



IRAN

# We are a Buried Generation

Discrimination and Violence Against Sexual Minorities in Iran

HUMAN  
RIGHTS  
WATCH



# **“We Are a Buried Generation”**

**Discrimination and Violence against  
Sexual Minorities in Iran**

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## Terminology

**Biological sex:** the biological classification of bodies as male or female based on factors including external sex organs, internal sexual and reproductive organs, hormones, or chromosomes.

**Bisexual:** a person who is attracted both to women and men.

**Gay:** a synonym for homosexual in English and some other languages, sometimes used to describe only males who are attracted primarily to other males.

**Gender:** the social and cultural codes (as opposed to biological sex) used to distinguish between what a society considers “masculine” or “feminine” conduct.

**Gender Identity:** a person’s internal, deeply felt sense of being female or male, or something other than female or male.

**Gender-based violence:** violence directed against a person on the basis of gender or perceived sexual orientation. Gender-based violence can include sexual violence, domestic violence, psychological abuse, sexual exploitation, sexual harassment, harmful traditional practices, and discriminatory practices based on gender. The term originally described violence against women but is now taken to include violence targeted at both women and men because of how they experience and express their genders and sexualities.

***Hamjensbaz:*** a derogatory but commonly used Persian term for homosexuals.

**Heterosexual:** a person attracted primarily to people of the opposite sex.

**Homosexual:** a person attracted primarily to people of the same sex.

**Intersex:** a person who is born with a reproductive or sexual anatomy that does not fit the typical definitions of female or male.

**Lesbian:** a female attracted primarily to other females.

**LGBT:** lesbian, gay, bisexual, or transgender; an inclusive term for groups and identities sometimes associated together as “sexual minorities.” In this report the term LGBT is

generally used to refer to individuals who self-identify as either lesbian, gay, bisexual, or transgender.

**MSM:** men (or males) who have sex with men. Men who have sex with men may or may not identify as gay or bisexual.

**Sexual minorities:** an all-inclusive term that includes all persons with non-conforming sexualities and gender identities, such as LGBT, men who have sex with men (and may not self-identify as LGBT) and women who have sex with women.

**Sexual orientation:** the way in which a person's sexual and emotional desires are directed. The term categorizes according to the sex of the object of desire—that is, it describes whether a person is attracted primarily toward people of the same or opposite sex or to both.

**Transgender:** one whose inner gender identity or outward gender expression differs from the physical characteristics of their body at birth. Female-to-male (FTM) transgender people (or transmen) were born with a female body but have a predominantly male gender identity; male-to-female (MTF) transgender people (or transwomen) were born with a male body but have a predominantly female gender identity.

**Transsexual:** a person who has undergone or is in the process of undergoing hormone therapies and the complex of cosmetic and reconstructive procedures usually known as sex reassignment surgery (SRS) so that their physical sex corresponds to their internal gender identity.

**WSW:** women (or females) who have sex with women. Women who have sex with women may or may not identify as lesbian or bisexual.

## Summary

In Iran we don't have homosexuals like you do in your country. This does not exist in our country.

—President Mahmoud Ahmadinejad, Columbia University, New York,  
September 24, 2007.

Mahmoud Ahmadinejad's now infamous denial in September 2007 that homosexuality exists in his country rings as hollow today as it did when the Iranian president made the claim before an audience at New York's Columbia University more than three years ago.

Iranian authorities continue to process hundreds of applications from men seeking exemption from compulsory military service on the grounds that they are gay or transgender. Several prominent psychiatrists, psychologists, and sexologists, operating with the tacit approval of the state, have counseled hundreds of gay, lesbian, bisexual, and transgender (LGBT) Iranians to diagnose and "treat" their sexual "deviancy." Moreover, Iran has become renowned throughout the world for its relatively large number of sex reassignment surgeries—at least some of which have been performed on Iranians who likely self-identified as gay, lesbian, or bisexual but who felt compelled to undergo the procedure to erase the "stain" of homosexuality and become "legal" under Iranian law.<sup>1</sup>

Ahmadinejad's position that Iran is free of homosexuals is consistent with the Iranian government's denial of, and intolerance towards, its sexual minorities. The environment in Iran today is such that sexual minorities, who are often the victims of abuse and violence, are instead treated as culprits; the state appears to officially sanction harassment and abuse of LGBT persons by private actors and even police; and LGBT persons are often seen as diseased, criminals, or corrupt agents of Western culture.

Despite official pronouncements, however, it is believed that thousands of Iranians self-identify as members of Iran's LGBT community, while many others engage in consensual same-sex acts prohibited under Iranian law. There are, of course, no official statistics regarding the size of Iran's LGBT population, but their existence is acknowledged in many of Iran's larger urban areas such as Tehran, Esfahan, and Shiraz. In the capital Tehran, for

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<sup>1</sup> Transgender Iranians have been recognized in Iran since 1987 when Ayatollah Khomeini issued a fatwa, or religious edict, granting them permission to undergo sex reassignment surgery.

example, there are public areas known to be hangouts for Iranian LGBT. Some of these areas, such as cafes and restaurants, are associated with more well-to-do and middle class LGBT persons, while others, including several well-known parks, are frequented by LGBT persons who have often been rejected by their families and are living on the fringes of society—particularly gay men and transwomen who resort to prostitution in order to make a living.

This report—based on interviews with more than 125 lesbian, gay, bisexual, and transgender Iranians inside and outside Iran over the past five years—documents discrimination and violence against Iran’s lesbian, gay, bisexual, and transgender citizens, and others whose sexual practices and gender expression do not conform to socio-religious norms. Human Rights Watch analyzed these abuses within the context of systematic human rights violations perpetrated by the Iranian government against its citizens generally, including arbitrary arrests and detentions, invasions of privacy, mistreatment and torture of detainees, and the lack of due process and fair trial standards.

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.

The report also documents instances in which police and *basij*/allegedly ill-treated and in some cases tortured actual or suspected LGBT people, both in public spaces and in detention facilities. Several individuals interviewed made allegations that members of the security forces had sexually assaulted or raped them.

Abuses resulting from the application of Iranian law are also discussed. For example, people charged with sexual crimes often endure summary trials that do not adhere to principles of fairness. Judges overseeing sodomy cases often ignore strict evidentiary guidelines within Iran’s penal code and use questionable investigative methods and evidence that should be inadmissible to decide guilt or innocence. Convictions frequently rely on confessions obtained through torture and extreme psychological pressure, and courts have convicted defendants of sodomy charges based solely on “knowledge of the judge” despite the existence of exculpatory evidence and a lack of inculpatory evidence. Finally, the report considers the plight of LGBT refugees who flee Iran for other countries (Turkey in particular), as well as the dangers faced by Iranians working on issues concerning the rights of sexual minorities.

Iranian law reflects the state’s hostile attitude towards sexual minorities, including lesbian, gay, bisexual, and transgender people. Iran’s penal code criminalizes all sexual relations engaged in outside of traditional marriage and specifically bans same-sex conduct regardless of whether it is consensual in nature. The very real threat of prosecution and the serious punishment that awaits those convicted of same-sex crimes constitute discrimination against members of Iran’s LGBT minority whose consensual sexual practices are criminalized under any and all circumstances. For example, Iranian law prohibits sodomy, defined to include both consensual and coerced sexual intercourse between two men. The punishment for same-sex intercourse between two men (*lavat*) is death and for sexual relations between two women (*mosaheqeh*) is 100 lashes for the first three offenses and the death penalty for the fourth. Evidence indicates that the punishment has been enforced—the threat of execution is real for Iran’s vulnerable LGBT community.

Legal provisions that criminalize and impose capital punishment for consensual homosexual conduct run afoul of Iran’s obligations under the International Covenant of Civil and Political Rights (ICCPR)—ratified by Iran in 1975—which prohibits death sentences except for “the most serious crimes.”<sup>2</sup> In addition, the Convention on the Rights of the Child (CRC) prohibits Iran from sentencing individuals to death for sodomy (or any other crime) allegedly committed while under the age of 18.<sup>3</sup> The Human Rights Committee, which interprets the ICCPR, has called on all state parties to repeal laws criminalizing homosexuality or same-sex conduct. The Iranian government is legally obligated under international human rights treaty law and customary law, and bound by its own treaty commitments and those of previous Iranian governments.<sup>4</sup> The ICCPR’s protections place a mandate for action upon Iranian authorities, including officials who bear responsibility for maintaining security and enforcing the law in Iran.

Human Rights Watch calls on the Iranian government to abolish all laws and other legislation under the Islamic Penal Code that criminalize consensual same-sex conduct, especially those that impose the death penalty, and to cease the harassment, arrest, detention, prosecution, and conviction of LGBT persons or persons who engage in consensual same-sex conduct. Human Rights Watch also calls on authorities to prohibit the public harassment, abuse, or arrest of sexual minorities, individuals thought to be members of the LGBT community, or

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<sup>2</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

<sup>3</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 6.

<sup>4</sup> The Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, 115 U.N.T.S. 331, establishes that obligations under international agreements are not terminated by a change in government.

others (such as “effeminate men”) by security forces, including Iran’s *basij*/units, and to investigate and prosecute members of the security forces who engage in such actions. Any use of testimony or confessions secured, or which appear to have been secured, under torture or threat of torture or other ill-treatment by security forces should be prohibited.

Human Rights Watch also calls on other states and the Office of the UN High Commissioner for Refugees to implement policies and recommendations to safeguard the rights of Iran’s vulnerable LGBT refugees and asylum seekers.

## Recommendations

### To the Government of Iran

- Abolish all laws and other legislation under the Islamic Penal Code that criminalize consensual same-sex conduct, including, but not limited to:
  - Articles 110-11, which criminalize sodomy (*lavat*) and prescribe the punishment for such acts as “death so long as both the active and passive partners are mature, of sound mind, and have acted of free will”;
  - Articles 121-22, which criminalize non-penetrative “foreplay” (*tafkiz*) between men, and prescribe lashes as punishment (and death upon the fourth conviction);
  - Articles 123-24, which criminalize “lustful kissing” between men and lying “naked under the same cover without any necessity” and prescribe lashes as punishment;
  - Articles 129-31, which criminalize *mosaheqeh*, or consensual sexual relations between women and prescribe lashes as punishment (and death upon the fourth conviction);
- Abolish or amend article 120 of the Iranian Penal Code allowing convictions, including those relating to same-sex conduct, based solely on the knowledge of the *Shari'a* judge as “derived through customary methods,” which enables judges to rely on tenuous circumstantial evidence to determine whether a crime has occurred;
- Amend the Islamic Penal Code to include a single, gender-neutral criminal provision on rape, including criminalization of marital rape;
- Cease the harassment, arrest, detention, prosecution, and conviction of sexual minorities based on offenses against public morals or chastity, including violating religious sanctities in public (Article 638), organization of (or participation in) an immoral or corrupt gathering (Article 639(a)), and encouraging others to engage in corrupt and obscene acts (Article 639(b));
- Cease harassment, arrest, detention, prosecution and conviction of sexual minorities based on provisions of the Islamic Penal Code, Press Law, and Cybercrimes Law that prohibit the production, use, and dissemination of material that is considered “immoral,” including LGBT websites, literature, and other paraphernalia;

- Immediately rescind any and all convictions and sentences related to punishment of individuals who have engaged in consensual same-sex conduct or relations, and immediately release any and all inmates who are currently serving prison sentences for such convictions;
- Immediately rescind all unlawful death sentences related to individuals alleged to have committed the crime of sodomy when they were under the age of 18, regardless of whether the act was consensual or forced;
- Modify military regulations that prohibit gay and transgender Iranians from serving in the armed forces because they are considered moral and sexual deviants with “behavioral disorders”;
- Cease the use and administering of all humiliating physical and psychological tests by private and government health care professionals designed to establish that an individual applicant is gay or transgender for the purposes of securing a military exemption;
- Prohibit the public harassment, abuse, or arrest of sexual minorities, individuals thought to be members of the LGBT community, or others (such as “effeminate men”) by security forces, including Iran’s *basij* units, and investigate and prosecute members of the security forces who engage in such actions;
- Protect and respect the privacy of all Iranians and cease all targeting or entrapment, including internet entrapment and home raids by security forces against Iran’s sexual minorities;
- Prohibit harassment, abuse, ill-treatment, torture, and sexual assault of sexual minorities or individuals believed to be members of Iran’s sexual minorities by security forces during detention, and investigate and prosecute members of the security forces who engage in such actions;
- Prohibit the use of testimony or confessions secured, or which appear to have been secured, under torture or threat of torture or other ill-treatment in all prosecutions, including those related to same-sex conduct;
- Ensure that law enforcement authorities properly investigate and charge perpetrators of domestic violence and abuse (including forced medication and/or medical treatment) regardless of whether the victims are sexual minorities or not;

- Take all necessary legislative, administrative, and other measures to respect and legally recognize each person’s self-defined gender identity, and to ensure that procedures exist whereby all state-issued identity papers that indicate a person’s gender/sex reflect the person’s self-defined gender identity;
- Ensure that changes to identity documents will be recognized in all contexts where the identification or disaggregation of persons by gender is required by law or policy;
- Ensure that private employers do not discriminate against persons on the basis of their sexual orientation or gender identity, and pass specific laws to protect transgender and transsexual Iranians who are already legally recognized by the Iranian government from such discrimination;
- Refrain from encouraging or persuading sexual minorities, especially lesbians, gay, and bisexual Iranians, to undergo sex reassignment surgery in order to become “legal” under the law;
- Provide adequate access to physical and psychological services to transgender or transsexual Iranians, including access to hormone therapy for individuals who have undergone sex reassignment surgery;

### **To the Government of Turkey and Other Refugee-Receiving States in the Region**

- Ensure that no Iranian refugees and asylum seekers are subject to refoulement, either at the border (by refusing to grant entry) or after entering the host country and that all have access to asylum procedures;
- Ensure that all law enforcement and other government officials treat all Iranian refugees, asylum seekers, and migrants with dignity and respect for their human rights, without exceptions, including prohibiting all discrimination on the basis of sexual orientation or gender identity;
- Prohibit and prosecute acts of violence against LGBT asylum seekers, refugees, and migrants;
- Allow all refugees and asylum seekers freedom of movement, and do not consign LGBT asylum seekers and refugees to “satellite cities,” but rather allow them to reside in

larger urban centers where they are less likely to be targeted based on their sexual orientation or gender identity;

- Allow all refugees and asylum seekers, including LGBT persons, to secure work permits, and grant fee and documentation waivers to applicants when necessary;
- Provide all refugees and asylum seekers, including LGBT persons, access to health services and medication on at least the same basis as other non-citizens in the country;
- Allow all refugees and asylum seekers, including LGBT persons, to apply for exemptions for residency fees, and inform them of their right to apply for an exemption of residence fees in accordance with Turkey's Article 88 of the Law on the Collection of Fees (No. 492);
- Train police officers who conduct "temporary asylum" interviews in the legal standards that govern the need to protect members of particular social groups, in interviewing techniques used to identify potential sexual orientation and gender identity claims, and in methods to elicit relevant testimony in a non-threatening manner;

### **To the Office of the UN High Commissioner for Refugees**

- Closely monitor and report on attacks and abuses based on sexual orientation and gender expression and identity in Iran, and provide guidance to governments of host countries on the asylum claims of Iranian asylum seekers who fear persecution based on sexual orientation and gender identity;
- Intervene actively to protect LGBT asylum seekers and refugees from abuse in countries of first asylum within the region, and to prevent any threatened refoulement;
- Facilitate rapid resettlement of those refugees identified as urgently needing to be moved outside the region in cooperation with countries of first asylum and resettlement countries;
- Accommodate any LGBT asylum seeker's preference for a male or female interviewing officer and interpreter;
- Train interpreters on best practices for working with LGBT asylum seekers, including issues of confidentiality, impartiality, and respect, and ensure that they use appropriate terminology when conducting interviews with LGBT asylum seekers;

- Develop and apply training materials based on UNHCR’s Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity and the 2002 UNHCR Guidelines on Gender-Related Persecution;
- Refer recognized LGBT refugees for resettlement together with their partners.

**To Other Concerned Governments, including EU Member States, Canada, Australia, and the United States**

- Insist that all states in the region treat LGBT Iranians fleeing the country in full accordance with international legal standards for the treatment of refugees;
- Closely monitor and report on attacks and abuses based on sexual orientation and gender expression and identity in Iran;
- Intervene to protect LGBT asylum seekers and refugees from abuse in countries of first asylum within the region;
- Recognize that integration into the country of asylum or return to the home country are often not a possibility for LGBT refugees and asylum seekers, and insist that asylum or refugee-hosting countries prohibit refoulement (actual or threatened) of LGBT refugees or asylum seekers to Iran based on the notion that there is no systematic persecution of sexual minorities in Iran, or that LGBT persons can live comfortably in Iran as long as they conceal their sexual orientation or identity;
- Be receptive to the need for rapid resettlement processing of refugees, including LGBT persons, with urgent needs to leave the region.

## **Methodology**

The Iranian government does not allow nongovernmental organizations (NGOs) such as Human Rights Watch to enter the country to conduct unimpeded investigations into human rights abuses. In addition many individuals inside Iran are not comfortable carrying out extended conversations on human rights issues via telephone or email, fearing they are subject to government surveillance. The Iranian government often accuses critics, including human rights activists, of being agents of foreign states or entities.

Human Rights Watch interviewed approximately 125 Iranian between 2005 and 2010. The overwhelming majority of those interviewed identified either as lesbians, gays, bisexuals or transgender persons. For individuals inside Iran, Human Rights Watch primarily conducted interviews through online messaging services such as Yahoo Instant Messenger, Google Chat, and Skype. A few of the interviews were conducted with individuals via email and telephone. Most of the remaining interviews took place in person with Iranian LGBT refugees and asylum seekers in Turkey during three separate trips in 2007, 2008, and 2010. Interviews were primarily conducted in Persian (Farsi). Some were conducted with the assistance of translators. Depending on the particular circumstances, interviews lasted between several minutes to several hours. Most were conducted one-on-one, although some took place in group settings.

Over the course of the five years, no less than five Human Rights Watch staff members, including divisional directors, researchers, and consultants, worked to interview witnesses and gather relevant information for the preparation of this report.

In addition to witnesses and victims, Human Rights Watch also interviewed and sought the assistance of Iranian human rights activists located in the United States, Canada, and Europe, Turkey-based and international NGOs working on LGBT and refugee issues, and UN bodies such as the United Nations Office of the High Commissioner for Refugees. Some of the aforementioned individuals and organizations also introduced Human Rights Watch to the witnesses and victims interviewed for this report.

Human Rights Watch has withheld the real names and locations of all sources who remain in Iran and those who are currently abroad out of concern for their security and privacy (and that of their family members). Where noted, the age of interviewees corresponds to their age at the time the interview was conducted.

## I. Legal Framework under International Law

[S]exual orientation is a status protected against discrimination under these provisions.

—UN Human Rights Committee<sup>5</sup>

### The Right to Life

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime.”<sup>6</sup> The Human Rights Committee, which authoritatively interprets the covenant, has said that the death penalty should be a “quite exceptional measure.”<sup>7</sup>

Additionally, the juvenile death penalty is prohibited in international law, and the prohibition is absolute. Both the ICCPR and the Convention on the Rights of the Child (CRC) specifically prohibit capital punishment for persons under 18 at the time of the offense.<sup>8</sup> Iran ratified the ICCPR in 1975 and the CRC in 1994. Between 2007 and 2009, the UN General Assembly twice specifically called upon Iran to end the juvenile death penalty.<sup>9</sup>

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<sup>5</sup> The UN Human Rights Committee has urged states to pass anti-discrimination legislation that expressly includes sexual orientation, and to prohibit in their constitutions all discrimination based on sexual orientation and gender identity. See UN Human Rights Committee, “Concluding Observations: Slovakia,” CRC/C/SVK/CO/2, June 8, 2007, para. 28, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/429/29/PDF/G0742929.pdf?OpenElement> (accessed October 21, 2010); UN Human Rights Committee “Concluding Observations: Namibia,” CCPR/CO/81/NAM, July 30, 2004, para. 22, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.81.NAM.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.81.NAM.En?OpenDocument) (accessed October 21, 2010); UN Human Rights Committee, “Concluding Observations: Trinidad and Tobago,” CCPR/CO/70/TTO, November 3, 2000, para. 11, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.70.TTO.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.70.TTO.En?OpenDocument) (accessed October 21, 2010); UN Human Rights Committee, “Concluding Observations: Poland,” July 29, 1999, CCPR/C/79/Add.110, para. 23, <http://www.unhchr.ch/tbs/doc.nsf/o/a61dboe519524575802567c200595e9c?OpenDocument> (accessed October 21, 2010).

<sup>6</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

<sup>7</sup> UN Human Rights Committee, “General Comment 6,” (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994), article 6.

<sup>8</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 6(5); Convention on the Rights of the Child (CRC), Adopted November 20, 1989, 1577 U.N.T.S. 3 (entered into force September 2, 1990), art.37(a).

<sup>9</sup> UN General Assembly, Resolution 62/168, Situation of human rights in the Islamic Republic of Iran, UN Doc. A/RES/62/168, March 20, 2008. This resolution called upon the Government of the Islamic Republic of Iran “to abolish, as called for by the Committee on the Rights of the Child in its report of January 2005, executions of persons who at the time of their offence were under the age of 18”; and “Situation of human rights in the Islamic Republic of Iran” where the AG “deplores the execution of persons who were under the age of 18 at the time their offence was committed, contrary to the obligations of the Islamic Republic of Iran under article 37 of the Convention on the Rights of the Child, and articles 4 and 6 of the International Covenant on Civil and Political Rights and in spite of the announcement of a moratorium on juvenile executions” called upon Iran “to abolish ... executions of persons who at the time of their offence were under the age of 18, and to uphold the

## The Right to Liberty and Security

Article 9 of the International Covenant on Civil and Political Rights (ICCPR) affirms that, “Everyone has the right to liberty and security of person.” Article 9 also prohibits “arbitrary arrests.” This obligates the state to not ignore known threats to the lives of people within its jurisdiction, and to take reasonable and appropriate measures to protect them.<sup>10</sup> It mandates that the state act where there are clear and identifiable threats against individuals or groups—including, but not limited to, fully investigating those threats with the aim of putting an end to them. The UN Human Rights Committee (charged with authoritatively interpreting the ICCPR and monitoring countries’ compliance with it) has repeatedly found states in violation of their obligations under article 9 if they have failed to take adequate steps to protect people in the face of repeated death threats. The Committee has also criticized states’ failure to protect people from violence directed at them because of their sexual orientation.<sup>11</sup>

The UN special rapporteur on extrajudicial, summary, or arbitrary executions has noted that where the criminal justice system has failed to investigate murders based on sexual orientation or gender identity, the “state bears responsibility under human rights law for the many who have been murdered by private individuals.”<sup>12</sup>

## Protection against Torture and Inhuman and Degrading Treatment

The ICCPR prohibits any form of torture and inhuman treatment in articles 7 and 10. Although Iran is not a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), the prohibition of torture is deeply rooted in customary international law. Torture is also prohibited under Iranian law.<sup>13</sup>

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moratoriums on juvenile executions and executions by stoning and to introduce these moratoriums as law in order to completely abolish this punishment; UN-Doc. A/RES/61/176, 1 March 2007. Annex 1.

<sup>10</sup> See, for example, UN Human Rights Committee Communication nos. 195/1985, *Delgado Páez v. Colombia*, adopted July 12, 1990; 314/1988, *Bwalya v. Zambia*, adopted July 14, 1993; 468/1991, *Oló Bahamonde v. Equatorial Guinea*, adopted October 20, 1993; 449/1991, *Mojica v. Dominican Republic*, adopted August 10, 1994; 916/2000, *Jayalath Jayawardena v. Sri Lanka*, adopted July 26, 2002; 859/1999, *Vaca v. Colombia*, adopted April 1, 2002; 821/1998, *Chongwe v. Zambia*, adopted November 9, 2000; and 1250/2004, *Arachchige Lalith Rajapakse v. Sri Lanka*, adopted September 5, 2006.

<sup>11</sup> Ibid.; and UN Human Rights Committee, “Concluding Observations: El Salvador,” CCPR/CO/78/SLV, July 22, 2003, para. 16, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.78.SLV.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.78.SLV.En?OpenDocument) (accessed September 12, 2010).

<sup>12</sup> “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mission to Guatemala,” A/HRC/4/20/Add.2, February 19, 2007, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/108/99/PDF/G0710899.pdf?OpenElement> (accessed September 12, 2010).

<sup>13</sup> Iran Constitution, article 38. Article 578 of the penal code and articles one, six, and nine of the Citizens Rights Law of 2004 also prohibit the use of torture, especially in order to secure confessions.

