



Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Islamic Republic of Iran

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Introduction

This report is a joint submission by the International Gay and Lesbian Human Rights Commission (IGLHRC) and the Iranian Queer Organization (IRQO) to the United Nations Human Rights Committee (“the Committee”) on the occasion of its consideration of the third periodic report of the Government of Iran on the implementation of the International Covenant on Civil and Political Rights (“the Covenant”).

The purpose of this report is to highlight the widespread and systematic human rights violations experienced by lesbian, gay, bisexual, and transgender (LGBT) people; men who have sex with men (MSM); and women who have sex with women (WSW) in Iran despite the country’s international obligations under the Covenant.

In particular, IGLHRC and IRQO draw the attention of the Committee to the following human rights violations.

- The Penal Code of the Islamic Republic of Iran (“the Penal Code”) criminalizes all homosexual acts and actively punishes certain homosexual acts with death.
- The Penal Code fails to adequately differentiate between consensual and non-consensual sex and in some instances wrongly convicts victims and recuses rapists.
- Iranian authorities at the highest levels have repeatedly issued homophobic statements that amount to incitement to discrimination and violence.
- Lesbians live at the dangerous intersection of homophobia and patriarchy, which almost certainly results in decreased freedom of expression and increased risk of non-consensual sex and domestic violence.
- Transgender people may be penalized under laws criminalizing sodomy and laws policing dress codes and additionally may be denied the right to choose their self-expression.
- Individuals perceived to have committed homosexual acts are subjected to arbitrary arrest, torture in state custody, and denial of the right to a fair trial.
- Individuals concerned with LGBT rights violations -- including human rights defenders, family members, and journalists – have been threatened with arrest and intimidated by police and security forces.
- Censorship of LGBT-related information is rife and includes wiretapping, shutting websites, and threat of arrest.
- The rights of individuals suspected of being LGBT to assembly and association are curtailed, with public events being virtually non-existent, private events being raided and resulting in arrests, and even state intervention to prohibit online assembly.

The extent, breadth and severity of the State of Iran’s violations of the human rights of LGBT, MSM, and WSW Iranians amounts to a clear breach of the terms of the Covenant

Non-Discrimination and Equal Rights of Men and Women

(Article 2(1), 3, and 26)

Articles 2(1), 3 and 26 of the Convention provide for the respect, equality and non-discrimination of all individuals on the grounds of, *inter alia*, race, colour and sex. In the landmark decision of *Toonen v Australia* in 1994, the Committee found not only that the reference to “sex” in Articles 2(1) and 26 must be taken to include sexual orientation, but also that laws which criminalize consensual homosexual acts expressly violate the privacy protections of Article 17.¹ In the past twelve months alone, the Committee has twice called upon states to end the criminalization of sexual conduct between adults of the same sex.² Furthermore, it has recommended that two states take positive steps to end national prejudice and discrimination against lesbian, gay, bisexual and transgender (LGBT) people.³

Criminalization of Homosexual Acts and State Failure to Adequately Differentiate between Consensual Sex and Rape

The Islamic Penal Code of Iran (“the Penal Code”) criminalizes consensual sexual acts between members of the same sex (both between women and between men) and punishes convictions on this basis with death.⁴ In fact, the Iranian Penal Code addresses consensual homosexual acts alongside rape, child abuse, and sex trafficking, which is a poignant indication of how the Iranian government views homosexuality.⁵

According to Penal Code Article 111 and Article 112, a man can be put to death for certain homosexual acts when he is of majority age, is of sound mind and has engaged in homosexual acts of his own free will. Likewise, Article 130 indicates that certain forms of lesbianism will be punished when a woman is of majority age, is of sound mind, and exercises free will. Thus, the law recognizes the possibility of coercion within the context of homosexual acts both between women and between men as well as the possibility that a victim should not be penalized with death.

¹ *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC), 4 April 1994, available at: <http://www.unhcr.org/refworld/docid/48298b8d2.html> [accessed 28 September 2011].

² CCPR/C/ETH/CO/1, 25 July 2011, at para 12; CCPR/C/TGO/CO/4, 18 April 2010, at para 14

³ CCPR/C/MNG/CO/5, 2 May 2011 at para 9; CCPR/C/POL/CO/6, 15 November 2010 at para 8

⁴ According to the Iranian Islamic Penal Code, “Both parties to the gay sex are equally criminally liable” (Article 109), unless one of them is forced, is a minor, or is mentally challenged (Article 111, 112, 113). Article 127 of Iran’s Islamic Penal Code defines lesbianism or *Mosahegheh* as sexual act between two women involving their genitalia (Article 127). The punishment for lesbian sex is 100 lashes (Article 129), but if the offense is repeated, the fourth times the parties will be killed (Article 131). Two adult and mentally sound men who willingly had anal intercourse with each other are sentenced to death (Article 110). If the two men only engaged in *tafkhez* (non-penetrative sexual pleasure), the penalty is 100 lashes for the first 3 times and the death penalty for the fourth time (Article 121 and 122). If two men are found naked under a blanket, they will both receive 99 lashes (Article 123). Finally, if two men kiss each other passionately, they will be punished by 60 lashes (Article 124).

⁵ The penalty for homosexuality is detailed in the Second Book of Iran’s Islamic Penal Code which is dedicated to Corporal Punishment (*hodood*). The offenses that are listed in this book include: 1) Sex outside of marriage (including adultery and rape) 2) Gay sex 3) Lesbian sex 4) Pimping 5) Wrongful sexual accusations 6) Alcohol consumption 7) Armed uprising and 8) Theft. The first five offenses discussed in this book are all of a sexual nature.

However, the legal distinction between consensual and non-consensual homosexual acts – including rape – is woefully flawed. There are two key issues.

First, with regard to sex between men, the law draws a substantial distinction between he who penetrates sexually and he who is penetrated. Iranian law only recognizes he who performs penetrative acts as a potential perpetrator of sexual violence. This fails to recognize the reality that a perpetrator may or may not commit penetrative sexual acts and that a victim may or may not be penetrated. This faulty logic potentially fails to hold rapists accountable and potentially prosecutes victims. (With regard to lesbianism, no distinction is made between the parties to the act.)

