

JRAN (27) 205

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IRN28636.E 11 February 1998

Fra det canadiske Flygtning
nævnet

Subject: ►Iran◄: Update to Responses to Information Requests IRN24789.E of 22 August 1996 and IRN21549.E of 2 October 1995 on the situation of ►homosexuals◄, and on whether legal penalties are applied in practice

Regional Office: 2

From: Research Directorate, Immigration and Refugee Board, Ottawa

Keywords: ►homosexuals◄; punishment; Islam; Muslims; judges; marriage; police; legislation; killings; detention; death penalty; men; women; crime; Shari'ah; statistical data; customs and traditions; legal proceedings; prosecution; security forces; child sex abuse; criminal law; asylum seekers; torture; marriage; rural areas; prostitution; drug traffic; viral diseases; rape; psychological problems; cultural identity; Saudi Arabia; Sweden; ►Iran◄

According to *Shari'ah: The Islamic Law*:

Sodomy [al-Liwât] or ►homosexuality◄ is an unnatural act of sex to satisfy one's passion... ►Homosexuality◄ is therefore a great sin in Islam... All Muslim jurists agree that sodomy is a sexual offence but differ in their punishment. According to Imam Abu Hanifa [Hanafi school], the act of sodomy does not amount to adultery and therefore there is no punishment by hadd to be given to the offender except Ta'azir. According to Imam Malik [Maliki school] the hadd punishment will be applied whether the offender is married or not (1984 241-242).

As Maarten Schild reports, there is, however, a significant difference in Islam between the theory and practice of ►homosexual◄ acts

Theoretically, ►homosexual◄ behavior is sharply condemned by Islam, but in practice it is present, and has been in the past, for the most part tolerantly treated and frequently occurring in countries where Islam predominates... In practice it is only public transgression of Islamic morals that is condemned, and therefore Islamic law stresses the role of eye-witnesses to an offense. The police are not allowed to go in search of possible sinners, who can only be caught redhanded, and not behind the "veil of decency" of their closed doors. In a way, concealment is advised, because to disclose a dreadful sin would be a sin in itself... The generally tolerant attitude toward ►homosexual◄ behavior in practice can partly be explained by the fact that it will usually take place discreetly. Moreover it does not have serious personal consequences such as, for example, heterosexual adultery would have (1992 182-183).

In theory, ►homosexuality◄ in ►Iran◄ is punished harshly. For a detailed account of the punishment for sodomy and lesbianism in Iranian law, please consult the attached excerpt from the 1991 Iranian Penal Code. Article 110 states that "Punishment for sodomy is killing; the Sharia judge decides on how to carry out the killing." *The Record* reports that in ►Iran◄ a fourth arrest for a ►homosexual◄ offence is punishable by death (11 Aug. 1996). According to *The Jerusalem Post* punishments in ►Iran◄ for ►homosexual◄ activity range from 74 lashes to death (1 May 1996). In its 1997 report on gays and lesbian in the world entitled *Breaking the Silence: Human Rights Violations Based on Sexual Orientation*, Amnesty International reports that

in ►Iran◄, lesbianism and male ►homosexual◄ acts short of consummation are punishable by lashes... In ►Iran◄, under Islamic law, sodomy is classed among the crimes considered hodoud (against the Divine will, liable to Divine retribution) and is subject to a mandatory death sentence

(26, 48).

A 21 November 1997 report published by *The Humanist* expands upon the information in the Amnesty International report:

As an indication of how serious the situation for gays and lesbians can get in some countries, AIMLGC Steering Committee member Mark Ungar, an assistant professor of political science at the City University of New York and an expert on international lesbian and gay human rights issues, estimates "an absolute minimum of 300 people have been executed since 1990 in Iran alone for violation of laws prohibiting homosexuality." Methods of execution in Iran include stoning and cleaving in two. Ungar uses 1990 as a starting date because it was not until then that systematic research into such cases first began. No one knows how many were executed prior to that year. As in Iran, so-called Sharia Islamic laws also apply in Saudi Arabia, making homosexuality a capital offense.

