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Home Office

Country Information and Guidance

Iran: Sexual Orientation and Gender Identity

November 2014

Preface

This document provides guidance to Home Office decision makers on handling claims made by nationals/residents of - as well as country of origin information (COI) about - Iran. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained within this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Within this instruction, links to specific guidance are those on the Home Office’s internal system. Public versions of these documents are available at <https://www.gov.uk/immigration-operational-guidance/asylum-policy>.

Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the European Asylum Support Office’s research guidelines, [Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please [e-mail us](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

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Section 1: Guidance

Date Updated: 24 November 2014

1.1 Basis of Claim

- 1.1.1 Fear of persecution by the state and/or non-state actors because of the person's actual or perceived sexual orientation or gender identity, i.e. that the person is (or is perceived to be) a lesbian, a gay man, bisexual, transgender or intersex (hereafter referred to as 'LGBTI persons').

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1.2 Summary of Issues

- ▶ Is the person's account a credible one?
- ▶ Do LGBTI persons from Iran constitute a particular social group (PSG)?
- ▶ Are LGBTI persons at risk of mistreatment or harm in Iran?
- ▶ Is the person open about their sexual orientation/gender identity?
- ▶ Are those at risk able to seek effective protection?
- ▶ Are those at risk able to internally relocate within Iran?

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1.3 Consideration of Issues

Is the person's account a credible one?

- 1.3.1 Decision makers must consider whether the material facts relating to the person's account of their actual or perceived sexual orientation/gender recognition/gender identity and of their experiences as such is reasonably detailed, internally consistent (e.g. oral testimony, written statements) as well as being externally credible (i.e. consistent with generally known facts and the country information). Decision makers should take into account all mitigating reasons why a person is inconsistent or unable to provide details of material facts such as age; gender; mental or emotional trauma; fear and/or mistrust of authorities; education, feelings of shame; painful memories, particularly those of a sexual nature, and cultural implications.

See also:

- ▶ [Country information](#)

and Asylum Instructions on:

- ▶ [Considering Protection \(Asylum\) Claims and Assessing Credibility](#)
- ▶ [Sexual Orientation in Asylum Claims](#)
- ▶ [Gender Identity Issues in Asylum Claims](#)
- ▶ [Gender Recognition in Asylum Claims](#) and, in the case of females,
- ▶ [Gender Issues in Asylum Claims](#).

Do LGBTI persons from Iran form a particular social group (PSG)?

- 1.3.2 In the Court of Justice of the European Communities judgement for the joined cases of C-199/12 to C-201/12, dated November 2013 ([2013] WLR(D) 427, [2013] EUECJ C-199/12), the Court held that ‘the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.’ (Ruling point 1).
- 1.3.3 Under the Islamic Penal Code of Iran, consensual same-sex sexual activity is criminalised and is punishable by death or flogging. Transgender and intersex people are often perceived of as being homosexual and treated as such. Transgender individuals who transgress socially constructed gender expectations without applying to become diagnosed as “certified transsexuals” and undergoing sex reassignment surgery risk being identified as “homosexual” and in violation of the law. Lesbians, gay men, bisexual, transgender and intersex persons from Iran should therefore be considered to form a particular social group (PSG) within the meaning of the 1951 UN Refugee Convention.
- 1.3.4 Although LGBT persons in Iran form a PSG, this does not mean that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether the particular person will face a real risk of persecution on account of their sexual orientation or gender identity.

See also:

- ▶ [Caselaw](#)
- ▶ [Country information](#)

and Asylum Instructions on:

- ▶ [Considering Protection \(Asylum\) Claims and Assessing Credibility](#)
- ▶ [Sexual Orientation in Asylum Claims](#)
- ▶ [Gender Identity Issues in Asylum Claims](#)
- ▶ [Gender Recognition in Asylum Claims](#) and, in the case of females,
- ▶ [Gender Issues in Asylum Claims](#).

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Are LGBTI persons at risk of mistreatment or harm in Iran?

- 1.3.5 The law criminalizes consensual same-sex sexual activity, which may be punishable by death or flogging. The overwhelming majority of reported prosecutions, convictions, and executions of individuals in Iran relate to boys or men charged with sodomy. It is extremely difficult to determine whether those charged and executed for same-sex conduct are in fact members of Iran’s LGBT community. It is equally difficult to confirm the frequency of executions for same-sex conduct.
- 1.3.6 In practice Iran’s security forces, including police and forces of the hard-line paramilitary basij, rely upon discriminatory laws to harass, arrest, and detain individuals whom they suspect of being lesbian, gay, bisexual, transgender or intersex. LGBTI persons face a variety of abuse by government authorities including beatings, verbal assaults, rape, sexual assault and torture.

- 1.3.7 Iran's criminalisation of same-sex relations facilitates similar forms of physical abuse in the domestic setting. For example, lesbian and bisexual women report familial violence, forced marriages and forced medical treatment. Individuals have reported that they were beaten by family members at home, but could not report these assaults to the authorities out of fear that they would themselves be charged with a criminal act.
- 1.3.8 Even discussion about sexual rights, gender equality, and homosexuality is met with violent reaction from both the judicial and law enforcement bodies. LGBTI persons also experience discrimination when accessing employment, education and access to goods and services, including health services.
- 1.3.9 The law defines transgender persons as mentally ill. The government provides financial assistance to undergo sex reassignment surgery. Human rights activists and NGOs report that some LGBTI persons were advised, and in many cases forced or coerced, to undergo sex reassignment surgery to avoid legal and social consequences due to their gender-identity ambiguity. Undergoing sex reassignment surgery against the person's will comprises persecution.
- 1.3.10 Failure to undergo surgery creates the perception of homosexuality. Transgender individuals who transgress socially constructed gender expectations without applying to become diagnosed as "certified transsexuals" and undergoing sex reassignment surgery risk being identified as "homosexual" and in violation of the Penal Code. They will be at real risk of being targeted for discrimination, arbitrary arrest and detention, torture and other forms of ill-treatment. Such treatment will similarly amount to persecution.
- 1.3.11 Many transgender persons report that their stigma, rejection and experiences of violence led them to make the decision to have sex reassignment surgery. After completing their transition, however, many transgender Iranians are advised to maintain discretion about their past. This is because of the negative stigma associated with being transgender and undergoing sex reassignment surgery in mainstream Iranian society. The level of stigma and discrimination may in individual cases amount to persecution. Decision makers must consider each case on its facts.