The ICCPR and the Convention Against Torture detail what states must do to enforce the prohibition, including the duty to investigate, prosecute, and provide effective remedies when violations occur.<sup>14</sup> The UN Human Rights Committee has also made clear that the duty to protect people against torture or inhuman treatment not only extends to acts committed by government officials, such as police, but also those inflicted by private individuals.<sup>15</sup>

## Right to a “Fair Hearing”

Article 14 of the ICCPR guarantees that

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.<sup>16</sup>

Article 14 also provides that the accused shall “be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him,” “have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing,” and be “tried without undue delay.”<sup>17</sup>

## Non-Discrimination and Fundamental Rights

Article 2 of the ICCPR requires a state party to “ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind.” It also provides that the state must “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,” and that “competent authorities shall enforce such remedies when granted.”<sup>18</sup> The right to a remedy exists regardless of whether the perpetrator is acting in an official capacity or a private one. Article 26 guarantees that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” The UN Human Rights

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<sup>14</sup> See for example UN Human Rights Committee Communication no. 322/1988, *Rodriguez v Uruguay*, adopted July 14, 1994; 328/1988, *Blanco v Nicaragua*, adopted July 20, 1994; 1096/2002, *Kurbanov v Tajikistan*, adopted November 6, 2003.

<sup>15</sup> UN Human Rights Committee, “General Comment 20,” (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), article 7.

<sup>16</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 14(1).

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

Committee has made clear on several occasions that sexual orientation is a status protected against discrimination under these provisions.<sup>19</sup> Unequal protection against violence and unequal access to justice are therefore prohibited under international law.

The ICCPR affirms the right to privacy (article 17), security (article 9), freedom of expression (article 19), and freedom of assembly (article 21). These rights entail the freedom to lead an intimate life peacefully; the freedom to express oneself, including one's gender identity, through clothes or comportment; and the freedom to move and meet in public without fear of harassment or assault. The state must protect people in exercising these rights. Persecuting or harassing people for exercising these freedoms must be prevented where possible and punished where it occurs.

Iranian laws regulating any of these rights and any other government limitation on these rights can only impose such limitations as are consistent with international legal standards—that is, they must be strictly necessary to achieve a legitimate purpose. As the UN Human Rights Committee has advised, “Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.”<sup>20</sup> Any restrictions must also strictly observe the principle of non-discrimination.

No such restrictions should ever be used to penalize the work of human rights defenders, including those who take up issues of sexual orientation or gender identity. Both the then-Special Representative to the Secretary General on Human Rights Defenders and the UN special rapporteur on torture have noted (in the former’s words):

[The] greater risks ... faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretation of

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<sup>19</sup> See UN Human Rights Committee Communication no. 488/1992, *Toonen v Australia*, adopted April 4, 1994; UN Human Rights Committee Communication no. 941/2000, *Young v Australia*, adopted September, 2003. The Human Rights Committee has also urged states to pass anti-discrimination legislation that expressly includes sexual orientation, and to prohibit in their constitutions all discrimination based on sexual orientation and gender identity.

See UN Human Rights Committee, “Concluding Observations: Slovakia,” CRC/C/SVK/CO/2, June 8, 2007, para. 28, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/429/29/PDF/G0742929.pdf?OpenElement> (accessed September 16, 2010); UN Human Rights Committee “Concluding Observations: Namibia,” CCPR/CO/81/NAM, July 30, 2004, para. 22, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.81.NAM.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.81.NAM.En?OpenDocument) (accessed September 16, 2010); UN Human Rights Committee, “Concluding Observations: Trinidad and Tobago,” CCPR/CO/70/TTO, November 3, 2000, para. 11, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.70.TTO.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.70.TTO.En?OpenDocument) (accessed September 16, 2010); UN Human Rights Committee, “Concluding Observations: Poland,” July 29, 1999, CCPR/C/79/Add.110, para. 23, <http://www.unhchr.ch/tbs/doc.nsf/o/a61dboe519524575802567c200595e9c?OpenDocument> (accessed September 16, 2010).

<sup>20</sup> General Comment 16/32, in ICCPR/C/SR.749, March 23, 1988, para. 4. See *Toonen v. Australia*, para. 8.3.

religious precepts that may have been used over long periods of time to condone and justify violations of the human rights of members of such groups. Of special importance will be ... human rights groups and those who are active on issues of sexuality, especially sexual orientation ... These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but other social actors.<sup>21</sup>

## Medical Treatment and Protection of Children

The Convention on the Rights of the Child (CRC) provides that a child's views should be given due weight in accordance with his or her age and maturity, and that children and parents should be informed and supported about child health.<sup>22</sup> Interpreting these provisions of the CRC, the Committee on the Rights of the Child has said that "the child's right to express his or her views and to participate ... applies to individual health-care decisions," and that "Children, including young children, should be included in decision-making processes, in a manner consistent with their evolving capabilities." They should be provided with information about proposed treatments and their effects and outcomes.<sup>23</sup> The Committee on the Rights of the Child has also emphasized that adolescents have the right to participate "actively in planning and programming for their own health and development."<sup>24</sup> If they are of sufficient maturity, informed consent shall be obtained from the adolescent, and parental consent shall not be necessary.<sup>25</sup>

In its General Comment 14, the UN Committee on Economic, Social, and Cultural Rights specifically noted that the relevant article in the Covenant on Economic Social, and Cultural Rights, which Iran has signed and ratified, should be read to bar "any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), *sexual orientation* [emphasis added] and civil,

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<sup>21</sup> "Report of the Special Representative to the Secretary General on Human Rights Defenders," UN Doc. E/CN.4/2001/94 (2001), para. 89g; cited in "Report of the Special Rapporteur on the Question of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment," UN General Assembly, A/56/156, July 3, 2001.

<sup>22</sup> Convention on the Rights of the Child (CRC), Adopted November 20, 1989, 1577 U.N.T.S.3 (entered into force September 2, 1990), arts. 12, 13 and 24(2)(e).

<sup>23</sup> UN Committee on the Rights of the Child, General Comment No. 12, The Right of the Child to be Heard, UN Doc. CRC/C/GC/12 (2009), paras. 98 and 100.

<sup>24</sup> UN Committee on the Rights of the Child, General Comment No. 4, Adolescent health in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4 (2003), paras. 39(b) and 39(d).

<sup>25</sup> Ibid., para. 32.

political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.”<sup>26</sup>

According to article 18 of the Yogyakarta Principles:

No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to the contrary, a person’s sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.<sup>27</sup>

Article 18 specifically addresses treatment of children, and calls on states to “take all necessary legislative, administrative and other measures to ensure that no child’s body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration.”<sup>28</sup> It also calls on states to “establish child protection mechanisms whereby no child is at risk of, or subjected to, medical abuse.”<sup>29</sup>

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<sup>26</sup> General Comment 14: The right to the highest attainable standard of health, Committee on Economic, Social, and Cultural Rights, 22nd Session, E/C.12/2000/4, 11/08/2000, paras. 18-19.

<sup>27</sup> The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, art. 18. In 2006, a group of international human rights experts met in Yogyakarta, Indonesia and drafted a set of international principles relating to sexual orientation and gender identity. They presented the Yogyakarta Principles as “a universal guide to human rights which affirm binding international legal standards with which all States must comply.” See The Yogyakarta Principles, <http://www.yogyakartaprinciples.org/> (accessed November 13, 2010).

<sup>28</sup> Ibid., art. 18(b).

<sup>29</sup> Ibid., art. 18(c).

## II. Legal Discrimination against Sexual Minorities

Sodomy is punishable by death so long as both the active and passive partners are mature, of sound mind, and have acted of free will.

—Islamic Penal Code, Article 111.

### Prima Facie Discrimination Against Sexual Minorities

Iranian law criminalizes all sexual relations engaged in outside the traditional bonds of marriage.<sup>30</sup> Same-sex conduct, whether consensual or forced, is specifically addressed in Iran's penal code. According to Iran's Islamic Penal Code, same-sex crimes are subject to *hudud*, a class of punishment that is fixed pursuant to *Shari'a* or divine [Islamic] law, where the claimant is deemed to be God.<sup>31</sup> Individuals convicted of engaging in same-sex conduct are subject to severe punishment, including the death penalty.

Iran's Islamic Penal Code defines *lavat* (sodomy) as consummated sexual activity between males, whether penetrative or not.<sup>32</sup> Same-sex relations between women, or *mosaheqeh*, are also punishable.<sup>33</sup> In both cases, the accused may only be punished if they are determined to be mature, of sound mind, and willing participants.

Same-sex intercourse between two men is punishable by death if it is determined that both partners meet these criteria.<sup>34</sup> The manner of execution is at the judge's discretion.<sup>35</sup> If an

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<sup>30</sup> Islamic Penal Code, Iran, Book 2, chapters. 1-3; see also Islamic Penal Code, Iran, art. 637 (prohibiting illegitimate relations not amounting to sexual conduct between men and women). Criminal heterosexual relations (i.e. fornication and adultery) are addressed in chapter 1 of the penal code, while same-sex conduct described in the penal code as "sodomy" and "lesbianism" is described in chapters 2 and 3. The punishment for "illegitimate relations" between unmarried men and women (including fornication) is flogging, although the death penalty will be applied to repeat offenders, Islamic Penal Code, Iran, arts. 88, 90. Adulterers, on the other hand, are subject to execution by stoning, Islamic Penal Code, Iran, arts. 99-107.

<sup>31</sup> Islamic Penal Code, Iran, arts. 12-13. *Hudud* crimes are essentially crimes deemed to have been committed against God's will, or "divine law." The punishment for these crimes, which include sodomy, adultery, theft, are fixed under *Shari'a* law and may not be altered by anyone, including a judge. The punishment for other crimes, such as *qesas* (retaliatory crimes) or *ta'zir* (other crimes for which the punishment is discretionary) may be administered at the discretion of the victim or the presiding judge.

<sup>32</sup> Islamic Penal Code, Iran, art. 108.

<sup>33</sup> *Mosaheqeh* is defined as same-sex relations between women by genitals. Islamic Penal Code, Iran, art. 127.

<sup>34</sup> Islamic Penal Code, Iran, art. 111. Article 111 absolves a male victim of rape of any criminal liability because he is deemed to have not participated in the act willingly. In Iran, forcible sodomy or rape of a male by another male is often referred to as *lavat beh onf*. It should be noted, however, that under Iranian law *lavat* includes both forcible and consensual sodomy. Moreover, under Iranian law majority (and maturity) is attained at the age of puberty (*buluq*) as stipulated by *Shari'a* and as specified in Iran's 1991 Civil Code as 15 lunar years (14 years and 5 months) for boys and 9 lunar years (8 years and 8 months) for girls. Islamic Penal Code, Iran, art. 49; Iranian Civil Code of November 1991, art. 1210. For a discussion of prevailing debates over puberty and criminal responsibility in Iran, see also Emad Baghi, "The Issue of Executions of Under-18s in Iran",

adult male is convicted of committing same-sex intercourse with a minor he is to be executed, while the minor shall receive up to 74 lashes unless it is determined that he has not willingly participated in the act.<sup>36</sup> Minors convicted of engaging in same-sex intercourse with one another will receive up to 74 lashes unless one of them is deemed not to have willingly participated in the act.<sup>37</sup>

*Tafkhiz*, the rubbing together of thighs or buttocks (or other forms of non-penetrative sex between men) is punishable by 100 lashes for each partner. Recidivism is punishable by death on the fourth conviction.<sup>38</sup> “Lustful” kissing between two men or two women is punishable by up to 60 lashes.<sup>39</sup> In addition, “[i]f two men who are not related by blood are found naked under the same cover without any necessity,” each one will receive up to 99 lashes.<sup>40</sup>

The punishment for women convicted of lesbianism, or *mosaheqeh*, is 100 lashes, regardless of whether the partner is active or passive.<sup>41</sup> Women convicted of *mosaheqeh* for the fourth time shall be sentenced to death.<sup>42</sup> If two women not related by blood are found naked under one cover without necessity, they will receive less than 100 lashes.<sup>43</sup>

Though the law does not target homosexuals *per se* and is applicable to any individual who engages in same-sex conduct (regardless of whether they self-identify as gay, bisexual, heterosexual, or transgender) it is, in practice, applied disproportionately to members of Iran’s sexual minorities. Despite some legal recognition,<sup>44</sup> Iran’s transgender community is also adversely affected by the country’s criminalization of same-sex conduct. Iran’s transgender and transsexual persons are often targeted, harassed, and abused by security forces and others because they are considered to be homosexuals. Moreover, transgender

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July 2007, available at <http://www.emadbaghi.com/en/archives/000924.php>? (accessed July 2010). See also section III for a discussion on Iran’s use of the sodomy law and the death penalty against juveniles.

<sup>35</sup> Islamic Penal Code, Iran, art. 110.

<sup>36</sup> Islamic Penal Code, Iran, art. 112.

<sup>37</sup> Islamic Penal Code, Iran, art. 113.

<sup>38</sup> Islamic Penal Code, Iran, art. 121-22. If, however, the active partner is a non-Muslim and the passive partner a Muslim, the penalty for the active partner is death.

<sup>39</sup> Islamic Penal Code, Iran, art. 124.

<sup>40</sup> Islamic Penal Code, Iran, art. 123.

<sup>41</sup> Islamic Penal Code, Iran, art. 129.

<sup>42</sup> Islamic Penal Code, Iran, art. 131.

<sup>43</sup> Islamic Penal Code, Iran, art. 134. Each offender receives 100 lashes upon the third conviction.

<sup>44</sup> See section X for a discussion of the rights of transgender and transsexual persons in Iran.

Iranians who have not undergone sex reassignment surgery (SRS) and engage in consensual same-sex conduct are, pursuant to Iranian law, subject to criminal punishment.

Same-sex conduct, whether between men or women, is considered proven under Iranian law if the accused confesses to the act four times before a judge, whether orally or in writing, or if four “righteous men” testify that they have witnessed the act.<sup>45</sup> In the case of individuals convicted of same-sex relations via confession, a judge may order the accused to be pardoned if he or she repents.<sup>46</sup> According to Iranian law, if a man accused of same-sex activities other than intercourse, or a woman accused of *mosaheqeh* repents before the giving of testimony, the conviction will be thrown out.<sup>47</sup> In the absence of confessions or available testimony by eyewitnesses, a judge may enter a conviction for *lavat* based on his “knowledge.”<sup>48</sup> The law requires that rulings based on a judge’s “knowledge” derive from evidence, and not merely personal belief that the defendant is guilty of the crime.

Although some standards of evidence proving same-sex conduct are seemingly high (i.e. proof based on eyewitness testimony or confessions), the very real threat of prosecution under the law and the serious punishment for those convicted of “homosexual crimes” indicate *prima facie* legal discrimination against Iran’s sexual minorities. Legal provisions criminalizing consensual same-sex conduct run afoul of Iran’s international legal obligations under the ICCPR, which only allows death sentences for “the most serious crimes.”<sup>49</sup> In addition, the Convention on the Rights of the Child (CRC) prohibits Iran from sentencing individuals to death for crimes allegedly committed while under the age of 18.<sup>50</sup>

Perhaps more worrying, however, are the practical effects of Iran’s legal provisions criminalizing consensual same-sex conduct. Despite the seemingly high standard of proof required under Iranian law to establish same-sex conduct, the evidentiary provisions as written are subject, in practice, to widely varying interpretations and abuse.

The provisions allowing convictions based on the “knowledge” of the judge or on confessions are particularly troubling. Article 120 of the Iranian Penal Code allows a *Shari'a* judge to reach

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<sup>45</sup> Islamic Penal Code, Iran, arts. 114; 117. If the accused confesses to *lavat* fewer than four times they will be subject to *ta'zir*, or lesser punishment (which includes corporal punishment), Islamic Penal Code, Iran, art. 115.

<sup>46</sup> Islamic Penal Code, Iran, arts. 126; 133.

<sup>47</sup> Islamic Penal Code, Iran, arts. 125; 132.

<sup>48</sup> Islamic Penal Code, Iran, arts. 120.

<sup>49</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 6(2).

<sup>50</sup> CRC, art. 37(a). Article 6(5) of the ICCPR also prohibits execution of juvenile offenders.

a verdict on sodomy based on his knowledge as “derived through customary methods,” which in practice enables judges to rely on tenuous circumstantial evidence to determine whether a crime has occurred. This provision also makes it easy in practice for a judge’s individual prejudices toward a defendant’s appearance or demeanor sway his rulings.<sup>51</sup>

Iranian law bans the practice of torture, particularly when used to extract confessions, and evidence acquired through the use of force is inadmissible in court.<sup>52</sup> In addition, those responsible for torture are subject to prosecution and punishment.<sup>53</sup> Yet the practice of torturing prisoners to extract confessions is relatively common in Iran, and forced confessions are often accepted as evidence in criminal trials.<sup>54</sup>

In June 2002, Iran’s Council of Guardians—a committee of twelve senior clerics—vetoed a bill which had been passed by the *Majlis* (parliament) which would have placed certain restrictions on the use of torture, and would have limited the judicial use of confessions obtained under duress.<sup>55</sup> The refusal of Iran’s government to enact even rudimentary safeguards against torture, whether specifically sanctioned by the judge or committed by police and security forces, sent a message that confessions can be obtained from arrestees by any means.

## Other Laws that May Apply to Sexual Minorities

### *Morality Laws Affecting Sexual Minorities*

Iran’s sexual minorities are also affected by criminal laws that do not specifically address same-sex conduct, but are applied to individuals who do not conform to socially acceptable norms on gender and morality. In fact, sexual minorities targeted by security forces in both public and private spaces often face charges related to offenses against public morals or chastity instead of sexual crimes. Examples of such laws include those that penalize the

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<sup>51</sup> For further discussion of sodomy convictions based on the “knowledge of the judge,” see section VIII.

<sup>52</sup> Constitution, Iran, art. 38. See also Law Respecting Legitimate Freedoms and Protecting Citizen Rights (Citizen Rights Law), art. 9; Criminal Code of Procedure, Iran, art. 129.

<sup>53</sup> See, e.g., Iran Constitution, art. 38; Citizen Rights Law, art. 9.

<sup>54</sup> “Netherlands: No Deportations of LGBT Iranians to Torture,” Human Rights Watch news release, October 8, 2006. <http://www.hrw.org/en/news/2006/10/08/netherlands-no-deportations-lgbt-iranians-torture>. For further discussion of forced confessions; see section VIII.

<sup>55</sup> Even this bill, however, provided inadequate protections against torture. It set no limits, for instance, on the length of time a person could be detained incommunicado, and it would have exempted altogether from its protections certain categories of arrestees, including people charged with *moharebeh* (‘enmity against God’), a general category for dissidents or moral offenders that could also be interpreted to include sexual minorities.

violating of “religious sanctities” in public,<sup>56</sup> operating an establishment of ill-repute or corruption,<sup>57</sup> and encouraging others to engage in “corrupt” and “obscene” acts.<sup>58</sup> Additional provisions under Iran’s penal code address the production, use, and dissemination of material that is considered immoral under Iranian law, including LGBT websites, literature, and other paraphernalia.<sup>59</sup>

During the course of its investigation, Human Rights Watch interviewed several LGBT Iranians who were ultimately charged with various moral offenses having nothing to do with same-sex conduct. For example, in September 2003, police arrested a group of men at a private gathering in one of their homes in Shiraz and detained them for several days. According to Amir, one of the arrested men, the judiciary charged five of the defendants with “participation in a corrupt gathering” and fined them.<sup>60</sup> The person who organized the private gathering was charged with various crimes, including “production and possession of indecent and obscene CDs, video tapes, and audio tapes,” “organizing a corrupt gathering and encouraging youth to engage in corrupt and obscene acts,” and “offending the public chastity.”

Additionally, Human Rights Watch has uncovered evidence suggesting that prosecutors will charge human rights defenders working on issues affecting sexual minorities, or anyone seen by the government as publicizing or promoting LGBT culture with violating national security laws. These crimes may include “propaganda against the regime,” “disturbing the public order,” “participation in an illegal gathering,” and “propaganda against the system.”<sup>61</sup> These individuals may also be subject to two other *hadd* crimes (crimes against God): *moharebeh*, or “enmity against God,” and *efsad-e fel arz*, or “sowing corruption on earth.” Both these crimes are punishable by death.<sup>62</sup>

### *Military Exemption Regulations*

Military service is compulsory for all Iranian men who reach the age of 18.<sup>63</sup> Military regulations, however, prohibit gays, transgender Iranians, and MSM from serving in the

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<sup>56</sup> Islamic Penal Code, Iran, art. 638. This article also addresses women who appear in public without the *hijab*.

<sup>57</sup> Islamic Penal Code, Iran, arts. 639(a).

<sup>58</sup> Islamic Penal Code, Iran, art. 639(b). See also Cybercrimes Law, Iran, art. 15(b).

<sup>59</sup> Islamic Penal Code, Iran, art. 640. See also generally Press Law, Iran; Cybercrimes Law, Iran.

<sup>60</sup> See, e.g., Human Rights Watch interview with Amir, September 16, 2005.

<sup>61</sup> Islamic Penal Code, Iran, arts. 498-512; 610-11.

<sup>62</sup> Islamic Penal Code, Iran, arts. 183-88.

<sup>63</sup> Men who have either not completed their military service or received an exemption are prohibited from exercising certain entitlements, including obtaining a drivers license or traveling abroad.

armed forces.<sup>64</sup> These individuals are permanently exempt from military service because they are considered moral and sexual deviants with “behavioral disorders.”<sup>65</sup> To be classified as unfit for service, men must undergo a series of psychological and physical tests and overcome numerous administrative barriers in order to prove that they are gay or transgender. Despite the long, tedious, and at times humiliating process involved, hundreds of individuals choose to seek exemption to avoid service.

In addition to suffering humiliation during the exemption process, several individuals who had received exemptions based on their sexual orientation (and not gender identity)<sup>66</sup> told Human Rights Watch that they were vulnerable to discrimination, especially in the area of employment, because their identification cards stated the reasons for their exemption as “behavioral disorders” such as “sexual deviancy.”<sup>67</sup>

Human Rights Watch believes that state exclusion of homosexual and transgender men from the military is another example of discrimination against sexual minorities, as clearly established by international courts such as the European Court of Human Rights.<sup>68</sup> The reason that Iran provides such an exemption for homosexual and transgender Iranians, as well as the procedures it imposes on men seeking that exemption, reflect the state’s refusal to treat sexual minorities as persons who deserve to be treated with dignity and equal to other citizens.

Individuals seeking an exemption must first fill out forms provided by the Compulsory Military Service Bureau for all men over 18 who are required to serve. The applicant then undergoes initial tests conducted by private doctors or psychiatrists who can vouch for the applicant’s “sexual deviancy.” There are few doctors in Iran who provide these tests, and most are located in Tehran. In addition, most doctors who perform the tests refuse to do so unless applicants are accompanied by their parents, many of whom are undoubtedly

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<sup>64</sup> See Examination and Medical Exemptions Regulations, Iran.

<sup>65</sup> Examination and Medical Exemptions Regulations, Iran, art. 33, No. 8. As of early 2010, transgender applicants seeking military exemption are no longer classified as having a psychological or behavioral disorder.

<sup>66</sup> In February 2010, the Iranian military announced that it will no longer classify transgender Iranians as individuals with behavioral disorders. According to the Director of Socially Vulnerable groups at the State Agency for National Well-Being, the new regulations will allow transgender Iranians to be classified either as “people with hormonal imbalance” or “diabetics.” “Transgenders No Longer Classified as having Behavioral Disorders on their Military Exemption Cards,” *BBC Persian*, January 6, 2010, [http://www.bbc.co.uk/persian/iran/2010/01/100106\\_lo7\\_transsexual\\_iran\\_sarbaz\\_armyexemption.shtml](http://www.bbc.co.uk/persian/iran/2010/01/100106_lo7_transsexual_iran_sarbaz_armyexemption.shtml) (accessed August 23, 2010).

<sup>67</sup> During the course of its investigation, Human Rights Watch spoke to numerous individuals, including human rights activists, who maintained that only applicants who identify themselves as “passive partners,” or *maf’ul*, (as opposed to *fa’el*, or the “active” partner) will be considered for military exemption. See, e.g., Human Rights Watch interview with Mohammad-Reza, April 4, 2010. Mohammad-Reza told Human Rights Watch that his understanding in connection with this limitation is that if one is active they can reform themselves and engage in heterosexual intercourse.

<sup>68</sup> Smith and Grady vs. United Kingdom (Application nos. 33985/96 and 33986/96), Judgment of September 27, 1999, para. 90-105, both are available at [www.echr.coe.int](http://www.echr.coe.int).

unaware that their children are gay or transgender.<sup>69</sup> The lack of doctors willing and able to perform these tests, the parental notification requirements enforced by doctors, and the costs associated with the tests effectively foreclose the exemption option to thousands of individuals who may otherwise be interested in pursuing this path.

