabic. The mistreatment of members of this group, who through peaceful means have attempted to express their cultural and language identity, is a clear sign of how minorities and in particular Arabs are suppressed in Iran.

The deprivation as mentioned above is not just limited to cultural activities but also with regard to political and economic affairs.

In 2005/2006, a notice was issued by the Revolutionary Prosecutor claiming that the Alwafaq al-Islami Committee (the only semi-official Arab party and the only one which had managed to send a representative to Parliament) was a cause for anarchy and waging difference between Arabs and Persians. The members and activists were being prosecuted and other non-governmental organisations of Arabs which had been formed during Khatami's presidency were also announced to be illegal.⁹ Many believe that the banning of this committee was a result of protests caused by 'the distribution of a circular attributed to Mohammad Ali Abtahi, former Vice President in the Parliamentary Legal affairs of the President (Khatami)...addressing and stating that the government had to take steps to ensure that in the next ten years the ratio of the Arab population of Khuzestan to that of Persian-speaking migrants was reduced by one third'¹⁰ Although Abtahi later refuted the letter as not genuine stating that he had no authority to pass such a circular, many believe that its falsity did not matter as discrimination towards Arabs had been going for years and was all that was needed for them to protest¹¹

In March 2003, the second term of elections for town and rural councils were held across Iran. Due to the relatively open cultural atmosphere in Khuzestan and as a result of increased political and cultural activities of Arabs, in most cities with Arab inhabitants Arab candidates were able to gain majority or in some cases all of the seats for the council and some believe that this was a cause for concern for the central government, resulting in the interference with the work of the council.¹²

Further evidence of discrimination can be seen following passing of circulars banning the speaking of Arabic for academic subjects whose students and teachers were mostly Arab.¹³ Although it was difficult for JFI to obtain this circular, many

⁸ Seeking Rights to Cultural Identity: The Deathly Struggle of Ahwazi Arab Activists, Justice for Iran, February 2013

⁹ Seeking Rights to Cultural Identity: The Deathly Struggle of Ahwazi Arab Activists, Justice for Iran, February 2013, page 9

¹⁰ Ibid at page 7

¹¹ Dual Characteristics of the unrest in Khuzestan, Jamshid Barzegar, BBC Persian, www.bbc.co.uk/persian/iran/story/2005/04/050420_mf_jb_khuzestan.shtml

¹² Seeking Rights to Cultural Identity: The Deathly Struggle of Ahwazi Arab Activists, Justice for Iran, February 2013, page 11

¹³ Karim Dahimi who used to be a teacher and a deputy head for middle school in various regions of Kouzestan testifies that circulars would come from the central government which required that in

reports suggest that such restrictions are imposed widely and informally for example, Saeed Hamidan who served as mayor of Ramshir, narrates that during Eid al-Fitr, one of the most significant holy days for Arabs, he ordered signs to be placed in Arabic and issued a three-day holiday. Following this and due to pressure by the Ministry of Intelligence, Hamidan was forced to resign.¹⁴

The examples above are proof of blatant violations of international law and even Iran's own law and therefore should cause the Committee to request Iran to remove such discrimination against a minority whose sole desire is to ensure that their culture and language is preserved in a country where they are treated as alien and outcast. Creating illegalities in all areas of their lives including those that were previously and openly valid will obviously cause upset among the community and is not an excuse to persecute and use this as an excuse to arrest activists, ban individuals from speaking their language and permitting the open request to move them out of areas where they have lived most of their lives.

bilingual schools, teachers and administrators must only speak in Farsi as reported in Seeking Rights to Cultural Identity: The Deathly Struggle of Ahwazi Arab Activists, Justice for Iran, February 2013, page

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¹⁴ Testimony from Saeed Hamidan, Justice for Iran

II. Transgender

- **Article 2: non-discrimination**
- **Article 12: right to the highest attainable standard of health**

The situation of members of the lesbian, gay, bisexual and particularly transgender (LGBT) community raises serious concerns within the Islamic Republic of Iran especially relating to the enjoyment of the right to health and the right to non-discrimination against harassment and persecution for those that endure a sex change operation and for those that would like to remain the gender they were born with.