See also:

- ▶ [Country information](#)

and Asylum Instruction on:

- ▶ [Considering Protection \(Asylum\) Claims and Assessing Credibility](#)

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Is the person open about their sexual orientation/gender identity/gender recognition?

- 1.3.12 Although all LGBTI persons have a right to live openly or discreetly based on their personal choice, decision makers should be mindful that often such decisions will be influenced by the treatment of the LGBTI persons in the country of origin. In cases where it is found that a transgender person will be discreet about their past, the reasons for such discretion needs to be considered in the light of [HJ \(Iran\)](#). A person should not be expected to conceal aspects of their gender identity or transition if they are not willing to do so. However, if the person would choose to conceal that for reasons other than for a fear of persecution then the person would have no basis for their claim for international protection.
- 1.3.13 The Supreme Court decision in [HJ \(Iran\) v Secretary of State for the Home Department \(Rev 1\) \[2010\] UKSC 31 \(07 July 2010\)](#) ('HJ (Iran)') and the [CJEC cases of C-199/12 to C-201/1](#) held that a person is entitled to live freely and openly as a gay or bisexual

person and this involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. It does not require them to show that their sexual orientation plays a prominent part in their life. All that matters is that the person has a well founded fear that they will be persecuted because they are lesbian, gay or bisexual.

- 1.3.14 The CJEC cases of C-199/12 to C-201/12 also ruled that ‘the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.’ When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation (Ruling point 2 and 3).
- 1.3.15 If a person is not openly lesbian, gay, bisexual, transgender or intersex and lives discreetly because they fear that if they were open about their sexual orientation they would face mistreatment, and that fear is well-founded, they will have a well founded fear of persecution.
- 1.3.16 If the material reason for choosing to live discreetly is because of personal choice or because the person believes being open about their sexuality may cause embarrassment to friends or family, then they may not have a well-founded fear of persecution. This is because such social pressures to conceal their sexual orientation are not sufficiently detrimental to constitute ‘persecution’ (HJ (Iran), paragraph 82).
- 1.3.17 Decision makers must determine the extent to which a person who is ‘openly LGBTI’ would be exposed to a risk of persecution as a consequence of this. This should be treated as allowing gay persons to be as free as their straight equivalents in the society concerned and to live their lives in the way that is natural to them without persecution.
- 1.3.18 Decision makers must also establish and assess whether the choice to live discreetly is informed and not because they have no choice because of the risk of persecution.

See also:

- ▶ [Caselaw](#)
- ▶ [Country information](#)

and Asylum Instructions on:

- ▶ [Considering Protection \(Asylum\) Claims and Assessing Credibility](#)
- ▶ [Sexual Orientation in Asylum Claims](#) and, in the case of females,
- ▶ [Gender Issues in Asylum Claims](#).

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Are those at risk able to seek effective protection?

- 1.3.19 Where the person’s fear is of ill treatment/persecution by the state they cannot reasonably be expected to seek protection from the authorities.
- 1.3.20 Where the person’s fear is of ill treatment/persecution by non state actors, they cannot reasonably be expected to seek protection from the authorities as this would lead to a real risk of them being subjected to ill-treatment by those state authorities.

See also the Asylum Instruction on:

- ▶ [Considering Protection \(Asylum\) Claims and Assessing Credibility](#)

Are those at risk able to internally relocate within Iran?

- 1.3.21 As this category of claim concern's a fear of ill treatment by the state authorities, relocation to a different area of the country to escape this threat is unlikely to be relevant or reasonable.
- 1.3.22 Given the societal attitude towards LGBTI persons is prevalent throughout Iran, internal relocation to escape ill treatment by non state actors is unlikely to be a viable option. Furthermore, the Supreme Court in the case of [HJ \(Iran\)](#) made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.

See also the Asylum Instruction on:

- ▶ [Internal Relocation](#)

1.4 Policy Summary

- The law criminalizes consensual same-sex sexual activity, which may be punishable by death or flogging. The country evidence is that the authorities rely upon discriminatory laws to harass, arrest, and detain people whom they suspect of being LGBTI.
- Iran's criminalisation of same-sex relations facilitates psychological and physical abuse by the security forces and in private settings. LGBTI persons experience familial violence, forced marriage and forced medical treatment, but cannot report these assaults to the authorities out of fear that they would themselves be charged with a criminal act.
- The law defines transgender persons as mentally ill. Some transgender persons have reportedly faced physical attacks, arbitrary detention, rape and torture, and discrimination in employment and education.
- Where there is a real risk that a gay man, lesbian, bisexual, transgender or intersex person, or those suspected of being such, will come to the attention of the authorities, the person would on return to Iran face a real risk of persecution and, they are likely to qualify for a grant of asylum as LGBTI persons in Iran may be considered to be members of a particular social group within the meaning of the Refugee Convention.
- Where a claim falls to be refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

See also the Asylum Instructions on:

- ▶ [Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002](#)
- ▶ [Humanitarian Protection](#)
- ▶ [Discretionary Leave](#)

Section 2: Information

Date Updated: 3 November 2014

2.1 Legal situation and treatment by the state

- 2.1.1 The Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, dated 28 February 2013 (Report of the Special Rapporteur 2013), stated:

‘The Special Rapporteur continues to share the concern of the Human Rights Committee that members of the lesbian, gay, bisexual, and transgender community (LGBT) face harassment, persecution, cruel punishment, and are denied basic human rights. The new draft Islamic Penal Code criminalises same-sex relations between consenting adults. Articles 232-233 of the new Penal Code would mandate a death sentence for the “passive” male involved in sodomy, regardless of whether his role was consensual. Under the new law, “active” Muslim and unmarried males may be subject to 100 lashes so long as they are not engaged in rape. Married and/or non-Muslim males may be subject to capital punishment for the same act. Men involved in non-penetrative same-sex acts or women engaged in same-sex acts would also face 100 lashes according to the new Penal Code.’¹

- 2.1.2 The Iran Human Rights Documentation Center’s report entitled ‘Denied Identity: Human Rights Abuses against Iran’s LGBT Community’ provides details of the punishments for same sex offences under Iranian law:

“[...] the IPC [Islamic Penal Code of Iran] explicitly criminalizes sexual relations between same-sex individuals. A new version of the IPC came into effect in 2013 [...] The IPC criminalizes specific sexual acts; it does not, however, provide for punishment of homosexuality in general. There are four types of same-sex sexual acts that are explicitly recognized as criminal by the IPC.