Second, all Penal Code references to homosexuality, even those with regard to non-consensual acts, fall in relation to the penalization of homosexual acts and never in relation to the penalization of sexual violence and rape.⁶

Not only are these laws inadequate *prima facie*, they are inadequate in practice. Because the punishment for both consensual and non-consensual homosexual acts is death, there is incentive to the parties to misrepresent the facts, which can lead to wrongful convictions and ultimately wrongful death.

Incitement to Discrimination

Discrimination against people who are LGBT, men who have sex with men (MSM), women who have sex with women (WSW) is not limited to the law. Iranian officials have repeatedly condemned homosexual acts and homosexual individuals in public remarks. During a press interview on September 22, 2011, President Ahmadinejad described homosexuality as a “despicable act... that is dirty and harmful to humanity.”⁷ In January 2011, President Ahmadinejad was quoted by the Iranian media as saying, “Homosexuality means the divorce of humanity from its integrity.”⁸ Similarly, the Iranian Supreme Leader Ayatollah Ali Khamenei has several times attacked homosexuality as “scandalous”, a “shameless act”, “unmentionable behavior”, and “moral corruption.”⁹

By classifying homosexuality as a sexual crime and citing it as an example of moral decay, the authorities have both produced and perpetuated widespread social stigma and persecution of LGBT Iranians by both state and non-state actors.¹⁰ The hostility is so severe that a sizable number of LGBT Iranians have been displaced from their homeland and forced to seek asylum in other countries.¹¹

⁶ Articles 111, 112 and 130 are from Penal Code Chapter 2 entitled, “Punishment for Sodomy.”

⁷ “Mr. President in his interview with US media: NATO's policies in the Middle East is in line with the U.S. expansionist policies”. See: <http://dolat.ir/NSite/FullStory/?id=206515> (Consulted 03/10/2011)

⁸ “Ahmadinejad's opinion about homosexuality in Iran”, See: <http://alef.ir/1388/content/view/93350> (Consulted 03/10/2011)

⁹ Search of the Articles on homosexuality from the Ayatollah Khamenei's official website See: <http://farsi.khamenei.ir/search-result?q=مذحجین> (Consulted 03/10/2011) <http://farsi.khamenei.ir/search-result?q=%D9%87%D9%85%D8%AC%D9%86%D8%B3>

¹⁰ The Human Rights Report, “We Are a Buried Generation” is a thorough examination of Discrimination and Violence against Sexual Minorities in Iran, based on testimony from more than 100 Iranians.

<http://www.hrw.org/reports/2010/12/15/we-are-buried-generation>

¹¹ Between October 2007 and April 2010, Human Rights Watch traveled 3 times to Turkey and interviewed 125 LGBT Iranians who had arrived in Turkey seeking asylum based on the fear of persecution in their native country. For more details about the plight of Iranian LGBT refugees in Turkey, see: <http://www.hrw.org/reports/2010/12/15/we-are-buried-generation>

Lesbians and WSW

There is appallingly little documentation of the human rights violations experienced by lesbians and WSW. The intersection of patriarchy and homophobia is a dangerous intersection for lesbians, producing high levels of vulnerability and invisibility. For instance, lesbians are less likely to be subjected to arbitrary arrest than gay men because they are less likely to be able to enjoy the full right of freedom of movement, but it would be wrong to deduce that they are necessarily safer or leading fuller lives. In all of the ways that heterosexual women's lives are circumscribed, so, too, are lesbians' lives, only lesbians have the additional, complicating factor of homophobia to contend with. Because of social expectations of women's traditional roles and the State's failure to bestow the rights on women that would permit full economic and legal independence, lesbians may be more likely to be dependent on their biological families and may be more likely to be forced to marry a man. The consequence of these circumscriptions means that lesbians are denied basic rights to human dignity and expression. At the same time, these barriers may also force lesbians into sexual acts with heterosexual men against their will. Domestic violence, whether in the parental or marital home, is a reality of too many women's lives, and there is every reason to assume that women who transgress gender and sexual norms are equally if not more vulnerable to violence.

Transgender Rights

The government of Iran is rightly proud to be among the first Muslim countries in the world to legally permit sex reassignment surgery and fully recognize transsexuals under the law. For transgender women and men, this is a crucial affirmation of their fundamental human rights.¹²

However, there are strict laws governing dress code in Iran, and an individual found in contempt of the law can be punished with imprisonment.¹³ Iranian authorities at times fail to recognize transgender people for who they are and arrest them under cross-dressing or sodomy laws instead.¹⁴ In these instances, Iranian authorities may subject transgender people to a range of offenses ranging from hate speech to physical assault. The sexual assault of transgender women, including rape, in state custody is a particularly severe threat, especially because incarcerated transgender women are frequently held in jail and prison facilities intended for men.¹⁵

¹² The Iranian Society for Supporting Individuals with Gender Identity Disorder (<http://gid.org.ir>) is a registered NGO in Iran that works to advance transgender rights. The group was established by a coalition of transgender activists and their medical allies in 2007 to fight against legal, social, and employment discrimination against transgender people.

¹³ Under Article 638 of the Islamic Penal code, an individual who offends "public decency" will be sentenced to imprisonment from 10 days to two months or up to 74 lashes.

¹⁴ On September 24, 2011, according to Iranian news accounts, a 15-year-old perceived as a boy was arrested in the city of Qum for dressing up in *chador* (the traditional head-to-toe veil for women) and was sent to the police station for mental evaluation. See: <http://www.fardanews.com/fa/news/162819/%D9%BE%D8%B3%D8%B1-%DA%86%D8%A7%D8%AF%D8%B1-%D8%A8%D9%87-%D8%B3%D8%B1-%D8%AF%D8%B3%D8%AA%DA%AF%DB%8C%D8%B1-%D8%B4%D8%AF>.