Homosexuality is such a taboo that members of the LGBT community suffer greatly throughout their lives. To be lesbian, gay, bisexual or transgender (LGBT) in Iran is to live a life predominantly marked by stigma, fear, exclusion and violence.¹⁵ Iranian law, through provisions in the Islamic Penal Code, provides for the arrest, prosecution and execution of persons who engage in homosexual acts of their own free will.¹⁶ For example, Iran divides individuals who live outside dimorphic, hetero-normative gender relations into two distinct, yet interrelated, categories: transsexual patients and (homo)sexual perverts. The former encompasses individuals who suffer from a “gender identity disorder” (ekhtelal-i hoviati-jensy) and must be “cured” through hormonal conversations and sex reassignment surgery while the latter includes morally bankrupt individuals who engage in sinful (homo)sexual behaviour outside the bounds of gender normalcy and must be prosecuted and have appropriate punishment meted out to them.¹⁷ With such opinions, it is hardly surprising that there are reports of violence and exclusion from society.

To reaffirm the above opinion:

- Article 111 of the current Penal Code of Iran states that, “...consummated sexual activity between males, whether penetrative or not... is punishable by death...”
- Articles 121 and 122 states that ‘...the rubbing together of thighs or buttocks, or other forms of non-penetrative “foreplay” between men... is punishable by one hundred lashes for each partner.
- Article 123 of the Penal Code adds that “if two men who are not related by blood lie naked under the same cover without any necessity,” each will receive ninety-nine lashes. Lesbianism (mosahegheh) is punished with 100 lashes; its fourth repetition invokes death.
- According to Article 134 of the Penal Code, if two women who are unrelated to one another lie, without necessity, naked under the same cover, they will each be punished by less than 100 lashes of the whip. If the act is repeated and

¹⁵ Denying Identities, Maiming Bodies: Human Rights Violations against Individuals of Diverse Sexual Orientations and Gender Identities in the Islamic Republic of Iran, page 9 – Justice for Iran, November 2012

¹⁶ Islamic Penal Code, (Islamic Republic of Iran), 28 November 1991

¹⁷ Denying Identities, Maiming Bodies: Human Rights Violations against Individuals of Diverse Sexual Orientations and Gender Identities in the Islamic Republic of Iran, page 14 – Justice for Iran, November 2012

the punishment is in each case administered, on the forth occasion the punishment of execution will be incurred.

Due to the existence of these laws, there is a creation of profound and harmful impact on members of the LGBT community, so much so that, members of the public advise that the operation is a good way to alleviate the problem of harassment for example:

‘A conservative state-radio reporter stated during a heated argument with a transsexual person in the clinic of Mir Damad, Tehran ...‘When you are still a boy and you haven’t yet completed your operation to become a girl, the law, religion and custom does not allow you to dress as a girl. Once you’re given the official permit to have the operation, put it in your pocket and when the police stop you, pull it out and no one will then bother you... If you want to continue to dress like a girl but keep your male body, you are not a transsexual anymore; you are a transvestite; you may even be suspected of being a homosexual [meaning you have no right to complain about being policed, persecuted and punished]...so make up your mind. Either you want to be a man or a woman...it is my duty to know if someone is a man or a woman.’¹⁸

The opinion here is openly stating that those who are gay or lesbian should expect to be harassed and punished, yet having a sex change operation, will alleviate the so called problem. Yet, according to Iran’s Penal Code, punishment of being a homosexual is permissible to a high degree.

Being an Islamic country, strict enforcement of boundaries between men and women remains a major force behind this continued policing of gender and sexuality. Iran segregates all public spaces such as schools, city buses, beaches, sport stadiums, and mosques on the basis of gender. It imposes strict dress codes upon women and discriminates against them with respect to access to employment, housing, education, political office, and divorce and child custody, as well as in such areas as criminal law, inheritance law and citizenship law.

Lesbian, gay and transgender persons, by virtue of their diverse gender identities and sexual orientations, pose an existential threat to the segregation of the genders, hence the denial of their existence at the discursive level and their subjection to violence, harassment and discrimination in reality. However, understandably and in extreme contrast to the simple and potentially ignorant and seemingly straightforward explanation, many individuals might not be as inclined to identify as members of the other sex and opt for sex change operations if there was less legal and societal condemnation of homosexuality and more leeway in traditional masculine and feminine role behaviour.