[...] Shari’a, or Islamic law, prescribes punishments for certain offenses [...] one category of crime and punishment as prescribed by Shari’a is called hadd. In plural, these punishments are called hodud, and they comprise a separate class of punishments from other Shari’a punishments or those that originate in the civil law. While hodud punishments have been incorporated into the IPC, they differ from other punishments in several aspects. Evidentiary requirements and treatment of repeat offenders are two examples of the ways in which hodud crimes differ from other crimes. In addition, hodud punishments are fixed and the judge cannot change or mitigate these punishments. Among the crimes listed below, sodomy, tafkhiz, and mosaheqeh belong to the hodud class of crimes. On the other hand, crimes falling under the title “other homosexual acts” are not hodud crimes. Punishment for these crimes is referred to as ta’zir.”

‘Article 233 of the IPC [Islamic Penal Code of Iran] defines sodomy as: “penetration of a man’s sex organ, up to or beyond the point of circumcision, into the anus of another man.” If there is no penetration, the parties could be charged with the lesser crime of *tafkhiz*. Article 235 of the IPC defines *tafkhiz* as: “placing a man’s sex organ between the thighs or the buttocks of another man.” A proviso to Article 235 states that if penetration does not reach the point of circumcision, the sex act is considered to be

¹United Nations (UN). Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 28 February 2013, I. Lesbian, gay, bisexual and transgender community, paragraph 68, http://www.ohchr.org/documents/countries/ir/a-hrc-22-56_en.pdf [Accessed 23 October 2014]

tafkhez. Sexual acts between two females can lead to a charge of *mosaheqeh*. Article 238 of the IPC defines *mosaheqeh* as: “when a female places her reproductive organ on another female’s reproductive organ.” Other sexual acts are discussed in Article 237 of the IPC. According to this Article, in addition to sodomy and *tafkhez*, other homosexual acts such as kissing and touching for pleasure are forbidden as well.’

Punishment for Sodomy

Iranian law distinguishes between “active” and “passive” partners involved in sodomy. This distinction is rooted in Islam’s views on homosexuality. Accordingly, the punishments for active and passive partners are different.

Passive Partner in Sodomy

The passive partner in sodomy, if convicted, will be sentenced to death. His marital status is irrelevant.

Active Partner in Sodomy

The sentence given to the active partner engaging in sodomy is more complicated. If he is married, he will be sentenced to death. If he is not married, however, he will be sentenced to one hundred lashes. The death penalty will also apply to the active partner when the active partner is a non-Muslim but the passive partner is a Muslim.

Punishment for *Tafkhez*

Unlike sodomy, there is no distinction between an active and a passive partner. Also, there is no distinction between a married and an unmarried partner. Neither is punishment more severe if one partner forces the other to engage in the sexual act. Any man convicted of *tafkhez* will be sentenced to one hundred lashes. Nevertheless, if the active partner is a non-Muslim and the passive partner is a Muslim, the non-Muslim active partner will be sentenced to death.

Punishment for *Mosaheqeh*

Article 239 of the IPC states that *mosaheqeh* is punishable by one hundred lashes. Article 240 explains that there is no difference between an active and a passive partner, and the marital status of the parties has no effect on the punishment. Also, the religion of the partner is not a relevant factor. Similar to *tafkhez*, the punishment for a person convicted of *mosaheqeh* would not be more severe if she forces another woman to engage in the sexual act.

Punishment for Other Same-sex Sexual Acts

Article 237 of the IPC states that other homosexual acts, such as kissing and touching for pleasure, are punishable by 31 to 74 lashes. This provision applies to both men and women. *Shari’a* law does not specify punishments for crimes falling under this category. Therefore, the punishment of lashes provided in the IPC is referred to as a *ta’zir* punishment.

Death Penalty on the Fourth Conviction

Article 136 of the IPC states that any person convicted for the fourth time of any crime in the *hodud* category will be sentenced to death, provided that after each conviction he or

she has been accordingly flogged. With the exception of the passive partner in sodomy, who will be executed after the first punishment, Article 136 means that an active partner in sodomy, a man convicted of *tafkhez*, and a woman convicted of *mosahegeh* may be put to death after their fourth conviction. This repeat-offender scheme, however, does not apply to those convicted of “other same-sex sexual acts” such as kissing and touching for pleasure.’²

See also:

- ▶ A full English translation of Book One and Book Two of the new Islamic Penal Code of Iran (IPC)³ of 2013 can be found on the Iran Human Rights Documentation Center (IHRDC) website.

2.1.3 The US State Department’s, ‘Country Reports on Human Rights Practices 2013 – Iran’, released on 27 February 2014 stated that:

‘The law criminalizes consensual same-sex sexual activity, which may be punishable by death or flogging. Security forces harassed, arrested, and detained individuals they suspected of being gay. In some cases security forces raided houses and monitored internet sites for information on LGBT persons. Those accused of sodomy often faced summary trials, and evidentiary standards were not always met. Punishment for same-sex sexual activity between men was more severe than for such conduct between women.’

‘According to the state-run media agency, IRGC and Basij officers raided an alleged “gay” birthday party in Kermanshah on October 8. Authorities reportedly fingerprinted and interrogated 80 attendees, confiscated their electronic devices and passwords, subjected some individuals to beatings and electrical shocks, and arrested 17 individuals who were subject to further abusive treatment in detention, including being severely beaten, photographed naked, and processed for mock execution. Security forces released without charge all detainees from the raid within one week and returned their belongings. No charges were filed at year’s end.’

‘The government censored all materials related to LGBT issues. There were active, unregistered LGBT NGOs in the country, but most activities to support the LGBT community took place outside the country. International LGBT NGOs reported that many young gay men faced harassment and abuse from family members, religious figures, school leaders, and community elders. Some persons were reportedly expelled from university for alleged same-sex sexual activity.’