After a private doctor fills out the forms, the applicant sends them back to the Compulsory Military Service Bureau. He then receives a notification, usually by mail, for an appointment to visit a local hospital for additional psychological and physical testing. The results of these tests are then forwarded to the Bureau, and the applicant is required to report there for a final series of interviews and tests conducted by government doctors that will determine whether he receives his permanent exemption.<sup>70</sup>

Saeed H., a 24-year-old gay male, described a fairly typical path to military exemption:

At first the doctors spoke with me alone. Then they had me speak to a doctor in the company of a parent. I begged my mother to come with me. I promised her that I would begin showing interest in women if she agreed. After two meetings I was given a series of written tests. I had to answer five pages of irrelevant questions about my childhood and about my life. Finally I was sent to two other doctors for a second opinion. After a total of 10 sessions I received my exemption.<sup>71</sup>

Despite the fact that the military exemption procedures for gay men and transgender Iranians have been in effect for years and are considered fairly routine, applicants are not immune from harassment and abuse. Mohammad-Reza, a 31-year-old gay male, received his medical exemption a few years prior to leaving Iran. He visited the offices of Dr. Fereydoon Mehrabi, a well-known psychiatrist who has conducted many of these tests for individuals seeking military exemption. He described his experience during the exemption process:

[After mailing in your forms, you receive an appointment at the military hospital with army doctors. When I went there, the doctor said, "Why do you want to get an exemption? You'll love it there."]<sup>72</sup> Then he showed me pictures

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<sup>69</sup> Saeed Kamali Dehghan, "Rainbow Over Tehran," *The Guardian*, March 17, 2009, <http://www.guardian.co.uk/commentisfree/2009/mar/16/iran-gay-rights> (accessed September 30, 2010).

<sup>70</sup> Human Rights Watch Interview with Mohammad-Reza, April 4, 2010.

<sup>71</sup> Human Rights Watch interview with Saeed H., November 2, 2007.

<sup>72</sup> Several gay men interviewed by Human Rights Watch said that homosexual conduct is not uncommon in the military, and several provided testimony regarding their own experiences while in the military. Some of these experiences included consensual sex, while others amounted to sexual abuse.

of soldiers. His words upset me so much. He was mocking me. Then he informed me that they need to run more tests. When I stepped in the room [for more testing] I was shaking.

Then you go and take more tests. You go before a council of doctors and you tell them your difficulties. Thankfully they did not find it necessary for me to get a physical exam. But many of my friends had to do it. You basically have to bend over and [the doctor] checks your anus with his finger. Then the doctors write down their opinion. The head doctor was nice to me. They identified me as a “classic homosexual.”<sup>73</sup>

Meysan, a 26-year-old gay male, was one of the applicants forced to undergo the humiliating physical exams that forensic doctors conduct for the ostensible purpose of determining whether they engage in anal sex. In light of the severe penalties available under Iranian law for those proven to have engaged in sodomy, many are understandably suspicious of the exemption process, which Meysan described as follows:

I had a difficult time proving that I was gay. The military doctors didn’t believe it, so they sent me to the forensic doctor. They told me that I behaved like a man, and that I was a man. I told them that this had nothing to do with whether or not I am a man. [In any case,] the forensic doctor performed an anal test on me. It was so humiliating.<sup>74</sup>

Meysan continued:

The process was so difficult. When I finally got my exemption card, it had no value for me. I didn’t need to go to a doctor to know who I am.<sup>75</sup>

Ahmad, a 28-year-old gay male, told Human Rights Watch that a private doctor and army doctors he visited during the process tried to convince him that he was transgender, and not gay: “I told the army officials that I am gay and cannot be in the military. They said no, you are not gay. There are no gay people in Iran. You are a transsexual.”<sup>76</sup>

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<sup>73</sup> Human Rights Watch interview with Mohammad-Reza, April 4, 2010.

<sup>74</sup> Human Rights Watch interview with Meysan, April 6, 2010.

<sup>75</sup> Ibid.

<sup>76</sup> Human Rights Watch interview with Ahmad, November 30, 2006. In Iran people often use the term ‘transsexual’ instead of ‘transgender.’ The doctor presumably tried to convince his patient that he was transsexual because transgender Iranians have certain protections under the law. See section X for a discussion on transgender and transsexual rights.

### III. The Death Penalty for Same-Sex Acts

It's in the law. In Iran sodomy is punished by hanging, stoning, or decapitation. Even the most uneducated man in the mosque knows this law. Even a child in Iran knows this law.

—Neli, Transwoman Iranian in exile, October 29, 2007

Iran is one of a few countries that applies the death penalty to consensual same-sex conduct. As of May 2010, six other countries had laws allowing the execution of individuals convicted of engaging in homosexual conduct: Mauritania, Saudi Arabia, Yemen, Sudan, Somalia, and Nigeria.<sup>77</sup> In recent years there has been considerable debate regarding how many individuals have been executed by the state for having committed same-sex acts, if those executed had engaged in consensual sex (or any sex at all) or not, and whether the state specifically targets homosexuals for execution. Notwithstanding these debates, the fact remains that Iranian law provides the death penalty for consensual same-sex acts, the threat of execution hangs above all Iranians who engage in such acts, and Iran's sexual minorities are disproportionately affected by these discriminatory laws.

#### Executions for the Crime of *Lavat (Sodomy)*

Although Iranian law prescribes the death penalty for non-penetrative sex acts between men and lesbianism, 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.<sup>78</sup> Third, sodomy and same-sex conduct is punishable for heterosexuals as well as for members of Iran's LGBT

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<sup>77</sup> See Daniel Ottosson, "State Sponsored Homophobia," International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), May 2010, [http://old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2010.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf) (accessed November 13, 2009). According to the ILGA report, sodomy is punishable by death in parts of Somalia and Nigeria. Also, there is some dispute among lawyers and international human rights groups regarding whether sodomy is punishable by death in the United Arab Emirates.

<sup>78</sup> Iran currently has the highest rate of executions per capita in the world. According to some rights groups, Iran has executed hundreds of LGBT persons since 1979.

community.<sup>79</sup> 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.

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.<sup>80</sup> 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.<sup>81</sup>

Perhaps the most controversial case illustrating the difficulty of accurately reporting on the execution of LGBT persons is the case of Mahmoud Asgari and Ayaz Marhoni, two adolescent boys who were publicly hanged in the city of Mashhad, northeast Iran, on July 19, 2005. The two were charged and convicted of *lavat beh onf*(rape) of a 13-year-old boy after allegedly admitting to the crime, according to Iranian authorities.<sup>82</sup> In addition to the outrage surrounding their ages at the time they allegedly committed the crime (at least one of them was under 18), some rights groups maintained that the two were executed because they were gay. Human Rights Watch condemned their execution, but could not verify that they were, in fact, executed because they were gay or had engaged in consensual same-sex conduct.<sup>83</sup>

In 2007, a local court sentenced Makwan Mouloudzadeh, 20-years-old, to death for allegedly raping three boys in 2000, when he was only 13-years-old. Like the case of Asgari and Marhoni, Moloudzadeh's plight drew international criticism from numerous activists and

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<sup>79</sup> Iranian law criminalizes same-sex conduct and not homosexuality per se. Therefore MSM, WSW, or individuals who self-identify as heterosexuals may also be prosecuted under the law.

<sup>80</sup> Another complication is that under Iran's penal code, both consensual and non-consensual heterosexual and same-sex relations outside the traditional marital relationship warrant the death penalty. See generally Islamic Penal Code, Iran, arts. 63-107 (addressing the crimes of fornication or other "illegitimate relations," such as incest and adultery); see also Islamic Penal Code, Iran, arts. 82(d) (addressing the act of heterosexual rape), 110-11 (addressing, albeit implicitly, the rape of one male by another male).

<sup>81</sup> In April 1992, for example, Dr. Ali Mozafarian, a Sunni Muslim leader, was convicted and executed on charges of espionage, adultery, and sodomy. The Safra Project, "Country Information Report: Iran," 2004, [http://www.safraproject.org/Reports/SP\\_Country\\_Information\\_Report\\_Iran.pdf](http://www.safraproject.org/Reports/SP_Country_Information_Report_Iran.pdf) (accessed August 15, 2010).

<sup>82</sup> *Lavat beh onf*is also sometimes referred to as *lavat-e iqabi*.

<sup>83</sup> Letter from Human Rights Watch to His Excellency Ayatollah Mahmud Hashemi, Iran's Head of the Judiciary, "Letter to Iran's Head of Judiciary," July 27, 2005, <http://www.hrw.org/en/news/2005/07/26/human-rights-watch-letter-irans-head-judiciary>.

organizations, some of whom claimed that Mouloudzadeh was being targeted because he was gay.<sup>84</sup> Human Rights Watch could not confirm this assertion, but urged the Iranian judiciary to revoke Mouloudzadeh's death sentence, noting that he was a child at the time the alleged offenses were committed, and pointing to numerous irregularities with Mouloudzadeh's trial and conviction. These include the fact the defendant repudiated his confession at trial (which he claimed had been secured through torture), and the purported victims repudiated their accusations. In several press releases issued in this case, Human Rights Watch reminded local court authorities in Kermanshah that they were legally obligated to follow the judiciary's order to allow further judicial review of the case.<sup>85</sup>

Mouloudzadeh was executed on December 5, 2007.

Meanwhile, Iranian newspapers have reported on cases during the past several years where individuals have been executed for allegedly engaging in sodomy. According to the Persian-language daily *Etemad*, for example, Tehran's criminal court sentenced two men to death in 2005.<sup>86</sup> The wife of one of the men discovered a videotape of the two engaging in homosexual acts and reported them to the authorities, *Etemad* reported. On November 13, 2005, the semi-official Tehran daily *Kayhan* reported that the Iranian government publicly hanged two men, Mokhtar N. (24-years-old) and Ali A. (25-years-old), in the Shahid Bahonar Square of the northern town of Gorgan, after they were convicted of *lavat* (sodomy).<sup>87</sup>

The ICCPR states that nations that have not abolished the death penalty must impose it only for the "most serious crimes." The Human Rights Committee, which authoritatively interprets the covenant, has said that the death penalty should be a "quite exceptional measure."

Human Rights Watch opposes capital punishment in all circumstances because of its cruel and inhumane nature. Human rights principles and protections are founded upon respect for the inherent dignity of all human beings and the inviolability of the human person. These principles cannot be reconciled with the death penalty, a form of punishment that is unique

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<sup>84</sup> It was never determined whether Mouloudzadeh was gay or not.

<sup>85</sup> "Iran: Prevent Execution of Juvenile Offender," Human Rights Watch news release, December 4, 2007, <http://www.hrw.org/en/news/2007/12/04/iran-prevent-execution-juvenile-offender>; "Iran: Revoke Death Sentence in Juvenile Case," Human Rights Watch news release, November 2, 2007, <http://www.hrw.org/en/news/2007/11/02/iran-revoke-death-sentence-juvenile-case>.

<sup>86</sup> Letter from Human Rights Watch to Minister Verdonk, Minister for Integration and Immigration, Netherlands: Threat to Return Gay or Lesbian Iranians, March 7, 2006, <http://www.hrw.org/en/news/2006/03/07/netherlands-threat-return-gay-and-lesbian-iranians-o>.

<sup>87</sup> "Iran: Two More Executions for Homosexual Conduct," Human Rights Watch news release, November 21, 2005, <http://www.hrw.org/en/news/2005/11/21/iran-two-more-executions-homosexual-conduct>.

in its cruelty and finality. The intrinsic fallibility of all criminal justice systems assures that even when full due process of law is respected, innocent persons may be executed.

## Current Death Sentences for the Crime of *Lavat*

Human Rights Watch has also documented several cases where individuals have been convicted of sodomy and are awaiting execution. Many of these individuals were children under the age of 18 at the time of the alleged offense.<sup>88</sup> Moshen G., from Shiraz, and Nemat Safavi, from Ardebil were accused and convicted in 2009 in separate cases of committing consensual same-sex acts when they were under the age of 18. Moshen G. denied the charges and no witnesses testified against him. Safavi was arrested at the age of 16 in 2006 and tried by a court in Ardebil. At this writing, no date has been set for their execution. The lawyer representing both men has repeatedly expressed concerns that his clients could be executed at any moment.<sup>89</sup>

The courts sentenced the two to death despite the requirement in Iran's *Shari'a*-based criminal code that sexual offenses require a confession repeated four times or the testimony of four male witnesses. In the case of Mohsen G., the judge relied on article 120 of the penal code allowing him to reach a decision regarding guilt based solely on his "knowledge." No information is available on the source of evidence for the judgment against Safavi.<sup>90</sup>

In July 2010, a court in the northwestern city of Tabriz issued an execution order for Ebrahim Hamidi. Hamidi was initially charged and convicted, along with three of his friends, of raping a young man. The four were initially convicted of *lavat* based on the testimony of the alleged rape victim. Later, the victim withdrew his accusation and merely alleged that it was his belief that the four had attempted to rape him. Three of the four defendants were eventually acquitted of the charge, but Hamidi was convicted of forcible sodomy based on article 120 of the penal code allowing judges to find defendants guilty of sodomy based on their "knowledge."<sup>91</sup> Hamidi was 16-years-old, and thus a child, at the time of his alleged offense

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<sup>88</sup> Iran leads the world in executing juvenile offenders – at least seven in 2008, and at least four in 2009. The execution of another juvenile offender, Safar Angooti, who was charged with murder, was scheduled for October 21, 2009, but postponed at the last minute for a month. In February 2009, the United Nations General Assembly called on Iran to cease the execution of persons who were under age 18 at the time of their offense. Similar requests were made during Iran's Universal Period Review before the Human Rights Council in February 2010.

<sup>89</sup> "Iran: Revoke Death Sentences for Juvenile Offenders," Human Rights Watch news release, November 4, 2009, <http://www.hrw.org/en/news/2009/11/03/iran-revoke-death-sentences-juvenile-offenders>.

<sup>90</sup> Ibid.

<sup>91</sup> Mohammad Mostafaei, "The Acquittal of Three of the Four Sentenced to Die for the Murder of a Young Man from Tabriz and the Issuing of a Death Sentence for One of Them," Modafe, <http://www.modafe.com/NewsDetail.aspx?Id=415>, July 4, 2010, accessed (August 6, 2010).

and when he was charged with committing sodomy. Both the ICCPR and the CRC prohibit the execution of individuals who were under the age of 18 at the time of the alleged offense.

According to a blog entry written by Mohammad Mostafaei, their lawyer, Hamidi should have also been acquitted of rape because of procedural irregularities in his case. Mostafaei stated that his client was coerced and tortured into signing a confession statement admitting blame for the crime.<sup>92</sup> In his blog, Mostafaei wrote:

I have asserted in the past that many of the execution cases I have agreed to take on were flawed to the point that a death sentence should not have been issued. This case is one of those cases where an innocent person has been sentenced to execution.<sup>93</sup>

Human Rights Watch is aware of at least four other cases of individuals who have received death sentences for *lavat beh onf*, or rape, and are in danger of execution.

## Death Sentences against Juvenile Offenders

Iran remains the world leader in executing individuals who committed an offense while under the age of 18.

In 2009, Iran executed at least four juvenile offenders; in 2008, it executed seven, and in 2007 at least eight.<sup>94</sup> More than 100 juvenile offenders currently remain under sentence of death for alleged crimes including rape, drug-related offenses, and murder.<sup>95</sup> Despite all evidence to the contrary, President Mahmoud Ahmadinejad claimed in 2008 that his country does not execute people for crimes committed before they were 18-years-old.<sup>96</sup>

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<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> “Iran hangs seventh juvenile offender this Year,” Human Rights Watch news release, November 4, 2008, <http://www.hrw.org/en/news/2008/11/04/iran-hangs-seventh-juvenile-offender-year>. It is reported that in 2010 Iran executed at least one juvenile offender. See “Iran, Saudi Arabia, Sudan: End Juvenile Death Penalty,” Human Rights Watch news release, October 8, 2010, <http://www.hrw.org/en/news/2010/10/09/iran-saudi-arabia-sudan-end-juvenile-death-penalty>.

<sup>95</sup> The Foreign Policy Centre, “From Cradle to Coffin: A Report on Child Executions in Iran,” 2009, <http://fpc.org.uk/fsblob/1063.pdf> (accessed November 26, 2010); “Iran: Execution of juvenile scheduled for Monday,” Amnesty International news release, October 1, 2009, <http://www.amnesty.org/for-media/press-releases/iran-execution-juvenile-scheduled-monday-20091002> (accessed November 26, 2010).

<sup>96</sup> Asked about Iran leading the world in the execution of juvenile offenders in a *New York Times* interview, Iranian President Ahmadinejad said: “In Iran youngsters are not executed. Where have they been executed? Our law actually sets 18 as the criminally liable age for capital punishment. So I don’t really know where you brought the number 30 from.” See “An Interview With President Mahmoud Ahmadinejad,” *New York Times*, September 26, 2008,

Although the number of juvenile offenders who were executed in 2009 was less than in previous years, Iran has still not taken concrete steps towards abolishing the practice. In February 2008, the head of the Iranian judiciary established a “non-binding moratorium”—essentially an administrative circular that is non-binding for judges—on juvenile executions. Also in 2008, authorities announced that Iranian judicial authorities would ban the juvenile death penalty for non-murder-related offenses, effective immediately, pending parliamentary approval. But Iran continues to issue and implement death sentences in cases involving juvenile offenders.<sup>97</sup> To date, no ban on the execution of juvenile offenders has been approved by both Iran’s *Majlis* and the Guardian Council, the constitutional body in charge of determining whether laws passed by the *Majlis* are in line with *Shari'a* law.<sup>98</sup>

The juvenile death penalty is prohibited in international law, and the prohibition is absolute. Both the CRC and the ICCPR specifically prohibit capital punishment for persons under 18 at the time of the offense. Iran ratified the ICCPR in 1975 and the CRC in 1994. Between 2007 and 2009, the UN General Assembly twice specifically called upon Iran to end the juvenile death penalty, and member states again raised their concerns regarding this issue during Iran’s Universal Periodic Review in February 2010.<sup>99</sup>

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[http://www.nytimes.com/2008/09/26/world/middleeast/26iran-transcript.html?\\_r=1&pagewanted=2&ref=middleeast](http://www.nytimes.com/2008/09/26/world/middleeast/26iran-transcript.html?_r=1&pagewanted=2&ref=middleeast) (November 26, 2010).

<sup>97</sup> UN General Assembly, Report A/63/459, 1 October 2008, Sixty-third session, par. 37; Robert Tait, “Iran bans public executions amid death sentence boom”, *The Guardian*, January 31, 2008, <http://www.guardian.co.uk/world/2008/jan/31/iran.international> (accessed November 25, 2010).

<sup>98</sup> In 2003, the Iranian *Majlis* introduced a bill to increase the minimum age for executions to 18, in accordance with Iran’s international legal obligations. The Guardian Council, however, refused to approve the measure.

<sup>99</sup> UN General Assembly, Resolution 62/168, Situation of human rights in the Islamic Republic of Iran, UN Doc. A/RES/62/168, March 20, 2008. This resolution called upon the Government of the Islamic Republic of Iran “[to] abolish, as called for by the Committee on the Rights of the Child in its report of January 2005, executions of persons who at the time of their offence were under the age of 18”; and “Situation of human rights in the Islamic Republic of Iran” where the AG “deplores the execution of persons who were under the age of 18 at the time their offence was committed, contrary to the obligations of the Islamic Republic of Iran under article 37 of the Convention on the Rights of the Child, and articles 4 and 6 of the International Covenant on Civil and Political Rights and in spite of the announcement of a moratorium on juvenile executions” called upon Iran “to abolish … executions of persons who at the time of their offence were under the age of 18, and to uphold the moratoriums on juvenile executions and executions by stoning and to introduce these moratoriums as law in order to completely abolish this punishment; UN-Doc. A/RES/61/176, 1 March 2007. Annex 1.

## IV. Family, School and Society

When your family does not accept you and wishes the worst for you, what can you expect from society?

—Ali, Gay Iranian in exile, September 9, 2007

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. An overwhelming majority of the individuals interviewed by Human Rights Watch during the course of its investigations maintained that many of the problems suffered by sexual minorities stemmed from abuse and neglect at home.

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.

The failure of the state to investigate, prosecute, and punish private actors, including family members who perpetrate violence against Iran's sexual minorities, violates Iran's obligations under international law. These obligations include the responsibility to protect citizens “without distinction of any kind,” and to ensure that those whose rights are “violated have an effective remedy.” The right to a remedy exists regardless of whether the perpetrator is acting in an official capacity or a private one.<sup>100</sup> The UN Human Rights Committee has made clear on several occasions that sexual orientation is a status protected against discrimination under these provisions.<sup>101</sup>

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<sup>100</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 2.

<sup>101</sup> See UN Human Rights Committee Communication no. 488/1992, *Toonen v Australia*, , adopted April 4, 1994; UN Human Rights Committee Communication no. 941/2000, *Young v Australia*, adopted September, 2003. The Human Rights Committee has also urged states to pass anti-discrimination legislation that expressly includes sexual orientation, and to prohibit in their constitutions all discrimination based on sexual orientation and gender identity.

See UN Human Rights Committee, “Concluding Observations: Slovakia,” CRC/C/SVK/CO/2, June 8, 2007, para. 28, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/429/29/PDF/G0742929.pdf?OpenElement> (accessed November 5, 2010); UN Human Rights Committee “Concluding Observations: Namibia,” CCPR/CO/81/NAM, July 30, 2004, para. 22, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.81.NAM.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.81.NAM.En?OpenDocument) (accessed November 5, 2010); UN Human Rights Committee, “Concluding Observations: Trinidad and Tobago,” CCPR/CO/70/TTO, November 3, 2000, para. 11,

## Harassment and Abuse by Family and Relatives

For many LGBT persons, the bonds with their families are often strained—and even severed—leaving many more vulnerable to abuse than they otherwise might be with such a support system. These tensions, which often manifest themselves at an early age, lead family members to strictly monitor their children’s lives, lash out against them in frustration, anger, or shame, and sometimes abandon them altogether.<sup>102</sup>

Matin, a 24-year-old gay male from a small village outside of Esfahan recounted how he was summoned to the local cleric’s office in a mosque after his parents and school officials began to suspect that he was engaging in homosexual relations with other boys. Matin was around 13-years-old at the time:

When I went to the mosque the cleric asked me why I don’t come more regularly. “Why do you distance yourself from us?” he asked. “Why don’t you confide in me?” I denied that I had a problem. I challenged the validity of the allegations against me. He told me that what I was doing was wrong, and that I was shaming my family and the village. Then he asked, “Do you know what the punishment for *lavatis*? He read from the Quran, the part about Lot and God’s wrath. He then urged me to follow the right path and confess to my sins. “It’s never too late to change,” he said.<sup>103</sup>

Many LGBT Iranians interviewed by Human Rights Watch maintained that they felt “different” from others at an early age. Depending on their personalities and family situations, some were more comfortable in expressing their differences, while others shied away from social interaction. Most felt that this “difference,” often made them the targets of harassment and abuse, including sexual abuse, by both immediate and extended family members. Hossein M., a 26-year-old gay Iranian in exile, describes a pattern of harassment and abuse experienced by many LGBT persons at the hands of family members:

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[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.70.TTO.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.70.TTO.En?OpenDocument) (accessed November 5, 2010); UN Human Rights Committee, “Concluding Observations: Poland,” July 29, 1999, CCPR/C/79/Add.110, para. 23, <http://www.unhchr.ch/tbs/doc.nsf/o/a61dboe519524575802567c200595e9c?OpenDocument> (accessed November 5, 2010).

<sup>102</sup> Violence and abuse suffered at the hands of family members and relatives do not, of course, only affect young LGBT person or children who exhibit non-conforming sexual or gender identity. As in many other countries, children in Iran are punished, sometimes quite harshly, for any conduct deemed to violate acceptable social or cultural norms. This is particularly true of any sexual conduct that takes place outside the bonds of traditional marriage, whether heterosexual or homosexual in nature.

<sup>103</sup> Human Rights Watch interview with Matin, April 12, 2010.

Problems arise when family members start to realize that you are different from them because of your appearance, the way you act, or the things you say. They can't accept this, and your problems begin. For example when I was a child, the older cousins and children would always make fun of me and call me *bacheh susu*/[mama's boy] sometimes. They would even take me to an empty room and sexually violate me. After they were done they would call me a *kumi*[faggot].

My parents eventually became aware of this. They treated me very badly. My mother would say, "What have I done to deserve having a sick child?" She then threw me out of the house.<sup>104</sup>

Human Rights Watch found that family restrictions and monitoring were generally more severe against girls than boys. Not surprisingly, families ratcheted up the pressure once they suspected their daughters of showing too much interest in other girls. Roodabeh, a 30- year-old lesbian, recounts a fairly typical story of a mother's horrified reaction when she discovered her six-year-old playing with a girl cousin:

My first experience of liking a female was when I was six-years-old. I liked my girl cousin. We were always together. And sometimes we played doctor in their kitchen, during the afternoon while our mothers napped. I always liked to touch her. I would pull her shirt up and rest my head on her chest. And sometimes I would taste her breasts. One day my mother walked in on us. What a scene. The commotion that took place! I received a good beating. And then my mother grabbed me by the ear. We left dramatically. She shouted that I had shamed her.<sup>105</sup>

As Roodabeh got older, problems with her mother continued:

My mother would always say that I am "sick." She would ask, "Is it possible for a woman to like another woman in such a way?" And she was always surprised by my friendship with some of my female friends. She would always fight with me about this. I remember the first girl I fell in love with. Her name was Fatemeh.... My mother found out. When Fatemeh called she would

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<sup>104</sup> Human Rights Watch interview with Hossein M., October 2, 2006.

