

Islamic Republic of Iran

Submission to the United Nations Universal Periodic Review

20th Session of the Working Group on the UPR

United Nations Human Rights Council

[October 27 – November 7, 2014]

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

Submitted By:

The International Gay and Lesbian Human Rights Commission (IGLHRC)

www.iglhrc.org

Iranian Queer Organization (IRQO)

www.irqo.org

Endorsed By:

Arseh Sevom

www.arsehsevom.net

Iran Human Rights

www.iranhr.net

Santa Clara Law School's International Human Rights Clinic

law.scu.edu/ihr

Tonga Leitis' Association (TLA)- Tonga

www.tongaleitis.org

Pacific Sexual Diversity Network (PSDN) – Tonga

<http://psdnetwork.org/>



Introduction

This report is submitted by the International Gay and Lesbian Human Rights Commission (IGLHRC) (ECOSOC accredited NGO) and the Iranian Queer Organization (IRQO). It focuses on the human rights violations of individuals in Iran because of their actual or perceived sexual orientation and/or expression.

I. Consensual Same-Sex Relations and the Iranian Legal System

1. In May 2013, the Guardian Council of the Constitution, the upper house of the Iranian Parliament, ratified a new penal code, formally known as the Islamic Penal Code. The new Islamic Penal Code criminalizes consensual same-sex relations, with punishment ranging from 100 lashes for consensual sexual activity between women (Article 239) to the death penalty for consensual sexual intercourse between men (Article 234).¹ 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.² Article 232-233 of the new Islamic Penal Code sentences the “passive” partner of consensual sexual intercourse between two men to death, while the law sentences the “active” partner to receive 100 lashes, as long as he is Muslim and unmarried.³ Non-Muslims and married men who engage in consensual same-sex relations are subjected to the death penalty

¹ Islamic Penal Code of the Islamic Republic of Iran (2013) at Art. 239, 234.

² *Id.* at 237.

³ *Id.* at 232-233.

regardless of their position during the intimacy. According to the United Nation’s High Commission for Human Rights, Iran is one of five countries on the planet that imposes death penalty for consensual same-sex relations.⁴

2. The Iranian law also prohibits any neutral or positive speech regarding same-sex behavior and other consensual sexual conduct outside the confines of a heterosexual marriage. Article 15(B) of the Iranian Cyber Crime Law imposes 91 days to one year imprisonment and a fine between \$1,600 US to \$6,700 US, or both, for those who use online and digital communications – including social media, blogs, and website- for inviting the public to “participate in crimes against chastity [...] or acts of sexual perversion...”⁵ Furthermore, the Iranian government has issued “The List of Examples of Criminal Content.” This widely-circulated document that is used by the police and the Ministry of Telecommunications explicitly specified that “Stimulation, encouragement, persuasion, threats or invitation to immoral acts, prostitution, crimes against chastity or sexual perversion” are considered to be criminal content (Article A (2)). The law also considers the redistribution and re-publication of any content that “violates public decency” as a crime (Article A (3))⁶.
3. Iranian print media is equally restricted in discussing issues related to same-sex relations and other consensual sexual conduct considered indecent. The Iranian Press Law bans all periodicals from “Promoting prostitution and vice, and publishing photos, images and

⁴ “Fact Sheet: Criminalization,” OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *available at* https://unfe-uploads-production.s3.amazonaws.com/unfe-34-UN_Fact_Sheets_v6_-_Criminalization.pdf

⁵ The full text of the law can be found on the official website of the Iranian Cyber Police: <http://www.cyberpolice.ir/page/2431>

⁶ The full text of The List of Examples of Criminal Content can be found on the official website of Iran’s Cyber Police: <http://www.cyberpolice.ir/page/2551>

articles against public decency.” (Article 6(2) of the Iranian Press Law”.⁷ The Iranian government has designated the Ministry of Culture and Islamic Culture as the authority charged with implementing this, and other, censorship provisions for all printed materials published and distributed inside Iran. The Circular Number 660 issued in 2010 by the Supreme Council for Cultural Revolution (the highest government authority for determining cultural strategies in Iran) specifies three broad categories as the “legal boundaries” that should not be crossed by any publications. The law stipulates that anti-family propaganda, the weakening of the family values and the “promotion of deviant and immoral individuals and movements” are illegal and should be banned by the Ministry of Islamic Guidance ⁸

4. The Iranian legal system provides some space for transgender people, as long as they adhere to strict regulations and do not circumvent the gender roles related to their preferred gender. The government of Iran, for example, recognizes the right of transgender individuals to undergo sex-reassignment surgery. However, the recognition is based on a fatwa, or opinion in religious jurisprudence, by late Ayatollah Khomeini, who first authorized sex reassignment surgery in the 1980s. Because the recognition comes in the form of a fatwa, rather than law, both the practice and the legal recognition of the rights of transgender people is subject to interpretation and, therefore, left to the discretion of doctors and lawyers. Furthermore, only individuals who have had sex-reassignment surgery can receive legal identification documents with