For those that actually go through the operation, the process of obtaining a legal sex change in Iran is marked by inconsistency, conflicting views and arbitrary standards of proof. The exact process in obtaining a legal sex change in Iran is not clear as research is in the early stages and therefore limited. As a result of this, the following method is limited to that of Tehran and based on research gathered by JFI¹⁹ The conclusion from evidence collected to date points to a diagnostic process marked by deep-seated homophobia and prejudiced obsession with female male binaries. Individuals appearing before the Commission are expected to delineate their transsexual identity as an “illness” in need of hormonal and surgical correction and

¹⁸ Negin Klanfar and Daisy Mohr, *The Birthday*, 2006, DVD (Gijs van de Westelaken

¹⁹ For a full step by step process of obtaining a legal sex change please refer to *Denying Identities, Maiming Bodies: Human Rights Violations against Individuals of Diverse Sexual Orientations and Gender Identities in the Islamic Republic of Iran*, page 19 – Justice for Iran, November 2012

completely distinct from sexual and behavioural deviations, particularly, homosexuality. They must place their transexuality in the realm of confusion, depression, isolation and impairment and trace the origins of these feelings to being in the “wrong” sex and body. The psychologists controlling the process never seem to ask whether the hetero-normative norms that take gender and sexuality as fixed, intransigent and inherently heterosexual may be a source of these feelings of distress and anxiety and they readily link any expression of gender and sexual non-conformity to an internal pathology and disorder. The applicant is not, however, allowed to dress as a member of the other sex and live in society as such until she or he undergoes hormone therapy and other medical procedures. This requirement compels many applicants to (self)administer hormone therapy in a rushed manner and without a proper understanding of all the negative effects that hormone therapy can have upon their bodies. The certification also instructs courts to allow the name change of the applicant and the issuance of new national identification papers provided that s/he meets the surgical requirements of legal sex change. Transsexual applicants must show that their body has been altered so as to resemble a body of the opposite sex by means of hormone therapy and sex reassignment surgeries. The surgical removal of uterus, ovaries and breasts is, however a necessity. No Account is taken of pre-existing medical conditions (e.g., hepatitis C, clotting disorders, AIDS) or psychological, religious and financial constraints that may render surgery risky, prohibitive or undesirable.

The surgical requirements are deemed necessary for the protection of public order, public health and morals, yet this is full proof that these individuals are not provided proper health care or given adequate psychological care or assistance in determining the effects the operation can have including physical aspects.

Many of the lesbian and transgender persons that Justice for Iran interviewed held that their stigma, rejection and experiences of violence led them to make the decision to have sex reassignment surgery. There are reports of harassment and being assaulted by members of the police force and being placed in a prison cell for wearing attire worn by the opposite sex.²⁰ One of the individuals interviewed by Justice for Iran states that ‘after all, being transsexual is a more acceptable identity,’²¹ leading to the decision to go through the surgery. Another interviewee reports being beaten by her father who sad that she had become brainwashed (for being a lesbian), she also reports harassment at school and being prevented from participating in school activities.²²

Others report, that it was not until they were granted asylum in another country, that they were able to be themselves without the need for surgery and could live their life in the body they were born with and not be forced to have a sex change due to social pressure.

It would seem that the Islamic Republic of Iran is in effect leaving transgender persons with two options which pose an equal risk to their health and safety: to seek

²⁰Justice for Iran Interview with Ashkan, Kayseri, July 2012 as reported in Denying Identities, Maiming Bodies: Human Rights Violations against Individuals of Diverse Sexual Orientations and Gender Identities in the Islamic Republic of Iran, page 22 – Justice for Iran, November 2012

²¹ Ibid at Page 23

²² Justice for Iran Interview with Ashkan, Kayseri, July 2012 as reported in Denying Identities, Maiming Bodies: Human Rights Violations against Individuals of Diverse Sexual Orientations and Gender Identities in the Islamic Republic of Iran, page 23 – Justice for Iran, November 2012

risky, costly and invasive hormonal treatments and surgical operations or to continue a dangerous and clandestine life unremittingly overshadowed by harassment, discrimination in employment and education, arbitrary arrest and detention, and risk of killing, physical attacks, rape and torture.

