

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	771
Land:	Iran
Kilde:	ILGA
Titel:	State-sponsored homophobia 2019
Udgivet:	20. marts 2019
Optaget på baggrundsmaterialet:	25. juni 2019



STATE-SPONSORED HOMOPHOBIA

2019

13th Edition

LUCAS RAMÓN MENDOS

ilga.org



COPYRIGHT

This 13th edition of *State Sponsored Homophobia* is copyright-free provided you cite both the author and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).

Suggested citation:

International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019).

Author	Lucas Ramón Mendos
Main Research Assistants	Daryl Yang Lucía Belén Araque
Research Assistants	David J. Godfrey Martina Olivera Alejandro Hilarión Moncada Ezequiel Steuermann Nahuel Grayani Estanislao Segurola
Footnote Editor	Juan Francisco Mareque
Project Assistant	Felipe Da Silva Oliveira
Proofreader	Aengus Carroll
English Translation	Jordan Beyga



IRAN

Provisions in force

- **Islamic Penal Code** (2013): Book Two: Hudud.

Chapter Two: *Livat, Tafkhiz and Musaheqeh*

*Livat: penetration of
male anus with
penis*

Article 233. *Livat*.

Livat is defined as penetration of a man's sex organ (penis), up to the point of circumcision, into another male person's anus.

*Death penalty
100 lashes*

Article 234.

The *hadd* punishment for *livat* shall be the death penalty for the insertive party if he has committed *livat* by using force, coercion, or in cases where he meets the conditions for *ihsan*; otherwise, he shall be sentenced to one hundred lashes.

The *hadd* punishment for the receptive party, in any case (whether or not he meets the conditions for *ihsan*) shall be the death penalty.

Note 1. If the insertive party is a non-Muslim and the receptive/passive party is a Muslim, the *hadd* punishment for the insertive party shall be the death penalty.

Note 2. *Ihsan* is defined as a status that a man is married to a permanent and pubescent wife and whilst he has been sane and pubescent has had a vaginal intercourse with the same wife while she was pubescent, and he can have an intercourse with her in the same way [vaginal] whenever he so wishes.

*Tafkhiz: putting
penis between male
thighs or buttocks*

Article 235. *Tafkhiz*.

Tafkhiz is defined as putting a man's sex organ (penis) between the thighs or buttocks of another male person.

Note. A penetration [of a penis into another male person's anus] that does not reach the point of circumcision shall be regarded as *tafkhez*.

*100 lashes
(Note: death
penalty)*

Article 236.

In the case of *tafkhez*, the *hadd* punishment for the insertive and receptive party shall be one hundred lashes and it shall make no difference whether or not the offender meets the conditions of *ihsan* [mentioned in note 2 of article 234], or whether or not [the offender] has resorted to coercion.

Note. If the active party is a non-Muslim and the passive party is a Muslim, the *hadd* punishment for the active party shall be the death penalty.

Other homosexual acts: male (and female, note)

Article 237.

Homosexual acts of a male person in cases other than *livat* and *tafkhez*, such as kissing or touching as a result of lust, shall be punishable by thirty-one to seventy-four lashes of *ta'zir* punishment of the sixth grade.

Note 1. This article shall be equally applicable in the case of a female person.

Note 2. This article shall not be applicable in the cases punishable by a *hadd* punishment under Shari'a rules.

Musaheqeh: touching between female sex organs

Article 238. *Musaheqeh*.

Musaheqeh is defined as where a female person puts her sex organ on the sex organ of another person of the same sex.

100 lashes

Article 239.

The *hadd* punishment for *musaheqeh* shall be one hundred lashes.

Conditions for *musaheqeh* punishment

Article 240.

Regarding the *hadd* punishment for *musaheqeh*, there is no difference between the active or passive parties or between Muslims and non-Muslims, or between a person that meets the conditions for *ihsan* and a person who does not, and also whether or not [the offender] has resorted to coercion.

► **Press Law** (1986).

Legal barrier to freedom of expression

Article 6.

The Press is free, except for items which undermine Islam's bases and commandments, and public and private rights, as set forth in this chapter: [...]

- (2) Spreading fornication and forbidden practices and publishing photographs, pictures, and material which violate public chastity.

Note 2. A violation of what is set forth in this Article is subject to punishments as determined in Article 698 of the Islamic Penal Code* and in the event of persistence, they are subject to an intensification of the punishments and the forfeiture of one's license.

* Article 698 of Islamic Penal Code provides for imprisonment of between two months to two years and flogging of up to 74 lashes.

► **Law on Computer Crimes** (Law No. 71,063)

Legal barrier to freedom of expression

Article 14.

Whoever uses computer systems, telecommunications systems or data carriers to publish or distribute immoral content, or produces or store them with the intention of corrupting the society, will be sentenced to imprisonment for between 91 days to 2 years or will be fined ... or both.