¹⁵ Sayeh, a male-to-female transgender woman in her late twenties, told IRQO, "I have been arrested three times and have been disrespected in the worst ways possible... When they arrest you, some of them want to do [sexual] things with you... They first try to scare and torture you psychologically by calling you a jerk, a dirty pig, a faggot, a carrier of AIDS and a thousand other things. They try to provoke you to do something so that they can form a complaint against you based on that action. Even when you don't do anything, they still take you to *Mafased* (the moral and social vice bureau of the police). They keep you there for a while. Then, they send you to court... and the judge decides on your fate... As soon as you are taken to court, every officer makes fun of you. When they are dealing with our cases, it is as if all the officers go on a break. They deal with murderers and thieves all day long and when they see an "attractive" case they want to have some fun

Behind the State's apparently affirming politics of gender recognition may lie a rationale more about safeguarding heterosexism and gender dimorphism than about protecting the rights of individuals to bodily integrity and gender expression.¹⁶ By 2008, Iran was carrying out more sex change operations than any other nation in the world except for Thailand.¹⁷

Transgender people should have the choice to modify their bodies for consistency with the gender they experience but should also be able to live full lives, recognized under the law and free from discrimination, without bodily modification if they so choose.¹⁸ Currently, by making sex reassignment surgery a prerequisite for recognition before the law, the Government of Iran denies transgender individuals the right to self-determination and may, in effect, force transgender individuals to forgo one basic human right to enjoy another.

Recommendations:

- Decriminalize all consensual homosexual acts and, with urgency, remove all provisions for homosexual acts to be punished by death.
- Introduce a clear legal distinction between forced and consensual homosexual acts.
- End Iranian officials' practice of using hateful and derogatory language to describe homosexual acts and LGBT people.
- Ensure the full legal and financial equality of women, equal to all rights and privileges entitled to men, to facilitate lesbian's ability to live safe, full lives.
- Permit transgender people full recognition before the law regardless of whether or not they have undergone sex reassignment surgery.
- Provide transgender Iranians with full access to legal, medical and psychological services, including access to hormone therapy and sex reassignment surgery, should they so desire.
- Commence a public education and awareness campaign to end violence and discrimination on the basis of individuals' real or perceived sexual orientation or gender identity.

by belittling us... All these miseries pass, and what stays are the scars that they leave on us. These psychological scars slowly transform us into abnormal humans. I frequently just start crying without any reason. I have nightmares and wake up screaming." Sayeh ended her life by committing suicide in July 2008. Interview on file with IRQO.

¹⁶ Rasha Bahreini, "From Perversion to Pathology: Discourse of Gender Policing in the Islamic Republic of Iran," (2008) 5(1) *Muslim World Journal of Human Rights*.

¹⁷ Ibid AT p. 19-20.

¹⁸ In its 2010 report on LGBT rights situation in Iran, Human Rights Watch raises "serious concern that the state is actively encouraging individuals to undergo SRS even for individuals who are not transgender and who may not wish to change their gender via an operation. ... [T]he Iranian government's promotion of SRS, coupled with the fact that same-sex conduct is criminalized in Iran, creates a powerful incentive for gays, lesbians, bisexuals and transgender Iranians who do not wish to undergo surgery, to become, in effect, "legal." See: "We are a Buried Generation", page 81. Available online at <http://www.hrw.org/reports/2010/12/15/we-are-buried-generation>

Right to Life

(Article 6)

Article 6 of the Convention provides that every individual has the right to life, that no person should be arbitrarily deprived of life, and that in countries where the death penalty has not been abolished, such a sanction should be imposed only for the “most serious offences.” The Second Optional Protocol of the Covenant was introduced for the purpose of “the abolition of the death penalty.”¹⁹ In its General Comments, the Committee has stated that the imposition of the death penalty should be a “quite exceptional measure” and must only follow where all “procedural guarantees” have been observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence and minimum guarantees for the defence.²⁰ In the past twelve months, in its Concluding Observations, the Committee has stated that any imposition of the death penalty must be “in compliance with Article 14 of the Convention” which ensures to the accused a fair and impartial legal system.²¹ It has further recommended to three states over the past year alone that they repeal their capital punishment laws.²²

The Penal Code states that two adult men who had consensual sex or two women thrice convicted on this basis shall be punished by death.²³ In fact, some high-ranking religious scholars whose opinions can be used by a court of law argue that the preferred form of killing for those convicted of homosexuality is burning them alive or throwing them off a cliff.²⁴ The failure of the legal system to adequately distinguish between a consensual interaction and sexual assault has created ambiguity around many sodomy cases, since it is often unclear whether the individual(s) convicted were rapists or consenting adults.²⁵

¹⁹ *Second Optional Protocol to the International Covenant on Civil and Political Rights: Aiming at the Abolition of the Death Penalty.*

²⁰ General Comment No. 06: The right to life (art. 6): 30/04/1982.

²¹ CCPR/C/ETH/1 25 July 2011 at para 19.

²² Ibid; CCPR/C/KAZ/C/1, 21 July 2011 at para 12; CCPR/C/MNG/C/5, 2 May 2011, at para 6.

²³ The Iranian Islamic penal Code has several sections dedicated to the issue of same-sex intercourse and its punishment: Articles 108-113: definition of gay sex between men and its punishment, Article 114-126 : Methods of proving gay sex in the court of law . Articles 127- 134: same-sex intercourse between women, Articles 135- 138: Facilitating same-sex intercourse between two people, and Article 139- 164: In definition and Punishment for wrongful accusation of same-sex intercourse

²⁴ For Example, Ayatollah Mousavi-Ardebili, a high-ranking member of the clergy and then the head of the Ministry of Justice, in a prayer sermon delivered at Tehran University on May 18, 1990, stated, “For homosexuals, men or women, Islam has given the most severe punishments ... After it has been proven on the basis of Sharia, they should seize him [or her], they should keep him standing, they should split him in two with a sword, they should either cut off his neck or they should split him from the head ... He will fall down ... After he is dead, they bring logs, make a fire and place the corpse on the logs, set fire to it and burn it. Or it should be taken to the top of a mountain and thrown down. Then the parts of the corpse should be gathered and burnt. Or they should dig a hole, make a fire in the hole and throw him alive into the fire. We do not have such punishments for *other* offences.” (Emphasis added.) See:

<http://www.unhcr.org/refworld/country,,IRBC,COUNTRYREP,IRN,,3ae6a8170,0.html>

²⁵ It seems that the Iranian authorities, aware of international sensitivities around the persecution of LGBT people, prefers to convict most homosexual death penalty cases as rape. While human rights organizations typically decry capital punishment, they also call for accountability in instances of sexual violence, so the State’s practice complicates the international community’s ability to condemn the case(s). Perhaps the most high-profile case in this regard took place in July 2005 when two adolescent boys, Mahmoud Asgari and Ayaz Marhoni, were publicly hanged in the city of Mashhad, after being charged with the rape (*lavat beh onf*) of a 13-year-old boy. Both boys received 228 lashes before their execution. Prior to and following their executions, debates raged as to the exact nature of their crime. This case typified the lack of transparency in Iran’s judicial system and the difficulty of reporting accurately on the execution of LGBT Iranians.

The State Report to the Human Rights Committee argues that Iran only applies the death penalty to the most serious crimes.²⁶ Murder in Iran is one such crime punished by death, however Iranian law permits a convicted murderer who successfully receives the forgiveness of a victim's next of kin to avoid penalty of death. Thus, by the State's own account in its report, and by the measure of leniency applied to other criminal acts, the Government of Iran perceives consensual homosexual acts to be more serious than murder.

One of the most troubling aspects of human rights violations in Iran is the legally sanctioned violence against LGBT individuals by both government agents and vigilantes. The issue here is rooted in a combination of homophobic violence specifically and generalized state-sponsored violence. For instance, an individual who commits the act of murder is offered a reduced sentence (a maximum of two years) if s/he can prove his victim was *mahdoorddam* (deserving of death).²⁷ According to Sharia jurisprudence, *mahdoorddam* is one who has committed a capital crime that carries the penalty of death or stoning under the *Penal Code of Islamic Republic of Iran*, which includes homosexual conduct.²⁸

Given Iran's opaque justice system, severe restrictions on the freedom of the press, and the social stigma of homosexuality, it is difficult to know the extent to which the death penalty is applied to homosexuality. Government-owned news outlets periodically list homosexual acts among the offenses committed by death penalty victims, but it is difficult to conclusively evaluate the credibility of such claims. Nonetheless, enough cases have emerged to indicate that the government of Iran not only criminalizes consensual same-sex acts but that it executes on this basis.²⁹

Significantly, among those accused of homosexual acts and executed on this basis are individuals who were minors at the time of the alleged acts and even minors at the time of their execution.³⁰

Recommendations:

- Abolish the death penalty for all homosexual acts.
- End the practice of the execution of minors.
- Cease the execution of those who are minors at the time of the alleged crime and introduce significantly lesser penalties for such individuals, in accordance with international standards.

²⁶ Consideration of reports submitted by States parties under Article 40 of the Covenant, Third periodic reports of States parties, Iran, Page 273. Available at <http://www2.ohchr.org/english/bodies/hrc/hrcs101.htm>.

²⁷ *Penal Code of the Islamic Republic of Iran*, Article 295-2.

²⁸ <http://irbar.ir/law-articles-database/3380/3491>.

²⁹ For instance, in March 2005, the Persian-language daily Etemad reported that two men were sentenced to death by Criminal Court in Tehran after the wife of one of them found a videotape of the two engaging in homosexual acts and reported them to the police. See: <http://www.hrw.org/en/news/2006/10/08/sweden-stop-deportations-lgbt-iranians>.

³⁰ The cases of Mahmoud Asgari and Ayaz Marhoni (see footnote 27) are examples of execution of people charged for crimes committed under the age of 18. The lawyer of the two individuals said at least one of them was under age 18 at the time of his execution. See <http://news.gooya.com/politics/archives/033525.php>.

Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment; Right to Liberty and Security of Persons; and Treatment of Persons Deprived of Liberty

(Art 7, 9, 10, and 12(3))

The Convention, particularly by its Articles 7, 9 and 10(1), recognizes the right of every individual to be free from torture, arbitrary arrest and cruel, inhuman or degrading treatment or punishment. In its General Comments on Article 7, the Committee has noted that States have a positive obligation to provide specific training for law enforcement officers and must hold responsible all those who violate the prohibition on torture.³¹ The time and place of all interrogations must be recorded, together with the names of all those present, and this information should be available for purposes of judicial or administrative proceedings. Where there has been a breach of Article 7, a court must refuse to accept any evidence that results there from.³² By its General Comments on Article 10, the Committee has stated “treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule...[which] must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³³ The Committee has used its recent Concluding Observations to call for an end to “enforced disappearance”, “arbitrary detention,”³⁴ “torture” and “forced displacement.”³⁵ It has reaffirmed that a judge should not admit evidence obtained under torture,³⁶ and where allegations of mistreatment in detention have been made, the State must put in place the appropriate structures to ensure that all claims are robustly and transparently investigated.³⁷

In Iran, men perceived to be gay are routinely and arbitrarily arrested.³⁸ Once in State custody, torture is common and frequently “confessions” extracted through torture become the evidence for conviction. Conviction of these men is frequently on the basis of assumed conduct rather than on the basis of credible evidence

Arbitrary Arrest

Men and transgender women perceived to be gay are arrested when socializing in places where gay men and transgender women gather, they are arrested walking down the street, and they are arrested in their homes with a knock on the door. There are few accounts of men arrested *in flagrante delicto*. Though Article 32 of the *Constitution of the Islamic Republic of Iran* prohibits arbitrary arrest, it

³¹ General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7): 10/03/1992.

³² *Ibid* at paras 11 and 12.

³³ General Comment No. 21: Replaces General Comment 9 concerning humane treatment of persons deprived of liberty (Art. 10): 10/04/1992 at para 4.

³⁴ CCPR/C/TGO/CO/4, 18 April 2011 at para 17.

³⁵ CCPR/C/ETH/CO/1, 25 July 2011 at para 16.

³⁶ CCPR/C/KAZ/CO/1 21 July 2011, at para 22.