‘LGBT rights defenders were subjected to government intimidation and prosecution. On August 20 [2013], authorities released from Tabriz Prison Javad Houtan Kian, a lawyer who defended individuals accused of adultery and sodomy.’⁴

² Iran Human Rights Documentation Center. Denied Identity: Human Rights Abuses against Iran’s LGBT Community. 7 November 2013. 3. Treatment of Homosexual Acts under Current Iranian Law, 3.1. Same-sex Offenses under Current Iranian Law and 3.2. Punishments for Sam-sex Offenses under Current Iranian Law, Page 9 -10. http://www.iranhrdc.org/files.php?force&file=reports_en/Denied-Identity.pdf. [Accessed 23 October 2014]

³ <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html> [Accessed 23 October 2014]

⁴ US Department of State, Country Report on Human Rights Practices for 2013, Iran, 27 February 2014, Section 6,, Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dld=220352>, [Accessed 14 October 2014]

2.1.4 The US Department of State's Country Reports on Human Rights Practices 2012, Iran, released on 19 April 2013 noted that, 'The Special Protection Division, a volunteer unit of the judiciary, monitored and reported on "moral crimes," including same-sex sexual activity.'⁵ 'This organization, primarily made up of unemployed former soldiers, was set up to control "the social ills of each neighbourhood and region" as well as "deviant individuals."⁶

2.1.5 The HRW report "We Are a Buried Generation"; Discrimination and Violence against Sexual Minorities in Iran" of December 2010 reported that:

'Iran's security forces, including police and forces of the hard-line paramilitary basij, rely upon discriminatory laws to harass, arrest, and detain individuals whom they suspect of being gay. The incidents often occur in parks and cafes, but Human Rights Watch also documented cases in which security forces raided homes and monitored internet sites for the purpose of detaining people they suspected of engaging in non-conforming sexual conduct or gender expression.'⁷

2.1.6 The HRW report continued:

'Abuse against sexual minorities on Iran's streets can range from verbal insults and harassment to beatings, arbitrary arrests, and even sexual assault. Roundups of individuals hanging out in parks and suspected of being gay have been reported. Sometimes sexual minorities are taken to detention facilities run by the basij or police, processed, and forced to sign a document called a ta'hod (promise), in which they pledge, for example, not to congregate in specific areas or appear in public wearing makeup. They are then released, but may be subjected to verbal harassment and physical assault by the officers. However, most times security forces stop short of actually arresting or transferring the individuals to formal detention facilities, but harass or abuse them on the streets.'⁸

'Human Rights Watch believes that these forces perpetrate violence against Iran's sexual minorities in part because they know that their victims have nowhere to turn for protection or justice.'⁹

2.1.8 Regarding treatment of those arrested and detained, the HRW report of December 2010 stated that:

'Security forces have used verbal, psychological, and physical abuse to harass and intimidate LGBT persons, and to extract from them confessions and ta'hods. A majority of LGBT individuals interviewed by Human Rights Watch who had experienced altercations with the security forces complained of some form of verbal abuse or

⁵ US Department of State, Country Report on Human Rights Practices for 2013, Iran, 19 April 2013. Section 6.. Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204359>

⁶ Human Rights Watch: "We Are a Buried Generation"; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. V. Government Harassment and Abuse in Public Space, Page 46. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

⁷ Human Rights Watch: "We Are a Buried Generation"; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. Summary, Page 4. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

⁸ Human Rights Watch: "We Are a Buried Generation"; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. V. Government Harassment and Abuse in Public Space, Page 46. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

⁹ Human Rights Watch: "We Are a Buried Generation"; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. V. Government Harassment and Abuse in Public Space, Page 49. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

harassment during their arrest, transfer, and/or detention. Several detailed abuse severe enough to constitute torture. This abuse included sexual assault or rape.’¹⁰

2.1.9 The UN Special Rapporteur’s February 2013 report stated “Interviews with 24 members of the Iranian LGBT community for this report reinforce many of the concluding observations forwarded by the Human Rights Committee’s periodic review of Iran. Fifteen interviewees believed that they were arrested at least once for their sexual orientation or for associating with other LGBT persons. Thirteen reported that once in detention, security officers subjected them to some form of torture or physical abuse; including punches, kicks and baton strikes to the head or body and, in a few cases, sexual assault and rape. Several people reported that they were coerced into signing confessions. Iran’s criminalisation of same-sex relations facilitates physical abuse in the domestic setting as well. A majority of these individuals reported that they were beaten by family members at home, but could not report these assaults to the authorities out of fear that they would themselves be charged with a criminal act.”¹¹

2.1.10 At a hearing on 19 June 2014 before the US House Committee on Foreign Affairs, Hossein Alizadeh, leader of the International Gay and Lesbian Human Rights Commission, described the discriminatory and dangerous state of Iran’s LGBT human rights one year after Hassan Rouhani’s election as Iran’s president. The Iranian president’s election had sparked a wave of hope for reform and a reversal of his predecessor’s approach that “there are no homosexuals in Iran”. However, Alizadeh, the Iranian-born immigrant, reported that Iran’s abuse of its LGBT population continues unabated with the government still employing “morality police”. He testified that “even discussion about sexual rights, gender equality, and homosexuality is met with violent reaction from both the judicial and law enforcement bodies. Alizadeh responded that several journalists have been imprisoned for merely writing about homosexuality and a newspaper was shut down the day after an editorial about homosexuality was published.”¹²

2.1.11 HRW report of December 2010 stated:

‘... the overwhelming majority of reported prosecutions, convictions, and executions of individuals in Iran relate to boys or men charged with sodomy. It is extremely difficult to determine whether those charged and executed for same-sex conduct are in fact members of Iran’s LGBT community. It is equally difficult to confirm the frequency of executions for same-sex conduct.’

‘There are several reasons for this. First, trials on moral charges in Iran are usually held in camera (i.e. in private). Second, international outrage over the frequency of executions has led the government to tightly control press reporting of the death penalty. Third, sodomy and same-sex conduct is punishable for heterosexuals as well as for members of Iran’s LGBT community. Fourth, the conservative nature of Iranian society and the shame associated with homosexuality (and non-conforming sexual or gender expression generally) often complicate any inquiry into whether the individual charged is actually an LGBT person.’