Human rights situation

In August 2014, reports indicated that two men were executed by hanging for allegedly having engaged in consensual same-sex sexual acts.¹ On 18 July 2016, a 17-year-old boy, Hassan Afshar, was hanged after being convicted of raping another male teenager, though he had consistently maintained that the sexual acts were consensual.² In January 2019, reports indicated that a 31-year-old gay man was publicly executed by hanging.³ As reported in the press, Iran's opaque judicial system creates enormous difficulties for journalists and human rights advocates to examine judicial cases, what makes it very difficult to ascertain to what extent convictions are based—exclusively or not—the specific provisions that impose the death penalty for consensual same-sex sexual acts.

In April 2017, 30 men were arrested in a gathering in Bagh-e Bahadoran, Isfahan (central Iran). The men were subsequently transferred to the Dastgerd Prison and charged with sodomy by a local court.⁴ According to JFI and 6Rang, since at least 2007, there have been several confirmed reports of state-led raids on private parties followed by mass arrest and detention of those suspected of same-sex sexual acts.⁵ Following an arrest, LGBT people are often made to reveal the names of other LGBT people they know.⁶ Individuals have also reported experiencing constant surveillance by the state's intelligence service.⁷

According to the Saghi Ghahraman, founder of the Iranian Queer Organisation, gay men often face the threat of blackmail as there are different punishments for consensual sexual intercourse

which creates a climate of distrust between partners.⁸

Health-care professionals have been reported to regularly tell gay and lesbian patients that their same-sex attraction and gender non-conformity are a sign of Gender Identity Disorder that must be treated with “reparative” therapies or sex reassignment surgeries, which are often carried out without prior consent.⁹ This is because religious clerics have issued fatwas recognising transsexual people as people “trapped in the wrong body” while homosexuality remains strongly condemned.¹⁰

However, though the State is formally accepting of transgender people who have undergone gender reassignment and provides loans specifically to fund gender reassignment surgery, there remains significant societal discrimination and violence.¹¹ Many gay and lesbian Iranians have tried to flee from Iran to avoid being forced to undergo gender reassignment.¹²

Laws which restrict freedom of expression are often used as the legal basis to exert control on people's behaviour both in public and in private spaces. The Supreme Council of National Security (SCNS) censored official journalists, forbidding them from covering certain topics including SOGIESC-related rights, in the name of ensuring national security. For instance, in September 2017, six admins of Telegram chat groups were reportedly charged with “promoting homosexuality”.¹³

¹ Jay Michaelson, “Iran's New Gay Executions”, *The Daily Beast*, 12 August 2014.

² “Iran: Hanging of teenager shows authorities' brazen disregard for international law”, *Amnesty International*, 2 August 2016.

³ Benjamin Weinthal, “Iran publicly hangs man on homosexuality charges”, *The Jerusalem Post*, 26 January 2019.

⁴ “Shots Fired as Iran Arrests Over 30 Gay Men In Violent Raid”, *Jerusalem Post*, 20 April 2017; “Men Arrested at a Party in Isfahan Charged with ‘Sodomy’”, *6Rang.org*, 20 April 2017.

⁵ Justice for Iran (JFI) & Iranian Lesbian and Transgender Network (6Rang), *Diagnosing Identities, Wounding Bodies: Medical Abuses and Other Human Rights Violations Against Lesbian, Gay and Transgender People in Iran* (2014), 71.

⁶ Sune Engel Rasmussen, “Living Dangerously: What It's Like To Be Gay In Iran”, *Vocativ*, 23 December 2014; see for instance, “More than 30 men arrested in Esfahan, Iran for sodomy”, *Iranian Railroad for Queer Refugees*, 20 April 2017.

⁷ Sune Engel Rasmussen, “Living Dangerously: What It's Like To Be Gay In Iran”, *Vocativ*, 23 December 2014.

⁸ Rachel Banning-Lover, “Where are the most difficult places in the world to be gay or transgender?”, *The Guardian*, 1 March 2017.

⁹ Justice for Iran (JFI) & Iranian Lesbian and Transgender Network (6Rang), *Diagnosing Identities, Wounding Bodies: Medical Abuses and Other Human Rights Violations Against Lesbian, Gay and Transgender People in Iran* (2014), 13.

¹⁰ Neha Thirani Bagri, “‘Everyone treated me like a saint’—In Iran, there's only one way to survive as a transgender person”, *Quartz*, 19 April 2017.

¹¹ Mehdi Fattahi and Nasser Karimi, “Iran's transgender people face discrimination despite fatwa”, *AP News*, 22 May 2018.

¹² Ali Hamedani, “The gay people pushed to change their gender”, *BBC News*, 5 November 2014.

¹³ “Six Telegram Administrators Charged With ‘Promoting Homosexuality’”, *Deutsche Welle Persian*, 14 September 2017.