³⁷ CCPR/C/KAZ/CO/1 21 July 2011, at para 14; CCPR/C/BGR/CO/3 25 July 2011, at para 8.

³⁸ There is less documentation of arrests of transgender people and lesbians, but there is no reason to conclude that it doesn't take place. The combination of patriarchy and stigma makes it uniquely difficult for transgender people and lesbians to report acts of human rights violations.

persists.³⁹ Whether in public or private, these men and transgender women are more likely to be arrested arbitrarily because of who they are perceived to be and what they are perceived to have done than because of actual evidence of wrong-doing.⁴⁰

Torture

According to the Penal Code, evidence is required to convict for sodomy.⁴¹ The law is clear: four righteous men who have observed a homosexual act must testify to this fact or the accused must confess four times in a court of law.⁴² In practice, however, the Government of Iran has developed a perverse notion of how to satisfy the burden of proof.

In one of the most common scenarios for men suspected of homosexuality, the State, or agents such as the *basiji* (paramilitary) which have the tacit support of the State, may torture the individual to humiliate the accused, to cause him pain and significantly to extract a “confession,” regardless of its truth.⁴³ For instance, “Babak” was arrested in 2008 in the city of Najaf Abad, province of Esfahan, on charges of homosexuality and sexual assault.⁴⁴ In the two months he was held in detention, prison agents wearing plain clothes raped him repeatedly. Though he was innocent of the accusations against him, Babak was broken down and eventually forced to claim responsibility acts he didn’t commit.⁴⁵ Sexual violence against transgender women in custody and the practice of housing them in facilities intended for men, which may be seen as an act of intimidation and intended violence, may be particularly common.

A second way the Government of Iran seeks to satisfy the formal need for evidence in such cases is by means of forced anal exams.⁴⁶ The exam is premised on the inaccurate belief that homosexuality can literally be embodied through the deformity of the anus or through lesions caused by anal penetration. Though experts internationally have discredited the practice as inaccurate science and a technique of torture, Iranian officials continue to use anal exams to build cases against men accused of sodomy and torture them in the process.⁴⁷

³⁹ Constitution of the Islamic Republic of Iran, Article 32: “No one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible. The violation of this article will be liable to punishment in accordance with the law.”

⁴⁰ For example, on August 16, 2007 in Roodhen, a suburb of Tehran, two *basiji* (paramilitary) agents arrested “Abbas” on suspicion of homosexuality while he was walking down an ordinary street. They took him to his house where they beat him and threatened to rape him. When the *basiji* found jewelry, which he claimed belonged to his ex-wife, Abbas recounted, “They shouted at me, ‘a man with long hair doesn’t deserve to have a wife.’” Abbas was eventually taken to a local police station where he was charged with acts related to homosexuality. In an unusual development, Abbas was eventually acquitted and released.

⁴¹ *Penal Code of the Islamic Republic of Iran*, Articles 114 -120, 126, and 128.

⁴² The other way to prosecute sodomy is at the discretion of the judge, which is a vague legal category ripe with abuse.

⁴³ In its 2011 Annual Report, Amnesty International notes that individuals in Iran are frequently ‘convicted in the absence of defence lawyers on the basis of “confessions” or other information allegedly obtained under torture in pre-trial detention’. See <http://www.amnesty.org/en/region/iran/report-2011> (Consulted on 10/03/2011).

⁴⁴ Interview on file with authors. December 16, 2009.

⁴⁵ Babak was permanently scarred by these events. He was released on bail and immediately hospitalized for one month. He subsequently fled Iran and is now an asylum seeker.

⁴⁶ “We are a Buried Generation,” p. 26. Available online at: <http://www.hrw.org/reports/2010/12/15/we-are-buried-generation>.

⁴⁷ For example, in March 2007 in the town of Esfahan, security forces raided a house party and arrested 78 men. Police subjected the men to brutal beatings while loading them into police vans and beat them again when they were in custody. As part

Recommendations:

- End the practice of the arbitrary arrest of LGBT people by state authorities and quasi-state actors such as *basiji*.
- End the practice of torture of LGBT people by state and quasi-state actors while in custody.
- Ensure that transgender people who are incarcerated are housed with the people of the gender where they feel safest and take particular precautions to safeguard them from sexual assault.
- End the practice of prosecuting people accused of homosexual acts based on insufficient evidence and particularly cease the practice of accepting statements extracted by means of torture as evidence in Iranian courts of law.
- Ensure that cases regarding an individual accused of acts committed when s/he was a minor are governed by a different standard of treatment in custody consistent with the terms of this Covenant and others, such as the *Convention on the Rights of the Child*.

Right to a Fair Trial

(Article 9, 14)

Article 14 of the Convention ensures equality before the law to each individual and provides for a right to a fair and public hearing by an independent court established by law. The Committee has set out detailed General Comments on both the rights of individuals during criminal proceedings and the obligations that the State owes to an accused.⁴⁸ In particular, the Committee has reaffirmed that the terms of Article 14 apply not only to the determination of criminal charges but also to the procedures that determine rights and obligations. An individual should only be convicted where his or her guilt has been proven beyond doubt, and the accused must have access to a lawyer without restriction, influence or undue interference. At its most recent session, the Human Rights Committee reaffirmed in its Concluding Observations that individuals enjoy the guarantees of Article 14 for the full duration of their trial.⁴⁹

Though the criminalization of consensual homosexual sex is in and of itself a violation of international human rights norms and standards, including those defined by this Committee in the landmark case of *Toonen v. Australia*, the standards for due process should be respected for all people, including those accused of committing homosexual acts in a state that with sodomy laws.⁵⁰ However, Iran flagrantly violates the rights of those accused of sodomy by denying them due process under its own as well as international standards.

of the police's attempt to substantiate sodomy charges, some of those arrested were sent to the State Forensic Office for anal examinations. Interviews on file with IGLHRC and with IRQO.

⁴⁸ General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14) : . 13/04/1984.