However, in a 3 February 1998 telephone interview, Dr. Mark Ungar, an assistant professor of political science at the City University of New York, stated that he was not an expert on the issue of homosexuality in Iran and declined to be interviewed on this issue. He did indicate, however, that the figure of 300 people executed for homosexuality provided in the 21 November 1997 issue of *The Humanist* was misleading. Dr. Ungar added that it only represents the total number of Iranians executed in Iran since 1990, not the number of Iranian homosexuals put to death. Dr. Ungar stated that he was misquoted in the article which appeared in *The Humanist*.

According to the representative of the Swedish Amnesty Group for Gay and Lesbian Concerns, a group working with Amnesty International on gay and lesbians issues, who is also an activist working with the International Gay and Lesbian Association (ILGA) in Sweden the information published by *The Humanist* is false (4 Feb. 1998). The correct information is that "300 Iranians have been executed in Iran since 1990 for a variety of reasons." This number is not related to the number of homosexuals or lesbians executed in Iran. The representative stated that none of the few known executions of homosexuals and lesbians in Iran were carried out on the sole basis of homosexuality or lesbianism.

While the legal penalty for sodomy/homosexuality is execution, it is extremely difficult to get a conviction on these grounds (Embassy of Sweden in Tehran, 1996; Sociologist, 27 Jan. 1998; Sociologist, 28 Jan. 1998; Sociologist, 26 Jan. 1998). Even in its publication *Breaking the Silence: Human Rights Violations Based on Sexual Orientation*, Amnesty International admits that it is difficult to substantiate reports of execution for sodomy or homosexuality and speculates at best on its implementation:

During 1995 at least fifty people were executed in Iran. It is unclear how many of these executions may have resulted from accusations of homosexuality... Amnesty International has received reports that some lesbians and gay men in Iran have faced punishments such as execution or lashes for their homosexuality, but they have been extremely difficult to substantiate (1997 49).

For an additional account of the legal proceedings related to sodomy, please consult the attached pages 135 to 137 of *Sexuality and Eroticism Among Males in Moslem Societies* (1992).

According to Jehoeda Sofer, in Iran

the rules of penal procedure are extremely strict. Only oral testimony by eye witnesses is

admitted. Four trustworthy Muslim men must testify that they have seen "the key entering the key hole" or the culprit must confess four times. Since there is a severe punishment for unproven accusation, the punishment was rarely carried out (ibid, 132).

In its 1996 report, the Embassy of Sweden states that:

The strict regulations for submission of evidence, four male witnesses to the »homosexual« penetration, alternatively four confessions from each of the active partners, renders a sentence for »homosexuality« almost impossible in practice. The police and justice administration do not take active measures to investigate the existence of »homosexuality«, nor do they actively hunt »homosexuals«. All in all, the situation in practice in »Iran« is drastically different from the impression conveyed by the Shari'a inspired Penal Code. According to information from usually very reliable sources, no »homosexuals« have been executed in »Iran« for the last few years. In order to risk policiary sanctions — maltreatment or a short time in custody/jail, regardless of the fact that the penalty according to the law is death or whipping — a »homosexual« couple must behave with great indiscretion, almost provocatively, in a public place.

According to a sociologist specializing on »Iran« and chargée de conférences at the Sorbonne-Nouvelle (Paris-III), the law stipulates that people engaging in sexual relations with a person of the same sex or »homosexuals« would only be put on trial if the prosecution can produce four righteous men who witnessed the sexual act, or one of the partners admits to having sexual relations with another man (28 Jan. 1998). If there are fewer than four men to testify to the »homosexuality« of a person, the accusation of »homosexual« activities cannot be proven. The sociologist stated that it would be suicidal to "admit one's »homosexuality«" and added that such an admission is implausible. In practice, the burden of proof lies so heavily on the prosecution that persons engaging in sexual relations with a person of the same sex, or a »homosexual«, will very rarely be tried or sentenced. The sociologist has never come across any case that went to trial and stated that there are many more stonings for heterosexual relations prior to marriage and for adultery than for »homosexuality«.