<sup>105</sup> Human Rights Watch interview with Roodabeh, April 9, 2008.

not give me the phone. And when I used to pick up the phone she would come on the line crying and saying, “You are a *hamjensbaz!* You are ruined! Now what should I do with you?”<sup>106</sup>

A large number of LGBT persons interviewed by Human Rights Watch indicated receiving beatings from their parents or siblings either because they acted on their sexual desires, or because they revealed their sexual orientation or gender identity to their parents. Saeed H. describes a fairly typical incident of abuse suffered at the hands of his father:

In ninth grade [where students are typically 15-16-years-old], when I first had a PC and access to internet, I would go into straight chatrooms and chat with boys. Eventually I found gay chatrooms. I met a boy in one of these chatrooms and he became my boyfriend. We started off by talking on the phone and after a while began seeing one another. Around this time my father found some gay pictures on my computer. He confronted me and severely beat me. I went home one day and he just started beating me. I managed to get out of the house and went to a friend’s house.... I left home and went to live with my boyfriend in a small town near Mashhad called Shahr-e Golabad, where my boyfriend went to university. I lived with him for eight to nine months. During this time I tried going back home but my father would not allow me inside the house. I talked to my mother occasionally from Shahr-e Golabad but had no contact with my dad.<sup>107</sup>

Interviews also revealed a common pattern of abuse suffered at the hands of older brothers. This abuse included harassment and threats, constant monitoring, and violence. Several interviewees recounted instances of violence perpetrated by siblings who allegedly worked with members of Iran’s security forces, including the police, *basij*, or *Sepah*.<sup>108</sup> Ali, a 25-year-old gay male, recalls:

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<sup>106</sup> Human Rights Watch interview with Roodabeh, April 9, 2008.

<sup>107</sup> Human Rights Watch interview with Saeed H., November 2, 2007.

<sup>108</sup> The *basiji*(Niruy-e Moqavemat-e Basij, or Resistance Mobilization Force) is a volunteer paramilitary force of men and women. It is “a large people’s militia” created by Ayatollah Khomeini in November 1979 to advance the aims of the Islamic Revolution. The *Basijis* are under the control of the Islamic Revolutionary Guard Corps (IRGC) and have branches throughout Iran, including in many social institutions such as schools, universities, mosques, and government offices. They engage in a wide range of activities, but one of their core duties is to help maintain law and order, repress dissent, and enforce their conservative interpretation of Islamic codes of dress and behavior; *Sepah* is short for *Sepah-e Pasdaran*, another name for the IRGC.

For me the biggest problems were within my family. As I got older, because of my appearance and behavior, things became worse. My older brother is very conservative and also religious. He works for the Ministry of Guidance. I was very different from my brother. You see, in conservative Iranian families like my family if a boy wants to change his appearance by plucking his eyebrows or growing his hair long, there are bound to be many problems. They don't understand these things. They think that being a homosexual is only about sex—a physical need. And this really hurts me. They see me as sick or crazy. When your family does not accept you and wishes the worst for you what can you expect from society?<sup>109</sup>

Ali went on to describe how his brother later found a video of him and his boyfriend, Sohail, sharing intimate moments:

I hid this film at my house and would watch it from time to time when I missed Sohail ... One day I took the film out from its hiding place and was watching it on a small handy cam. The film was only recorded on the handy cam and not on video. I did not know that my brother was home. While I was watching the film my mother called me to come downstairs. I left the handy cam next to my computer. While I was downstairs I suddenly heard my older brother screaming upstairs: "What have you done? What filth have you been up to!" He was in my room. I knew he had seen the film. He came downstairs and started beating me, saying that he would kill me. I managed to escape out of the house. I was very scared. My brother is connected to the *Sepah*.<sup>110</sup>

Farzam, a 26-year-old gay male from Talesh in northern Iran, recounted the beating that his brother, a *basiij*, gave him after he was arrested for attending a gay party in the city of Rasht in northwestern Iran:

A week later my brother came to the house. I went out to greet him. He beat me so hard he broke my nose and right hand. He struck me so many times he got tired after a while. Then he locked me inside a room and beat me with a hose.

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<sup>109</sup> Human Rights Watch interview with Ali, September 9, 2007.

<sup>110</sup> Ibid.

... He came back at night. My father didn't say anything to him. My brother said that I had shamed the family, and that he would kill me [if I continued down this path]. He said I was affecting his job. Later he shaved my eyebrows and hair with a razor. I didn't leave the house for a whole month.<sup>111</sup>

## Medical and Psychological Treatment

Human Rights Watch interviewed a number of LGBT persons who were directed, usually by their parents, to undergo medical and psychological treatment either because of their parents' suspicion or concern regarding their child's sexual or gender expression, or after the children revealed their sexual orientation or gender identity to family members. Families sought the assistance of a variety of health care providers, including family practitioners, gynecologists, neurologists, psychologists, and psychiatrists. Human Rights Watch also interviewed individuals whose parents had taken their children to "sexologists" and psychiatrists, mostly in Tehran, who specialize in the diagnosis and treatment of sexual and gender issues. Treatment options ranged from psychological counseling and testing, prescription medication such as hormone therapy, and the recommendation that patients consider sex reassignment surgery.

At least some interviewees told Human Rights Watch that they were coerced into undergoing ineffective or dangerous treatments to correct their sexual orientation or gender identity.

Shabnam, a 26-year-old lesbian, explains what happened to her and her girlfriend after she revealed her sexual orientations to their parents:

I went to a hormone doctor and after some tests he told my mother: "Everything is normal. Your daughter is a woman." I have also been to psychiatrists and taken pills. I was given [antidepressants] that made me nauseous and I slept all the time. Later, I found out that these are medications that they give to very sick people in hospitals.<sup>112</sup>

Mona, Shabnam's girlfriend, describes what happened to her when she told her mother that she is a lesbian:

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<sup>111</sup> Human Rights Watch interview with Farzam, April 9, 2010.

<sup>112</sup> Human Rights Watch interview with Shabnam, September 28, 2007.

My mother started crying. She said, “Don’t be upset, we will help you. Everything will be fixed.” I thought perhaps I could change. The next day we went to see a psychologist. I told the doctor everything. He told me to attend his psychotherapy sessions and promised he would cure me. But instead he told my mom everything I had told him [in private] and suggested that she send me abroad. My mom took me to another doctor. He wrote a prescription that was supposed to repress my sexual desires and gave me sleeping pills. He told me that I am mentally ill. I did not take it.<sup>113</sup>

The third doctor gave me the wrong dose of medication and I went into a coma for three days. I remember it was in a brown capsule. This is not a pleasant thing for me to remember. My mother was so upset and went to see the doctor. The guy came out and said, “It is not important, she is not worth it anyways.” After that they sent me to a hormone doctor. The results came out normal. They did not take me to another doctor again. After a while they suggested that I get married.<sup>114</sup>

Mona refused her parent’s wishes.

Farrokh, a 28-year-old gay male from Karaj, told Human Rights Watch that his parents took him to a series of psychiatrists and psychologists after he told them that he was gay. According to Farrokh, some of these specialists were self-styled “Islamic psychiatrists” who convinced him that he was not homosexual:

When I was 17-years-old my parents took me to a psychiatrist, in part because they suspected I was gay. I told my psychiatrist I thought I was gay and he told my parents. It was very unprofessional of him to do this. They started pressuring me. Then they took me to an Islamic psychiatrist who told me I had an illness but that I could get better ...

By the time I was 21 they had convinced me that I was, in fact, bisexual. Everyone is bisexual, they said. “If you want you can be a heterosexual.” So I got myself a girlfriend for a year and two months. But we never had sex. After some time we decided to sleep together, but I just got nauseous. So my

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<sup>113</sup> Human Rights Watch interview with Mona, January 27, 2008.

<sup>114</sup> Ibid.

relationship eventually came to an end. She thought I was being serious. I had been honest with her about my past, but I believed I could be straight [and she believed me].<sup>115</sup>

Another gay male, Saeed H., a 24-year-old gay male told Human Rights Watch that his parents checked him into a psychiatric hospital that subjected him to shock therapy when he was 20-years-old:

One day my parents came to my grandmother's house and forced me to leave with them. They took me to a psychiatric hospital called Dehkadeh Olumi located in Tehran. They checked me in against my will. The first day I was screaming and protesting so they gave me a shot, which made me very sleepy. The next morning and every other morning that I was there I was woken up early in the morning and given electric shocks. They would first give me an anaesthetic before shocking me. The doctor said that it would cure me. Each time they applied electric shocks to me my brain would slow down and my memory would get blurry. I was really depressed. My mother got upset because she realized that I was getting worse, not better. She begged my father and they stopped shock therapy. After a few days my parents agreed to have me released. I was at the psychiatric hospital for eight days. They gave me electric shocks five out of the eight days I was there. After I was released I did not return home. I cut all relations with my family. I was only with friends. I stayed with several of them. During this time I started to cut myself because I was severely depressed. I even had to go to the hospital a few times because of this.<sup>116</sup>

The provision of medical care to children and the right of parents to decide what is best for their children is a complex issue beyond the scope of this report. Notwithstanding these complexities, international law provides that a child has the right “to express his or her views and to participate ... [in] individual health-care decisions,” and that “children, including young children, should be included in decision-making processes, in a manner consistent with their evolving capabilities.”

In addition, Article 18 of the Yogyakarta Principles provides:

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<sup>115</sup> Human Rights Watch interview with Farrokh, April 5, 2010.

<sup>116</sup> Human Rights Watch interview with Saeed H., November 2, 2007.

No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.<sup>117</sup>

Article 18 specifically addresses treatment of children, and calls on states to "take all necessary legislative, administrative and other measures to ensure that no child's body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration."<sup>118</sup> It also calls on states to "establish child protection mechanisms whereby no child is at risk of, or subjected to, medical abuse."<sup>119</sup>

### **Harassment and Abuse at School, University, and Society at Large**

Many LGBT persons interviewed by Human Rights Watch indicated that primary school was one of the most traumatic periods in their life. This is the first time many were exposed to the harsh realities of the outside world, where looking, acting, or feeling different often meant ridicule, harassment, and at times, abuse suffered at the hands of classmates, teachers, and others. Many interviewees told Human Rights Watch that they were the victims of sexual harassment and abuse at school perpetrated by both classmates and teachers.

Mani, a 29-year-old gay male from Tehran, said:

In primary school, we realize we are different from our peers, and because of this we become the focus of ridicule. The [kids] call us names like *khaleh zanak* (literally "auntie lady") because we appear more feminine and because we don't like to play like other boys. It is from this time that we begin to think that there is in fact something wrong with us.<sup>120</sup>

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<sup>117</sup> The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, art. 18. In 2006, group of international human rights experts met in Yogyakarta, Indonesia and drafted a set of international principles relating to sexual orientation and gender identity. They presented the Yogyakarta Principles as "a universal guide to human rights which affirm binding international legal standards with which all States must comply." The Yogyakarta Principles, <http://www.yogjakartaprinciples.org/> (accessed November 13, 2010).

<sup>118</sup> Ibid., art. 18(b).

<sup>119</sup> Ibid., art. 18(c).

<sup>120</sup> Human Rights Watch interview with Mani, September 2008.

While some LGBT persons told Human Rights Watch that things got better for them after middle school and high school, others indicated that their problems only grew worse as they got older. Several individuals shared problems they encountered with university disciplinary committees (called *Edareh* or *Dafter-e Herasat*) or student *basijis*. Students caught for “immoral activity” were often suspended or expelled from school altogether. Several individuals told Human Rights Watch that their families pulled them out of school so they would not “shame” the family honor.

Hossein M. describes his expulsion from university:

I had searched and looked at gay pictures on my laptop at the university computer lab. I guess I was being monitored because shortly after I was stopped by the university disciplinary committee. I was taken into their office and told that that they had seen the sites that I had visited online. They accused me of spreading *hamjensbaz* culture in society and expelled me from the university.<sup>121</sup>

Farzam, a dental student at Azad University in Tehran, recounted what happened to him after he was caught kissing his boyfriend while attending university in 2008:

Ali-Reza followed me and we gave each other a short kiss next to the lockers. We didn’t realize there was a camera there. A few days later I went to get my papers signed for graduation. Instead they sent me to *Herasat* (government units charged with monitoring public order and security at universities and public institutions throughout the country).<sup>122</sup> They told me I had to go to see the president of the university. I asked if there was a problem, and they said no. They sent me to a room in which [name omitted], the head of *Herasat*, and the president were seated. I walked in and said ‘Hello.’ They did not respond. Then someone turned a monitor in the room on and there was a picture of me kissing Ali-Reza. “Why have you done this?” they asked. “You have a sexual disease.”<sup>123</sup>

University authorities eventually expelled Farzam from the university despite the fact that he was weeks away from receiving his diploma.

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<sup>121</sup> Human Rights Watch interview with Hossein M., October 2, 2006.

<sup>122</sup> *Herasat* offices at universities usually coordinate their activities with security and intelligent forces, including *basiji* students, and are responsible for spying and reporting on student activities on campuses.

<sup>123</sup> Human Rights Watch interview with Farzam, April 9, 2010.

In addition to the pressures at home and school, sexual minorities endure harassment and abuse from society at large. Hossein M. described his life:

From the time I started school up until university I had problems with other students and my teachers. As I got older I had problems when just walking in the streets. I took care of my appearance. For example, I plucked my eyebrows and styled my hair. These sorts of things are not accepted in Iranian society. I was often called names like *bacheh kuni* (young faggot). If I took a taxi, I was often propositioned and even molested. In stores the shopkeepers would jokingly say, “You don’t have to pay now. You can pay us in other ways later.” These things would really hurt me. I felt like I was a whore. My family would really restrict me. One time my father caught me in an intimate situation with another boy and as punishment he made me stick my hands in the toilet. At university many of my peers wondered why I didn’t look at the other girls. I was blackmailed a few times because some of my classmates suspected that I was into boys.<sup>124</sup>

Sohail, a 24-year-old gay male echoed Hossein’s concerns:

My primary problems have been with my family. Second to that there are the problems I have had in schools, in university, and with work. When I was younger in school no one wanted to befriend me. And later when I was older I could not find work because no one wanted to employ me—all of this because they thought that I was different. When my parents became aware they really restricted me. I was not allowed to leave the house without informing them about where I was going and what I would be doing. They were suspicious of boys my age from school who would call the house with homework-related questions. I had many problems at university with teachers, staff, and also other students. I was constantly reprimanded and harassed because of the way I looked and how I acted. Eventually my father made me withdraw from university because he was scared I would shame the family.<sup>125</sup>

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<sup>124</sup> Human Rights Watch interview with Hossein M., October 2, 2006.

<sup>125</sup> Human Rights Watch interview with Sohail, September 10, 2007.

## V. Government Harassment and Abuse in Public Space

I mean, how could you just pick someone up in the streets, take them away, rape them, and then just drop them back off as if nothing happened?

—Saba, gay Iranian in exile, September 28, 2007

Iranian law does not criminalize homosexuality *per se*, yet Iran's sexual minorities face regular harassment and abuse by members of Iran's police, security, and intelligence forces in public spaces throughout the country. Research suggests that the majority of street confrontations between security forces and sexual minorities likely occur not because individuals are targeted as part of a systematic effort to identify and root out sexual minorities, but because they get caught up in larger crackdowns by moral police ensuring that all Iranians comply with the country's Islamic dress code.<sup>126</sup>

Nonetheless, Human Rights Watch has documented cases where security forces seemed to single out individuals because they suspected them of being "gay," either because of their physical appearance, mode of expression, or where they were and with whom they associated with. Street confrontations occur more frequently in the capital Tehran and larger urban areas presumably because urban centers have larger populations of LGBT, public space is not as easy to monitor or regulate as in smaller towns, and sexual minorities tend to be more expressive with their physical appearance.

Common modes of expression for gay males include growing their hair, plucking eyebrows, shaving chest hair, wearing thumb rings, or applying makeup. These often incite and provoke the anger of police and *basij*/forces. Ahmad, a 26-year-old gay male from Shiraz, recounts how the city's moral police accost people in the streets:

A few times the moral police got me in the streets [of Shiraz] ... The guy took me into the street and slapped me across the face. I asked him what I had done. He said, "You look like a girl. You are like those gay men, like those *lavatkars*. Then he said, "Next time I catch you I'm really going to take care of you." He started kicking me so hard that a woman passing by pleaded with

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<sup>126</sup> These crackdowns seem to come in waves. Earlier in 2010, authorities rolled out the latest nation-wide campaign to combat social vice and crackdown on Iranians, particularly women, deemed to be flouting the Islamic dress code or engaging in other acts of "public indecency." See "Iran: Morality Police Launch Crackdown on Clothing and Hairdos Deemed Un-Islamic," *Los Angeles Times*, May 25, 2010, <http://latimesblogs.latimes.com/babylonbeyond/2010/05/iran-fashion-crackdown.html> (accessed December 9, 2010).

him and said, “What are you doing to this poor boy?” Then [the officer] got on his motorcycle and left.<sup>127</sup>

He continued:

The second time I had just come from Shiraz and it was summertime. [Police officers] searched my bag and found a necklace with a symbol of 32 men standing next to each other. They asked, “Why do you have this?” I answered, “I just liked it.” They also found lip liner in my bag. I have green eyes. They smacked me across my face really hard. I asked them why they did this, and they responded: “So your lenses fall out.” I said, “No this is my real eye [color].”

... Then one of them turned to his partner and said, “What shall we do with him?” His partner said, “Forget it, he’s dirty.” Then he turned to me and said, “Next time we catch you, we’ll whip you.”<sup>128</sup>

Moreover, cities such as Tehran have areas known to be frequented by gay men, MSM, and transgender Iranians (particularly transwomen).<sup>129</sup> At least some of these transwomen have been ‘diagnosed’ as suffering from gender dysphoria and received permits from authorities allowing them to appear in public dressed as women prior to their sex reassignment surgeries.<sup>130</sup> Despite legal recognition by the state, these individuals (and others with whom they associate in public areas, including gay men) are often easily identifiable by security forces and particularly vulnerable to harassment and abuse.<sup>131</sup>

A gay male told Human Rights Watch that a member of the *basij* stopped him when he was strolling alone in Daneshju Park in Tehran, an area commonly frequented by the city’s LGBT population. He told Human Rights Watch that at first the *basij* questioned him about why he was at the park, and then after a few minutes he sexually assaulted him: “We were in a

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<sup>127</sup> Human Rights Watch interview with Ahmad, November 30, 2006.

<sup>128</sup> Ibid.

<sup>129</sup> Tehran areas known to be “hangouts”—or *patoq*—for gay men and transgenders include Park-e Daneshju, Park-e Mellat, the area underneath Karim Khan bridge, and various restaurants or commercial spots. Authorities regularly shut down these restaurants or restrict access to families, but newer “hangouts” inevitably replace them.

<sup>130</sup> “Iran’s ‘Diagnosed Transsexuals’,” BBC, February 25, 2008, <http://news.bbc.co.uk/2/hi/7259057.stm> (accessed December 11, 2010). Pre-operative transwomen are still legally and biologically recognized as men, and cannot, therefore, engage in lawful sexual relations with other men. See section X for more discussion of Iranian laws and policies applicable to transgender Iranians.

<sup>131</sup> See section X for more discussion of discrimination and violence against Iran’s transgender and transsexual population.

secluded area. That's when he propositioned me. He grabbed my hand and put it on his crotch. I rejected him and he gave up.”<sup>132</sup>

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’had* (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.

It is not always easy to determine which security outfit is responsible for abuse against sexual minorities (and other socially non-conforming people) on Iran’s streets. In addition to regular police forces, numerous semi-official and “vigilante” organizations ostensibly dedicated to enforcing public morality operate in Iran, supported by the police and judiciary. In 2002, for instance, the Tehran police department formed sixty special patrols called Special Units, or *Yegan-e Vizhe*, to monitor public conduct in the city.<sup>133</sup> In late 2004, the judiciary began establishing, under its own supervision, a new group to police moral crimes called the *Setad-e Hefazat-e Ejtemai*; or Social Protection Division. This organization, primarily made up of unemployed former soldiers, was set up to control “the social ills of each neighborhood and region” as well as “deviant individuals.”<sup>134</sup> In July 2005, a senior judicial official in Qom, a city located southwest of Tehran, told reporters that 210 units of the Social Protection Division employing 1,970 formally accredited volunteers had been set up throughout that city. These divisions were tasked with reporting serious moral offenses to the “disciplinary forces of the Judiciary” for further action to be taken.<sup>135</sup>

LGBT persons interviewed by Human Rights Watch indicated that most street confrontations were initiated by two regular security forces: members of Iran’s Islamic militia, the *basij*, and

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<sup>132</sup> Human Rights Watch interview with Mohammad-Reza, April 19, 2010.

<sup>133</sup> See Charles Recknagel and Azam Gorgin, “Iran: New ‘Morality Police’ Units Generate Controversy,” RFE/RL, July 25, 2002, <http://www.rferl.org/content/Article/1100367.html> (accessed September 13, 2010).

<sup>134</sup> The division’s articles of association were apparently leaked to the Iranian press. See Letter from Human Rights Watch to Foreign Ministry of Sweden, Sweden: Stop Deportations of LGBT Iranians, October 8, 2006, <http://www.hrw.org/en/news/2006/10/08/sweden-stop-deportations-lgbt-iranians>.

<sup>135</sup> Ibid.

the national police force, *Niruy-e Entezamiy-e Jomhuriy-e Eslami* (NAJA).<sup>136</sup> Though considered a militia by many analysts, the *basij* are formally part of the state's security apparatus and operate under the guise of Iran's Revolutionary Guard Corps, which has direct ties to Iran's Supreme Leader. NAJA units most commonly involved in the harassment and abuse of Iranian LGBT persons are often referred to as the "moral police," or *niruhay-e mofased-e ejtemai*. Many street encounters involve *lebas shakshi*, or plainclothes officers affiliated with the *basij* or other security and intelligence forces.

A gay male, Hamid, a 26-year old described his harrowing encounter in 2007 with several *basij* members in Tehran:

They asked us if we were boys or girls. They ordered us to drop our pants so they could see for themselves ... I'll never forget it. It was dark. We pulled our pants down. Then they told us to get in their cars so they could take us to the detention facility. We cried and pleaded so much... [t]hey eventually let us go.<sup>137</sup>

Saba, a 32-year-old gay male from Tehran, was not so lucky. He told Human Rights Watch that security agents raped him several times following what appeared to be random street stops. He explained an encounter with plainclothes security forces in Tehran:

I was walking in the streets one day with my friend when two men in civilian clothing stopped us and asked us for our identity cards. I was surprised and asked him why he wanted to see my card. He said he was police and showed me an official-looking government ID. I don't remember exactly what was written on the card. I was so scared, I asked what we had done wrong. He said, "Don't act stupid. You know and we know what has happened." I said, "No, I don't understand. Please explain!" He said, "We have been keeping an eye on people like you." I understood what he meant.<sup>138</sup>

Saba continued:

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<sup>136</sup> NAJA is formally part of the Ministry of Interior.

<sup>137</sup> Human Rights Watch interview with Hamid, April 13, 2010.

<sup>138</sup> Human Rights Watch interview with Saba, September 28, 2007.

He told us that we had to go with them and that if we complied then we would not be harmed. He said, “Come with me I will bring you back here soon.” I was scared. I thought he was going to kill us. He kept saying things like “listening to me is in your best interest.” He hailed a private taxi. My friend and I got in the taxi. The other man, his colleague, followed our taxi on his motorcycle.

They took us to an empty house. When we arrived [one of them] said, “This is it. See, I told you you should believe me.” One guy took my friend to another room and the [other] man raped me. While he was doing it he kept telling me that if I cooperate with them they will not make trouble for us. Afterwards they put us back in the car and returned us [to our initial location]. I could not believe it. I went home, and I was sick. I had nightmares. I was just walking in the streets doing nothing. It was as if he did this routinely.

... I can never accept that this happened to me. I thought they were going to kill us.... How could you just pick someone up in the streets, take them away, rape them, and then just drop them back off as if nothing happened?<sup>139</sup>

Several gay men interviewed by Human Rights Watch believed they were victims of entrapment campaigns by *basij* designed to lure them into meeting other “gays” in public. A few spoke of members of the gay community who they believed were paid informants and had essentially “ratted them out.” Others described suspicious situations suggesting collusion between security forces and gay informants or individuals posing as such. Payam, the 22-year-old gay male from Shiraz, recounted:

One day, as I was walking in the street with my friend Ali, a boy started to follow us. I thought he was interested and was a bit scared. I tried not look at him but he came up to us and asked if he could use my mobile to make a quick call. He caught me off guard so I gave him my mobile. He made a quick call and went away. After Ali and I parted my mobile rang. I picked up and realized it was that same boy. He had called his own mobile with my phone. He introduced himself as Hamid. We started to talk and decided to meet the next night at the intersection of Molla Sadra. I had Ali come with me to the meeting place for safety. Ali was in his car across the street from where we had planned to meet. Hamid showed up but he was with a friend. He said,

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<sup>139</sup> Ibid.

“We have an empty house. Do you want to come with us?” I didn’t like the situation so I said no and got in Ali’s car.

About thirty minutes later he called me again and apologized. He suggested that we meet in Hakimi Street and said he would be alone. I agreed. As I approached Hamid I saw that he was with the same friend again. We started talking and all of a sudden two motorcycles pulled up next to us. There were five men, two on one motorcycle and three on the other. They were *basij*. They kept questioning us, and then lined us up against a wall and searched us. They told me to get on the bike but let Hamid and his friend go.<sup>140</sup>

They took Payam to the local *basij* station, where he was insulted, interrogated, and threatened. They eventually let him go without filing charges.

