



www.hrw.org

His Excellency
Dr. Hassan Rouhani
President of the Islamic Republic of Iran
Pasteur Square, Pasteur Street
Tehran
Islamic Republic of Iran

20 December 2013

Your Excellency

We, the undersigned representatives of human rights and civil society organizations, are writing to express our concern at the continuing and systematic state persecution of individuals perceived to be lesbian, gay, bisexual or transgender. For at least the past decade, the authorities have used articles of the Islamic Penal Code criminalizing consensual same-sex sexual relations, along with other laws and regulations governing dress, public conduct, online communications, public employment, and the press and publications to target individuals based on their actual or perceived sexual orientation and/or gender identity, or even based on their opinions about these issues.

The arbitrary arrest, conviction, and punishment of individuals based on their alleged sexual orientation or gender identity or their expressed opinions on such matters, violates the Iranian government's obligations under international law. Such practices contradict the safeguards and guarantees provided in the Iranian constitution to protect the fundamental rights and dignity of all.

You may recall that during the election campaign you acknowledged the importance of freedom of expression; the need to allow government criticism to make way for true progress and that you promised to improve women's rights. During your first speech following your election you said that you would "never forget the promises [you] made to the Iranian people".

Now, as the government considers the scope of the Charter of Citizens' Rights, in advance of it becoming draft legislation, we urge your government to carefully assess the suggestions made by a range of individuals and organizations. Likewise, we urge you to carefully note the issues set out in this letter and the recommendations made by our respective organizations

The current Islamic Penal Code criminalizes any freely and mutually agreed same-sex relations, with punishment ranging from 100 lashes for consensual sexual relations between women (Article 239) to the death penalty for consensual sexual intercourse between men (Article 234). The law also criminalizes other acts between members of the same sex, including touching and intimate kissing, which are punishable by up to 74 lashes (Article 237). We believe these laws, which Iranian officials frequently justify as legal manifestations of the society's religious and cultural values, are inherently discriminatory and prejudicial against vulnerable segments of the population, and flagrantly violate Iran's international obligations.

The government of Iran is a state party to both the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Both the United Nations (UN) Human Rights Committee and the UN Economic and Social Council, the UN bodies authorized to interpret a state's obligations under the ICCPR and ICESCR respectively, have repeatedly called on all state parties, including Iran, to repeal laws criminalizing same-sex conduct. Section 10 of the November 2011 Concluding Observations by the UN Human Rights Committee on the third periodic report of the Islamic Republic of Iran (CCPR/C/IRN/CO/3) and Section 7 of the May 2013 Concluding Observations by the UN

Economic and Social Council on the second periodic report of the Islamic Republic of Iran (E/C.12/IRN/CO/2) are very specific and clear in objecting to Iran's criminalization of consensual same-sex conduct and its discrimination against and prosecution and punishment of people for their sexual orientation or gender identity. In the past, the UN Human Rights Committee has rejected the argument that criminalization of same-sex conduct may be justified as "reasonable" on grounds of protection of public morals, noting that the use of criminal law in such circumstances is neither necessary nor proportionate to the nature of the act, especially since under Article 6 of the ICCPR, in countries that have not abolished the death penalty, "sentence of death may be imposed only for the most serious crimes."

Furthermore, government officials, Basiji militia members, and law enforcement and intelligence agents have often used the criminalization of same-sex sexual conduct as an excuse to impose monitoring and regulation on private relations between consenting individuals, as an excuse to violate the fundamental rights of individuals alleged to be involved in same-sex sexual relations.

The most recent example of such a violation of individual rights took place during a massive raid by around 50 members of the Nabi Akram Brigade of the Revolutionary Guards on a peaceful, private birthday function on Tuesday October 8, 2013, in Arg Hall, a reception hall in a suburb of the city of Kermanshah in western Iran.

According to a statement (<http://kermanshah.basij.ir/?q=node%2F8733>) issued by Kermanshah Province's Basij Forces, their goal was to disband an alleged "homosexual and Satan-worshipping network with dozens of [members]." The official statement of the Basij confirmed that the people attending the party had been "under surveillance for several months by the Revolutionary Guard's Security Unit." Such intrusion of an individual's privacy, based solely on speculations about the person's sexual orientation, violates the individual's right to privacy, as articulated in Articles 22 and 25 of the Iranian constitution.