⁴⁹ CCPR/C/ETH/1 25 July 2011 at para 22; CCPR/C/KAZ/CO/1 21 July 2011, at para 22

⁵⁰ *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC), 4 April 1994, available at: <http://www.unhcr.org/refworld/docid/48298b8d2.html> [accessed 28 September 2011].

The Penal Code states that evidence of sexual acts between two men or two women is only possible when 1) there are four reliable male witnesses who are willing to testify before a judge in a court of law that they have witnessed the alleged act,⁵¹ or 2) the parties accused -- under free will and with full mental capacity -- have confessed to the alleged acts four times.⁵²

Yet, individuals have been convicted of sodomy based on pre-trial admissions,⁵³ recanted testimony,⁵⁴ confessions extracted by means of torture,⁵⁵ testimony by less than four witnesses,⁵⁶ and sometimes without any testimony or admission at all.⁵⁷ Some accused of sodomy have been convicted without understanding the charges against them.⁵⁸ Some have been convicted without access to counsel.⁵⁹ There are reports that human rights defenders have been charged with sodomy as a ploy to discredit them.⁶⁰ Lawyers defending clients charged with sodomy report limited access to their clients.⁶¹ Reporters, lawyers, or family members who dare to speak up about these cases or to challenge the court's ruling can face harassment and even persecution by the government.⁶² In these cases, the judges often rely on the "knowledge of the judge"⁶³ to determine the guilt of the

⁵¹ *Penal Code of the Islamic Republic of Iran*, Article 117. If less than 4 witnesses testify before the court, their testimony is admissible and they will be charged and punished for wrongful sexual accusations (*ghazf*) (Article 118). Women cannot testify in a case involving gay sex. (Article 119).

⁵² *Penal Code of the Islamic Republic of Iran*, Article 114. The confession is only acceptable if made willingly, by sound minded adults under no duress (Article 116). Confession during the investigation is not admissible and if the defendants confess to their act less than four times, their confession cannot be used (Article 115).

⁵³ Article 114 of the Penal Code clearly states that, "The confession of *lavat* should be made 4 times in front of the Sharia Judge" in order for the case to be proven, however pre-trial admissions have been accepted as sufficient evidence. Makwan Mouloudzadeh was convicted on the basis of a pre-trial confession which he did not repeat in court. Page 29 of "Iran: We are a Buried Generation, Discrimination and Violence Against Sexual Minorities in Iran," Human Rights Watch. Consulted at <http://www.hrw.org/node/94978> on 29/09/2011.

⁵⁴ Ibid.

⁵⁵ Matin told the prosecutor that his initial confession had been procured under torture. Pages 71 and 72 of "Iran: We are a Buried Generation, Discrimination and Violence Against Sexual Minorities in Iran," Human Rights Watch. Consulted at <http://www.hrw.org/node/94978> on 29/09/2011.

⁵⁶ Moshen G. from Shiraz and Nemat Safavi were both convicted without the requisite four eyewitnesses. Page 30 of "Iran: We are a Buried Generation, Discrimination and Violence Against Sexual Minorities in Iran", Human Rights Watch. Consulted at <http://www.hrw.org/node/94978> on 29/09/2011.

⁵⁷ Ibid.

⁵⁸ Dr Kian, an Iranian defense lawyer, informed IGLHRC that some of his pro-bono clients who have been convicted on sodomy charges have not had access to a lawyer during the trial, and in some cases, the assigned court lawyer had no desire to represent a defendant accused of same-sex relationship, resulting in poor representation of the defendants. Interview on file with IGLHRC. DATE.

⁵⁹ Ibid.

⁶⁰ For example, in September 2011, the Iranian Students News Agency, a semi-official news agency, reported that three men, identified only by their initials as M.T, T,T, and MCH, were executed in the city of Ahvaz after being found guilty of *lavat*. Despite inquiries by IGLHRC and IRQO, we could not confirm whether the three men had indeed engaged in consensual same-sex conduct or, as some alleged, were political activists who were charged with sodomy to discredit them and sentence them to death. See <http://isna.ir/ISNA/NewsView.aspx?ID=News-1839696>.

⁶¹ Ibid fn 60.

⁶² Lawyers, family members, and journalists who have advocated on behalf of a people jailed and sentenced for their alleged involvement in homosexual acts have reported to IGLHRC and IRQO that they can not openly discuss the cases out of the fear of being wiretapped by the government and targeted by the Iranian security forces. The fate of Mitra Khalatbari, a journalist for Etemad newspaper, whose extensive coverage of Mr. Mouloudzadeh's case (see footnote number 66) brought the case to international attention, demonstrates how the Iranian government targets those who choose to expose state-sponsored homophobia. Ms. Khalatbari became the subject of pressure by the Iranian security forces, lost her job as a journalist, and was expelled from the university where she was a student. Under constant pressure, she was forced to leave Iran and seek asylum in Germany. Interview on file with IGLHRC.

⁶³ According to Article 120 of the *Penal Code of the Islamic Republic of Iran*, the judge can determine a gay sex case based on his knowledge (also known as *Knowledge of the judge*) as long as it is obtained through "conventional methods."

defendant, though according to the law, the “knowledge of the Judge” should be based on facts and evidence and not in substitution of the facts.⁶⁴

Recommendations:

- End the practice of the arbitrary arrest of LGBT people by state authorities and quasi-state actors such as *basiji* and immediately release all those from jail or prison being held unlawfully.
- Ensure that all people are granted full due process rights, consistent with both Constitutional guarantees and the terms of this Covenant, regardless of sexual orientation, gender identity or perceived homosexual acts.
- Ensure that individuals accused of homosexual acts have legal counsel, ensure that communication between the accused and their counsel is regular, and ensure that the accused has access to legal counsel who is not homophobic or transphobic.
- End the practice of prosecuting people accused of homosexual acts based on insufficient evidence and particularly cease the practice of accepting statements extracted by means of torture as evidence in Iranian courts of law. Related, ensure that human rights defenders are not arbitrarily charged with sodomy as a means to discredit and execute them.
- Ensure that cases regarding an individual accused of acts committed when s/he was a minor are governed by a different standard of custodial treatment and due process rights consistent with the terms of this Covenant and others, such as the *Convention on the Rights of the Child*.
- Ensure the confidentiality of the names and identities of those accused of committing homosexual acts.
- Ensure that independent journalists and human rights organizations can monitor the trials and treatment of those accused of sodomy and that, within the concern for confidentiality, they may report their findings publicly.