Human Rights Watch has not uncovered evidence suggesting that abuses perpetrated by Iran’s security forces are part of a systematic targeting campaign to identify and root out Iran’s sexual minorities. However, research reveals that harassment, arbitrary arrest, and abuse perpetrated by security forces against Iran’s sexual minorities on account of their public appearance are not uncommon. Some of these abuses ostensibly occur under the pretext of enforcing Iran’s penal code,<sup>141</sup> while others are carried out by renegade security forces who take the law into their own hands. These abuses, only a fraction of which have been included in this report, violate Iran’s international obligations, including Article 9 of the ICCPR prohibiting “arbitrary arrests” and guaranteeing all citizens the “right to liberty and security of person.”

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.

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<sup>140</sup> Human Rights Watch interview with Payam, September 27, 2007.

<sup>141</sup> See, e.g., Islamic Penal Code, Iran, art. 638 (regarding violation of religious sanctities in public).

## VI. Government Abuse Stemming from Invasions of Privacy

Kids had told us about things like this happening in chat rooms, but what could I do? This was the way I felt. I knew it was risky—and here I was.

—Farshad, gay Iranian in exile, December 7, 2006

In addition to abuse of sexual minorities in public spaces, Iranian security forces have harassed, abused, and arrested LGBT persons or individuals suspected of being LGBT by violating these individuals' privacy. Human Rights Watch has documented two primary methods employed by security forces which have led to the arrests of sexual minorities—raids of private homes where individuals are suspected of engaging in immoral activity and surveillance of internet sites visited by sexual minorities, primarily gay men.

Home raids by security forces, which have received much international attention over the past several years, seem to be part of a larger crackdown on immoral activity carried out in the private sphere, including sexual relations outside traditional marriage (of both the heterosexual and homosexual nature) and consumption or possession of alcohol and illegal drugs.

### Home Raids

Around 10 p.m. on Saturday, July 10, 2010, uniformed and plainclothes officers raided a private party in the city of Shiraz, in southwest Iran. At least 17 gay men, their boyfriends (several of whom did not self-identify as gay and consider themselves either bisexual or straight), and others were present. The party-goers were arrested on the spot and transferred to a detention facility located on Modaress Boulevard. The men first appeared in court on July 15.<sup>142</sup>

The Iranian Queer Railroad (IRQO), an Canada-based rights group dedicated to protecting the rights of Iranian LGBT persons told Human Rights Watch that the men were initially arrested on suspicion of *lavat*, satan worshipping, and alcohol use. Immediately following the arrests, LGBT persons in Shiraz were fearful that more arrests would follow as a result of information gathered during the interrogations and believed that information from the detainees' email accounts and Yahoo messenger IDs may be used to target the city's LGBT community.<sup>143</sup>

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<sup>142</sup> This information was provided to Human Rights Watch by the Iranian Queer Organization (IRQO), a Canadian rights group dedicated to documenting abuses by the Iranian government against Iranian LGBT as well as assisting LGBT refugees and asylum seekers.

<sup>143</sup> Ibid.

According to IRQO, however, authorities detained those arrested for approximately two weeks and then released them on bail. IRQO recently informed Human Rights Watch that prosecutors have dropped charges against the men. Human Rights Watch has not been able to independently confirm this information.

This recent Shiraz incident is typical of raids conducted by security forces in which gay and bisexual men, and sometimes transgender people, are arrested. Human Rights Watch has documented several such raids in recent years during which dozens of gay, bisexual, transgender, and straight men were arrested and detained.<sup>144</sup> It is not always clear whether the raids followed targeted surveillance of private residences, or whether they were carried out in response to a tip (for example, from a disapproving neighbor). In at least one case, an individual said the *basij* coerced him into informing them about a gay party in Tehran after he and his friends were caught with alcohol at a checkpoint. According to the witness, the *basij* forces promised a lighter sentence if he provided such information. Kamran describes what happened when they led the *basij* to the party:

We went to the party, rang the bell, and went upstairs. [When the hosts opened the door] they were all shocked to see us with the authorities. There were about 10 people [at the party], four of whom were transgender. The *basij* came in and when they realized what was going on and who was there they forgot about [the alcohol]. They didn't even tell us why they were there. They immediately lined everyone up against the wall and searched them. They found a condom on someone. Then one of them called for a backup car and took all of us downstairs. It was a minibus. They took us to a station on Piruzi Street.<sup>145</sup>

Kamran told Human Rights Watch that none of the individuals at the party were charged with *lavat*, but several were charged, convicted, and sentenced for other moral offenses such as possession and consumption of alcohol.

Perhaps the most infamous raid on a gay gathering occurred around 10 p.m. on May 10, 2007, when police and *basij* units raided a private birthday party in an apartment building in the city of Esfahan. They arrested 87 persons, including four women and at least eight

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<sup>144</sup> See, e.g., "Iran: Private Homes Raided for 'Immorality,'" Human Rights Watch news release, March 27, 2008, <http://www.hrw.org/en/news/2008/03/27/iran-private-homes-raided-immorality>; "Iran: End Arrests on Immorality Charges," Human Rights Watch news release, May 16, 2007, <http://www.hrw.org/en/news/2007/05/16/iran-end-arrests-immorality-charges>.

<sup>145</sup> Human Rights Watch interview with Kamran, October 31, 2007.

people who were accused of wearing the clothes of the opposite sex. The police and *basij* agents led those arrested to the street, stripped many to the waist, and beat them until their backs and faces were bloody. According to several sources who spoke to Human Rights Watch, several of those arrested suffered broken bones. The authorities released the four women the next day, along with a child.<sup>146</sup>

Family members were not allowed to see those detained, and many were denied lawyers. Of those arrested, 24 men were eventually tried for “facilitating immorality and sexual misconduct,” as well as possessing and drinking alcohol. In June 2007, a court in Esfahan found all of them guilty of various combinations of these charges. Most were sentenced to up to 80 lashes and to fines of 10 million to 50 million riyals (US\$1,000-5,000).<sup>147</sup>

The Esfahan party raid appeared to be part of a nationwide crackdown to enforce dress codes and conduct. After the raid, police intensified surveillance, harassment, and abuse of individuals connected to the 87 arrested people. Several individuals told Human Rights Watch that they were detained by police and interrogated to reveal contacts.<sup>148</sup>

Maziar, a 35-year-old gay male from Esfahan, attended the party and narrowly escaped arrest. He described harassment and surveillance by police following the arrests:

Two or three days after this incident ... I started to get really suspicious calls on my mobile. [The people who called] would not identify themselves. They would just say, “We are *basij*, you have been identified as a *hamjensbaz*, and you must come and present yourself to us.” I would pretend it was someone else and just hang up on them.

... One day two to three weeks before I left Iran I was at work and they went to my home. I lived with my parents and my family later told me that they said, “Your son is part of a group of Esfahani *hamjensbaz*” and he needs to report to the police station. When I got home I was confronted by my family. This was about 10 days after the party.<sup>149</sup>

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<sup>146</sup> “Iran: End Arrests on Immorality Charges,” Human Rights Watch news release, May 16, 2007, <http://www.hrw.org/en/news/2007/05/16/iran-end-arrests-immorality-charges>.

<sup>147</sup> “Iran: Private Homes Raided for ‘Immorality,’” Human Rights Watch news release, March 27, 2008, <http://www.hrw.org/en/news/2008/03/27/iran-private-homes-raided-immorality>.

<sup>148</sup> Ibid.

<sup>149</sup> Human Rights Watch interview with Maziar, October 2, 2007.

In December 2007 and February 2008, police raided two private gatherings in Esfahan and arrested at least 46 more people, subjecting some of them forensic examinations to look for “evidence” that they had engaged in same-sex conduct. Some remained in jail for weeks without access to lawyers and without charge.<sup>150</sup>

Hossein M., a 26-year-old gay male from Tehran, recounted his experience after attending a gay party in that city:

My last arrest was the reason I left Iran. In the winter of 2007 my partner and I went to a gay party in Tehran that was raided by the *basij*. We were caught having sex at the party and were taken to a *basij* base located in the basement of a building. We were about 15 people. They put us all in one room. We were held there for four nights and then tried at the Emam Khomeini courthouse for the crimes of homosexuality and participation in a corrupt gathering. We were all sentenced to 80 lashes [for the corrupt gathering charge] and were told to return to court in a month for our sentences to be carried out.

Some people at the party had taken pictures of us on their mobiles. The *basij* had confiscated everyone’s mobiles and had seen these pictures. I know this because later on they tried to make us confess to the crime of *lavat* and said that our final punishment would be execution, and that they would use the pictures as evidence against us. After five days in custody I was released on bail. My family put up my grandmother’s apartment as security. After we were released my partner’s uncle also told us that the *basij* had shown him the pictures. The official summons came on the May 15 and required that we present ourselves to the court on the 30th. My partner and I escaped Iran before our court date.<sup>151</sup>

The police have raided parties in smaller cities as well. Farzam, a 26-year-old gay male, told Human Rights Watch that *Sepah* and plainclothes officers raided a gay birthday party he attended in 2004 along with 24 other people in Rasht, a city in northern Iran. There was alcohol at the party. Farzam explained that the *Sepah* entered by breaking down the door, accompanied by plainclothes agents. He described how they gathered all the guests and

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<sup>150</sup> “Iran: Private Homes Raided for ‘Immorality,’” Human Rights Watch news release, March 27, 2008, <http://www.hrw.org/en/news/2008/03/27/iran-private-homes-raided-immorality>.

<sup>151</sup> Human Rights Watch interview with Hossein M., October 2, 2006.

beat them with batons, broke bottles, and tore the place apart in search of drugs and incriminating evidence. He said that they transported the guests to a detention facility and interrogated them until the next morning. The day after the party, according to Farzam, prison authorities administered 30 lashes and forced the detainees to take off their shoes and walk home barefoot.<sup>152</sup> Farzam told Human Rights Watch that the basis for the corporal punishment was not immediately clear to him.

## Internet Surveillance

In June 2004, according to information provided to Human Rights Watch, undercover police agents in Shiraz arranged meetings with gay men through internet chat rooms and arrested them. As part of the crackdown, police arrested Amir and held him in detention for a week, beating him repeatedly. Judicial authorities in Shiraz sentenced Amir to 175 lashes, 100 of which were administered immediately. Amir told Human Rights Watch that he did not know the crime with which he was charged and was never informed of the reasons for his conviction. Following his release, security officials subjected Amir to regular surveillance and arbitrary arrests, he said. Amir told Human Rights Watch that from July 2005, the date of his release, until he fled the country later in the year, the police threatened him repeatedly.<sup>153</sup>

News of the 2004 arrests in Shiraz and other major cities spread on the internet, causing concern among Iran's LGBT community. According to some LGBT rights groups outside Iran, security forces regularly monitored popular internet dating sites for both gay and straight men such as *Manjam* in order to lure and entrap unsuspecting gay men.<sup>154</sup> Human Rights Watch has not been able to confirm the methods and capabilities of the government when it comes to monitoring LGBT sites, nor has it secured evidence suggesting that Iran's security forces or judiciary have engaged in a systematic campaign to target and entrap gay men and other members of Iran's LGBT community. Despite this, Human Rights has, over the years, gathered accounts from several individuals, primarily gay males, alleging that they were caught through internet entrapment stings.

Ahmad, from Shiraz, is one of several gay males whom plainclothes officers arrested after allegedly setting up a date through the internet:

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<sup>152</sup> Human Rights Watch interview with Farzam, April 9, 2010. Punishment for crimes such as "participating in a corrupt gathering" is usually administered quickly and efficiently pursuant to a short trial before an administrative judge.

<sup>153</sup> Human Rights Watch interview with Amir, September 16, 2005.

<sup>154</sup> Human Rights Watch interview with Arsham Parsi, March 16, 2006. *Manjam* is a popular dating site that caters to both straight and gay men. Several individuals interviewed by Human Rights Watch during the course of its investigations expressed concern about the safety of this site.

I'd gone into a chat room where I saw an onscreen message saying "I want an active gay man." I responded and a few minutes later I got an instant message. I would normally never have responded because my family was well-known in Shiraz. But I replied and said I am a gay man in Shiraz. It was about three or four in afternoon. And he replied to my message. I asked him what he looked like. He told me so and so and very fast he sent me web pictures, which was unusual because in Shiraz they don't usually send that fast. He asked me what I looked like. I said I'm lighter, I have green eyes. He was really my type from every point of view. I really liked him. He said, "When can we see each other? Can we meet at 6 o'clock?" I was very excited.

... We met on a street called Zaqeri Street near a billboard. He introduced himself as Mohammad. I said I'm Danny. He said, "Where should we go?" I said, "let's go toward Chamran Street." He said, "No let's go somewhere more private. Let's go into a quieter street around that area."

... We hadn't gone but 15 meters when a car pulled up, and the driver ordered me into his car and called me a *bacheh kuni*.<sup>155</sup> I turned around to Mohammad and looked at him and said, "Do you know this guy?" He said nothing. The guy in the car got out and pushed me into the car. Mohammed then came and sat next to me in the back and said, "Do you want to have sex, [expletive]? I'll take you with me and have sex with you in such a horrific way that..." Then he told me to shut up and keep my head down. I asked him, "What have I done?" He slapped me hard and I just kept crying. He turned to the driver said, "Between you and me, he's not a bad looking guy is he?" I was shaking so hard—my whole body still shakes when I tell you this story.<sup>156</sup>

Ahmad was eventually charged and convicted of "inciting immoral behavior" and sentenced to 100 lashes, which were administered. He told Human Rights Watch that he endured constant verbal and psychological harassment during his time in custody, both from law enforcement and judiciary officials.

Amir, also from Shiraz, told Human Rights Watch that he was chatting with someone in an Iranian gay chat room in. The person asked him what kind of man he was looking for, and Amir

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<sup>155</sup> *Kuni* is a derogatory term for gays. *Bacheh* means 'kid' or 'young' in Farsi.

<sup>156</sup> Human Rights Watch interview with Ahmad, November 30, 2006.

described his ideal partner. A few minutes later someone logged in who described himself as having the exact profile Amir sought. Amir asked for a photo and the man sent one. They communicated with a webcam for a short while and agreed to meet later that day in a public area. Less than a minute after they met, someone came up behind Amir, tapped him on the shoulder, handcuffed and blindfolded him, and shoved him into the back of a waiting car. Amir’s “date” then exchanged pleasantries with the arresting officer and walked away.<sup>157</sup>

During the drive to the local detention center, the arresting officer asked him if “he really missed dick,” Amir recalled. The officer threatened to take him to an army barracks where he would be raped. He endured seven days of interrogation and beating at the hands of police officers. During the interrogation, he was presented with the transcript of his chat room conversation. The interrogators also told him that they knew of his prior arrest. Amir describes one of the exchanges he had with an interrogator:

Interrogator: Tell me the details of your sexual behavior.

Amir: Hugs, kisses, caresses.

Interrogator: Come on, you never have sex?

Amir: No.

Interrogator: You must do something else.

Amir: Well, sometimes I may do oral.

Interrogator: Would you do me now?<sup>158</sup>

After seven days of interrogation, Amir returned to the courthouse where he was sentenced the first time. He told Human Rights Watch that he did not know what crime the authorities had charged him with. His photo from the chat room and the transcript were presented as evidence against him. He was then asked questions by the presiding judge:

Judge: Have you engaged in penetration?

Amir: No, I only made out with other men.

Judge: What does that mean?

Amir: Hugs, kisses.

Judge: You’ve never done penetration either way? I can send you for a medical exam. If it comes back positive, you will be charged.<sup>159</sup>

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<sup>157</sup> Human Rights Watch interview with Amir, September 16, 2005.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

Amir was never convicted of *lavat*, nor was he subjected to a physical examination. He told Human Rights Watch he was instead sentenced to 175 lashes and released after authorities administered the punishment.

Iraj, another gay male from Shiraz, explained an online encounter that he believes led to a police search of his home:

I met a guy online ... He introduced himself as Ahmad. He said he really liked me and wanted to meet me on the Yahoo Messenger webcam. I had always been very careful presenting my face or image online, so I said, “No, I don’t feel comfortable. Let’s meet in person.” But before that I said, why don’t you show me who you are?” He presented himself online through the webcam. He was wearing sunglasses and I asked, “Why don’t you take off the sunglasses?” But he wouldn’t. I wasn’t keen to have the meeting take place then, so instead we just chatted for about a week.

[One day] he said, “I have a computer software store and you can come by there.” We arranged a meeting for me to come by the store. I don’t know why but I didn’t feel scared at all. I felt comfortable. He seemed familiar to me so I didn’t question him. He had given me a phone number to arrange the meeting before going and I called it from my house line.

... We arranged it so I would go to his store at 5 p.m.... The store was in a shopping mall in Shiraz called *Molasadra*, which is a place where [you can find] all sorts of computer software. I walked into the *pasaj* [outdoor mall] and recognized him from a distance based on the picture he had given me on the webcam. He was standing with two other men. I thought he was in a meeting so I decided not to disturb him.

I waited 10 or 15 minutes before speaking to him. I was about to leave when I noticed one of the men was carrying a walkie-talkie—the way *basij* carry it—around his waist. Even the memory of this disturbs me. I got so frightened I returned to my grandmother’s house.<sup>160</sup>

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<sup>160</sup> Human Rights Watch interview with Iraj, December 13, 2006.

Iraj continued:

A few hours later I tried to call my sister again and she picked up this time. She was crying. She said the Ministry of Intelligence had been to my house and had searched my room.<sup>161</sup>

Human Rights Watch has also gathered evidence of possible internet entrapment incidents in other large cities such as Esfahan and Tehran. In March 2008, for example, Esfahan police apparently entrapped several men over the internet by answering personal advertisements and interrogated them to reveal the names of friends and contacts. Police found erotic pictures of men on another man's mobile phone after arresting him, and a court reportedly sentenced him to three years in prison.<sup>162</sup>

Mohammad S. recalls how he was caught in 2007 after he met someone named Arash in a popular Yahoo chat room in Tehran:

We decided to meet one day in public. He told me: "You decide when it would be the most appropriate for us to meet. So I looked on my calendar and was looking for a day off other than the regular Friday night. I wanted it to be a Thursday night so it would be crowded in the streets. We met on July 26, 2007.

We decided to meet at a shopping mall on Vali Asr Street. We met in front of the store and we walked a little toward the nearby Daneshju Park. We walked around for a bit in the park and sat down; he told me a little more about himself and I told him about myself. After a while he said, "If you want we can go somewhere less public so we can be closer together." So we walked and we found a small street that was relatively deserted. He took my hand and started to play—touched me, rubbing me.

All of a sudden he grabbed my wrist really tight. I tried to pull away. "Why are you grabbing me so hard?" I said. He pushed me in the direction of a white Paykan<sup>163</sup> that was parked in the street. Two *hezbollahis* [security agents]

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<sup>161</sup> Ibid.

<sup>162</sup> "Iran: Private Homes Raided for 'Immorality,'" Human Rights Watch news release, March 27, 2008, <http://www.hrw.org/en/news/2008/03/27/iran-private-homes-raided-immorality>.

<sup>163</sup> Paykan is an Iranian-made car that is no longer in production.

with beards came out of the car.<sup>164</sup> They looked like *basij*. They tried to force me into the car and I resisted, but they finally kicked me in the back of the legs and forced me into the car.

In the car they kept calling me *lavatkarand kuni* and saying that I was an animal for desiring these kinds of things. With the driver we were five people in the car. Arash got in front. I and the other two guys were in the back. I realized then that he had tipped them off ... I said, “What are you doing to me? You have no evidence against me!” Arash reached into his bag and pulled out some photocopies and said, “These are all my chats with him.”<sup>165</sup>

Authorities detained Mohammad S. at a local police station for three days before he was tried in front of a judge. He told Human Rights Watch that police officials subjected him to constant verbal abuse. His informant, “Arash,” was also present during his trial, which lasted approximately 30 to 45 minutes. He was forced to sign a *ta’had* (a written declaration promising that he would no longer engage in the “unlawful” activity in question) promising not to visit gay internet sites and lashed 100 times before being released. He does not know the crime with which he was ultimately charged and convicted.<sup>166</sup>

Farshad, a gay male from Esfahan, provided similar testimony of an incident that occurred in 2004:

[I] used to go to a chat room called *Gay Room* to find others like myself. People were there from all different cities. We would identify ourselves with pictures and webcams, and describe what we looked like and how tall we were. I arranged a meeting with someone who said he was about 23-years-old. He sounded very attractive from his description.

We arranged to meet in the street. He said he knew of an empty house so we decided to go there. We had decided to take a taxi when a car pulled up with two [men] sitting in the front and one in the back. We got in. I sat in the back between the guy who was already in there and the one I had met. As soon as the car started to move, two men pulled my head down between the two

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<sup>164</sup> *Hezbollahi* is a generic term that refers to security agents, whether members of Iran’s uniformed police, plainclothes agents, or *basij* militia members, who are charged with pursuing “moral” indiscretions in public.

<sup>165</sup> Human Rights Watch interview with Mohammad S., 2007.

<sup>166</sup> Ibid.

seats, blindfolded my eyes, and began beating me. They called me the worst names—I don't feel comfortable repeating them.

... It was then that I realized that I'd fallen into a trap. Kids had told us about things like this happening in chat rooms, but what could I do? This was the way I felt. I knew it was risky—and here I was.<sup>167</sup>

Farshad was taken to an unknown location, blindfolded, and severely beaten. He believes the detention facility was run by the local police. Authorities informed him that he was lucky that he was not “caught in the act” and forced him to sign a *ta’had* promising that he would never visit gay chat rooms again. Farshad was released after about two days in custody.

The ICCPR affirms the right to privacy (article 17), security (article 9), and freedom of expression (article 19), freedoms that are routinely and systematically violated by the Iranian government’s efforts to control and monitor the conduct and speech of Iranians, even in the private sphere. Home raids and internet surveillance carried out by Iran’s security forces violate the fundamental rights of all Iranians, not just Iran’s sexual minorities, under the guise of moral conformity.

Human Rights Watch has repeatedly called on the Iranian government to respect its citizens’ right to privacy in the home, and not to censor, control, or monitor speech on the internet. Despite these requests, however, the Iranian government continues to employ its security forces, including the Revolutionary Guards, to monitor and control private conduct in violation of Iran’s international obligations.<sup>168</sup>

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<sup>167</sup> Human Rights Watch interview with Farshad, December 7, 2006.

<sup>168</sup> See, e.g., Human Rights Watch, *False Freedom: Online Censorship in the Middle East and North Africa*, vol. 17, no. 10(E), November 2005, <http://www.hrw.org/en/reports/2005/11/14/false-freedom>; see also “Iran: New Coordinated Attack on Human Rights Groups,” Human Rights Watch news release, March 24, 2010, <http://www.hrw.org/en/news/2010/03/24/iran-new-coordinated-attack-human-rights-groups> (discussing role of the Revolutionary Guards in monitoring and shutting down websites).

## VII. Ill-Treatment and Abuse by Security Forces during Detention

Once inside, they put us in a cell and tied aprons around our waists. Then the two men who had bought us in sexually assaulted us.

—Hossein M., a gay Iranian in exile, October 2, 2006

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

Human Rights Watch has gathered testimony indicating that security forces use physical abuse and torture, including beatings and whippings, against LGBT persons who are held in their custody. Farshad told Human Rights Watch that police flogged him in 2004 because he refused to sign a *ta'hod* promising that he would not visit gay internet sites anymore:

I was still blindfolded when they took me into a house. I later found out it was a sort of school. They took off my blindfold. I saw that there were about eight to ten people there, including the person I had arranged to meet [online]. They started to beat me and call me the worst names possible until they broke my pride. They threatened to kill me and hang me, and then they beat me.

... A person came ... He said, "You're very lucky that we didn't catch you in the act, because if we had we would have made sure that you received the death sentence." He placed a paper in front of me and tried to get a confession out of me. He asked for my name. The paper indicated that I had been in a chat room, and I had to swear never do this again.

... I told him I will not sign this. So they laid me down on a kind of bed and with a watering hose they started to whip me. My hands were tied to the bed while they were doing this. It was as though smoke were coming from my back. They were saying the worst things to me. I felt that my back was bleeding. After about 30 to 40 minutes I decided to sign the piece of paper.

But when they put the paper in front of me I told them I would not do it. There was no reason for me to sign it. After I said no, they tied me up to the bed again and resumed whipping me.<sup>169</sup>

After this, the same men took Farshad in a car, blindfolded, to an area outside the city. They pushed him out of the car. He waited until he heard the car drive away before taking off the blindfold. He found himself in the middle of nowhere. It was dark.<sup>170</sup>

Ebrahim, a 22-year-old from Tehran, who was walking with his boyfriend at Vanak Square in Tehran had a similar experience. He told Human Rights Watch that he was holding hands with his boyfriend—which is not necessarily uncommon for straight men—when several police officers approached him.<sup>171</sup> His boyfriend was wearing some makeup. Ebrahim told Human Rights Watch:

We are a minority here. It's obvious that we are gay and this is the reason they took us in. It's evident to others and hard for us to deny it based on the way we act.<sup>172</sup>

Ebrahim asked why they were being stopped and the police replied that he and his boyfriend had “behavioral issues.” He said the police loaded them into a van and took them to the local station. Once there, the authorities wiped the make-up off his boyfriend’s face, repeatedly slapped the two, and locked them up until the next morning.