¹⁰ Human Rights Watch: “We Are a Buried Generation”; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. Page 61. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

¹¹ United Nations (UN). Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 28 February 2013, I. Lesbian, gay, bisexual and transgender community, paragraph 70, http://www.ohchr.org/documents/countries/ir/a-hrc-22-56_en.pdf, [Accessed 14 October 2014]

¹² Gay Asia News. Rights leader tells US Congress of Iran’s persecution of LGBT community 26 June 2014. <http://gayasianews.com/2014/06/26/rights-leader-tells-us-congress-of-irans-persecution-of-lgbt-community/> [Accessed 22 October 2014]

'Finally, Iranians who have been convicted of lavat and then executed have rarely, if ever, been charged solely with that crime. In most cases the court also convicted them on other charges, some of which carry the death penalty. Without a case-by-case analysis, it is not always possible to know in which cases, if any, the court sentenced the defendants to death because of their sexual orientation or gender identity. For example, in several notable death penalty cases during the past decade, the government charged defendants with a variety of sexual crimes warranting the death penalty, including, for example, sodomy, adultery, or rape. In at least some cases, Iranian prosecutors have included serious moral or sex charges when prosecuting individuals primarily for political reasons.'¹³

- 2.1.12 According to HRW's report, Basij forces attempt to entrap or arrest persons engaged in same-sex sexual conduct. LGBT rights defenders are subject to government intimidation and prosecution.¹⁴
- 2.1.13 On 6 August 2014 the two men, Abdullah Ghavami Chahzanjiru and Salman Ghanbari Chahzanjiri, were reported hanged in southern Iran, possibly for consensual sodomy. Their deaths are part of a wave of executions in Iran, with more than 400 in the first half of 2014 alone, according to the NGO Iran Human Rights. The Daily Beast news article stresses it has not been confirmed that the men were killed because of their sexuality, but at least one Iranian source reports that they were. Another is vague about their "crimes" but labels the men as "immoral villains."¹⁵ According to reporting by EDGE, one of the sources says the two men were hanged to "promote community safety" and to "reduce the suffering of the victims."¹⁶
- 2.1.14 The Heartland Alliance, Iranian Queer Organization and the International Human Rights Clinic stated in their shadow report to the UN Committee on Economic, Social, and Cultural Rights in March 2013, that "We have both first-hand and second-hand reports confirming widespread acts of torture, detention, corporal punishment, rape, and sexual assault committed by state agents against individuals thought to be LGBT individuals".¹⁷
- 2.1.15 The Iran Human Rights Documentation Centre report of November 2013 found that "A number of witnesses who shared their stories with IHRDC have discussed how they were raped by Iranian authorities, including while in custody, and how the fear that their sexual orientation would be discovered if they came under increased scrutiny from the authorities prevented them from reporting the assaults".¹⁸

¹³ Human Rights Watch: "We Are a Buried Generation"; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. III. The Death penalty for Same-Sex Acts, Executions for the Crime of Lavat (Sodomy), Page 27 - 28. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

¹⁴ Human Rights Watch: "We Are a Buried Generation"; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010, V. Government Harassment and Abuse in Public Space, page 48. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

¹⁵ The Daily Beast. Iran's New Gay Executions. 12 August 2014. <http://www.thedailybeast.com/articles/2014/08/12/iran-s-new-gay-executions.html> [Accessed 21 October 2014]

¹⁶ Edge Publications. 2 Gay Men Hanged in Iran. 13 August 2014. <http://www.edgeonthenet.com/news/international/News/164013/reports: 2 gay men hanged in iran> [Accessed 22 October 2014]

¹⁷ Heartland Alliance for Human Needs & Human Rights; Iranian Queer Organization; International Human Rights Clinic, The Violations of the Economic, Social and Cultural Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Persons in the Islamic Republic of Iran, March 2013. III, Substantive Violations, page 9, http://hrp.law.harvard.edu/wp-content/uploads/2011/01/JointHeartlandAlliance_IROO_IHRC_Iran_CESCR50.pdf [Accessed 28 October 2014]

¹⁸ Iran Human Rights Documentation Center, Denied Identity, Human Rights Abuses against Iran's LGBT Community, 7 November 2013, 5.4 Rape of LGBT Individuals, page 25. http://www.iranhrdc.org/files.php?force&file=reports_en/Denied-Identity.pdf [Accessed 28 October 2014]

- 2.1.16 The International Gay and Lesbian Human Rights Commission (IGLHRC) and the Iranian Queer Organization (IRQO) in its submission to the UN Human Rights Council reported that “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” and listed 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”.¹⁹

Transgender persons

- 2.1.17 The US State Department report covering events in 2013 stated that “The law defines transgender persons as mentally ill, but the government provided transgender persons financial assistance in the form of grants of up to 4.5 million tomans (\$1,800) [£1,125] and loans up to 5.5 million tomans (\$2,200) [£1,375] to undergo gender-confirmation surgery. In addition the Ministry of Cooperatives, Labor, and Social Welfare requires health insurers to cover the cost of gender-confirmation surgery. Individuals who underwent gender-confirmation surgery may petition a court for new identity documents with corrected gender data, which the government reportedly provided efficiently and transparently. Human rights activists and NGOs reported that some LGBT persons were advised to undergo gender-confirmation surgery to avoid legal and social consequences due to their gender-identity ambiguity.”²⁰
- 2.1.18 A 2013 report by Heartland Alliance for Human Needs & Human Rights and others noted that “there have been instances of botched sex reassignment surgeries, which have left some people with permanent and irreparable physical damage...the doctors performing the operations in Iran are so careless - for them, it is like cutting paper and not flesh ... just because it's a highly profitable business ... they perform all these operations improperly, and often incompletely.”²¹
- 2.1.19 The same report continued “Furthermore, Iran has done little to ensure the quality of medical services offering sex reassignment operations: in cases that constitute malpractice, we found no evidence that those victimized have had legal recourse or that the government has taken steps to remedy them. Moreover, we have found no evidence that the State has taken measures to address the emotional trauma and compromised mental health of individuals who have had sex reassignment surgeries, which were caused by, inter alia, their repudiation by their family members as well as continuous persecution and harassment.”²²

¹⁹ The International Gay and Lesbian Human Rights Commission (IGLHRC) and the Iranian Queer Organization (IRQO), Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity, 30 April 2014, II. State Persecution based on Actual or Perceived Sexual Orientation or Expression, page 5, <http://iglhrc.org/sites/iglhrc.org/files/UPRSubmission.pdf> [Accessed 28 October 2014]

²⁰ US Department of State, Country Report on Human Rights Practices for 2013, Iran, 27 February 2014, Section 6., Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220352>, [Accessed 14 October 2014]

²¹ Heartland Alliance for Human Needs & Human Rights; Iranian Queer Organization; International Human Rights Clinic: The Violations of the Economic, Social and Cultural Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Persons in the Islamic Republic of Iran, March 2013. III. Substantive Violations, 2. Article 12 (Right to Health), a. Sex reassignment surgery, Page 13. http://hrp.law.harvard.edu/wp-content/uploads/2011/01/JointHeartlandAlliance_IRQO_IHRC_Iran_CESCR50.pdf [Accessed 23 October 2014]

