

# Islamic Republic of Iran

Submission to the United Nations  
34<sup>th</sup> Session of the Working Group on the UPR  
United Nations Human Rights Council  
November 2019

## Violations of the Rights of individuals in Iran based on their Sexual Orientation, Gender identity and Gender Expression

Submitted By:

**OutRight Action International:** Founded in 1990 and formerly known as the International Gay and Lesbian Human Rights Commission, OutRight seeks to advance human rights and opportunities for LGBTIQ people around the world by developing partnerships at global, regional, and national levels to build capacity, document human rights violations, advocate for inclusion and equality, and hold leaders accountable for protecting the rights of LGBTIQ people. OutRight is an ECOSOC accredited organization since 2010 and is based in New York.

**Small Media:** Established in 2011, Small Media is a London-based organization that works to support freedom of expression and access to information globally. We work with our global partners to develop strategies and tools that can support human rights defenders, activists and journalists to work safely and effectively in the digital age. To do this, we provide research, training, and technology support to our network of partners to develop effective, data-driven advocacy strategies and campaigns that can bring about meaningful change

**Impact Iran** represents a coalition of non-governmental organizations that draw attention to the situation of human rights in Iran, and encourage the Iranian government to address concerns expressed by the international community and international human rights bodies. Impact Iran promotes Iranian civil society efforts to engage with the wider UN human rights system, alongside various intergovernmental processes aimed at strengthening rights protections in Iran. Impact Iran's focus emanates from the belief that the sustainability of efforts to promote respect for human rights in Iran hinges on the capacity of Iranian civil society to effectively engage with and participate in the range of UN processes that promotes accountability and encourages implementation of Iran's international human rights obligations.



IMPACT IRAN

## **Introduction**

1. Lesbian, gay, bisexual, and transgender (LGBT) individuals in Iran continue to face multiple and intersecting forms of violence and discrimination and suffer from a range of human rights violations. The violations stem directly from the state's continued criminalization of same-sex consensual activity, restrictions around speech in terms of same-sex behavior, and strict regulations around transgender persons right to legal recognition. These codified laws and their resulting stigmatization of LGBT people create challenges not only to their fundamental right to life and right to live free from violence and discrimination but also in terms of violations pertaining to arbitrary arrest and detention, freedom of expression and association, access to justice and access to healthcare.
2. Iran's violation of LGBT individuals' human rights is contrary to its obligations under the treaties to which it is a party. Iran is a party to the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>i</sup> LGBT Iranians face violations under each of these treaties and in order for the state to be in compliance with international human rights law, it must end the continued state-sanctioned discrimination and violence against LGBT individuals.

## **Criminalization of homosexuality**

3. Articles 233 through 240 of Iran's Islamic Penal Code criminalizes same-sex consensual relations. Under these articles, the death penalty is imposed upon a male who is the "passive" party in homosexual acts or is a non-Muslim engaged in an act with a Muslim man. Men who do not fall under either of these categories and women engaged in same-sex sexual intercourse are punishable with 100 lashes. Additionally, men and women who engage in acts of affection, such as kissing or touching, with persons of the same sex can be punished with 31 to 74 lashes.<sup>ii</sup> Iran remains one of eleven countries or entities that imposes the death penalty for consensual same-sex relations.<sup>iii</sup>

## **Violence and Discrimination**

4. The criminalization of same-sex consensual behavior along with homophobic rhetoric results in increased stigmatization of LGBT Iranians. It also legitimizes and effectively encourages violence and discrimination by state agents and private individuals against individuals based on their real or perceived sexual orientation, gender identity and expression.<sup>iv</sup>