According to witnesses, armed members of the security forces verbally abused, assaulted, and beat many of the 80 or so people attending the party, as well as waiters and other staff. Some officials used pepper spray on the participants while others shocked them with electric batons. Witnesses said security forces gathered and divided the attendees into small groups, and confiscated their electronic devices, including their cell phones and cameras, fingerprinted, filmed, and photographed them, and recorded their contact and personal information. Officers severely beat several participants who refused to surrender their private belongings.

Officers took at least 17 individuals into custody, blindfolded them, and without explanation, transported them to a nearby, but secret, detention center. The undersigned human rights groups have received accounts of severe mistreatment at this location, as officials reportedly sought to force the detainees into confessing that they had engaged in unlawful conduct. Accounts included the stripping of individuals naked and filming them; beating; and preparing them for mock execution. By Monday, October 14, 2013, officials released all of those who had been arrested and told them that they would face charges in coming weeks.

Similar to other incidents involving officials' persecution of individuals based on their perceived sexual orientation, including prior mass arrests of men suspected of being gay during raids on a number of private parties in Kerman (2013), Shiraz (2010), Karaj (2009), and Isfahan (2007 and 2006), the arrests of October 8, 2013 were characterized by the following circumstances:

- Security and intelligence officials executed the arrests without a warrant and did not inform those arrested of the reasons for their arrest, or the charges they faced; this violates the rights of detainees under Article 22 of the constitution, which guarantees immunity from prosecution without a cause, and Article 37 of the constitution, which promises the presumption of innocence.
- Security and intelligence officials detained those arrested longer than the 24-hour window the law allows them to keep detainees without pressing charges, suggesting that officials had no requisite prima facie evidence or reasonable suspicion that they had committed a recognizable offence; hence violating the due process rights of those individuals under Article 32 of the constitution.
- Security and intelligence officials failed to inform those arrested of their whereabouts, and prevented them from accessing lawyers or family members, which violates detainees' rights protected by Article 34 and 35 of the constitution.
- Security and intelligence officials subjected the detainees to beatings, verbal and physical abuse, and other forms of torture and humiliation, which violates Article 38 of Iran's constitution prohibiting torture and forced confession.

The Iranian government's policies and practices through which intelligence and judicial authorities may seek to harass or prosecute anyone based on their actual or perceived sexual orientation, gender identity or attitudes on these issues negatively impact not just sexual or gender nonconformists, but also the fundamental rights of all people in Iran, regardless of their sexual or gender identity, including in respect to freedom of expression and the press.

The Iranian government has a history of persecuting individuals and institutions for merely discussing the issue of sexual orientation and gender identity. For example:

- On September 4, 2013, Hojatoleslam Dr. Sadraddin Shariati, the former president of Allameh Tabatabai University in Tehran, the biggest social science university in Iran, who is appointed by the Ministry of Science, told *Kayhan* newspaper that he fired a sociology professor because she discussed "homosexuality" in her class (<http://kayhan.ir/920613/8.htm#N801>).
- On June 23, 2012, then-Minister of Culture and Islamic Guidance Seyyed Mohammad Hosseini told reporters that Cheshmeh Publications is no longer licensed to publish books, and accused the publisher of "promoting Western culture and loose behaviour," including "homosexuality" (<http://www.farsnews.com/newstext.php?nn=13910403000912>).
- In January 2011, a Revolutionary Court in Tehran sentenced journalist Siamak Ghaderi to four years in prison, 60 lashes, and a fine, for interviews he conducted with members of Iran's lesbian, gay, or bisexual community and articles he wrote.
- On August 6, 2007, the Press Advisory Board closed the reformist newspaper *Sharq* for publishing an interview with Saghi Ghahreman, a Canadian-based Iranian poet who is also an advocate for the rights of lesbian, gay, bisexual, and transgender (LGBT) people. Although the interview itself did not refer to LGBT rights, the press board deemed the story to promote "homosexuality" (<http://archive.is/4gUW>).