Throughout the operation and after care procedure, reports of degrading, inhumane treatment and experiencing forms of torture are not uncommon. Harassment is strife, physical and verbal abuse by nurses are reported. Reports of harassment and ignorance by the psychologists who are meant to analyze each individual prior to the procedure are known to act with prejudice and ignorance causing the patient to feel like they have to conform to the psychological and physical stereotypes required of them.²³

Despite the overwhelming evidence, Iran still claims that its excessive use of transgender operations is an assertion against other countries and their progression to rights of a person. ‘A state radio reporter proudly stated in a 2008 documentary about the state of transsexuals ‘that Iran has the best social services in the world for transsexuals. First of all, no other country on earth changes the gender on your birth certificate. However, Iran, because of religion and custom, does this for you. The first supreme leader, the first religious authority in the whole world to give a ruling on sex change is Imam Khomeini.’²⁴

Following the above, please do bear in mind that Iran is a party to International Human Rights Treaties and Under article 3 of the Universal Declaration of Human Rights, “everyone has the right to life, liberty and the security of person.” Article 6 of the ICCPR affirms, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” States have an obligation to exercise due diligence to prevent, punish and redress deprivations of life, and to investigate and prosecute all acts of targeted violence. The right to be free from torture and other cruel, inhuman or degrading treatment is absolute. Article 5 of the Universal Declaration of Human Rights and article 7 of the ICCPR provide that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, yet individuals are repeatedly and openly punished, harassed and targets of violence and segregation.

In the context of Iran, the consequences of non-recognition for transgender persons are far graver given that that transsexuality is repeatedly defined in relation to homosexuality. Failure to undergo surgery creates the perception of homosexuality, which can in turn put transgender persons at risk of physical attacks, arbitrary detention, rape and torture, and discrimination in employment and education.

When you are treated in such a manner and segregated from your family and friends, forced to hide your true self and conform to a society that treats you like a third class citizen, yet portrays themselves to be a forward thinking country who provides top healthcare and overall treatment to members of the transgender community and in fact boasts about the formal statistics as proof of their forward thinking. When a country uses their religion when it suits them to justify their lack of understanding to these individuals who are degraded on a daily basis and forced to sometimes live such a life of seclusion that it leads them to make a decision without

²³ Denying Identities, Maiming Bodies: Human Rights Violations against Individuals of Diverse Sexual Orientations and Gender Identities in the Islamic Republic of Iran, Justice for Iran, November 2012

²⁴ Tanaz Eshaghian, Be Like Others, 2008, DVD (Distributed by Wolfe Video)

being given the proper help they need. When the country that you live in, is a party to the international treaties, and therefore meant to directly protect the individuals discussed in this report, how can you show Iran's government that by being a party to such treaties actually requires enforcing the protection on their citizens and not justifying this on religion but on their ignorance of such situations.

III. Gender discrimination

The following article focuses on gender discrimination in the context of higher education in the Islamic Republic of Iran with research conducted by the Justice for Iran.

- **Article 2: discrimination and equality**
- **Article 3: equal right of men and women to enjoyment of all economic, social and cultural rights**
- **Article 13: right to education**

Following research by Justice for Iran, a considerable number of university courses are either only available to male applicants or are accessible to inexorably few female applicants, demonstrating a serious case of gender-based discrimination in access to higher education.

Findings based on data from 22,800 courses offered during the current academic year at Iranian public universities indicates there no women are admitted into approximately 14 fields of study from petroleum engineering to law. For example out of 1360 spaces available for new entrants into the field of emergency medical technology, none have been allocated to women. Admission into those public universities affiliated with governmental agencies, also guarantees students employment at government offices. Therefore, by admitting no female applicants in most fields, relevant government offices move through a gradual process of gender discrimination culminating in eradication of female employees. Accordingly, women face diminishing chances of government employment. In addition to the public job market, gender-based quotas in fields involving the sciences and mathematics will affect employment opportunities in the private sector, causing many fields to be dominated by men.

Aside from those fields in which admission of female applicants is entirely banned, in many other fields, gender-based quotas seem to violate the rights of women to free and equal access to higher education and entry into the job market.

Furthermore, findings suggest another policy parallel to that of gender-based quotas and bans that result in gender segregation in Iranian universities. Many universities have divided their annual quota so that during the first half of the academic year they admit students of one gender and during the second term, students of the other gender. In this vein, women and men admitted at different times will not benefit from shared classes and consequently, these fields will suffer from gender-based segregation. Lorestan University in Khorramabad has chosen to admit male students into its psychology department during the first term of the academic year and female students during its second term. Likewise, Zabol University admits female students into its Persian literature program during the first term of the academic year, and male students during the second term.

Following the same policy on gender-based segregation in various fields of some universities implies some are exclusive to one gender or another. Accordingly, while the total number of men and women admitted has not

changed dramatically, the academic space is no longer gender-neutral. This is evident in the case of the faculty of political sciences at two of Iran's universities, where only men are granted admission into Esfahan University, and women into Shahid Chamran University in Ahvaz. Such a policy not only creates a gender-specific atmosphere at these universities but also in light of constraints imposed as a result of the current culture in Iran, women will have even less access to universities. In addition to cultural constraints, it should be noted that the foundation of legal system in Iran encourages discrimination against women and diminishes their chances of access to higher education throughout the country.