Statements by public officials

In March 2012, in response to accusations from other countries regarding Iran's treatment of LGBT people, Mehrdad Bazrpash, a former Member of Parliament and former Deputy President of the country, stated that it was "one of the honours of the Islamic Republic is to violate the rights of homosexuals".¹⁴

On 4 April 2014, Iran's Supreme Leader described "homosexuality" as "moral bankruptcy" and "libidinous behaviour".¹⁵

On 24 September 2014, the Iranian Speaker of Parliament described "homosexuality" as "modern Western barbarism".¹⁶

In December 2017, the Iranian Lesbian & Transgender Network published a report on official hate speech by state officials against LGBT people.¹⁷ In January 2011, Ali Larijani, the Speaker of Parliament justified the use of the death penalty for consensual same-sex sexual conduct on the basis that it is "effective in keeping society safe from perversion".¹⁸

National Human Rights Institution

Iran has a National Human Rights Institution in accordance with the Paris Principles: the Islamic Commission on Human Rights. The institution does not address SOGIESC issues.

UN voting record

Iran was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.¹⁹

At the session of Third Committee of the UN General Assembly held in November 2016, Iran voted against the LAC amendment to remove Operative Paragraph 2,²⁰ and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Iran voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in February 2010, Iran received three recommendations regarding decriminalisation and discrimination based on SOGI, while at its 2nd cycle review in October 2014, there were 14 SOGI recommendations. These mostly focused on decriminalisation, persecution and discrimination.²¹

At its interactive dialogue session, the delegation of Iran justified his country's position on "homosexuality", by saying it was not so long ago that same-sex sexual relations had been "subject to prosecution in most Western countries in the not too distant past".²²

Iran will be before the UPR again in April 2019 for its 3rd cycle sessions.

Treaty Bodies

In 2011, the **Human Rights Committee** expressed concern that the LGBT community faced harassment, persecution, cruel punishment and even the death penalty as well as discrimination on the basis of their sexual orientation, including with respect to access to employment, housing,

¹⁴ 6Rang, *Official Hate Speech against LGBT People* (2017), p. 13.

¹⁵ "بیانیت در دیدار اعضای مجلس خبرگان رهبری", پایگاه اطلاع رسانی دفتر مقام معظم رهبری, ۱۳۹۲/اسفند; The International Gay and Lesbian Human Rights Commission (IGLHRC), *Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity* (2014).

¹⁶ "بیانیه مکرار شکر سازمان ملل یاغی گری بین المللی را ترویج می دهد", *Acana*, 17 February 2013.

¹⁷ 6Rang, *Official Hate Speech against LGBT People* (2017).

¹⁸ 6Rang, *Official Hate Speech against LGBT People* (2017), p. 12.

¹⁹ Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

²⁰ Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

²¹ "UPR - Iran" ILGA Website.

²² "UPR - Iran" ILGA Website.

education and health care, as well as social exclusion within the community.²³ It called on the state to “repeal or amend all legislation which provides for or could result in discrimination against, and prosecution and punishment of, people because of their sexual orientation or gender identity” and to “take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation, including with respect to access to employment, housing, education and health care, and to ensure that individuals of different sexual orientation or gender identity are protected from violence and social exclusion within the community”.²⁴

While reviewing a periodic report of the Islamic Republic of Iran in 2013, the **Committee on Economic, Social and Cultural Rights** expressed concern over the criminalisation of consensual same-sex sexual acts and the possibility that convicted male persons may be subject to the death penalty.²⁵ It also called on the state to “take steps to combat and prevent discrimination and societal stigma against members of the LGBT community, and ensure their enjoyment of all the rights enshrined in the Covenant, including unhindered

access to employment, social services, health care and education”.²⁶

The **Committee on the Rights of the Child** addressed Iran in February 2016. It expressed concern that “children who belong to the LGBTI group face continuous discrimination because of their real or perceived sexual orientation or identity and that the same sex sexual behaviour of adolescents above the actual age of criminal responsibility is criminalized and punished with penalties ranging from flogging to death penalty”.²⁷ It also expressed concern that young people have no information on LGBTI issues, and trans people are forced into surgery and urges reversal of such policies.²⁸

Special Procedures

In 2013, several mandates²⁹ expressed serious concerns on the revised Islamic Penal Code (IPC), which provided for the use of the death penalty for non-violent acts and the use of stoning and other corporal punishments like amputation, flogging and crucifixion.³⁰

²³ *Concluding observations of the Human Rights Committee - Islamic Republic of Iran*, CCPR/C/IRN/CO/3, 29 November 2011, para. 10.

²⁴ *Ibid.*

²⁵ *Concluding observations on the second periodic report of the Islamic Republic of Iran*, E/C.12/IRN/CO/2, 10 June 2013, para. 7.

²⁶ *Id.*, para. 7.

²⁷ *Concluding observations on the combined third and fourth periodic reports of the Islamic Republic of Iran*, CRC/C/IRN/CO/3-4, 14 March 2016, para. 31.

²⁸ *Id.*, paras. 71-72.

²⁹ The mandates were the Special Rapporteur on freedom of religion or belief; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice.

³⁰ For more information, see [IRN 9/2013](#).