These and other examples demonstrate the adverse and broad-ranging impact of laws criminalizing consensual, private same-sex conduct and the persecution of lesbian, gay, and bisexual people's rights, regardless of the individual's actual sexual orientation or gender identity.

While we applaud the Iranian government's decision to recognize and legally protect people's right to change their gender identity, we believe that those who self-identify as transgendered should not be obliged to change their gender identity by way of sex-reassignment surgery in order for their gender to be legally recognized and be issued a new national identification card.

The government's recognition of individual's right to change their gender is based on a fatwa, or opinion in religious jurisprudence, by late Ayatollah Khomeini, who first authorized sex reassignment surgery back in 1980s. Such practice is not codified in law and both the practice and the legal recognition of transgender rights is subject to varying interpretations. By passing laws that specifically protect the right of individuals to choose their gender identity, the Iranian government can provide better protection for the rights of this vulnerable population.

The government imposes this restriction in a climate of state-sanctioned discrimination and a high level of tolerance of widely-held discriminatory attitudes regarding transgender people. Adopted by governmental agencies and law enforcement officials dealing with transgender issues and challenges, these attitudes and policies contribute to the social discrimination and abuse experienced by transgender people in Iran.

In light of the foregoing, we urge your government to take immediate action to protect the fundamental human rights of all people in Iran, regardless of their sexual orientation or gender identity, including their right to life, privacy, free speech, freedom of assembly, due legal process, and other rights enshrined in the Iranian constitution and guaranteed by international treaties to which Iran is a state party.

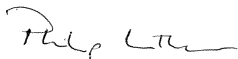
As the president of the Islamic Republic of Iran, you swore to implement the constitution. We now urge you to do exactly that by taking action to uphold the constitution of the country for all people in Iran, including those most vulnerable to abuse.

Specifically, we request that the government of the Islamic Republic of Iran:

- 1- Repeal or amend all legislation that results or could result in discrimination against, or prosecution and punishment of people because of their real or perceived sexual orientation or gender identity, particularly Articles 233 through 240 of the new Islamic Penal Code.
- 2- Ensure that anyone detained solely on account of their real or perceived sexual orientation or freely and mutually agreed sexual activities is released immediately and unconditionally.
- 3- Take all necessary legislative, administrative, and other measures to eliminate and prohibit discrimination on the basis of sexual orientation or gender identity, including with respect to access to employment, housing, education, and health care, and to ensure that all individuals, regardless of their sexual orientation or gender identity, are protected from violence and social exclusion.
- 4- Dismantle state-sanctioned bodies that promote gender and gender identity discrimination; including by ending the promotion of discriminatory texts that perpetuate discrimination and which create a climate that is tolerant of abuse.
- 5- Promote respect for the rights of individuals to privacy and dignity, and cease all forms of state-endorsed surveillance, intrusion, and interference in individuals' private affairs.
- 6- Protect the rights of individuals to freedom of speech, both online and in print, and lift all forms of restrictions that prevent anyone, regardless of their sexual orientation and gender identity, to freely express their opinion and discuss issues related to gender, sexuality, and bodily autonomy.
- 7- Provide public and private training courses for law enforcement officers, members of the judiciary, and other state-run institutions and agencies on issues related to fundamental human rights, such as privacy, due legal process, freedom of expression, freedom of assembly, and sexual orientation and gender identity.

We look forward to receiving your response to the matters raised in this letter.

Yours sincerely



Philip Luther
Director
Middle East and North Africa Program
Amnesty International



Sara Leah Whitson
Director, Middle East and North Africa Division,
Human Rights Watch



Jessica Stern
Executive Director
International Gay and Lesbian Human Rights Commission



Saghi Ghahreman
President
Iranian Queer Organization-IRQO|

CC:

Ayatollah Amoli Larijani, Head of Judiciary, Islamic Republic of Iran
Dr. Javad Larijani, High Council of Human Rights, Judiciary of the Islamic Republic of Iran