⁷ The full text of the Press Law can be found on the official website of the Ministry of Culture and Islamic Guidance: <http://press.farhang.gov.ir/fa/rules/laws2>

⁸ Circular Number 660 Article 3, Section C (6). The text of this circular is available on the official website of the Iranian Supreme Council for Cultural Revolution: <http://www.iranculture.org/fa/simpleView.aspx?provID=1722>

their preferred gender marker. Individuals who do not have the desire or financial means to have surgery cannot obtain identification documents which makes it hard to find employment, access medical services and education, and otherwise participate fully and equally in society.

II. State Persecution based on Actual or Perceived Sexual Orientation or Expression

The government of Iran actively pursues the policy of persecuting individuals based on their actual or perceived sexual orientation, or because of their opinion or organizing in support of non-discrimination. The following is a list of recent incidents that demonstrate the systematic violation of basic human rights of individuals suspected of being gay or supporting the rights of gay and lesbian community by the government of the Islamic Republic of Iran:

1. On Tuesday October 8, 2013, around 50 members of the Nabi Akram Brigade of the Revolutionary Guards raided a peaceful, private birthday function, in Arg Hall, a reception hall in a suburb of the city of Kermanshah in western Iran. According to a statement issued by Kermanshah Province's Basij Forces, their goal was to disband an alleged "homosexual and Satan-worshipping network with dozens of [members]."⁹ 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." According to witnesses, armed members of the security forces verbally abused,

⁹ The official Basij statement is available on their website at this address: <http://kermanshah.basij.ir/?q=node%2F8733>

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 personal belongings. Officers took at least 17 individuals into custody, blindfolded them, and without explanation, transported them to a secret, detention center. IGLHRC and IRQO 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, beating, and preparing them for mock execution. By Monday, October 14, 2013, officials released those who had been arrested and told them that they would face charges in coming weeks.¹⁰

2. IGLHRC and IRQO have documented similar 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).
3. On February 4, 2014, the Iranian police confirmed the arrest of a person responsible for posting gay-related material online. In an interview with semi-official ISNA news agency,

¹⁰ "Iran: Joint Open Letter to Iranian President Rouhani," AMNESTY INTERNATIONAL, HUMAN RIGHTS WATCH, INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION (IGLHRC), IRANIAN QUEER ORGANIZATION (IRQO) (Dec. 20, 2013), <http://iglhrc.org/content/iran-joint-open-letter-iranian-president-rouhani>.

the head of Cyber Police in Ilam province – in western Iran- announced that they arrested an internet user on charges of promoting immorality and homosexuality on social networks. The news reports indicated that the suspect was identified through online surveillance, and police used different techniques and methods to identify the internet user who was responsible. The person arrested first denied all charges, but the mounting evidence was such that he had no choice but to confess.¹¹

4. On September 4, 2013, Hojatoleslam Dr. Sadraddin Shariati , the former president of Allameh Tabatabai University in Tehran, the largest social science university in Iran told Kayhan newspaper that he fired a sociology professor because she discussed “homosexuality” in her class.¹²
5. 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 behavior,” including “homosexuality.”¹³
6. 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, and bisexual community and articles he wrote.¹⁴

¹¹ “Perpetrators of Gay Content on the Internet,” Iranian Students’ News Agency, (Feb. 4, 2014), available at: <http://isna.ir/fa/news/92111510907/%D8%AF%D8%B3%D8%AA%DA%AF%DB%8C%D8%B1%DB%8C-%D8%B9%D8%A7%D9%85%D9%84-%D8%A7%D9%86%D8%AA%D8%B4%D8%A7%D8%B1-%D9%85%D8%B7%D8%A7%D9%84%D8%A8-%D9%87%D9%85%D8%AC%D9%86%D8%B3-%DA%AF%D8%B1%D8%A7%DB%8C%DB%8C-%D8%AF%D8%B1>. Last visited March 14, 2014.

¹² “Shocking Revelations Former Head of Allameh Tabatabai,” RAJANEWS, (September 13, 2013), <http://rajanews.com/PrintFriendly.asp?id=166871>.

¹³ “Hosseini: We are dealing with publishers who are promoters of the West,” Fars News Agency, (June 23, 2013), <http://www.farsnews.com/newstext.php?nn=13910403000912>.

¹⁴ “Iran: Joint Open Letter,” *supra* note 8.

7. 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 pressboard deemed the story promoted “homosexuality”.¹⁵

III. Iran’s Obligation under the International Law

Iran has ratified both the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and the Committee on Economic Social and Cultural Rights as well as the Human Rights Committee have repeatedly called on all state parties, including Iran, to repeal laws criminalizing same-sex conduct.