²² Heartland Alliance for Human Needs & Human Rights; Iranian Queer Organization; International Human Rights Clinic: The Violations of the Economic, Social and Cultural Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Persons in the Islamic Republic of Iran, March 2013. III. Substantive Violations, 2. Article 12 (Right to Health), a. Sex reassignment surgery, Page 15. http://hrp.law.harvard.edu/wp-content/uploads/2011/01/JointHeartlandAlliance_IRQO_IHRC_Iran_CESCR50.pdf [Accessed 23 October 2014]

2.1.20 A June 2014 report by Justice for Iran & Iranian Lesbian and Transgender Network stated that “transgender people are generally required to complete four main steps in order to change their legal gender. These are: receiving a psychiatric diagnosis of “Gender Identity Disorder” from a psychiatrist; obtaining an official permit for sex change, provided by the Prosecution Office on the recommendation of LMOI [Legal Medicine Organization of Iran]; fulfilling a whole set of medical requirements, including hormone therapy, sterilization and genital reassignment surgeries; and applying to the court and the National Organization for Civil Registration to change their name and obtain new national identification documents reflecting their gender post-sex reassignment surgery. There is no legal certainty across the country as to the criteria that are applied in each of these steps”²³. Furthermore “transgender individuals who transgress socially constructed gender expectations without applying to become diagnosed as “certified transsexuals” and undergoing sex reassignment surgery risk being identified as “homosexual”, and targeted for discrimination, arbitrary arrest and detention, torture and other forms of ill-treatment.”²⁴

2.1.21 The same report found:

‘The findings of this report suggest that transgender people also experience serious violations of the right to health as a result of negligent and substandard sex reassignment surgeries that are carried out without proper documentation of evidence of Gender Identity Disorder and the full consideration of different possible therapeutic approaches.’

‘In fact, the Iranian healthcare system not only fails to recognize the various expressions of gender that may not necessitate psychological, hormonal or surgical treatments, but it also engages in the administration of sex reassignment surgeries that drastically fall short of international clinical standards and result in long-lasting health complications including chronic chest pain, severe back pain, unsightly scarring, loss of sexual sensation, debilitating infections, recto-vaginal and recto-urethral fistula and incontinence. The great deal of pain and suffering that is inflicted upon transgender people through these surgeries, as indicated by the cases below, is a cause for serious concern considering that transgender persons are required to undergo sex reassignment surgeries as a prerequisite for enjoying legal recognition of their preferred gender. The accounts of those interviewed for this report show that more often than not, individuals are rushed through sex reassignment surgeries without free and informed consent, and a clear understanding of the risks that such interventions entail.’²⁵

2.1.22 Human Rights Watch state that once an individual is diagnosed by a medical professional as suffering from ‘gender dysphoria’ and agrees to undergo SRS [sex reassignment surgery], they may secure permits from local authorities allowing them to appear in public dressed as women prior to the actual surgery. Without this permit, however, individuals dressing like members of the opposite sex will be considered

²³ Justice for Iran & Iranian Lesbian and Transgender Network (6Rang). Pathologizing Identities, Paralyzing Bodies: Human Rights Violations Against Gay, Lesbian and Transgender People in Iran. June 2014. 4. Legal Gender Recognition Procedures in Iran. <http://6rang.org/english/wp-content/uploads/2014/06/Pathologizing-Identities-Paralyzing-Bodies.pdf> [Accessed 24 November 2014]

²⁴ Justice for Iran & Iranian Lesbian and Transgender Network (6Rang). Pathologizing Identities, Paralyzing Bodies: Human Rights Violations Against Gay, Lesbian and Transgender People in Iran. June 2014. 4. Legal Gender Recognition Procedures in Iran. <http://6rang.org/english/wp-content/uploads/2014/06/Pathologizing-Identities-Paralyzing-Bodies.pdf> [Accessed 24 November 2014]

²⁵ Justice for Iran & Iranian Lesbian and Transgender Network (6Rang). Pathologizing Identities, Paralyzing Bodies: Human Rights Violations Against Gay, Lesbian and Transgender People in Iran. June 2014. 4. Legal Gender Recognition Procedures in Iran. <http://6rang.org/english/wp-content/uploads/2014/06/Pathologizing-Identities-Paralyzing-Bodies.pdf> [Accessed 24 November 2014]

transvestites and in violation of the law.²⁶ Once a transgender individual has undergone SRS in Iran that person legally becomes the ‘new’ sex—male, in the case of trans-men, and female, in the case of trans-women. All legal documents, such as birth certificates and passports, are also changed accordingly. After completing their transition, however, many transgender Iranians are advised to maintain discretion about their past. This is because of the negative stigma associated with being transgender and undergoing SRS in mainstream Iranian society.”²⁷

- 2.1.23 Justice for Iran in their report entitled “Weapons of Mass Discrimination: The Islamic Republic Policies and the Economic, Social and Cultural Rights of citizens in Iran” state that:

“The applicant is not, however, allowed to dress as a member of the other sex and live in society as such until she or he undergoes hormone therapy and other medical procedures. [...] Transsexual applicants must show that their body has been altered so as to resemble a body of the opposite sex by means of hormone therapy and sex reassignment surgeries. The surgical removal of uterus, ovaries and breasts is, however a necessity. No Account is taken of pre-existing medical conditions (e.g., hepatitis C, clotting disorders, AIDS) or psychological, religious and financial constraints that may render surgery risky, prohibitive or undesirable. The surgical requirements are deemed necessary for the protection of public order, public health and morals, yet this is full proof that these individuals are not provided proper health care or given adequate psychological care or assistance in determining the effects the operation can have including physical aspects. Many of the lesbian and transgender persons that Justice for Iran interviewed held that their stigma, rejection and experiences of violence led them to make the decision to have sex reassignment surgery. There are reports of harassment and being assaulted by members of the police force and being placed in a prison cell for wearing attire worn by the opposite sex.”²⁸

“Throughout the operation and after care procedure, reports of degrading, inhumane treatment and experiencing forms of torture are not uncommon. Harassment is rife, physical and verbal abuse by nurses are reported. Reports of harassment and ignorance by the psychologists who are meant to analyze each individual prior to the procedure are known to act with prejudice and ignorance causing the patient to feel like they have to conform to the psychological and physical stereotypes required of them. [...] In the context of Iran, the consequences of non-recognition for transgender persons are far graver given that that trans-sexuality is repeatedly defined in relation to homosexuality. Failure to undergo surgery creates the perception of homosexuality, which can in turn put transgender persons at risk of physical attacks, arbitrary detention, rape and torture, and discrimination in employment and education.”²⁹