Another sociologist and a maître de conférences at the Université de Paris stated that the legal requirement for prosecuting a case of »homosexuality« is the testimony of four males who witnessed the sexual act between the men (27 Jan. 1998). In practice, it is so difficult to prosecute a case of »homosexuality« that it almost never happens. The sociologist stated that legislative repression is not directed against »homosexuals« but against heterosexual relations outside marriage. Repressing »homosexual« activities is rare for the security forces because of the difficulty in identifying who is »homosexual« and who is not since Iranian men have very close physical contact (holding hands and kissing) which is a socially accepted behaviour in »Iran«. It is very rare that a person would be arrested for »homosexuality«, but if a person were arrested and convicted as a »homosexual« the punishment would be harsh.

According to another sociologist and a researcher on »Iran« with the CNRS, although Muslim and Iranian laws punish »homosexuality« by death, in practice, it rarely happens, except in cases of pedophilia (26 Jan. 1998). She added that a man caught having sexual relations with a child would face harsh punishment. »Homosexuality« is a common phenomenon and is tolerated as long as it does not disturb public order and remains a private activity. It would be repressed only when made public and asserted, an implausible occurrence in »Iran«.

A 2 February 1998 letter from the Director of the »Iran« Desk at the Alien Appeals Board of Sweden in Stockholm states that:

Furthermore, it is not known that Iranian authorities are actively taking legal actions against »homosexuals«. It is most unlikely that the authorities would take proceedings against a »homosexual« as long as he does not manifest his disposition in an open and public manner. As far as the Alien Appeals Board knows not anyone has been prosecuted on »homosexuality« charges alone in »Iran« for the past seven to eight years.

There are many indications that there is a significant difference between the legal texts and the practice of the security forces.

According to a 1996 report on »homosexuals« in »Iran« by the Embassy of Sweden in Tehran,

Concerning the situation for »homosexuals« in »Iran«, theory and practice differ dramatically. Officially and in theory »homosexuality« as well as lesbianism is prohibited and, according to the current Iranian Penal Code, punishable by death. The actual situation is, however, that »homosexuals« are not actively persecuted. The situation for »homosexuals« is similar to that of the convertites — or even more favorable — in the sense that the risk for legal proceedings or harassment is utterly minimal as long as a »homosexual« relationship is handled in a discreet manner.

As far as the behaviour of »homosexual« persons can be taken as a relevant indication about the degree of oppression of »homosexuals«, the impression is rather that the situation in »Iran« is relatively tolerant, since »homosexuality« is by no means unusual in »Iran«. Certain "health clubs" in Teheran are e.g. known to be frequented by »homosexuals«. Furthermore, it is by no means unusual to meet openly »homosexual« persons — under otherwise heterosexual private circumstances like social events.

Judging by appearances, diplomats with a »homosexual« orientation posted in »Iran« have not had any problems to get in touch with "partners" in »Iran«. If anything, the situation is rather that »homosexuals« can conceal their orientation more easily in »Iran« than e.g. in Sweden, as physical contact between men - embracements, cheek-kissing, holding hands — is culturally accepted behavior.

The decided opinion of the Embassy is that the 25-year-old man who has asked for asylum on grounds of »homosexuality« can return to »Iran« without running any risk for serious harassment. In the light of the account given above on the actual situation for »homosexuals« in »Iran«, his story, as you cite it, does not sound reliable, neither concerning the torture of his boyfriend nor the domiciliary visit.

The following information was provided during a 28 January 1998 telephone

interview with a sociologist with the Iranian research group with the Centre national de la recherche scientifique (CNRS) in Paris who is also a chargée de conférences at the Sorbonne-Nouvelle Paris-III. The sociologist travels frequently to »Iran« for field research on a variety of subjects, including AIDS-afflicted communities.

The sociologist stated that the term "»homosexuality«" is not used in »Iran« and does not have the same meaning in »Iran« as it does in the Western world. There are three Iranian terms that illustrate sexual relations between men. There is "lavat" (or "liwât") which means sexual relations between men, "hamjens baze", persons of the same sex who "play together", and

"hamjens garayi" which means to be emotionally attracted to people of the same sex. The sociologist added that the term "hamjens garayi" is close to the western understanding of homosexuality and stated that Iranian men whom she would term "hamjens garayi" are very rare. The terms "hamjens baze" and "lavat" (or "liwât") only designate sexual activities between men, not homosexuality. In Iran there is a distinction between sexual orientation with an emotional dimension ("hamjens garayi") and sexual activities ("lavat" (or "liwât") and "hamjens bazi"). For example, some married Iranian men who have sexual relations with other men are not considered homosexuals, but bisexuals. These men pursue their sexual activities with other men privately and do not have problems with the authorities.