1. In its 2011 review of Iran’s implementation of the ICCPR, the Human Rights Committee expressed concern that LGBT people in Iran “face harassment, persecution, cruel punishment and even the death penalty.” The Committee also expressed concern that LGBT people face discrimination on the basis of their sexual orientation, regarding “access to employment, housing, education and health care, as well as social exclusion within the community.” In response, the Committee called on the State to “repeal or amend all legislation which provides for or could result in the discrimination, prosecution and punishment of people because of their sexual orientation or gender identity.” It also called for the immediate and unconditional release of anyone “held solely on account of freely and mutually agreed sexual activities or sexual orientation.”

¹⁵ “East Newspaper Banned,” Iranian Student News Agency, (Aug. 6, 2007), available at <http://archive.is/4gUW>. Last visited March 14, 2014.

The Committee also called on the State to “take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation ...and to ensure that individuals of different sexual orientation or gender identity are protected from violence and social exclusion within the community” .¹⁶

2. In May 2013, the Committee on Economic, Social and Cultural Rights reviewed Iran’s implementation of the ICESCR and expressed “concern that consensual same-sex sexual activity [in Iran] is criminalized” and that individuals convicted of acts of consensual same-sex activity could receive the death penalty. It is also expressed concern at the discrimination of LGBT people in areas of “employment, housing, education and health care, as well as social stigma and marginalization.” The CESCR called on the State to repeal or amend legislation that results or “could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity.” The Committee also recommended that the State party “take steps to combat and prevent discrimination and societal stigma” against LGBT people and “ensure their enjoyment of all the rights enshrined in the Covenant, including unhindered access to employment, social services, health care, and education.”¹⁷

¹⁶ Concluding Observations of the Human Rights Committee, Iran, ¶10, U.N. Doc CCPR/C/IRN/CO/3.(Nov. 29, 2011).

¹⁷ Concluding Observations of the Committee on Economic, Social and Cultural Rights, Iran, ¶7, U.N. Doc E/C.12/IRN/CO/2 (Jun. 10, 2013).

3. Despite requests by these UN treaty bodies, Iranian authorities continue to criminalize and actively prosecute consensual same-sex practice in Iran. For example, on March 14, 2013, the Secretary of Iran's High Council for Human Rights – the official human rights body of Iran's Judiciary publically announced that the "right to life" is not applicable to Homosexuals. Speaking in Geneva with members of the Non-Alignment Movement (NAM), Dr. Mohammad Javad Larijani said, "In our country, homosexuality is a form of sickness, and a wrong behavior that can be punished.... Using the right to life argument [to defend LGBT people] is a joke...[if the right to life] means that people should be allowed to live, no matter what kind of mischief they are involved in, then the right to life can be used to argue that people can get away with any wrongdoing.¹⁸" On March 6, the Supreme Leader of Iran, Ayatollah Ali Khamenei, attacked same-sex behaviour and described it as an unnatural act. In his meeting with a group of high-ranking Shiite clerics, the highest ranking political leader in Iran referred to homosexuality as "moral bankruptcy" and "libidinous behaviour."¹⁹

¹⁸ The full text of Dr. Larijani's speech on the official website of Iran's High Council for Human Rights: <http://www.humanrights-iran.ir/news-30829.aspx>

¹⁹ The full text of Ayatollah Khamenei is available on his official website: <http://www.leader.ir/langs/fa/index.php?p=bayanat&id=11526>

IV. Recommendations

We respectfully request that the Human Rights Council ask the Islamic Republic of Iran to:

1. Repeal or amend all legislation that results or could result in discrimination against, or prosecution and punishment of people because of their actual or perceived sexual orientation, gender identity or expression, particularly Articles 233 through 240 of the new Islamic Penal Code.
2. Ensure that anyone detained solely on account of their actual 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, gender identity or gender expression, including with respect to access to employment, housing, education, and healthcare, and to ensure that all individuals, regardless of their sexual orientation, gender identity or expression, are protected from violence and social exclusion. This would include eliminating the requirement of sex-reassignment surgery for transgender persons to change the gender markers on their official documents.
4. Dismantle state-sanctioned bodies that advocate hatred constituting incitement to violence, discrimination and hostility. Promote gender and gender identity discrimination from within all government bodies. Cease the production and 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 by ending state-sanctioned surveillance, intrusion, and interference in individuals' private affairs because of their actual or perceived sexual orientation or gender identity.
6. Protect the rights to freedom of speech, both online and in print, and lift all forms of restrictions that prevent individuals from freely expressing their opinion or discussing issues related to gender, sexuality, and bodily autonomy.
7. Provide training 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, and freedom of assembly, and their universal applicability regardless of an individual's sexual orientation and gender identity.