5. Forms of violence and discrimination experienced by Iranians based on their real or perceived sexual orientation, gender identity and expression include abuse by police and judiciary, domestic violence, sexual violence, discrimination in the workplace, and bullying and abuse in schools.<sup>v</sup>
6. LGBTI Iranians report experiencing violence and discrimination at the hands of family members in the form of beatings, sexual assault and rape, as well as verbal abuse. There have also been reports of individuals facing abuse by state actors including torture, beating and rape by police officers.<sup>vi</sup> Unfortunately, these acts remain largely underreported due to a fear of persecution and even further abuse by those to which they report these violations to.<sup>vii</sup>
7. Threats of violence and blackmail also manifest in online spaces. In a 2018 survey of 727 LGBT Iranians conducted by Small Media, 11% of respondents reported that they had been entrapped on dating apps – either by state actors, or other individuals with malicious intent.<sup>viii</sup> In light of the legislative restrictions on LGBT citizens, there is no avenue for such threats of blackmail to be reported, as the victim will legitimately fear being subjected to harassment or detention by the police.
8. Online threats have also been reported from state institutions. One gay man received a message on a dating app from a man purporting to be from the Iranian Cyber Police. Several days later, he received an SMS from the ‘Notification Office of Iranian Revolutionary Guard Corps Intelligence’, informing him that he would shortly be charged under Iran’s sodomy law. He fled the country several days later, fearing for his life.<sup>ix</sup>
9. These forms of violence directly speak to Iran’s obligations under the ICCPR. The use of the death penalty when it comes to male same-sex consensual relations violates Article 6 of the ICCPR, the right to life. Even though the death penalty in itself is not currently unanimously considered a violation of Article 6, the Human Rights Committee explained in General Comment No. 36 that it may only be imposed for the most serious crimes, involving intentional killing. Same-sex consensual sexual behavior does not fall within that criteria. Further, both the ICCPR and CRC prohibit the use of the death penalty for minors. These violations also speak to Article 17 of the ICCPR, the right to privacy.

### **Arbitrary Arrests and Detention**

10. State officials continue to use discriminatory laws to arbitrarily arrest and detain LGBT individuals.<sup>x</sup> One of the most recent examples of this behavior is found in reports of the arrest of over 30 gay men in Iran based on their perceived sexual orientation in April 2017.<sup>xi</sup> While OutRight and Small Media did not research the incident at the time, publications detailing the arrests found that state police raided a private party in

Bahadoran at 8:30 PM local time on April 13, 2017. Witnesses explained that the officers fired several gunshots before arresting the 30 men under charges of “being homosexual.”<sup>xii</sup> Additionally, it was confirmed that the officers who arrested the 30 individuals also attacked and beat them. While detained, the individuals were also forced to undergo anal examinations, a scientifically debunked technique amounting to torture or other cruel, inhuman or degrading treatment, to allegedly prove their sexuality in court. They were also forced to write down names of their friends and acquaintances.<sup>xiii</sup>

11. Article 9 of the ICCPR states that, “everyone has the right to liberty and security of person,” and prohibits arbitrary arrests.<sup>xiv</sup> State officials carrying out raids and arbitrarily arresting individuals based on their real or perceived sexual orientation comes in direct contravention to Iran’s obligations under Article 9. Further, the treatment individuals endure while detained under these discriminatory laws continue to violate their rights to be free from cruel and degrading punishment.

## **Access to Justice**

12. As mentioned above, LGBT Iranians continue to be arbitrarily arrested and detained based solely on their actual or perceived sexual orientation. Once individuals have been arrested based on these laws, they are then subjected to a criminal justice system that continues to violate their rights. Featured in OutRight’s 2016 Human Rights Report: Being Lesbian In Iran, lesbians who has been arrested because of their sexual orientation explained that once detained, they are subject to interrogations under duress without access to their lawyers or being informed of their rights.<sup>xv</sup> Additionally, they noted that the trial procedures failed to respect fair trial standards, with some individuals stating that their trials lasted only 30 minutes and resulted in harsh sentences.<sup>xvi</sup>
13. The very arrests that lead to LGBT individuals’ involvement with the criminal justice system in Iran are violations of international human rights law.<sup>xvii</sup> However, the experiences once they enter the criminal justice system further these violations. Article 14 of the ICCPR guarantees the right to a fair hearing which includes access to one’s attorney. Interrogations without the presence of an attorney of one’s own choice as well as 30-minute trials undeniably violate this right.