Ebrahim told Human Rights Watch that police directed him and his boyfriend to sign a *ta’had* promising that they would never see each other again and would no longer frequent gay *patoqs* or hangouts. He said they were scared into signing the document and did so without reading it. Neither of them was given a copy. Ebrahim was later told by one of the officers that in addition to promising not to be seen in public together, the *ta’had* required that they no longer wear improper clothing or makeup.<sup>173</sup>

During its investigations, Human Rights Watch also interviewed several gay men who provided vivid accounts regarding inappropriate touching and rape while being detained.

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<sup>169</sup> Human Rights Watch interview with Farshad, December 7, 2006.

<sup>170</sup> Ibid.

<sup>171</sup> Ebrahim told Human Rights Watch that it is not uncommon for straight boys to hold hands in Iran.

<sup>172</sup> Human Rights Watch interview with Ebrahim, March 30, 2006.

<sup>173</sup> Ibid.

Amir, the 22-year-old gay male who was arrested at a private party in Shiraz, was beaten in custody. He told Human Rights Watch that during his interrogation in 2003 his interrogators blindfolded him and shoved a dildo in his mouth, which they had found during the party raid. One interrogator asked him: “In what position do you have sex?” They threatened that if he did not answer the question they would have him examined by a forensic doctor.<sup>174</sup>

In Qom, one of Iran’s most conservative and holy cities, Hossein M. was stopped by police in 2006 along with his partner presumably because of their appearance. He describes the humiliation he and his friend endured when taken to a detention facility:

I was arrested a second time in Qom with my partner. We had gone to Qom to visit a friend. My partner was wearing a little make-up and had long hair at the time. We were stopped by two men in civilian clothing. They were *hezbollahi* [plainclothes security agents]. One of them said, “You two are *hamjensbaz!*” We argued and they took us to the army staff enforcement base in Qom. This is a special base for moral police whose job is “Enjoining the Good and Prohibiting the Forbidden.” They are, in fact, a select group of *basiji*, and they have orders from the judiciary to act against un-Islamic behavior. Once inside, they put us in a cell and tied aprons around our waists. Then the two men who had brought us in sexually assaulted us. We were kept there for twenty-four hours. The next morning they shaved our heads, forced us to sign a piece of paper, and told us to go back to Tehran and never set foot in Qom again.<sup>175</sup>

Saba from Tehran recounted his experiences with police agents in 2001:

[I] was arrested in northern Iran in a small street while being intimate with my boyfriend. We were in a side alley. We were kissing. Someone came from behind and grabbed me by my elbow. I got scared. I turned around and my boyfriend ran away. [The guy] demanded that I come with him and took me to the [local police station charged with] combating “social corruption.” He put a blank piece of paper in front of me told me to sign it. He told me to write: “I am gay and I have sex with men.” I did everything he said because I was scared.

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<sup>174</sup> Human Rights Watch interview with Amir, September 16, 2005.

<sup>175</sup> Human Rights Watch interview with Hossein M., October 2, 2006.

... He raped me three times on three separate occasions. He said that he would turn over the paper I had signed to the courts if I ever told anyone [what had happened] or refused to come back and see him again ... I went home then but went back [out of fear] only to have him rape me again. He was [a member of the local police force] but wore civilian clothing.<sup>176</sup>

Farrokh, a 26-year-old gay male, was picked up by two plainclothes security agents on the streets of Karaj after the June 2009 presidential election. Farrokh and a friend worked for candidate Mehdi Karroubi in the city of Karaj, about 20 kilometers west of Tehran. They were putting up posters commemorating the 40th day of the death of Neda Agha Soltan, a demonstrator killed by sniper fire in the streets of Tehran during post-election protests.

We were taken to an unknown location [inside a building]. I was blindfolded. “Who told you to do this? You are *monafeqin* [hypocrites],” he said.<sup>177</sup> Then he asked about my hair and my eyebrows. They separated us. “You are a lesbian!” I told him I had to be a girl before I could be a lesbian. They beat me. I told them I was a transsexual, and that in Iran transsexuals are protected by the law and he was required to protect me. I reminded him that Khomeini had issued a fatwa protecting transsexuals.<sup>178</sup>

The security agent’s response was to beat Farrokh. They then told him that they planned on “tak[ing] him somewhere and find[ing] him a husband.”<sup>179</sup> They then raped him, Farrokh said.

Navid, a 42-year-old gay male, told Human Rights Watch about an attack he suffered at the hands of two plainclothes agents whom he later discovered were members of the local *basij*. In 2007, Navid was on his way home from the café that he owned in a small town outside Tehran, which is a popular spot among young people, when two agents picked him up. Navid believes he was targeted because of his long hair and appearance. The *basij* handcuffed him and escorted him to his house. When they arrived, they pushed him out of the car, beat him, and forced him inside. Once there, they found a carton of “immoral”

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<sup>176</sup> Human Rights Watch interview with Saba, September 28, 2007.

<sup>177</sup> The Iranian government uses the term “*monafeqin*” to refer to members of the resistance group the Peoples’ Mojahedin-e Khalq (often referred to as the PMOI, MEK or MKO).

<sup>178</sup> Human Rights Watch interview with Farrokh, April 5, 2010. For a discussion regarding Khomeini’s *fatwa* regarding transgender Iranians, see section X.

<sup>179</sup> Human Rights Watch interview with Farrokh, April 5, 2010.

material (CDs and gay images). Then, according to Navid, they took off his clothes and sexually assaulted him:

[One of them] forced his penis inside my mouth. I threw up and dirtied myself. They dragged me into the bathroom and washed me down with cold water. The whole time they continued to beat me all over. Then one of them found a satellite receiver and told me to say goodbye to my place for at least six months.<sup>180</sup>

The agents dressed Navid and forced him back into the car. They drove to another location, which they told Navid was a “guest residence.” They pulled him out of the car and beat him another time. There was another *basij*/there who opened the door of the residence as the other two pushed him in and locked him inside a kitchen. Navid describes what happened next:

There was a foul-smelling and dirty kitchen full of cockroaches. [One of the agents] took my clothes off. He then raped me with a flashlight and a baton. He just pushed me down to the ground and raped me. The other two joined in.<sup>181</sup>

After they were done, one of the agents handed a confession letter to Navid and told him to sign it. When Navid asked about the letter, they told him that it was his execution order. They then beat him more until he signed the letter, after which they dragged him outside, poured cold water and dishwashing liquid over his head, and told him to wash himself. After he was finished washing himself, one of the *basij*/took out a knife and cut his long hair. “You are responsible for bringing AIDS to [our town]!” he said. “You open restaurants to poison our children with AIDS!”<sup>182</sup>

Navid said he endured several more hours of physical and verbal abuse before the agents transferred him to a local police station. He told Human Rights Watch that when the agents presented local authorities there with Navid’s confession letter and materials they had confiscated from his home, they were informed that the forced entry into Navid’s home was improper and the confession letter was invalid. They prepared a new letter for Navid and forced him to sign it. Navid told Human Rights Watch that he was tried for *lavat* and

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<sup>180</sup> Despite the fact that it is unlawful to possess or use a satellite receiver in Iran, many Iranians own one.

<sup>181</sup> Human Rights Watch interview with Navid, April 13, 2010.

<sup>182</sup> Ibid.

possession of a satellite receiver and bootleg CDs. He was eventually acquitted of the *lavat* charge because the state could not produce evidence indicating that had engaged in sodomy, and was only convicted of possessing a satellite receiver and fined.

Matin, a 24-year-old gay male, was arrested by local police in 2007 after a few eyewitnesses complained to the police that he and his friends had engaged in sodomy in a public garden outside Esfahan. He told Human Rights Watch that his friends who were in the garden with him had decided to coordinate their stories and blame the whole affair on him and another friend. He denied that he had engaged in sodomy.

Matin described several days of prolonged detention, beatings, and torture, which he claimed were designed to force him to confess. Matin also told Human Rights Watch that prison officials raped him several times during his detention, and that he had suffered serious injury as a result. His friend, Ehsan (also gay) yielded to the pressure and confessed to *lavat*. Matin, however, kept resisting. He describes the initial beating and torture that took place at the police station:

They suspended us by our legs with handcuffs and hosed us down with cold water. They did this for five to ten minutes. If we didn't answer their questions "properly" they would do it again. Meanwhile, they repeatedly punched me and struck me with a baton.<sup>183</sup>

Matin says all the others, including Ehsan, were eventually freed. He told Human Rights Watch that he believed they were well-connected and were thus able to influence police officials. However, he remained in detention for another two to three weeks. He explained the despair he felt during this time:

I couldn't take it anymore. I attempted suicide. I fashioned a noose with my undershirt. But they saw everything through the camera [that was in my cell]. They came in, cuffed me, and tied me up again. They said, "You think you can get off this easily?"<sup>184</sup>

Matin finally buckled under the pressure and agreed to confess. Still blindfolded, Matin was told what to write by the interrogator, who placed blame on Matin and his friend Ehsan for

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<sup>183</sup> Human Rights Watch interview with Matin, April 12, 2010.

<sup>184</sup> Ibid.

engaging in sodomy. After confessing to the crime, Matin was sent to the Dastegerd, the central prison in Esfahan.

He told Human Rights Watch that prison authorities would not accept him at first because he was in poor physical shape due to the extensive beatings and torture he received at the police detention facility.<sup>185</sup> Eventually, however, he was registered there and sent to the juvenile ward, where he spent two months and was forced to attend moral education classes. But his troubles had not ended. Matin says that prison guards raped him repeatedly, on several different occasions. He began to suffer from rectal bleeding, but felt he could not tell anyone. He told Human Rights Watch that he was sure he would eventually be killed in prison.<sup>186</sup>

Authorities eventually released Matin on bail in 2008. He fled to Turkey before his trial convened.

Ill-treatment and abuse perpetrated by Iranian security forces against detainees, including Iran's sexual minorities, violate articles 7 and 10 of the ICCPR. Although Iran is not a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), the prohibition of torture is deeply rooted in customary international law. Torture, which includes sexual assault or rape, is also prohibited under Iranian law.<sup>187</sup>

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<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Iran Constitution, article 38. Article 578 of the penal code and articles one, six, and nine of the Citizens Rights Law of 2004 also prohibit the use of torture, especially in order to secure confessions.

## VIII. Abuses during Administration of Justice

The trial lasted between 30 to 45 minutes. The judge spoke the whole time.  
That was it.

—Mohammad S, a gay Iranian in exile, 2007

Several individuals interviewed by Human Rights Watch described their experiences before judges, either during the investigation phase of their cases or during their trials. Their accounts highlight the broad discretionary powers given to judges by law, which allows convictions based on “knowledge of the judge.” Equally problematic are provisions relying on confessions extracted from the accused as proof of guilt. Torturing prisoners to extract confessions is not uncommon in Iran, where forced confessions are often accepted as evidence in criminal trials, despite a constitutional provision specifically banning it.

Armed with wide powers and entrenched notions and attitudes towards Iran’s sexual minorities, prosecutors and judges feel little compunction about intimidating or pressuring individuals accused of homosexual conduct or other “immoral” activity into confessing to their crimes. Investigations, interrogations, and trials are often short sessions conducted without a lawyer, where the accused is presented with “evidence” of his guilt and ordered to confess. There is little, if any, opportunity for the accused to present his or her side of the story.

Mohammad T., who was arrested in 2007 after an alleged internet entrapment scheme, describes his trial and punishment this way:

I never saw charge documents. [I never saw documents] other than photocopies of chats and the *ta’had* [guarantee] I had to sign. In court, the judge and the *basij* guards called me *hamjensbaz* and insulted me ... Arash, the guy who had ratted me out, was also there. The judge asked me: “Why do you do this?” I told him I didn’t know—it was the way I felt. I wanted to be with someone similar to me. Then he asked, “You know that in Islam that’s a sin, right?”... The trial lasted between 30 to 45 minutes. The judge spoke the whole time. That was it.

Then they took me somewhere so I could receive my lashes ... They took me to a separate room. Inside was a bench, like the ones you find in parks. They tied my hands to the metal on the bench and hit me with a long stick that

was made out of plastic. One person struck me 100 times ... After the lashing, he said, “That’s it, you’re free.” My body was in such pain. It was full of scabs that bled for several days. They didn’t even give me any bandages. They just told me to put on my shirt and go home. It took two months for the wounds to heal completely.<sup>188</sup>

Ahmad talked to Human Rights Watch about the execution threats he received from the judge who had no proof that he had committed *lavat*. The judge instead sentenced him to a lashing after berating him during the trial, which took place in 2004:

The judge [turned to us] and said, “I should have you guys stoned to death! I should have you killed! You know there is a death sentence here for people like you?” We were pleading and crying. Finally, he said, “The next time I catch you guys, I will have you put to death.” Instead, he gave us a sentence of 100 lashes. When he announced the sentence we started to cry. He yelled at us: “Stop your crying and sniveling—I should have been much harsher on you!”

They took us back to jail and gave us the lashings. I was bleeding so much. It was extremely painful. I couldn’t sleep on my back for month.<sup>189</sup>

Amir is a 22-year-old gay male who was arrested at a private party in Shiraz in 2003.<sup>190</sup> He was tried in a court in Shiraz along with several other men. Amir provided vivid details to Human Rights Watch regarding his trial following the party raid. He told Human Rights Watch that during the mens’ first visit to the judge’s chambers, the judge criticized the men: “You’re all like women talking at the same time. Get out!”<sup>191</sup>

During Amir’s second court visit, the judge asked him the same set of questions as his interrogator. He read a question from the interrogation report and then read Amir’s alleged response. He then asked, “So that’s your answer?” He did not give Amir an opportunity to correct the answers he had given, under torture, during his interrogation. The hearing ended without Amir having an opportunity to represent himself:

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<sup>188</sup> Human Rights Watch interview with Mohammad T., 2007.

<sup>189</sup> Human Rights Watch interview with Ahmad, November 30, 2006.

<sup>190</sup> Human Rights Watch interview with Amir, September 16, 2005.

<sup>191</sup> Ibid.

Judge: Did you know that your sentence could be death?

Amir: Why? What have I done?

Judge: Because you acted against the law of God and nature. Don't you know that sex is what men and women do together? Get his mother to arrange a *sigeħ* with a girl so that he can be cured.<sup>192</sup> Why doesn't she take him to a doctor?"<sup>193</sup>

According to a copy of the judge's ruling provided by Amir, there were six defendants in the case. The main defendant, who organized the party, was charged with "production and possession of indecent and obscene CDs, video tapes, and audio tapes"; "purchase and possession of alcoholic beverages and gambling paraphernalia (playing cards)"; "purchase and possession of a satellite receiver,"; "organizing a corrupt gathering and encouraging youth to engage in corrupt and obscene acts"; and "offending the public chastity." The others, including Amir, were only charged with consumption of alcohol and participation in a corrupt gathering. In the end, Amir was fined the equivalent of US\$125.<sup>194</sup>

Several witnesses recounted the arbitrariness of the sentences they received for their "crimes." Hossein M., a 26-year-old gay male who was arrested and expelled from university after authorities found gay pornography on his computer told Human Rights Watch:

Soon after this incident I received a court summons at my home address. I went to court. The judge asked, "Is this your laptop?" I said, "Yes." He asked, "How many buttons do you have on your shirt?" I said, "Four buttons, sir." He said, "Four months in jail and 120 lashes."<sup>195</sup>

Human Rights Watch also gathered testimony suggesting that allegations of torture submitted by defendants are routinely dismissed by judges, contributing to a culture of impunity that encourages the use of such tactics to secure confessions. For example, after suffering torture and sexual assault by local *basij* agents in a small town outside of Tehran, Navid was summoned to court to face criminal charges including *lavat*. Navid told Human Rights Watch that the judge asked the prosecutor to identify the second person involved in the act of sodomy. When the government failed to produce a co-defendant, the judge threw

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<sup>192</sup> A *Sigeħ* is a "temporary marriage" which allows a non-married man and woman to engage in sexual relations. The practice is recognized by clerics who follow the the Twelver Shi'a school of Islam, which is the official religion in Iran.

<sup>193</sup> Human Rights Watch interview with Amir, September 16, 2005.

<sup>194</sup> Ibid.

<sup>195</sup> Human Rights Watch interview with Hossein M., October 2, 2006.

out the sodomy charge and simply fined Navid for possessing a satellite receiver and bootleg CDs. When Navid attempted to show the judge the extensive wound marks on his body, the judge refused to look and ended the proceedings.<sup>196</sup>

But Navid was determined to pursue the case and filed a complaint against the *basij* agents responsible for torturing and raping him. He eventually succeeded in receiving a letter from the prosecutor's office referring him to a forensic doctor who could examine his injuries. On August 22, 2007, Navid visited a forensic doctor. After a thorough physical inspection, the doctor told him that he could not conclude that the damage to his rectum was caused by rape, and that the bleeding was instead likely the result of hemorrhoids.

Prosecutors pursuing the criminal case against the two *basij* were able to identify them and a judge summoned them to the prosecutor's office.<sup>197</sup> However, Navid told Human Rights Watch that the *basij* agents were never convicted of any crimes because prosecutors eventually dropped the case. Several months after filing the complaint against the *basij*, both he and his sister began receiving threats from local *basij* whom Navid believes were sent to intimidate him. He fled the country in September 2008.<sup>198</sup>

Matin also informed Human Rights Watch about the judiciary's failure to investigate serious abuses committed by security forces against him in 2007. During his detention and repeated torture, Matin, who had been charged with *lavat*, was taken before a judge in the prosecutor's office several times. The judge summarily dismissed his complaints about the harsh treatment received at the hands of security forces, including torture and rape, and reprimanded him:

Next day I went to the prosecutor's office. The prosecutor shook his head at me. I told him that I was being abused in prison. He cursed at me and said, "Now that you've been caught you want to file a complaint against us?" He ordered the authorities to take me away and get a confession out of me.

... I went to the prosecutor's office again. The prosecutor yelled at me again and asked me if I would confess. I denied everything and told him that the

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<sup>196</sup> Human Rights Watch interview with Navid, April 13, 2010.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

confession they'd gotten from me was secured through torture. I told him I had not committed *lavat*. He threatened me and said you'll rot in prison.<sup>199</sup>

Matin said the prosecutor eventually changed his tone with him and tried to coax him into admitting his mistakes and moving on. He put another confession letter in front of him and told him to sign it. Matin told Human Rights Watch that he thought the judge could help him, so he signed the paper and accepted the sodomy charge. As soon as he did, the judge sent him back to prison.

Matin was eventually freed from prison after his family posted bail and fled the country prior to his trial.<sup>200</sup>

Article 14 of the ICCPR, to which Iran is a signatory, guarantees everyone "a fair and public hearing by a competent, independent and impartial tribunal." It also provides that the accused shall "have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing." Yet for more than 15 years, Human Rights Watch has documented routine and systematic violations of due process and fair hearing rights by the Iranian government against its own people. Authorities routinely prevent the accused from meeting with their lawyers, rendering them vulnerable to harassment, abuse, and torture for the purposes of extracting coerced confessions. Trials are rarely conducted in public, judges often rely on forced confessions to convict and sentence the accused, and there is little opportunity for the accused to defend themselves.<sup>201</sup>

Human Rights Watch's investigations into the administration of justice against sexual minorities, particularly those accused of committing same-sex crimes, reveal similar abuses. Research suggests that the vast majority of sexual minorities who are detained are not actually charged and prosecuted. Those who are charged are usually not prosecuted under the sodomy laws, but for "lesser" same-sex acts or violations of public morality or chastity. The accused are often not allowed access to lawyers,<sup>202</sup> it is not uncommon for confessions to be secured under psychological or physical pressure,<sup>203</sup> trials are extremely short, and corporal punishment is usually administered quickly.

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<sup>199</sup> Human Rights Watch interview with Matin, April 12, 2010.

<sup>200</sup> Ibid.

<sup>201</sup> For Human Rights Watch's work on Iran, see generally <http://www.hrw.org/en/middle-eastn-africa/iran>.

<sup>202</sup> See, e.g., section VI discussing treatment of detainees arrested on May 10, 2007, for attending a "gay" party in Esfahan.

<sup>203</sup> See section VII for a general discussion of the use of ill-treatment and torture of sexual minorities in detention; see also "Netherlands, Sweden: "Bar Deportations to Torture in Iran," Human Rights Watch news release, October 8, 2006, <http://www.hrw.org/en/news/2006/10/08/netherlands-sweden-bar-deportations-torture-iran>.

In cases where individuals are prosecuted for sodomy, such as the cases of Ebrahim Hamidi , Mohsen G., and others, Iran’s judiciary often relies on confessions or Article 120 of the penal code allowing convictions based on the “knowledge” of the judge.<sup>204</sup> As previously discussed, Article 120 of the Iranian Penal Code allows a *Shari'a* judge to reach a verdict on sodomy based on his knowledge as “derived through customary methods,” which in practice enables judges to rely on tenuous circumstantial evidence to determine whether a crime has occurred. Convictions based on confessions secured through torture or questionable evidentiary findings per Article 120 of the penal code violate the defendant’s due process rights.

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<sup>204</sup> For further discussion of convictions based on the “knowledge of the judge,” see sections II and III.

## **IX. Lesbian and Bisexual Women**

I am a lesbian. And I would like to live according to my own will.

—Maryam, an Iranian lesbian in exile, April 5, 2010

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. Some of these pressures and abuses are discussed in section four of this report.

### **Pressures to Marry**

As part of routine family and societal pressures on Iranian women, some lesbians are forced into marriage. The pressures to socially conform, especially in smaller cities and towns throughout the country, are felt by all women regardless of sexual orientation or gender identity. Yet the emotional and psychological consequences for lesbian women can be devastating. This is especially true given that under Iran’s penal code marital rape does not exist.<sup>205</sup>

Human Rights Watch interviewed a number of Iranians who self-identified as lesbian, bisexual, or WSW. Several told Human Rights Watch that their families forced them to marry men after discovering they were lesbians. If they had refused, their parents would have disowned them and they would have had no means to support themselves. They lived in fear that their husbands would discover their sexual orientation and become abusive, or publicly “out” them in a shameful divorce.

Shadi, 23-year-old lesbian, had this to say about the problem:

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<sup>205</sup> Article 82 of the penal code only defines rape as coerced intercourse outside the traditional bonds of marriage.

I have so many friends who are forced to live a double life. They are forced to get married and secretly have girlfriends. There are a lot bisexual women in Iran who are actually lesbians, but they have to be bisexual in order to survive. They have sex with men in order to get by. I have older friends who say, “I wish I knew 20 years ago the things you know now. I have been living with my husband as a roommate.” In Iranian culture divorce is still taboo. Many people think that a divorcee is a whore ... There are many who are worse off than me. I was in a position to get a divorce, but many lesbian women who are forced into marriage have no way out.<sup>206</sup>

She continued:

My family held me in a room and forced me to accept marriage with a man they knew. They threatened not to pay for my education if I did not accept. They thought they could “fix” me. When I had sex with him I became extremely depressed. I just stopped having sex with him [after a while]. It reached a point where I would rather die than have sex with him. After a while I met my girlfriend Darya on the internet.... My husband grew suspicious and hacked into my computer without my knowledge. He read all our emails and recorded our phone conversations. He threatened to tell my family and the police if I did not pay him off. [My girlfriend and I] were living in constant fear. He made our lives hell. It went on like this for a while until I confessed to my family. I said to them, “You can do whatever you want with me—kill me—but I cannot go on like this.” They were eventually supportive and I was able to get a divorce after paying my husband a lot of money and giving him alimony.

I moved in with Darya but he continued to terrorize us. He constantly threatened to go to the police with the documents that he had against us. He even threatened to kill Darya. We paid him a large amount of money and he went away for a while, but he came back.<sup>207</sup>

Several lesbians who spoke to Human Rights Watch said that many married women in Iran who had relationships with women on the side did not self-identify as lesbians but thought of themselves as bisexuals. A lesbian from Tehran told Human Rights Watch:

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<sup>206</sup> Human Rights Watch interview with Shadi, September 27, 2008.

<sup>207</sup> Ibid.

I know a lot of lesbians who have been pressured into getting married. It's very sad ... The family is the major problem for us, especially for those who are forced to get married. [Your] family finds out that [you are] a lesbian and they think if they force [you] to get married that [everything] will change. Ninety-nine percent of the time the result is divorce. It's much worse when there is a baby. Some women just decide to keep their lesbian life hidden. They have both girlfriends and husbands. But it's challenging for everyone involved—the girlfriend and the husband. They don't leave the lesbian community; they just participate in it in a different way.<sup>208</sup>

Maryam, a 30-year-old lesbian from Tehran, told Human Rights Watch:

My family forced me into an arranged marriage [in 2004], and I was only able to get a divorce after four years and a lot of problems—both physical and emotional pain. In spite of this they wanted to force me into marriage again after my divorce. One of my brothers-in-law worked for the security or intelligence services. He tried to rape me several times, but I did not dare say anything especially because I was having problems with my family, who were frantically trying to marry me off again. I had no way out. If I refused he would beat me. Because of this I ran away from home.