Although it is too early to assess the long-term social impact of gender-based quotas and segregation in accessing higher education among Iranian women, nevertheless, our preliminary research points to a process initiated by the Islamic Republic authorities and agencies that seek to eliminate women from a significant number of fields of higher education and professions resulting in deep-rooted segregation of professional spaces. It is important to note that a mere 13% of Iran's women are currently in employment. Article 13 of the ICESR, requires the commitment of the Iranian government as a signatory to this Convention to ensure "Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means" as well as Article 6, whereby States must recognize "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right." Justice for Iran (JFI) recommends that the necessary steps to demand the Islamic Republic of Iran immediately lifts its gender-based bans and barriers against female university applicants in accordance with its international obligations.

III. Afghan refugees and migrants

- **Article 2: non-discrimination**
- **Article 11(1): Right to adequate housing: forced evictions**
- **Article 14: right to primary education**
- **Article 12: right to the highest attainable standard of health**

In March 2012, during the New Year festival of Norooz, the director of the Committee to Enforce Ease of Travel in Isfahan announced that for Sizdeh Beh Dar (a traditional celebration 13 days after Norooz during which individuals are supposed to spend the entire day in a picnic outside of their homes), a ban would be issued for the entry of Afghan nationals into Saffeh Mountain Park “for the welfare of the Iranian citizens” and “to preserve security of the families.”²⁵ National and international outrage followed this decision. However, instead of retreating, Iranian officials continued to pursue their campaign of discrimination against Afghan nationals residing in Iran. In April 2012, the director of the Bureau of Alien and Foreign Immigrant Affairs (BAFIA)’ office in Mazandaran Province, announced that the province was off limits to Afghan refugees. Calling it a “cleansing,” the government considered the presence of Afghan refugees to be a threat to the Province and stated that “since Mazandaran is a tourist attraction, it cannot withstand the presence of these [foreign] nationals.”²⁶

Since 2006, the Iranian government has been pursuing a policy of “voluntary return” by which Afghan refugees are relocated to their home country. Recently, the relocation of Afghans back to their country has decreased, largely due to the difficult conditions there. The Iranian government’s latest efforts to effectively push Afghan’s out, in spite of the deplorable conditions in their home country and their entitlement to UNHCR protection, is a new instalment in their campaign of violating the rights of Afghan refugees in Iran.

On May 28 2012, the director of BAFIA announced that as the moratorium issued on determining the residency status of Afghan refugees in Iran is ending, single Afghan men residing in the provinces of Tehran, Isfahan and Razavi Khorasan must leave the country by June 20, 2012. It was stated that after that date only those in possession of “valid residence cards and passport” are allowed to reside in designated areas of the provinces. The Iranian government, seemingly supported by the UNHCR, insists on pursuing the forced expelling of what they call “illegal Afghan migrants” under the pretext that Afghanistan is now safe and fit for refugees to return.

The 1951 Convention Relating to the Status of the Refugee (CRSR) as well as the 1967 Protocol Relating to the Status of the Refugee are the major bodies of law comprising international refugee law. In aggregate, they define refugee to be “[a] person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and

²⁵ Afghans banned from Entering a Park in Esfahan, RFI, April 2.2012 as reported in Iran: An Afghan free Zone?!, Justice for Iran, June 2012

²⁶ Mazandaran is the only Province in the country banning the presence of Afghans, BAFIA, April 2012 as reported in Iran: An Afghan free Zone?!, Justice for Iran, June 2012

being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it...” In 1969, Organization of Africa Unity expanded the definition to include flight due to “external aggression, occupation, foreign domination or events seriously disturbing public order”, more accurately reflecting the realities of the developing world. When flight from the homeland happens in such mass scale that renders individual screening impossible a groups status can be declared for all such individuals. Based on this, each individual belonging to that group is, in the absence of evidence to the contrary, considered a refugee. There are three common solution to the refugee problem: 1) voluntary repatriation, when conditions in home country is safe, 2) local integration, when host country allows integration of refugee in the country of asylum and 3) resettlement in third country, when repatriation is unsafe and host country refuses local integration.²⁷