## **Restrictions on freedom of expression**

### **A. Cyber Laws**

14. The 2009 Computer Crimes Law radically expanded state powers for surveillance and online content censorship and has had a chilling effect upon freedom of expression

online, with LGBT citizens particularly adversely affected. Indeed, the Law allows for the imposition of the death penalty for ‘Crimes against Public Morality and Chastity’, defined broadly in Articles 14-15 of the law.<sup>xviii</sup>

15. Article 14 criminalizes “producing, sending, publishing, distributing, saving or financially engaging in obscene content”. ‘Obscene content’ is subsequently defined in unacceptably vague terms as content which is ‘immoral’ or ‘pornographic’ in nature, granting significant power to law enforcement to define LGBT-related content in these terms.<sup>xix</sup>
16. Article 15 criminalizes “the use of computers, telecommunication systems or portable data storage devices for inciting or aiding and abetting in the commission of crimes”, and includes accessorial liability for those who “provoke, encourage, threaten, invite, deceive, train or facilitate other individuals’ access to obscene content”, as well as criminalising “the use of computers, telecommunications or portable data storage devices to provoke, encourage, threaten, invite, deceive or train individuals to “engage in such acts as rape, drug abuse, suicide, sexual perversion or violence.” This article similarly fails to define sweeping terms such as ‘obscene content’ and ‘sexual perversion’, which could be employed to restrict a wide range of consensual and harmless activities including same-sex sexual conduct.<sup>xx</sup>
17. Subparagraph (b) of Article 15 mandates prison sentences or steep fines for anyone who encourages “the public access to immoral content or facilitates access to this content,” or who “provokes or invites the public to participate in crimes against chastity... or acts of sexual perversion.” Although Article 15 never explicitly mentions restrictions on LGBT content, the imprecision of language around “immorality” and “chastity” provides the ambiguity necessary for the laws to be deployed against the LGBT community.<sup>xxi</sup>

## **B. Print Media Laws**

18. Iranian print media regulations are similarly restrictive in terms of content related to same-sex relations and other consensual sexual conduct considered indecent. Article 9 of the Iranian Press Law, states that a publisher can only receive a publication license if they are deemed to be “free of moral corruption” and Article 6(2) prohibits the publication of “obscene” or “indecent” material.<sup>xxii</sup> This effectively prevents any publication related to the diversity of sexual orientations or gender identities.

## **C. Violations of Freedom of Expression and Association**

19. Freedom of expression is routinely denied to LGBT citizens on the basis of the laws outlined above, including the Islamic Penal Code, the Computer Crimes Law, and the Press Code.

20. In the face of legal and social restrictions offline, online spaces have long offered LGBT citizens the opportunity to express themselves freely, assemble as a community, and advocate for their human rights. However, these spaces have found themselves subject to increasing surveillance under legislation such as the 2010 Computer Crimes Law outlined above.
21. There have been several reported incidents of arrests of LGBT people on the basis of content they have shared online. The Iranian news agency ISNA reported in 2014 that an individual had been arrested by the Iranian Cyber Police (FATA) for soliciting for sex on Facebook.<sup>xxiii</sup> This was followed in 2017 with the arrest of six Telegram channel administrators for ‘promoting homosexuality’.<sup>xxiv</sup>
22. LGBT citizens perceive that widespread surveillance is undertaken by state and state-aligned actors. In a 2018 survey of 727 LGBT Iranians conducted by Small Media, 81% of respondents said that they were concerned about surveillance while accessing LGBT-related content online. Such perceptions have a chilling effect on the community’s willingness and ability to express themselves freely online.<sup>xxv</sup>
23. Article 19 of the ICCPR states that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Iran’s continued harassment of the LGBT individual through both print and online forms of media directly comes in conflict with the states obligations under Article 19 of the ICCPR.