Freedom of Opinion and Expression

(Article 19)

Article 19 of the Convention recognizes the rights of free expression and opinion. In its most recently published General Comments, the Committee stated that both of these ideas represent “the foundation stone for every free and democratic society.”⁶⁵ All domestic laws should uphold freedom of expression, and media within the state must be able to operate without “censorship or restraint.” Freedom of opinion extends to all areas of society, including “political discourse,” “discussion of human rights,” and “journalism.” In the past twelve months, the Human Rights

⁶⁴ Makvan Moulloodzadeh was found guilty of multiple counts of committing anal rape (*ighab*), allegedly committed when he was as young as 13 years old. Although All parties involved in this case, including the initial plaintiff and witnesses, told the court that their statements during the investigation were either untruthful or coerced, the judge used “the *Knowledge of the judge*” principle to convict Makvan. Despite international pressure, Makvan was executed on December 5, 2007. See: <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/330.html>.

⁶⁵ CCPR/C/GC/34, 21 July 2011.

Committee has noted its strong concern for the State blocking of internet websites, as well as the verbal and physical harassment of journalists and human rights defenders.⁶⁶

Iranian authorities deploy extensive monitoring and censorship methods to prevent any mention of homosexuality that may contradict the official homophobia spread by the government. For instance, in August 2007, the Press Advisory Board (PAB) closed a prominent Iranian reformist newspaper for publishing an interview with Saghie Ghahraman, a Canadian-based Iranian poet who is also a well-known advocate for LGBT rights. Although the interview itself did not make any reference to LGBT rights, the PAB nonetheless decided that the newspaper's story amounted to the promotion of homosexuality.⁶⁷

According to Article 9 of the Iranian Press Law, publishers are only eligible to publish books that, among other things, are "free of moral corruption" and "supportive of the Constitution."⁶⁸ Therefore, there is no licensed publisher of LGBT-specific subject matter. In September 2011, the Deputy Ministry of Culture and Islamic Guidance, the government agency in charge of censorship, openly confirmed that books that discuss the sexual orientation of famous cultural figures in Iran would be censored from publication.⁶⁹ In a parallel move, the law enforcement agents have waged a campaign to increase what they consider to be public safety through a crackdown on any merchandized item that symbolizes "cultural decay" such as "homosexuals' symbols."⁷⁰

In recent years, the Iranian government has expanded its homophobic campaigns to cyberspace by waging a war against LGBT websites and blogs. Iranian telecommunications officials regularly block the access of Iranians to LGBT Persian websites that are run from outside the country, thus preventing access to information.⁷¹ Since 2009, many Iranian LGBT blogs that were hosted by Iranian companies have been shut down. Prior to being shut, these blogs received warnings that stated, "This blog was shut down in accordance with an order from the Official Working Group Responsible for Blocking Criminal Content."⁷²

The Iranian Revolutionary Guard has even established an online unit under the name of Cyber-Crime Office⁷³ to deal with what they describe as "cyber crimes" through methods such as hacking websites, wiretapping, monitoring online communications, and even publishing online

⁶⁶ CCPR/C/KAZ/CO/1 21 July 2011, at para 25; CCPR/C/ETH/1 25 July 2011 at para 24.

⁶⁷ "Following publishing an interview with a lesbian, Sharq newspaper was shut down" Hayat news, August 6, 2007: http://www.hayat.ir/?lang=fa&page=showbody_news&key=&row_id=8923&style=no

⁶⁸ Qanun-e Matbu'at [Press Law] 1364 [ratified 1986, amended 2000], art. 9.

⁶⁹ "Deputy Minister gives example of the books that will be censored", September 26, 2011, Aftab News, <http://aftabnews.ir/vdcbssb8zrhbfpp.uur.html>.

⁷⁰ "Confiscation of stationeries depicting immoral images in Hormozgan province", September 25, 2011, Fars News Agency <http://www.farsnews.com/newstext.php?nn=13900703001219>.

⁷¹ For example, the access to IRQO website and the Manjam.com website (a popular gay dating website), along with many blogs belonging to expatriate gay Iranians, are blocked by the Telecommunication Company of Iran. When an individual tries to visit one of these websites, s/he receives a warning that reads: "Affiliation with these websites is criminal and carries serious penalties."

⁷² For example see: <http://ma2tarafeha.blogfa.com/>.

⁷³ You can see the official statements of the Cyber-Crime Office on their official website at this address: <http://www.gerdab.ir/>.

propaganda.⁷⁴ On their official website (gerdab.ir), they regularly post articles against homosexuality and make threats against those who “violate the country’s regulations and post materials about homosexuality.” Such systematic harassment by the authorities is a serious concern for freedom of expression and opinion as well as access to information by LGBT Iranians.⁷⁵

Recommendations:

- The government of Iran should lift all laws and regulations that censor freedom of expression and opinion and limit access to information by Iranians, including LGBT Iranians.
- State institutions, such as the Ministry of Culture and the Revolutionary Guard, should not suppress LGBT-related information through censorship, entrapment, arrests, intimidation and harassment.

Freedom of Assembly and Association

(Article 21, 22)

Articles 21 and 22 of the Convention provide for the right of peaceful assembly and association. Although the Committee has not issued General Comments on these topics, it has used its Concluding Observations to underline the importance of Article 21 and 22. In particular, the Committee has criticized laws which require state sanctioning of assemblies,⁷⁶ which force people to assemble in inaccessible areas,⁷⁷ and which prolong assembly appeal procedures to the extent that the right is thus void.⁷⁸

As part of its crackdown on LGBT groupings, the Iranian police have LGBT-related parties and social events. It has becoming increasingly difficult for LGBT Iranians to meet even at private gatherings. Members of the LGBT community are painfully aware of the consequences of being present where such a raid takes place. Past actions of the police include beatings, mass arrests, fines and even imprisonment.⁷⁹

⁷⁴ Mr. Solouki, from the Cyber-Crime Office of the Islamic Revolutionary Guards told the official IRNA News Agency, “Those who engage in cultural operations against the sacred culture and the Islamic regime should not proceed under the assumption that Iran’s cyber space is vulnerable and out of control.” See “the Revolutionary Guard warns all those who want to overthrow the Islamic Republic through soft warfare”, April 21, 2009: <http://hamshahrionline.ir/print-78583.aspx>.