"Lavât" (or "liwât") is widely practiced with young men or children, especially in the rural areas of Iran where it represents "compensatory sexual activities for the unavailability of women" and should not be considered an expression of sexual orientation.

The sociologist indicated that sexual relations between people of the same sex (men and women) is common and has been present in Iran for a long time.

The Iranian authorities perceive "lavât", "hamjens baze" and "hamjens garayi" as deviant behavior requiring re-education. The sociologist could not provide information on "re-education" because she was unaware of a case. The Ministry of Public Health produces information on AIDS in which AIDS is associated with prostitution, drug addiction and homosexuality.

The sociologist commented on the Agence France Presse story dated 14 November 1995 attached below. According to the sociologist, it does not represent a case of homosexuality, but of rape. Had it represented a case of homosexuality both partners would have been implicated, and both would have suffered punishment. Since only one person was executed it means that the second person was a victim of rape who denounced the aggressor.

There is a park in central Tehran called Daneshju (student) that is famous and well-known as a place where men who are looking for sexual relationships with other men meet. The sociologist added that the public and the security forces are aware of the park's reputation.

The sociologist mentioned that it is impossible to distinguish a homosexual couple from two heterosexual friends in the street because in Iran, as in many other Middle Eastern and African countries, men publicly demonstrate physical affection such as holding hands or kissing male friends or male members of their families. It becomes very difficult for the security forces to arrest anyone because they are unable to identify homosexual behavior. As a result, men conducting private sexual activities with other men or homosexuals are not mistreated in Iran and are not subject to systematic ill-treatment.

The following information was provided during a 27 January 1998 telephone interview with a sociologist who is a maître de conférences at the Université de Paris and has published material on Iran with the Fondation nationale de sciences politique de Paris. The sociologist describes his information as "an educated academic opinion".

The sociologist stated that homosexuality as understood in the Western world is not accepted in Iran and is considered deviant behavior. In Iran, a "homosexual" is the person who duplicates the submissive or passive behavior of a woman, while the person playing the male role would still be considered virile. This information is corroborated by Maarten Schild who adds that there is a confusion of terms with regard to homosexuality in Iran:

"Homosexuality" refers specifically to passive homosexual behavior, which is

considered particularly objectionable, because it turns God's creation topsy-turvy, and threatens the God-given harmony between men and women, which is reflected in the social role pattern. A man who plays the active, penetrator role in a »homosexual« act behaves like a man, and is therefore not considered "»homosexual«." Passive »homosexual« behavior, however, implies being penetrated like a woman, and is considered to be extremely scandalous and humiliating for a man, because it is feminine behavior (1992 185-186).

Another sociologist who conducts research on »Iran« for the CNRS in Paris and who also describes her information as "an educated academic opinion" further corroborates this "Iranian" concept of »homosexuality« (26 Jan. 1998). She stated that in »Iran« a man is usually considered "»homosexual«" only when he reproduces the role of the woman in a sexual relationship and added the information that there is a public park in central Tehran called Daneshju which is well-known by the public as a place where "»homosexuals«" meet each other.

The maître de conférences also states that sexual relations between men are a common phenomenon in »Iran« and as long as they remain private they are not repressed by the security forces (27 Jan. 1998) while the CNRS sociologist indicated that in »Iran« repressive measures taken by the security forces are mainly directed towards heterosexual relations before marriage (26 Jan. 1998). It is very difficult to identify "»homosexuals«" in the street as Iranian men have affectionate relations towards each other, a socially and culturally accepted behaviour. There is less social control over men-to-men relations. Men engage in sexual relations with other men also because of the unavailability of women prior to marriage. It represents another widespread aspect of male sexuality in »Iran« to have male partners as a temporary measure to compensate sexual desire and does not represent cases of "»homosexuality«".

For additional information on the hadd punishment, please consult the attached photocopy from *The Encyclopaedia of Islam* (1993, 20-22).

For additional information on the concept of "liwât", please consult the attached chapter by Charles Pellat in *Sexuality and Eroticism Among Males In Moslem Societies* (1992, 151-167).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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