### **Transgender Related Laws and Right to Healthcare**

24. The Iranian legal systems provides some space for legal recognition of transgender individuals. After years of advocacy from the Iranian trans community, in 1986 Ayatollah Khomeini issued a religious decree, or fatwa, accepting forms of transition-related healthcare for the Iranian trans community.<sup>xxvi</sup>
25. Section 18 of Article 4 of The Family Law holds that issues related to gender affirmation services are subject to the authorization of a family court. Further, a judiciary Legal Department advisory opinion noted that before going through gender affirmation surgery and applying for gender recognition in legal documents an individual must obtain court authorization.<sup>xxvii</sup> The court authorization does not compel an individual to undergo surgery, but an individual cannot obtain a change in any legal documents to reflect the person's gender identity unless he or she undergoes the surgery.<sup>xxviii</sup>

26. LGBT citizens face barriers to accessing healthcare that are not encountered by heterosexual and/or cisgender citizens. The extremely discrete nature of existing sexual health services in Iran makes it difficult for Iranian LGBT people to know where to go for sexually transmitted infections (STI) testing, or which practitioners they can trust with the information that they are LGBT. Dr. Arash Alaei, one of Iran’s pioneering HIV/AIDS practitioners – who was imprisoned between 2008 and 2011 under the charge of “communications with an enemy government” – commented that despite the availability of some discreet sexual health services, they remained inaccessible to many LGBT citizens on the basis that their public promotion was prohibited by the county’s legal prohibitions around discussing same-sex sexual activity. Dr. Alaei estimated that up to 70% of cases of HIV were going undiagnosed and untreated as a result.<sup>xxix</sup>
27. OutRight’s 2016 Human Rights Report on Being Transgender in Iran highlighted the specific issues when it comes to transgender individuals’ right to health. The legal recognition of their gender identity is only fully granted once officially diagnosed with Gender Identity Disorder and after successful completion of the process of legal and medical gender transition, thus leaving behind transgender individuals who do not wish to pursue medical transition as defined by the State wholly or partially.<sup>xxx</sup> Further, when some individuals decide to undergo medical interventions they are faced with inadequate services sometimes resulting in substandard surgeries putting their health at risk.<sup>xxxi</sup>
28. The experiences faced by LGBT individuals in attempts to secure their right to health reveal severe violations under international human rights law. Article 12 of the ICESCR provides for human right to health and explains that States must ensure that ethical standards are met by healthcare professionals. Additionally, Article 12 prohibits medical professionals from exercising any coercive measures in terms of treatment. The various experiences of LGBT individuals in healthcare settings is directly at odds with these standards.

## **Recommendations**

### **I. Analysis of past recommendations**

29. In Iran’s 2014 Universal Periodic Review Cycle, 11 states submitted a total of 13 recommendations that addressed the human rights of LGBTI individuals. Of the 13 recommendations, 1 was partially implemented, 2 were not implemented and 10 were not accepted. Iceland, Israel, Luxembourg, Uruguay, Spain, Canada, the Netherlands, Italy, Chile, Argentina and Denmark all called on Iran to end discrimination against LGBT Iranians by addressing issues such as national legislation that fosters discrimination and violence, including the laws criminalizing same sex consensual relationship and laws restricting freedom of expression.<sup>xxxii</sup>

30. Iceland's recommendation calling on Iran to outlaw forced or coerced sterilization, sex reassignment surgeries and reparative therapies imposed without free and informed consent is noted as partially implemented because these acts are considered unlawful under national legislation. However, there is no standalone legislation protecting individuals from these practices, and reports have shown that they continue to happen.<sup>xxxiii</sup> Therefore, in practice, the recommendation cannot be said to have been fully implemented.
31. The government of Iran continues to reject and ignore repeated recommendations by Member States regarding protections for individuals based on their sexual orientation, gender identity, gender expression and sex characteristics.

## II. Proposal of recommendations

32. We call on states to use the opportunity of the Universal Periodic Review of the Islamic Republic of Iran to recommend that Iran:
- Repeal or amend all legislation that results directly or indirectly in discrimination against, or prosecution and punishment of people based on their actual or perceived sexual orientation, gender identity or expression, particularly Articles 233 through 240 of Iran's Islamic Penal Code.
  - Take all necessary legislative, administrative, and other measures to eliminate and prohibit discrimination on the basis of sexual orientation, gender identity or gender expression, including with respect to access to adequate healthcare, and ensure that all individuals, regardless of their sexual orientation, gender identity or expression are protected from violence and social exclusion.
  - Protect the right to freedom of expression, both online and in print, and lift all forms of restrictions that prevent individuals from freely expressing their opinion, sharing information or discussing issues related to gender, sexuality and bodily autonomy.
  - Provide training for law enforcement officers, members of the judiciary, and other state run institutions and agencies on issues related to fundamental human rights, such as privacy, due legal process, freedom of expression and freedom of assembly, and their universal applicability regardless of an individual's sexual orientation and gender identity.