... Around the same time my brother-in-law hacked into my computer and discovered that I am a lesbian. He began threatening me in order to protect his family's reputation. With the kind of work that my brother-in-law was involved in, I know that they could have found me anywhere in Iran. They had even discovered the phone numbers of my lesbian friends via my mobile phone and had threatened each and every one of them. And I knew that my father, because of his so-called principles and patriarchal beliefs, would surely kill me.

It had been two weeks since I left my house and I was on the run. Two days before leaving Iran, I was at a friend's house when my phone rang.

This same friend who I was staying with, Roodabeh, was on the line crying. In a shaky voice full of anxiety she said that my father and brother-in-law had just been to her house, that they were yelling, and that they had shamed her

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<sup>208</sup> Human Rights Watch interview with Mona T, December 3, 2008.

and even slapped her across the face. They did not go inside the apartment, but yelled *hamjensbaz* in the apartment complex and threatened her. They said we will set Maryam and her *hamjensbaz* friends on fire.

I was shaking from shame and fear because I was responsible for causing this trouble.<sup>209</sup>

## Lesbian and Bisexual Women in Public Space

A large number of Iranian lesbian and bisexual women interviewed for this report indicated that the internet was an important part of their daily lives, especially in light of the social limitations imposed on them by their families and outsiders. Perhaps even more so than for gay males, internet chat rooms and social websites are a critical medium or public space for Iran's lesbian and bisexual women. Shadi, 23-year-old lesbian, told Human Rights Watch:

The internet creates a space for them to receive and exchange information. It has allowed them to understand that they have rights in the face of prejudices and restrictions. However, many of them still see their relations as only physical and cannot come to terms with the emotional aspects of it. They only have private relations and would not consider making their relations public as normal people do. This ultimately makes them feel small and unhappy. Many others get pressured into marriage. They would accept to do so to be normal. I know a lesbian now who is married to a gay man in Iran. They can have their lives and be free from social pressure. Normal means that one gets married and has children. These people have negative perceptions of themselves. Emotionally, they are damaged.<sup>210</sup>

Roodabeh, a 32-year-old lesbian told Human Rights Watch about the important role the internet played in facilitating self-discovery:

I began to identify as a lesbian very late in life, probably around two or three years ago. But I always knew what I wanted. There was a vacuum for lesbians in Iran when it comes to information and awareness. Around 2007 the website *Hamjenseman* appeared. This really helped us out. Gay men had *Maha*, *Cheraq* and *Manjam*. They were a lot more plugged in than we were.

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<sup>209</sup> Human Rights Watch interview with Maryam, March 12, 2008.

<sup>210</sup> Human Rights Watch interview with Shadi, September 27, 2008.

But there were no sites for us lesbians. We had to fight to create space for ourselves and use the word “lesbian” [in the Persian blogosphere].

Then I was introduced to the online magazine *Hamjenseman*. This opened the door for me. I met other groups of lesbians online, and we began to use the internet more frequently. I realized that I was no longer alone.<sup>211</sup>

The social stigma of same-sex conduct increases the vulnerability of lesbian women to blackmail, including physical and sexual assault. Shabnam, a lesbian in her thirties, reported to Human Rights Watch that she received phone calls from an anonymous man demanding that she have sex with him, or else he would report her as a lesbian to the *basij*. She also reported that her ex-husband blackmailed her for several years, using evidence of her relationship with another woman against her.<sup>212</sup>

Though less common, Human Rights Watch also interviewed lesbians who had dangerous encounters because they were caught in compromising situations, or because they chose to speak out more publicly about their lives. Hengameh, a 35-year-old lesbian from Tehran, told Human Rights Watch that an intimate encounter with a girl she’d known for some time eventually forced her to leave the country. Hengameh said that the witnesses called the police on her, and that her “friend” eventually laid the whole thing on her.<sup>213</sup>

Saye Sky, a 20-year-old lesbian rapper from Tehran, told Human Rights about several incidents where she and her lesbian friends were detained by the police simply because of the way they looked. Saye also told Human Rights Watch that she was forced out of university in 2007 because she and her girlfriend were caught kissing each other in the university hall. She said that her family eventually found out that she was attracted to women, but they refused to accept it. They sent her to a psychiatrist.

In late October, however, she was forced to leave Iran for Turkey. She believes that security agents began surveillance of her telephone calls after she conducted several anonymous interviews with LGBT-related media outlets regarding her rap music and life as a lesbian in Iran.<sup>214</sup>

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<sup>211</sup> Human Rights Watch interview with Roodabeh, April 8, 2010.

<sup>212</sup> Human Rights Watch interview with Shabnam, August 11, 2008.

<sup>213</sup> Human Rights Watch interview with Hengameh, April 8, 2010.

<sup>214</sup> Human Rights Watch interview with Saye Sky, April 13, 2010.

## X. Transgender and Transsexual Iranians

I wanted to live a good, moral life. But it was a dream. I realized how difficult it was to sustain. I couldn't fight the fight

—Afsaneh, a transgender Iranian in exile, April 11, 2010

Iran is a highly gendered society where individuals must act according to the conventional norms associated with their biological sex. Iranian law reflects these values and punishes behavior that is inconsistent with them.<sup>215</sup> In cases where someone is intersex (or possesses biological features of both men and women), the state encourages the individual to choose between the two and undergo sex reassignment surgery (SRS). Iran is, somewhat unique, however, in that it also allows such surgeries for transgender individuals.

### Sex Reassignment Surgery

Prior to the Islamic Revolution in 1979, the Iranian government had never officially addressed the issue of transgender persons. After 1979, the government of the new Islamic Republic classified transsexuals and tranvestites with gays and lesbians, whose conduct was criminalized. They faced corporal punishment (i.e. lashing) and possibly death under Iran's anti-sodomy laws if they were deemed to be transgender. The situation changed in 1987, however, when Ayatollah Khomeini issued a *fatwa*, or religious edict, to Maryam Khatoon Molkara, granting her permission to live as a woman and undergo male to female sex reassignment surgery (SRS).<sup>216</sup> She underwent surgery in 1997.

While some Muslim majority countries allow SRS for intersex individuals, Iran also allows SRS for what psychiatrists and clinicians have termed “gender dysphoria” or “gender

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<sup>215</sup> See, e.g., “Iran: Private Homes Raided for ‘Immorality,’” Human Rights Watch news release, March 27, 2008, <http://www.hrw.org/en/news/2008/03/27/iran-private-homes-raided-immorality> (explaining that several people were arrested for wearing clothes of the opposite sex).

<sup>216</sup> Khomeini’s original *fatwa* has since been reconfirmed by the current Supreme Leader of Iran, Ayatollah Ali Khamenei, and is also supported by many other Iranian clerics. Hojatoleslam Kariminia, a mid-level cleric who is in favor of transsexual rights, has stated that he wishes “to suggest that the right of transsexuals to change their gender is a human right” and that he is attempting to “introduce transsexuals to the people through [his] work and in fact remove the stigma or the insults that sometimes attach to these people.”

identity disorder.”<sup>217</sup> By 2008 Iran was carrying out more sex change operations than any other nation in the world except for Thailand.<sup>218</sup>

Once an individual is diagnosed by a medical professional as suffering from “gender dysphoria” and agrees to undergo SRS, they may secure permits from local authorities allowing them to appear in public dressed as women prior to the actual surgery.<sup>219</sup> Without this permit, however, individuals dressing like members of the opposite sex will be considered transvestites and in violation of the law. In the 2008 documentary exploring the lives of transgender Iranians, *Be Like Others*, a religiously conservative journalist addresses a transgender Iranian at a clinic:

You people bring this on yourselves. When you are still a boy and you haven’t had the operation to become a girl, the law, religion, and custom does not allow you to dress as a girl. Once you’re given the official permit to have the operation, put it in your pocket, and when the police stop you show it and no one will bother you.” She continues: “If you want to continue to dress like a girl but keep your male body, you are not a transsexual. You are a transvestite. You may even be suspected of being a homosexual. Make up your mind—either you want to be a girl or a boy.<sup>220</sup>

Once a transgender individual has undergone SRS in Iran that person legally becomes the ‘new’ sex—male, in the case of transmen, and female, in the case of transwomen. 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.

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:

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<sup>217</sup> The Safra Project, Country Information Report on Iran, 2004, [http://www.safraproject.org/Reports/SP\\_Country\\_Information\\_Report\\_Iran.pdf](http://www.safraproject.org/Reports/SP_Country_Information_Report_Iran.pdf) (accessed August 23, 2010).

<sup>218</sup> In 2005, Dr. Mirjalali, one of Iran’s leading sex change surgeons, claimed that he had performed more than 300 such surgeries in a 12 year span. “Iran’s Sex-Change Operations,” BBC, January 5, 2005, <http://news.bbc.co.uk/2/hi/programmes/newsnight/4115535.stm> (accessed August, 22, 2010).

<sup>219</sup> During this time transgender persons may also begin preparing for the SRS by initiating hormone therapy.

<sup>220</sup> Tanaz Eshaghian, *Be Like Others*, 2008, distributed by Wolfe Video, New Almaden, CA.

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.<sup>221</sup>

Hojatoleslam Kariminia, a mid-level cleric who is in favor of transsexual rights and wrote his doctoral thesis on the implications of SRS for Islamic law, has stated that “the right of transsexuals to change their gender is a human right,” and that he is attempting to “introduce transsexuals to the people through [his] work and in fact remove the stigma or the insults that sometimes attach to these people.” Kariminia explains the importance of SRS and the difference between transgender Iranians and homosexuals:

Islam has a cure for people suffering from this problem. If they want to change their gender, the path is open. The same is true for those with two genders. They need surgery. They are allowed, via a sex operation, to become either male or female. This issue is fundamentally different from that regarding homosexuals. They’re absolutely not related. Homosexuals are doing something unnatural and against religion.<sup>222</sup>

Despite the availability of options for transgender Iranians wishing to undergo SRS, Human Rights Watch and other rights groups have expressed serious concern that the state is actively encouraging individuals to undergo SRS even for individuals who are not transgender and who may not wish to change their gender via an operation. Human rights groups believe that the Iranian government’s promotion of SRS, coupled with the fact that same-sex conduct is criminalized in Iran, creates a powerful incentive for gays, lesbians, bisexuals and transgender Iranians who do not wish to undergo surgery, to become, in effect, “legal.”

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<sup>221</sup> Human Rights Watch interview with Saba, September 28, 2007

<sup>222</sup> *Be Like Others*, 2008.

During the course of its investigations, Human Rights Watch spoke to several LGBT persons, including gay males, who were advised to undergo SRS. Payam S., a gay male, explains how his psychiatrist tried to convince him to undergo SRS:

I went to a psychiatrist on my own who helped me. At first she said you are a trans person and you can easily change. I told her I am a man and I will not change. I like men but I want to be with men as a man not as a woman. I have no problems with my manhood. I knew I would never do this. Despite this, she never used the word “gay.” She just called me a “weak trans.”<sup>223</sup>

According to Atrina, a 27-year-old transwoman, many transgender Iranians who are desperate to have SRS are taken advantage of. She told Human Rights Watch:

There are some doctors who take advantage of friends who do not have the money to pay for surgery. These doctors do not care whether patients really know whether they want to or should change their sex, whether the surgery is carried out properly, or what the possible complications are. There are doctors who are able to lower the price for surgery but instead keep raising the prices and sell themselves under false pretenses. Trans patients are like steps that these doctors use to climb to profits.<sup>224</sup>

Despite the “accommodations” afforded transgender Iranians, Human Rights Watch found that a very high percentage of transgender interviewees had experienced trauma as a result of various factors, including rejection from their families, inability to hold steady employment, and gender-based violence. A significant number of transgender Iranians, particularly transwomen, had resorted to *sigehs*, or “temporary marriages,” in order to make a living. Several told Human Rights Watch that despite the legal recognition provided to transsexuals in Iran, their lives were worse off than other sexual minorities because they felt completely abandoned by both their families and the state.

Hooliya, a 25-year-old transwoman from Tehran, echoed many of these sentiments:

In Iran being a transsexual means having no place, no identity, and being treated like a whore. Even if one has had a sex change it’s the same. People in

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<sup>223</sup> Human Rights Watch interview with Payam S, September 27, 2007.

<sup>224</sup> Human Rights Watch interview with Atrina, September 29, 2007.

Iran just don't accept you. They don't understand these things. Even with a sex change people continue to treat you badly and with disrespect. It is very difficult for gay men and transsexuals like myself. We have problems everywhere we go—in the family, in our neighborhoods, and in society. People think we are like lepers. In Iran it is not like how it is in Europe or America. There is no information about these things. No cultural or social sources of information to help people to understand that we are not abnormal. We cannot openly talk about these things with our families and friends.<sup>225</sup>

Research suggests that transgender/transsexual Iranians, particularly transwomen, are more likely be targeted and victimized by security forces because they are more easily recognizable. Atrina, a transwoman, described an altercation she had with the police on the street:

I showed the police my legal and medical documents, which say that I am a trans. They just called me *kuni evakhahar*<sup>226</sup> and a dirty faggot. They told me I spread sickness and infect people. Then they threw the documents in my face and laughed at me.

At the station they made us stand and would not allow us to sit down. The worst was that they would stand in our faces, put their hands on their penises, and laugh at us. They would touch their crotch and say, “Is this what you really like?” For me this was torture.<sup>227</sup>

Hooliya recounted another 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.

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<sup>225</sup> Human Rights Watch interview with Hooliya, November 7, 2008.,

<sup>226</sup> *Kuni* is a derogatory term for gay men. *Evakhahar* is a derogatory term for effeminate men.

<sup>227</sup> Human Rights Watch interview with Atrina, September 29, 2007.

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.<sup>228</sup>

### Afsaneh's Story

Afsaneh, a 42-year-old transwoman, described the difficulties of living as a transgender and transsexual in Iran. She had SRS and legally changed her identity and began to look for a job. She told Human Rights Watch that she went to several places to work, but found it extremely difficult to hold down a job. Her coworkers asked her boss to let her go from the first job despite the fact that she was legally recognized as a women by the state.<sup>229</sup>

Afsaneh told her next boss the truth. He proposed to her. She was in no position to get married, but felt obliged to carry on a sexual relationship with him for a while until she could no longer take it. Money became tight, and several of her friends suggested that she consider other ways to make ends meet: “I went down a path I shouldn’t have gone. I completely changed. I got rid of my *maqniyeh*<sup>230</sup> put on a *rusani*,<sup>231</sup> and colored my hair.”

She continued:

About a year later I met a rich man who wanted to *sige h* me. He was about 60 years-old, and I was about 23 or 24. I was at a party with two other transwomen and three women. He started talking to me and asked why I’d decided to go down this path. “Nowadays people don’t ask us these types of questions,” I explained. “It’s a shame you decided to take this path,” he said, “what do you want to do with your life?”

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<sup>228</sup> Human Rights Watch interview with Hooliya, November 7, 2008.

<sup>229</sup> Human Rights Watch interview with Afsaneh, April 11, 2010.

<sup>230</sup> *Maqniyeh* is a conservative style of hijab that covers most parts of a woman’s body

<sup>231</sup> *Rusani* is the generic term for a loose scarf that covers women’s hair.

Afsaneh continued:

He eventually got me a very nice place close to his own home. I was there for about a year and a half. He even got me a car. He would come over at certain times and then go to work. We had completely separate lives. I never asked him questions about his other life. Then one day his wife found out and came over to my place. I allowed her in. As soon as she sat down she said, “My dear, do you know that Haj Agha is married?” I said yes. She asked me how long I’d been with him. I answered. She told me that she had hired a private investigator to follow him around and found out about me around two weeks ago. She had become suspicious. “Do you know I have kids your age?” she asked me.

Afsaneh said that at some point the wife became very angry and violent. But Afsaneh kept her calm and cooperated, so she eventually calmed down. She asked Afsaneh if she was Haj Agha’s wife and Afsaneh replied that she was only a temporary wife. Then Afsaneh revealed her secret. The wife made Afsaneh promise to annul the *sigeh*. She had no choice but to comply.

Afsaneh told Human Rights Watch that after this incident, she went back to her old ways and entered into numerous *sigehs* with several other men, some of whom she suspects were members of Iran’s security forces. During this time she experienced many humiliations, lost several of her transwomen friends to suicide and murder, and endured several attacks, including having acid thrown at her by three plainclothes policemen. She was also arrested several times, imprisoned, and punished with lashes for solicitation. She described one of these incidents to Human Rights Watch:

Another time they caught me with a boyfriend of mine. We were taken to Vozara.<sup>232</sup> One of the men who worked there took me upstairs. He asked if I was open or not.<sup>233</sup> I answered no. Then he said: “They open you so you would become a woman, not a prostitute. Now that you’ve decided go down this path, put a chador on. I want to do something with you. Pretend I’m your husband. Take my clothes off.” I asked him why he wanted me to do this ... “I want to see how much of a woman you really are.” I had no choice but to oblige.

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<sup>232</sup> Vozara is a detention facility in Tehran.

<sup>233</sup> “Open” refers to whether a transwomen who has undergone SRS has the ability to have vaginal intercourse or not.

Around 1999, Afsaneh was finally able to gather around \$10,000 to complete the final phase of her SRS. She went to Thailand for the operation. After returning from her trip she then met someone with whom she fell in love. She decided to sever all ties with her former life and try married life. “I was tired of being alone,” she told Human Rights Watch.

Afsaneh was honest with her husband about who she was from the beginning, and according to her he accepted her for who she was. They spent more than four years together.

I told my husband that he was like a father and a brother to me. I never had these things. I could finally go out in public with my head held high. I had a husband. I had finally discovered who I was. I had received my “new” identification papers years ago, but now I realized that they were just papers—they were meaningless.

Afsaneh said that after her marriage her mother-in-law started to become really close to her and began to confide that she wanted grandchildren. She and her husband told her mother-in-law that she could not get pregnant, but her mother-in-law kept trying to convince her to try taking medications or go to the doctor. Afsaneh said after a while the pressure of pretending became too much. Her husband was willing to continue pretending, but she chose to put an end to the charade.

Afsaneh and her husband finally decided to separate around the spring of 2008. Afsaneh said that after her marriage failed she felt she had tried everything. She gave up her rights to her share of the matrimonial property and left Iran for good.

I wanted to live a good, moral life. But it was a dream. I realized how difficult it was to sustain. I couldn’t fight the fight.<sup>234</sup>

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<sup>234</sup> Human Rights Watch interview with Afsaneh, April 11, 2010.

## **XI. Restrictions on Human Rights Defenders Working on Issues Affecting Sexual Minorities**

Of special importance will be women’s human rights groups and those who are active on issues of sexuality, especially sexual orientation and reproductive rights. These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but by other social actors

— Report of the Special Representative to the Secretary General on Human Rights Defenders, July 3, 2001

In Iran, any attempt to openly gather, organize, or disseminate information contrary to the government’s mainstream views regarding gender identity and sexual orientation may be viewed as political propaganda and a threat to national security. This phenomenon is not limited to Iran. Human rights defenders working on issues affecting sexual minorities, particularly in the Middle East, are often discredited and accused by governments of being foreign agents. They risk being targeted by security forces and prosecuted under national security-related crimes. It is not surprising, therefore, that rights groups in Iran and LGBT Iranians themselves tend not to address rights deprivations affecting sexual minorities.

Despite the great risks involved, however, there are human rights defenders, journalists, bloggers, students, and artists who have chosen to address the rights (and deprivation of rights) of sexual minorities. There are no LGBT rights organizations formally registered in the country, but starting in the early 2000s, during the period of reform under former president Mohammad Khatami, several rights activists began addressing issues affecting sexual minorities and started assuming a more vocal profile, especially over the internet and the blogosphere.

But by 2005, Iran’s short-lived “Tehran Spring”—or period of political reforms—was over. Individuals, including human rights defenders working on issues affecting sexual minorities, began to feel the weight of the state as government authorities initiated a new crackdown on Iranian civil society. Some were forced into exile, while others resumed their underground activities even more cautiously than before. Today, the vast majority of work in this area is done underground or over the internet for security reasons.<sup>235</sup>

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<sup>235</sup> In addition, there are several organizations, such as the Iranian Queer Railroad (IRQR) and the Iranian Queer Organization (IRQO), operating outside Iran and dedicated to advocating on behalf of the rights of sexual minorities inside the country.

Yet government authorities still have shown a willingness to use harsh tactics to silence those who seek to publicize discrimination and violence against Iran's sexual minorities in the country. In addition to local police units, rights defenders and others who wish to organize, educate, or draw attention to the situation of sexual minorities in Iran run the risk of being targeted by intelligence officers from the Ministry of Intelligence or the Revolutionary Guards, charged under the country's harsh national security laws, and prosecuted for political crimes in Iran's revolutionary courts.<sup>236</sup> The dangers may be even greater for rights defenders who self-identify as members of Iran's LGBT community.

A recent example of the dangers involved in addressing rights issues affecting sexual minorities in Iran is illustrative. On May 17, 2009—International Day Against Homophobia—a group calling itself Homosexual Students of Universities in Iran (HSUI) issued a statement addressed to Iran's larger student movement. In the statement, the group declared:

The student movement must be a safe haven for students regardless of their race, religion, sexual orientation, or language. Is the student movement in a position to pretend that diversity does not exist within its ranks? Should it pretend that we do not have homosexual students in this country? During the past few years, we have stood beside you. And we will continue to stand with you.<sup>237</sup>

A little more than a month later, after demonstrations gripped the country following the disputed results of the June 12 presidential election, HSUI issued its second statement condemning the government's crackdown on protesters and civil society. On December 6, 2009, a day before the commemoration of Student Day in Iran, it issued a third statement in support of the Green Movement:

Considering that a considerable number of students are sexual minorities and the fact that many queer activists are either students or alumni of Iranian universities, on the eve of this year's Student Day we should embrace a more thorough meaning of human rights values that includes the rights of queers.<sup>238</sup>

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<sup>236</sup> See "Iran: New Coordinated Attack on Human Rights Groups," Human Rights Watch news release, March 24, 2010, <http://www.hrw.org/en/news/2010/03/24/iran-new-coordinated-attack-human-rights-groups>.

<sup>237</sup> Letter from the Homosexual Students of Universities in Iran , May 17, 2009, [http://zamaaneh.com/humanrights/2009/05/post\\_353.html](http://zamaaneh.com/humanrights/2009/05/post_353.html) (accessed December 2, 2010).

<sup>238</sup> Letter from the Homosexual Students of Universities in Iran, December 6, 2009, <http://hsuiran.blogspot.com/> (accessed December 2, 2010).

The next day, Hesam Misaghi,<sup>239</sup> a member of the Committee of Human Rights Reporters (CHRR)<sup>240</sup>, gave an interview to a gay-oriented US publication in which he acknowledged the recent creation of a group within CHRR dedicated to protecting the rights of sexual minorities. During the interview, Misaghi also referred to the existence of sexual minorities and LGBT student groups within university campuses throughout Iran. Within days, the Ministry of Intelligence summoned Misaghi and several of his CHRR colleagues. Misaghi chose to ignore the summons and go into hiding. He eventually fled Iran and sought refugee status in Turkey.

Later, in a letter addressed to Human Rights Watch during the summer of 2010, Misaghi explained that a trusted source had informed him that the Ministry of Intelligence was planning to arrest him and several of his colleagues. He told Human Rights Watch that he feared that the authorities would prosecute both him and the other members of the CHRR to the maximum extent of the law, in part because of his organization's decision to take up the issue of sexual minorities.<sup>241</sup>

CHRR, one of the few remaining human rights organizations in the country, was effectively shut down by the government earlier this year. All of its members are either currently in prison or in exile.<sup>242</sup>

Government efforts to silence the work of rights defenders, including those who take up issues of sexual orientation or gender identity, violate Iran's obligations to guarantee freedom of expression and assembly. In addition, both the Special Representative to the Secretary General on Human Rights Defenders and the UN special rapporteur on torture have noted (in the former's words):

[The] greater risks ... faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretation of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be ... human rights groups and those who are active

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<sup>239</sup> Hesam Misaghi does not identify as a member of Iran's LGBT or sexual minority community.

<sup>240</sup> The Committee of Human Rights Reporters is an Iran-based human rights organization that was founded in 2006. Most of their members are currently either in exile or prison. CHRR does not exclusively focus on issues related to the rights of sexual minorities in Iran. See "Iran: New Coordinated Attack on Human Rights Groups," Human Rights Watch news release, March 24, 2010, <http://www.hrw.org/en/news/2010/03/24/iran-new-coordinated-attack-human-rights-groups>.

<sup>241</sup> Letter of Hesam Misaghi to Human Rights Watch, June 14, 2010.

<sup>242</sup> See "Iran: Release Rights Activists; Guarantee a Fair Trial," Human Rights Watch news release, September 1, 2010, <http://www.hrw.org/en/news/2010/09/01/iran-release-rights-activist-guarantee-fair-trial>.

on issues of sexuality, especially sexual orientation ... These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but other social actors.<sup>243</sup>

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<sup>243</sup> "Report of the Special Representative to the Secretary General on Human Rights Defenders," UN Doc. E/CN.4/2001/94 (2001), para. 89g; cited in "Report of the Special Rapporteur on the Question of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment," UN General Assembly, A/56/156, July 3, 2001.