²⁶ Human Rights Watch: “We Are a Buried Generation”; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. X. Transgender and Transsexual Iranian, Sex Reassignment Surgery, Page 80. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

²⁷ Human Rights Watch: “We Are a Buried Generation”; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. X. Transgender and Transsexual Iranian, Sex Reassignment Surgery, Page 80. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

²⁸ Justice for Iran, Weapons of Mass Discrimination: The Islamic Republic Policies and the Economic, Social and Cultural Rights of citizens in Iran, 14 March 2013. II. Transgender, Page 8. http://www2.ohchr.org/English/bodies/cescr/docs/ngos/JusticeIran_Iran_CESCR50.pdf [Accessed 23 October 2014]

²⁹ Justice for Iran, Weapons of Mass Discrimination: The Islamic Republic Policies and the Economic, Social and Cultural Rights of citizens in Iran, 14 March 2013. II. Transgender, Page 9. http://www2.ohchr.org/English/bodies/cescr/docs/ngos/JusticeIran_Iran_CESCR50.pdf [Accessed 23 October 2014]

- 2.1.24 Al-Monitor reported in October 2013 that “The challenge of being a transsexual Iranian citizen is not so much the transformation itself as it is surviving the storm of stigma which exists. One may have a different birth certificate, a different look, a different name, but most likely will be forced to find a different job, different mannerisms and a different skin: a much, much thicker one, one that can tolerate the taboo of being a transsexual Iranian”.³⁰ Justice for Iran and the Iranian Lesbian and Transgender Network (6Rang) documents in its report, published in June 2014, the “human rights violations experienced by transgender people as a result of medical requirements imposed on them in order to obtain legal recognition of their gender. In highlighting these requirements, including psychiatric diagnosis, sterilization and genital reassignment surgery, the report underscores the plight of Iranian transgender people forced to forgo some human rights in order to enjoy others. The alternatives are stark. Obtain identification documents reflecting their gender expression and identity or preserve their physical and mental health by refusing to undergo sex reassignment surgeries. The former option may require transgender people to potentially harm their bodies through medical surgeries that are frequently performed in a reckless and substandard fashion, while the latter option will expose them to lack of legal recognition; arbitrary deprivations of liberty; torture and other ill-treatment; and widespread discrimination in areas such as employment, education and access to goods and services”.³¹
- 2.1.25 While the Iranian government permits and even encourages sex-reassignment surgeries (SRS), transgender persons face unequal treatment. Transgender individuals are often pressured by healthcare professionals to undergo SRS, and they are subject to arbitrary arrest solely based on their appearance.³²
- 2.1.26 Human Rights Watch report that:

“Research suggests that transgender/transsexual Iranians, particularly transwomen, are more likely be targeted and victimized by security forces because they are more easily recognizable. ... Hooliya [a 25-year-old transwoman from Tehran] recounted an incident: One time I was walking in a park and two park officials came up to me and harassed me about my appearance. They made me go with them to a small room in the park. They searched me and then raped me. It was so horrible. I was crying and I kept saying that I would complain to the police. When they were finished with me, they forced me to leave the room with them. Once we got outside they turned me over to the police. I told them what the two park officials had done to me. They became very angry and said, ‘How dare you insult our colleagues! Why do you say things that are not true? They arrested me for insulting their colleagues and took me to the station. I was charged with the crime of intent to increase moral corruption. They kept saying, ‘We will teach you never to repeat such lies!’ I was in a damp and smelly jail cell for five days in solitary confinement. I was not allowed to complain. I felt like a dead person. It is very difficult for me to talk about it.”³³

³⁰ Al-Monitor, Fataw allows sex changes but stigma remains, 7 October 2013, <http://www.al-monitor.com/pulse/originals/2013/10/iran-subsidizes-sex-change-surgery.html#> [Accessed 28 October 2014]

³¹ Justice for Iran & Iranian lesbian and Transgender Network (6Rang), Pathologizing Identities, Paralyzing Bodies: Human Rights Violations Against Gay, Lesbian and Transgender People in Iran, June 2014, 1. Introduction and Background, page 5, <http://6rang.org/english/wp-content/uploads/2014/06/Pathologizing-Identities-Paralyzing-Bodies.pdf> [Accessed 28 October 2014]

³² Iran Human Rights Documentation Center (IHRDC). LGBT. Undated. <http://www.iranhrdc.org/english/lgbt.html> [Accessed 23 October 2014]

³³ Human Rights Watch: “We Are a Buried Generation”; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. X. Transgender and Transsexual Iranians, Sex Reassignment Surgery, Page 83 -84. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

“Saba, a gay male who had spent time with a lot of transgender Iranians in patoqs in Tehran, said this about the reality of life for transgender Iranians: They do not even accept something that by law is allowed. The problem is not only with the lack of legal protection but with family and culture. Even if Iranian law allows transsexuality, this clashes with Iranian cultural views. Gays get the death penalty. Trans Iranians may be legal, but they are treated horribly. They can often not find work and society does not accept them. Everyone thinks that just because it is legal to get a sex change in Iran that trans have no problems. They are wrong. They do not issue legal paper to all trans people anyway, and even if you have this legal paper who is going to pay for surgery? And there are few who are actually able to have surgery and get married, work, and be active citizens in society.”³⁴

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2.2 Societal treatment and attitudes

- 2.2.1 The Foreign and Commonwealth Office in their Human Rights and Democracy Report 2013 reported that many persons identifying themselves as LGBT were denied educational and employment opportunities and suffered verbal and physical abuse from family members and communities. This sort of abuse mostly goes unreported because of Iran’s discriminatory laws against the LGBT community, and the prospect of abuse by security personnel.³⁵
- 2.2.2 According to HRW’s 2010 report, family members threatened and abused many young gay men, who also faced harassment from religious scholars, schools, and community elders. Some persons were expelled from university for alleged same-sex sexual activity. Human Rights Watch reported that “As in many other countries, Iran’s sexual minorities suffer much harassment, discrimination, and abuse at the hands of private actors, including members of their family and society at large. (...) Yet in Iran sexual minorities are particularly vulnerable to such abuse because state law criminalizes same-sex conduct and imposes the death penalty for certain same-sex acts. Not only are sexual minorities prevented from availing themselves of the general protections afforded under the law, they must also fear possible prosecution under the law should they seek help from authorities. Iranian law, therefore, creates a “chilling effect” on the ability (and desire) of victims to report abuses against them, and renders them more vulnerable to harassment, abuse, blackmail, and extortion by private actors.”³⁶
- 2.2.3 The Iran Human Rights Documentation Center say that LGBT Iranians are subject to a wide range of abusive discriminatory practices such as custodial rape, arrests at social functions, expulsion from educational institutions and denial of employment opportunities. LGBT persons who face abuse at home have limited legal recourse because Iranian law grants parents significant discretion in disciplining their children. In addition, filing a complaint against abusive family members could put LGBT persons at the risk of criminal prosecution. The Iran Human Rights Documentation Center also states that “While there is no specific law barring LGBT persons from access to education, several witnesses that IHRDC interviewed for this report stated that they