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<sup>i</sup> Ratification Status for Iran, United Nations Human Rights Office of the High Commissioner [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=81&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=81&Lang=EN).

<sup>ii</sup> Iran: Islamic Penal Code, accessed at: <https://www.refworld.org/docid/518a19404.html>

<sup>iii</sup> Sexual Orientation Laws in the World – 2019, ILGA World, accessed at: [https://ilga.org/downloads/ILGA\\_Sexual\\_Orientation\\_Laws\\_Map\\_2019.pdf](https://ilga.org/downloads/ILGA_Sexual_Orientation_Laws_Map_2019.pdf)



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- iv Being Lesbian in Iran, OutRight Action International, page 3 (2016)
- v Ibid.
- vi Being Transgender in Iran, OutRight Action International, page 31-32 (2016) accessed at: <https://www.outrightinternational.org/sites/default/files/OutRightTransReport.pdf>;
- vii Supra note iv, vi.
- viii Small Media, 'Breaking the Silence: Digital Media and the Struggle for LGBTQ Equality in Iran', (2018), [https://smallmedia.org.uk/media/projects/files/BreakingTheSilence\\_2018.pdf](https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf), p. 94
- ix Ibid, pp. 25-27
- x We are a Buried Generation: Discrimination and Violence Against Sexual Minorities in Iran, Human Rights Watch (2010) [https://www.hrw.org/sites/default/files/reports/iran1210webwcover\\_0.pdf](https://www.hrw.org/sites/default/files/reports/iran1210webwcover_0.pdf).
- xi Michael K. Lavers, Report: Iranian police arrest more than 30 men for 'sodomy', Washington Blade (April 21, 2017) <http://www.washingtonblade.com/2017/04/21/report-iranian-police-arrest-30-men-sodomy/>.
- xii Ibid
- xiii Ibid
- xiv Article 9, ICCPR
- xv Supra, note x at pg 16.
- xvi Ibid.
- xvii See Article 2, ICCPR (principle of nondiscrimination); Article 2, ICESCR (principle of nondiscrimination)
- xviii Article 19, 'Islamic Republic of Iran: Computer Crimes Law', (2012), <https://www.article19.org/data/files/medialibrary/2921/12-01-30-FINAL-iran-WEB%5B4%5D.pdf>, p. 29
- xix Ibid, p. 30
- xx Ibid, p. 32
- xxi Mani Mostofi, 'Iranian's Queer Internet: Human Rights Successes and Setbacks' in Outright International, *Lesbian, Gay, Bisexual and Transgender Rights in Iran: Analysis from Religious, Social, Legal and Cultural Perspectives*, (2015), <http://bit.ly/2KreaXe> p. 104
- xxii Article 9, Qanun-e Matbu'at [Press Law] 1364 [ratified 1986, amended 2000]; art 6(2).
- xxiii Iranian Students' News Agency, 04/02/2014, 'Perpetrators of Gay Content on the Internet', <http://bit.ly/2Kj3km5>
- xxiv Deutsche Welle Persian, 14/09/2017, 'Six Telegram Administrators Charged With 'Promoting Homosexuality'', <http://bit.ly/2KicQWJ>
- xxv Small Media, 'Breaking the Silence: Digital Media and the Struggle for LGBTQ Equality in Iran', (2018), [https://smallmedia.org.uk/media/projects/files/BreakingTheSilence\\_2018.pdf](https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf), p. 93
- xxvi Being Transgender in Iran, OutRight Action International, (2016), <https://www.outrightinternational.org/sites/default/files/OutRightTransReport.pdf>, p. 6
- xxvii Ibid, pg 8.
- xxviii Ibid.
- xxix Ibid, p. 74
- xxx Supra, note vi at pg 1.
- xxxi Ibid, pg 41.
- xxxii UPR Iran, Impact Iran, accessed at: <http://upriran.org/#?cycle=2014&lang=en>.
- xxxiii Ibid.