⁷⁵ Recently, a leading LGBT blogger informed IRQO that he has received a number of threats from Gerdab, the investigative arm of the Cyber-Crimes Office of the Islamic Revolutionary Guards. One such message says: “Iran’s cyber army is ready to identify and wipe out corrupt and decaying social groups. Everyone who works behind this weblog has been identified. The Cyber Army of the Islamic Republic of Iran has identified all the people who work on putting up websites and weblogs with immoral content. They are from the provinces of Kerman and Tehran in Iran, and Toronto, Ontario in Canada.” Information on file at IRQO.

⁷⁶ CCPR/C/JOR/C/4, 18 November 2011 at para 15.

⁷⁷ CCPR/C/KAZ/C/1, 21 July 2011 at para 26.

⁷⁸ CCPR/C/POL/C/6, 15 November 2010 at para 23.

⁷⁹ As referenced above, for example, in March 2007, police and security forced raided a party in a private home in Esfahan, arresting 78 men. According to eyewitness accounts obtained by IRQO and IGLHRC, police brutally beat the men as they loaded them into police vans. In detention, the men were subjected to further humiliation and beatings. Some of those arrested were sent to the State Forensic Office for anal examinations as part of the police’s attempt to gather evidence to charge them with sodomy. Upon release, a large number of these men left Iran due to constant threats and psychological pressure at the hands of the authorities that had their contact information.

In recent years, as more LGBT Iranians have turned to internet chat rooms and online dating sites as a means of socializing, they increasingly find themselves the victims of state espionage and surveillance.⁸⁰

Recommendations:

- The Iranian police should end the practice of raids on LGBT parties and social gatherings.
- Iranian authorities should guarantee LGBT individuals and groups equal rights to freedom of assembly and association as enjoyed by all other persons and that, where domestic law and practice is less than the rights provided in this Covenant, the Covenant's higher standard shall prevail.

⁸⁰ For example, in 2010, Soroush, a 27-year-old gay man and a frequent visitor to a gay chatrooms online informed IRQO of the threats he received from a user with the ID name of "Sepah" (which in Persian means Revolutionary Guard) who warned him that he was acting in violation of Iran's cyber laws and could face prosecution. Rahman, a gay man from Kerman, told IRQO about the formation of a surveillance group by the *basiji* in Kermanto that sought to identify networks of homosexuals and entrap their members through arranged meetings with them. As part of this scheme, the police arrested a transsexual person in Kerman and threatened to deprive him or her of the medical and legal entitlements necessary for sex change if he or she did not introduce them to LGBT people. This incident led to the arrest and prosecution of a number of gay men in Kerman. Interview with IRQO

Recommendations

- Decriminalize consensual sexual intercourse, co-lying and kissing between individuals of the same sex, and with urgency, remove provision for same-sex sexual intercourse to be punished by death.
- Introduce a clear legal distinction between forced and consensual homosexual acts.
- Ensure that women have full legal and economic equality with men so that lesbians and other women who have sex with women can live safe, full lives.
- Permit transgender people full recognition before the law regardless of whether or not they have undergone sex reassignment surgery.
- Provide transgender Iranians with full access to legal, medical and psychological services, including access to hormone therapy and sex reassignment surgery, should they so desire.
- End the hateful and derogatory language which Iranian officials use to describe homosexual acts and LGBT people.
- Commence a public education and awareness campaign to end violence and discrimination on the basis of individuals' real or perceived sexual orientation or gender identity.
- Cease the execution of those who are minors at the time of their alleged crime and introduce significantly lesser penalties for such individuals, consistent with the terms of this Covenant and others, such as the *Convention on the Rights of the Child*.
- End the torture of LGBT people by state and quasi-state actors while in custody.
- Ensure that transgender people who are incarcerated are housed with people of the gender where they feel safest and take particular precautions to safeguard them from sexual assault.
- End the practice of prosecuting people accused of homosexual acts based on insufficient evidence or evidence which has been extracted by torture
- Ensure that minors accused of homosexual acts are given a heightened level of protection while in custody, consistent with the terms of this Covenant and others, such as the *Convention on the Rights of the Child*.
- End the arbitrary arrest of LGBT people by state authorities and quasi-state actors such as *basiji* and immediately release all those from jail or prison who are being held unlawfully.

- Ensure that all people are granted full due process rights, consistent with both Constitutional guarantees and the terms of this Covenant, regardless of sexual orientation, gender identity or perceived homosexual acts.
- Ensure that individuals accused of homosexual acts have access to legal counsel, that communication between the accused and their counsel is regular, and that the legal counsel is not homophobic or transphobic.
- Ensure that human rights defenders are not arbitrarily charged with sodomy as a means to discredit and execute them.
- Ensure that the names and identities of those accused of committing homosexual acts remain confidential.
- Ensure that independent journalists and human rights organizations can monitor the trials and treatment of those accused of sodomy and that, while respecting the principle of confidentiality, they may report their findings publicly.
- The government of Iran should lift all laws and regulations that censor freedom of expression and opinion and limit access to information by Iranians, including LGBT Iranians.
- State institutions, such as the Ministry of Culture and the Revolutionary Guard, should cease to censor LGBT-related information through closing websites and blogs, entrapment, arrests, intimidation and harassment.
- The Iranian police should end the practice of raids on LGBT parties and social gatherings.
- Iranian authorities should guarantee LGBT individuals and groups equal rights to freedom of assembly and association as enjoyed by all other persons and that, where domestic law and practice is less than the rights provided in this Covenant, the Covenant's higher standard shall prevail.