³⁴ Human Rights Watch: “We Are a Buried Generation”; Discrimination and Violence against Sexual Minorities in Iran, 15. December 2010. X. Transgender and Transsexual Iranians, Sex Reassignment Surgery, Page 80-81. http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 23 October 2014]

³⁵ UK Foreign and Commonwealth Office: Human Rights and Democracy Report 2013 - Section XI: Human Rights in Countries of Concern - Iran, 10 April 2014 (Updated 16 October 2014), LGBT rights <https://www.gov.uk/government/publications/iran-country-of-concern/iran-country-of-concern> [Accessed 20 October 2014]

³⁶ Human Rights Watch, “We Are a Buried Generation”; Discrimination and Violence against Sexual Minorities in Iran, 15 December 2010, IV. Family, School and Society, page 33, http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 28 October 2014]

were expelled or otherwise discriminated against in school or university on account of their sexual and/or gender orientation. In some instances, the witness' manner of dress was questioned and used as a basis on which to expel the student or discriminate against them. In other cases, the individual's relations with other students of the same sex was called into question and used as a basis for questioning or disciplinary measures".³⁷ The report further stated that "Many of the witnesses interviewed for this report testified to physical and psychological abuse they were subjected to by family members who disapproved of their LGBT status. This abuse took the form of beatings, floggings, burning and other forms of physical violence, as well as psychological abuse like threats of violence and enforced seclusion and isolation from society".³⁸

Lesbian and bisexual women

2.2.4 Human Rights Watch reports in 2010 that "For lesbians and bisexual women in Iran, family and social controls may be the greatest threat to their safety and well-being. Research conducted by Human Rights Watch suggests that family members pressure Iranian lesbians to conform to acceptable societal norms and repress their sexual orientation in a myriad of ways. For lesbians, in particular, the fear of discovery is well-founded. Societal as well as official scrutiny of "deviant" behavior among non-conforming women is widespread in Iran, and it is exacerbated by the fact that women have less freedom to move than their male counterparts. It is not uncommon for lesbians to report familial violence, forced marriages, and forced medical treatment".³⁹ Justice for Iran and the Iranian Lesbian and Transgender Network (6Rang) documents in its report, published in June 2014, that "A considerable number of lesbian, gay and transgender individuals interviewed by JFI & 6Rang, also reported being subjected to various forms of abuse by their family members because of their sexual orientation and gender identity. These included beatings and flogging as well as forms of psychological abuse such as enforced seclusion and isolation from friends and society, neglect and abandonment, verbal insults and death threats. For lesbians and female-to-male transgender persons, these abuses were often accompanied by threats or realities of being concerned (sic) into arranged marriage. Lesbian, gay and transgender individuals in Iran often have no recourse to justice or support for the abuse and violence they routinely suffer in their families, leading non-state actors to feel emboldened to enact homophobic and transphobic violence with impunity".⁴⁰

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³⁷ Iran Human Rights Documentation Center, Denied Identity: Human Rights Abuses against Iran's LGBT Community, 7 November 2013, 5.5 Discrimination in Education, page 28, http://www.iranhrdc.org/files.php?force&file=reports_en/Denied-Identity.pdf. [Accessed 28 October 2014]

³⁸ Iran Human Rights Documentation Center, Denied Identity: Human Rights Abuses against Iran's LGBT Community, 7 November 2013, 5.6. Lack of Protection against Abuse of LGBT Persons by Family Members, page 30, http://www.iranhrdc.org/files.php?force&file=reports_en/Denied-Identity.pdf. [Accessed 28 October 2014]

³⁹ Human Rights Watch, "We Are a Buried Generation"; Discrimination and Violence against Sexual Minorities in Iran, 15 December 2010, IX. Lesbian and Bisexual Women, page 74, http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf [Accessed 28 October 2014]

⁴⁰ Justice for Iran & Iranian Lesbian and Transgender Network (6Rang), Pathologizing Identities, Paralyzing Bodies: Human Rights Violations Against Gay, Lesbian and Transgender People in Iran, June 2014, 3.2.4. Abuse and Violence in the Family, pages 47/48, <http://6rang.org/english/wp-content/uploads/2014/06/Pathologizing-Identities-Paralyzing-Bodies.pdf> [Accessed 28 October 2014]

Annex A: Map

Map of Iran showing regions and main cities.⁴¹



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⁴¹ United Nations (UN), Department of Peacekeeping Operations, Cartographic Section. January 2004. <http://www.un.org/Depts/Cartographic/map/profile/iran.pdf> [Accessed 15 October 2014]

Annex B: Caselaw

Supreme Court. HJ & HT v SSHD [2010] UKSC31 7 July 2010

The Supreme Court hereby established at paragraphs 82 and 83 the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

"[...] 82. When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.

If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality.

If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.

If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly".

If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself *why* he would do so.

If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e g, not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.

If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.

83. The Secretary of State should, of course, apply the same approach when considering applications of this type. Although I have, for the most part, concentrated on the position of gay men, the Secretary of State and tribunals should approach applications concerning lesbian women in the same way".

Court of Justice of the European Communities (including Court of First Instance Decisions), Minister voor Immigratie en Asiel v Hooq Commissariaat van de Verenigde Naties voor de Vluchtelingen [2013] EUECJ C-199/12 (07 November 2013) found in Rulings 1-3 that:

- “1. (...) the existence of criminal laws (...) which specifically target homosexuals supports the finding that those persons must be regarded as forming a particular social group;
2. (...) the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution; and
3. (...) When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.

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Change Record

Version	Date	Change References
1.0	25 Nov 2014	First version of updated country information and guidance.

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