The principle of non refoulement of the international refugee law prohibits forced return of refugees by way of returning or expelling the refugee “to the frontiers of territories where his life or freedom would be threatened.” The same law prohibits countries from penalizing refugees fleeing from danger and crossing into a country’s territory without permission. The law also prescribes that upon receiving recognition as a refugee, the individual is entitled to certain rights, some of which are: access to elementary education, public relief and assistance and protection by social security as well as the right to engage in wage-earning employment and choose the place of residence as afforded to other individuals of foreign national in the host country. UNHCR’s responsibilities are providing protection for the refugee and promoting a lasting solution to the problem as well as providing material assistance for refugees and returnees. Furthermore, states signatory to the convention agree to cooperate with UNHCR in acting upon its mandate and help it supervise the implementation of the Convention.

Presently, Afghanistan has the largest number of refugees in the world, 34% of whom reside in Iran. Since 2010, the Iranian government has been implementing the Plan for Registering and Organizing Afghan Citizens in Iran, passed by the National Security Council, which intends to facilitate the border crossing by legally registered refugees while identifying and increasing punishment for illegal immigrants and those who hire them.²⁸ During the first step of the plan, a proper count was done of the all illegal immigrants who were then provided with a number, given a time to attend at the government offices where they would be given a temporary pass and by the expiration of the date, they would be required to leave the country. At that point, all individuals who continue to remain inside Iran without a passport or a refugee card will be dealt with by Iranian law enforcement. The closeness of the statistics published by UNHCR and the Iranian government indicates that the majority of the Afghans who remain inside Iran are refugees afforded the status by the UNHCR either through individual screening or as a group escaping general aggression. The Iranian government’s bold unwillingness to provide these individuals “the most favourable treatment accorded to the nationals of a foreign country”²⁹ for finding jobs or providing any form of social or relief protection is in violation of the responsibilities of state parties to the convention.

Iranian law prevents Afghan nationals who do not hold a valid passport, visa and work permit from holding governmental jobs, buying or selling land, enjoying socialized governmental healthcare, opening a bank account, registering a cell phone,

²⁷ Refugee and Displaced Person, Human Rights Education Agency.

²⁸ New wave of Organising Afghan Nationals with Amayesh 7 Plan, May 30, 2011.

²⁹ See Article 17 of Convention relating to the status of Refugees.

or any other activity that requires official registration (where a National ID card or birth certificate is required).³⁰ Naturally this causes a plethora of problems for the Afghan refugees who, due to their unique circumstance, often do not enjoy basic refugee rights or are not even recognized as immigrant or migrant workers. The majority of them are engaged in agricultural and construction jobs that require little to no paperwork. As they do not have Iranian citizenship, even Afghans who fled to Iran 30 years ago, including children born to Afghan families inside of Iran, are still considered foreign nationals and do not enjoy any citizenship rights. This is while a large number of the work force is comprised of Afghan migrants who, due to their low wages and inability to follow up on their legal rights are heavily pursued and simultaneously abused by the Iranian construction managers.

Starting from 2002, Iran placed residential restrictions on Afghan nationals in Iran. This led to numerous provinces becoming out of bounds, causing Afghan nationals who had been living in these named provinces to have to relocate and start a new life, furthermore, the Iranian government has held that foreign nationals without a legal permit, cannot attend free public schools or use the socialised healthcare system. Many Afghan families do not hold valid refugee cards and therefore cannot attend public schools. As a result of this and to remedy the situation, Afghans created their own self governed schools. Such schools, like all schools costs money and many families were only able to send one child to school. This usually ended up being the male in the family. During the last few years, the Iranian government has started cracking down on these schools.

Access to healthcare is subject to similar restrictions. Afghan refugees cannot benefit from medical care in Iran.

All these restrictions are against international law and access to education, the right to living and medical care must be established to the citizens of Afghanistan who are forced to flee their homeland and are permitted under International Law to reside in another country. These basic rights discriminate against the citizens of a war torn country who seek relief in other countries through no other choice. JFI requests that Iran is forced to lift these discriminatory restrictions placed upon Afghan Nationals to ensure that they are provided with education and healthcare, the right to employment and the right to live.

³⁰ Procedural Code to Facilitate the Return of Afghan Nationals, Research Centre of the Islamic Majlis, December 17, 2003, <http://rc.majlis.ir/fa/law/show/125429>; Procedural Code regarding the Ownership of Immoveable Property by non-Iranian Nationals, Research centre of the Islamic Majlis, December, 10, 1995.