## XII. The Situation of Iranian LGBT Refugees and Asylum Seekers

There I had to hide the fact that I was a lesbian. Here I have to prove it.

—Maryam S., Lesbian Iranian in exile, April 2010

Human Rights Watch researchers traveled to Turkey three times in order to meet with LGBT refugees and asylum seekers: in October 2007, May 2008, and April 2010. They interviewed more than 125 LGBT Iranians who had arrived in Turkey seeking asylum between 2005 and 2010 with no more than their passport, a change of clothes, and a few hundred dollars in their pocket.

Turkey is a signatory to the 1951 Refugee Convention; however, it limits resettlement of refugees inside the country to those who originate from Europe. Non-European refugees are considered by the Turkish government to be “temporary asylum seekers” who shall remain in Turkey until United Nations High Commissioner for Refugees (UNHCR) grants them refugee status and they are resettled in a third country, or they are denied refugee status and must be sent back to their country of origin. Despite these limitations, Turkey receives the largest number of Iranian refugees, including members of Iran’s sexual minorities, of any other country because it shares a border with Iran, does not require visas for Iranian passport holders, and is a transit route to continental Europe.

UNHCR grants LGBT asylum refugee status on the grounds of belonging to a “particular social group.”<sup>244</sup> However, UNHCR did not originally identify them in their database by their lesbian, gay, bisexual, or transgender identities. It was not until September 2008 that UNHCR started to include sexual orientation or gender identity as a field in its recollection of data.<sup>245</sup> That same year, UNHCR issued a guidance note recognizing that individuals being persecuted due to sexual orientation and gender identity should be considered to be “fleeing due to membership of a particular social group.”

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<sup>244</sup> According to UNHCR, a “particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience, or the exercise of one’s human rights.” UN High Commissioner for Refugees, “Guidelines on International Protection No. 2: ‘Membership of a Particular Social Group’ Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees,” May 7, 2002, HCR/GIP/02/02, <http://www.unhcr.org/refworld/docid/3d36f23f4.html> (accessed December 2, 2010).

<sup>245</sup> Email communication from Eduardo Yrezabal, Senior Protection Officer, UNHCR, to Human Rights Watch, September 29, 2008. Yrezabal told Human Rights Watch that “UNHCR-Turkey introduced only recently (a month ago) a field in its database that includes sexual orientation. Before this field was included in the database, LGBT claims were recorded within the wider category of ‘membership of a particular social group.’”

Iranian LGBT refugees and asylum seekers face many of the same problems that all refugees face in Turkey.<sup>246</sup> The refugee registration process is multi-phased process during which applicants must apply for “temporary asylum” with the Turkish Ministry of Interior and undergo refugee status determination interviews with UNHCR. The process from start to finish, when the applicant boards a plane to go to a resettlement country, can take up to two years if not longer.<sup>247</sup>

During their time in Turkey, all refugees and asylum seekers are constrained by a range of regulations restricting what they can and cannot do while they are in Turkey. For example, all refugees and asylum seekers have restricted freedom of movement and must be assigned to a “satellite city” away from larger urban areas such as Istanbul, Ankara, or Izmir.<sup>248</sup> They must sign in at the local “foreigners” police station once or several times a week so that authorities can ensure that they have not left their assigned city.<sup>249</sup>

Turkish law requires that all refugees and asylum seekers pay fees for residency, which must be renewed every six months. According to Turkish law, they have the right to apply for exemption of residency fees in accordance with Turkey’s Article 88 of the Law on Collection of Fees (No. 492). Most, however, are not aware of this right. Those who have applied told Human Rights Watch that it is nearly impossible for the exemption to be granted. Most refugees and asylum seekers do not have the ability to pay the residency fees.<sup>250</sup> Without residency permits it is extremely difficult to gain access to health care, education, social assistance, and employment. In general, refugees and asylum seekers are responsible for their own expenses, including housing.

Turkish law also requires everyone, including refugees and asylum seekers, to secure work permits prior to gaining employment. Administrative burdens, along with the high cost of

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<sup>246</sup> For a recent report detailing the situation of Iranian refugees in Turkey, see OMID Advocates for Human Rights, Report of the Situation of Iranian Refugees in Turkey, June 2010, [http://www.omidadvocates.org/uploads/2/4/8/2/2482398/report\\_on\\_the\\_situation\\_of\\_iranian\\_refugees\\_post\\_june\\_12th\\_one\\_year\\_later.pdf](http://www.omidadvocates.org/uploads/2/4/8/2/2482398/report_on_the_situation_of_iranian_refugees_post_june_12th_one_year_later.pdf) (accessed December 2, 2010).

<sup>247</sup> Human Rights Watch researchers spoke to LGBT refugees who arrived in Turkey as early as 2006 and had not been resettled two years later. Researchers also interviewed LGBT refugees that were resettled in less than a year. The speed of the resettlement process is not clear even among the same group of asylum seekers and refugees.

<sup>248</sup> Satellite cities are the provinces the Ministry of Interior in Turkey designated for asylum seekers to reside in. As this writing, there were more than 30 cities, mostly in the interior region of the country. See United States Committee for Refugees and Immigrants, “World Refugee Survey 2008 - Turkey,” June 19, 2008 in UNHCR Refworld, <http://www.unhcr.org/refworld/docid/485f50d776.html> (accessed October 15, 2008).

<sup>249</sup> Refugees and asylums seekers may apply for permission to temporarily leave their satellite city, but the ultimate decision rests with the local police station.

<sup>250</sup> Refugees and asylum seekers who have not paid their residency fees may be required to do so before being allowed to leave Turkey and resettle in a third country.

residency fees, means that most refugees cannot secure work permits and must therefore work illegally in order to make a living. Working illegally, on the other hand, renders many refugees and asylum seekers vulnerable to abuse and exploitation by their Turkish employers.

In addition to these general hardships, however, Iranian LGBT refugees and asylum seekers have their own set of unique problems.<sup>251</sup> During its three visits to Turkey in 2007, 2008 and 2010, Human Rights Watch interviewed dozens of Iranian LGBT refugees and asylum seekers who described their main problems in Turkey as discrimination and abuse suffered at the hands of local townspeople in Turkey, difficulties with Turkish government authorities including the Turkish police, and problems with UNHCR itself.

One of the biggest problems facing LGBT refugees and asylum seekers is that they must reside in smaller “satellite cities” in Turkey’s interior. These smaller towns often have populations that are more culturally conservative than Turkey’s larger urban centers and may thus have problems with LGBT guests. Human Rights Watch and other organizations have documented numerous cases of harassment and gender-based violence directed at Iranian LGBT refugees and asylum seekers in Turkey.<sup>252</sup> LGBT refugees also complained of insufficient police protection or neglect when they attempted to report such abuses. Despite these dangers, however, current UNHCR guidelines do not consider sexual orientation or gender identity as factors warranting expedited resettlement.<sup>253</sup>

Another common grievance aired by Iranian LGBT refugees in Turkey was problems with UNHCR staff, including interviewers and interpreters tasked with performing registration and refugee status determinations. The majority of complaints by LGBT refugees included inappropriate, insensitive, or irrelevant questions asked by UNHCR officers, including some which were sexual in nature. Human rights groups, including Human Rights Watch, believed

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<sup>251</sup> For an excellent analysis of the situation of LGBT refugees and asylum-seekers in Turkey, see Helsinki Citizens Assembly (HCA) & Organization for Refugee, Asylum and Migration (ORAM), “Unsafe Haven: The Security Challenges Facing Lesbian, Gay, Bisexual and Transgender Asylum Seekers and Refugees in Turkey,” July 8, 2009, [http://www.hyd.org.tr/staticfiles/files/unsafe\\_haven\\_report.pdf](http://www.hyd.org.tr/staticfiles/files/unsafe_haven_report.pdf). Several of the recommendations in this report regarding treatment of LGBT refugees and asylum-seekers were taken from “Unsafe Haven.”

<sup>252</sup> UNHCR defines gender-based violence in the following way: “... gender-based violence is violence that is directed against a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.... While women, men, boys and girls can be victims of gender-based violence, women and girls are the main victims.” According to the UNHCR “This kind of violence perpetuates the stereotyping of gender roles that denies human dignity of the individual and stymies human development.” See UNHCR, “Sexual and Gender-Based Violence against Refugees, Returnees, and Internally Displaced Persons—Guidelines for Prevention and Response,” May 2003, [www.rhrc.org/pdf/gl\\_sgbv03\\_00.pdf](http://www.rhrc.org/pdf/gl_sgbv03_00.pdf) (accessed November 15, 2010).

<sup>253</sup> Resettlement under UNHCR auspices is geared primarily to the special needs of refugees under the office’s mandate whose life, liberty, safety, health, or fundamental human rights are at risk in the country where they seek refuge. It is also considered a durable solution for refugees who have compelling reasons to be removed from their country of asylum. Furthermore, it is appropriate for refugees without local integration prospects, for whom no other solution is available.

that these problems existed in part because of a lack of adequate guidelines for interviewing LGBT asylum seekers.<sup>254</sup>

In response to these problems, UNHCR issued new guidelines on processing refugee claims based on sexual orientation and gender identity in November 2008. The guidelines make it clear that “the fact that a[n] LGBT applicant has never actually been prosecuted for his or her homosexual conduct does not prevent him or her from having a well-founded fear of being persecuted.”<sup>255</sup> The guidelines also recognize that LGBT claims deserve protection whether the persecution is carried out by authorities or private actors whom the authorities are unwilling or unable to stop. The UNHCR guidelines also state that a “person should not automatically be considered heterosexual merely because he or she is, or has been, married, has children, or dresses in conformity with prevailing social codes.”

Finally, the guidelines encourage UNHCR to employ staff well-versed and trained in dealing with LGBT persons, and they call for the issuance of training manuals regarding proper questions to pose to applicants during the interview process.

On October 1, 2010, UNHCR issued the following statement regarding LGBT asylum seekers and refugees:

The existence of laws criminalizing same-sex relations in many countries (including the death penalty in seven) poses significant problems for these asylum seekers and refugees. Such laws, whether enforced or not, impede their ability to access state protection in their home countries. When they flee, they are often reluctant to register for asylum. When they do register for asylum, they may be unlikely to testify truthfully at asylum hearings regarding the nature of their persecution.

The survey found that people from these groups are more prone to sexual and gender-related violence during detention, both in their home countries

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<sup>254</sup> These guidelines are intended to provide legal interpretative assistance to UNHCR staff and others who carry out refugee status determination. The Guidelines recognize that claims presented on the grounds of sexual orientation “contain a gender element.” It also encompasses “homosexuals, transsexuals, or transvestites” under a particular social group. The Guidelines, however, failed to include lesbians within the possible groups that can be persecuted on the basis of their sexual orientation. Furthermore, the procedural issues related to interviewing asylum seekers fell short of including LGBT specific concerns. See UNHCR, Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, May 7, 2002, paras. 16, 36, <http://www.unhcr.org/publ/3d58dddef4.pdf> (accessed October 15, 2008).

<sup>255</sup> UNHCR, “UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity,” November 21, 2008, <http://www.unhcr.org/refworld/docid/48abd5660.html> (accessed December 10, 2010).

and countries of asylum. It also found that they face a heightened risk of discrimination in urban settings and refugee camps.

Durable solutions tend to be more limited, with integration into the country of asylum and return to the home country often not being a possibility.

UNHCR advocates for resettlement of individuals who face a heightened risk as a result of belonging to this social group, and calls upon resettlement states to recognize their vulnerability.<sup>256</sup>

Human Rights Watch calls on states receiving Iranian LGBT refugees, and particularly the government of Turkey, to, among other things, prohibit and prosecute acts of violence against them, allow freedom of movement for these individuals (including allowing them to settle in larger urban areas), and allow them to apply for work permits and residency exemptions.

Human Rights Watch also calls on UNHCR to, among other things, develop and apply training materials based on the UNHCR Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity, and to refer recognized LGBT refugees for resettlement together with their partners. Last but not least, Human Rights Watch calls on resettlement countries, including EU member states, Canada, Australia, and the United States, to prohibit refoulement of LGBT refugees or asylum seekers to Iran based on the notion that there is no systematic persecution of sexual minorities in that country, and that these individuals can live comfortably in Iran as long as they conceal their sexual orientation and identity.<sup>257</sup>

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<sup>256</sup> UNHCR calls upon states to recognize the need of people persecuted over sexual orientation or gender identity, Briefing Notes, October 1, 2010, <http://www.unhcr.org/4ca5da949.html?tr=y&aud=7095730> (accessed October 21, 2010).

<sup>257</sup> See “Gay Asylum Seekers from Iran and Cameroon Win Appeal,” BBC, July 7, 2010, <http://www.bbc.co.uk/news/10180564> (accessed December 10, 2010).

## Acknowledgments

This report was written by Faraz Sanei, researcher for the Middle East and North Africa division of Human Rights Watch. The report is based on research conducted by Faraz Sanei, Scott Long, former director of the lesbian, gay, bisexual, and transgender rights program, and Juliana Cano Nieto, former researcher for the lesbian, gay, bisexual, and transgender rights program. Eric Goldstein, deputy director of the Middle East and North Africa division, Boris Dittrich, acting director of the lesbian, gay, bisexual, and transgender rights program, Rasha Mounneh, researcher in the lesbian, gay, bisexual, and transgender rights program, Bill Frelick, director of the refugee policy program, and Bede Sheppard, senior researcher with the children's rights division, edited this report. Clive Baldwin, senior legal advisor at Human Rights Watch, and Danielle Haas, consultant to the Program Office, reviewed this report. Adam Coogle, associate in the Middle East and North Africa division, provided production assistance. Publications Director Grace Choi, Mail Manager Fitzroy Hepkins, and Creative Manager Anna Lopriore prepared the report for publication.

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Last but not least, Human Rights Watch would like to thank the dozens of Iranians who agreed to share their stories and experiences with us.

**HUMAN RIGHTS WATCH**

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**Appendix 1:**  
**Letter from Human Rights Watch to the Iranian Government**  
**requesting information for this report**

[www.hrw.org](http://www.hrw.org)

Sarah Leah Whitson, *Executive Director*  
Joe Stork, *Deputy Director*  
Eric Goldstein, *Deputy Director*  
Christoph Wilcke, *Senior Researcher*  
Nadim Houry, *Senior Researcher*  
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Victoria Riskin  
Charles Shamas  
Sid Sheinberg  
Mustapha Tili  
Andrew Whitley  
James Zogby  
Ahmed Zuaiter

November 4, 2010

His Excellency Ayatollah Sadegh Larijani  
Head of the Judiciary  
Islamic Republic of Iran

His Excellency Mohammad Javad Larijani  
Head of the Human Rights Council of the Judiciary  
Islamic Republic of Iran

His Excellency Alireza Avai  
Head of the Tehran Judiciary  
Islamic Republic of Iran

His Excellency Abbas Jaafari Dolatabadi  
Tehran Prosecutor  
Islamic Republic of Iran

Your Excellencies:

We write this letter to request permission for a Human Rights Watch delegation to visit Iran, in order to further the research we are conducting into the human rights situation of Iranians who self-identify as gay, lesbian, bisexual and transgender (collectively referred to as “sexual minorities”), or individuals who engage in consensual same-sex conduct.

For the past five years, Human Rights Watch has been gathering information, including accounts by Iranians both inside and outside the country who allege a pattern of state-sponsored discrimination against Iran’s sexual minorities. In order to complement that research we wish to conduct on-the-ground interviews in Iran, including with government officials in order to discuss the subject and ensure that government views

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Michele Alexander, *Development & Outreach Director*  
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Peggy Hicks, *Global Advocacy Director*

are fully incorporated into our report. Our findings will officially be released in the form of a report in the coming months.

We hope you will grant Human Rights Watch permission to visit Iran to conduct this research. Even if you do not authorize our visit, however, we wish to solicit from you information about laws affecting the rights of sexual minorities, statistics about the number of persons prosecuted for engaging in same-sex relations, any information about the mechanisms or programs the Iranian government has in place to prevent and punish ill-treatment by the police and *basij* forces of members of Iran's sexual minorities, and any other observations you wish to make so that these may be reflected in our report. We will reflect in the report all pertinent information we receive from you by November 25, 2010.

As you are aware, Iranian law defines the crime of sodomy to include both consensual and coerced sexual relations, whether penetrative or not, between men. The punishment for intercourse between two men is death and for sexual relations between two women (*mosaheqeh*) is 100 lashes for the first three offenses and the death penalty for the fourth. Similarly, *tafkiz*, or the rubbing together of thighs or buttocks (or other forms of non-penetrative "foreplay" between men) is punishable by 100 lashes for each partner. Recidivism is punishable by death on the fourth conviction. In addition, "lustful" kissing between two men (and two women) is punishable by up to 60 lashes, and "[i]f two men who are not related by blood are found naked under the same cover without any necessity," each one will receive up to 99 lashes.

HRW opposes the death penalty on principle. The International Covenant on Civil and Political Rights (ICCPR) states, in Article 6, "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime." We cannot see how making a capital offense of consensual same-sex relations can be reconciled with this obligation.

We believe that provisions in the Iranian Penal Code that criminalize consensual same-sex relations are inconsistent with Iran's international obligations under the ICCPR. The Human Rights Committee, which interprets the ICCPR, has called on all state parties to repeal laws criminalizing homosexual conduct.

In addition, Iran allows the execution of juvenile offenders, including those alleged to have committed sodomy, even though the ICCPR and the Convention on the Rights of the Child (CRC) prohibit Iran from sentencing individuals to death for any offense committed while they were under the age of 18. Iran is a signatory to both of these international conventions.

Our preliminary findings suggest that there is a relationship between Iran's discriminatory laws against sexual minorities and alleged abuse perpetrated against them by state actors (such as security forces) and by private citizens (including family members). Iran's sexual minorities are often the targets of harassment, abuse, blackmail, extortion, and torture because of their sexual orientation or gender identity. Yet because the law criminalizes same-sex conduct, Iran's sexual minorities cannot avail themselves of the general protections afforded under the law to all Iranians because they fear further discrimination and possible prosecution. In certain instances, particularly in those where the abuse is alleged to have been perpetrated by state actors (including members of the police force or *basij*), Iran's sexual minorities may be targeted precisely because the perpetrators know that their victims have nowhere to turn.

Moreover, we have collected eyewitness accounts and other information suggesting that Iran's security forces (including the police and *basij*) rely upon these discriminatory laws to target, arrest, and detain individuals whom they suspect of being "gay" or of belonging to Iran's sexual minorities. This targeting takes place in both public and private spaces, including parks, cafes, and people's homes. We have also documented instances where security forces have targeted individuals over the internet or at private parties whom they suspect of engaging in (or intending to engage in) consensual same-sex conduct.

In addition, a number of the witnesses we contacted alleged instances of ill-treatment, verbal and psychological abuse, sexual harassment, sexual assault, rape, and torture of gays, lesbians, bisexuals or transgender Iranians (or individuals suspected of belonging to these groups). In most cases, the abusive conduct was alleged to have been committed by local police or basij forces, either in public spaces or in detention facilities. If true, these allegations amount to a series of violations of international law, and in some cases, Iran's obligations under its own domestic laws. We would welcome any information about the mechanisms or programs the Iranian government has in place to prevent and punish ill-treatment by the police and basij forces of members of Iran's sexual minorities.

Our research also suggests that at least in some cases, individuals who are arrested and charged with "homosexual crimes" receive summary trials in which judges ignore the strict evidentiary guidelines that the penal code stipulates for such cases. Instead, they rely upon evidence that should be inadmissible as evidence of guilt, including confessions extracted through the use of physical torture and extreme psychological pressure. In some cases, courts have convicted defendants of sodomy charges solely on the basis of "the knowledge of the judge," even in the absence of inculpatory evidence or in the presence of exculpatory evidence. Article 120 of the Iranian Penal Code allows a Shari'a judge to reach a verdict on

sodomy based on his “knowledge” as “derived through customary methods,” a method that in practice enables judges to rely on tenuous circumstantial evidence to determine whether a crime has occurred. This provision also makes it easy in practice for a judge’s individual prejudices toward a defendant’s appearance or demeanor to sway his or her rulings.

In closing, we reiterate our request that you allow Human Rights Watch to visit Iran in order to conduct further research and assess the situation of Iran’s sexual minorities, and to meet with Iranian officials regarding these and other issues of concern. We would be eager to discuss the modalities of such a visit at your earliest convenience. In any event, our forthcoming report will reflect any pertinent information you provide to us by November 25, 2010.

We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Leah Whitson".

Sarah Leah Whitson  
Executive Director, Middle East & North Africa Division

**HUMAN RIGHTS WATCH**

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## Appendix 2: Follow-up Letter from Human Rights Watch to the Iranian Government requesting information for this report

[www.hrw.org](http://www.hrw.org)

December 2, 2010

His Excellency Ayatollah Sadegh Larijani  
Head of the Judiciary  
Islamic Republic of Iran

His Excellency Mohammad Javad Larijani  
Head of the Human Rights Council of the Judiciary  
Islamic Republic of Iran

His Excellency Alireza Avai  
Head of the Tehran Judiciary  
Islamic Republic of Iran

His Excellency Abbas Jaafari Dolatabadi  
Tehran Prosecutor  
Islamic Republic of Iran

Your Excellencies:

The purpose of this letter is to request permission for Human Rights Watch to come to Iran in order to present to the press, the public, and the government, its forthcoming report on the human rights situation of Iranians who self-identify as gay, lesbian, bisexual or transgender, or individuals who engage in consensual same-sex conduct (collectively “sexual minorities”).

This letter follows our November 4, 2010 correspondence to you. In that earlier letter, we informed you of our research into this topic and shared some of our preliminary findings with you. We asked that you allow Human Rights Watch to send a delegation to Iran in order to further our research and meet with Iranian officials, and provided you with an

opportunity to submit any pertinent information you feel should be included in our research by November 25, 2010. Additionally, we informed you that we plan on officially releasing our findings in the form of a report in the coming months.

To date, we are unaware of any responses from your government to Human Rights Watch's aforementioned requests. If you have provided us with a response and we have for some reason not received it, please let us know as soon as possible.

We will be happy to provide you with an advance copy of the report as soon as its Farsi version is finalized.

It is the general policy of Human Rights Watch's Middle East and North Africa division to release reports inside the country of concern in an effort to provide the government, the local press, and members of the public the opportunity to engage in constructive dialogue and debate regarding the subject of the report, in this case, the human rights situation of Iran's sexual minorities. Accordingly, we wish to present our forthcoming report on Iran at a press conference in Tehran.

We hope that you will agree to provide visas to three Human Rights Watch staff members so that they can come to Iran and hold such a press conference and meet with government officials to discuss the human rights situation of Iran's sexual minorities and the recommendations we address to Iranian government authorities.

If we do not hear from you in the coming days, we will release this report on December 15, 2010, outside of Iran.

I would be happy to discuss with you any aspect of the report – its findings, recommendations, and methodology, as well as the manner that we make it public.

We hope that you will allow us this opportunity, and look forward to your response.

Sincerely,



Sarah Leah Whitson  
Executive Director, Middle East & North Africa Division

# We are a Buried Generation

## Discrimination and Violence Against Sexual Minorities in Iran

Iranian law reflects the Iranian government's hostile attitude towards sexual minorities, including lesbian, gay, bisexual, and transgender (LGBT) people. Iran's penal code criminalizes all sexual relations outside traditional marriage, and specifically bans same-sex conduct, even if it is consensual. Threat of prosecution and serious punishment, including the death penalty, for those convicted of same-sex crimes constitutes discrimination against Iran's vulnerable sexual minorities.

This report—based on interviews with more than 125 lesbian, gay, bisexual, and transgender Iranians inside and outside Iran over the past five years—documents discrimination and violence against Iran's lesbian, gay, bisexual, and transgender population, and others whose sexual practices and gender expression do not conform to the government's socio-religious norms. Human Rights Watch analyzed these abuses within the context of general systematic human rights violations that Iran's government perpetrates against its citizens, including arbitrary arrests and detentions, invasions of privacy, mistreatment and torture of detainees, and lack of due process and fair trial standards.

The report also documents instances in which police and members of the hard-line basij paramilitary force—relying upon discriminatory laws to harass, arrest, and detain individuals suspected of being gay—allegedly ill-treated and sometimes tortured real or suspected LGBT people in public spaces and detention facilities. Several interviewees alleged that members of the security forces sexually assaulted or raped them.

*We are a Buried Generation: Discrimination and Violence Against Sexual Minorities in Iran* calls on Iran's government to abolish all laws and other legislation under the Islamic Penal Code that criminalize consensual same-sex conduct, especially those that impose the death penalty, and to cease the harassment, arrest, detention, prosecution, and conviction of sexual minorities and persons who engage in consensual same-sex behavior. Human Rights Watch also calls on authorities to prosecute members of the security force who engage in such actions.

*A 25-year-old gay Iranian man stands on the roof of a house in Turkey, where he now lives as a recognized refugee. He is one of several hundred Iranians who in recent years have sought protection in neighboring Turkey due to the discrimination they face based on their sexual orientation or gender identity.*

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