



**The Violations of the
Economic, Social, and Cultural Rights
of Lesbian, Gay, Bisexual, and Transgender (LGBT) Persons in the
Islamic Republic of Iran**

**A Shadow Report Submitted to the
Committee on Economic, Social, and Cultural Rights
50th Session (29 April – 17 May 2013)**

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March 2013

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I. INTRODUCTION

This shadow report is submitted to the Committee on Economic, Social, and Cultural Rights (hereinafter “CESCR” or “the Committee”) on the occasion of its 50th Session (29 April – 17 May 2013) by Global Initiative for Sexuality and Human Rights of the Heartland Alliance for Human Needs & Human Rights, Iranian Queer Organization, and International Human Rights Clinic of the Human Rights Program at Harvard Law School, in order to elaborate the violations of the 1966 International Covenant on Economic, Social, and Cultural Rights (hereinafter “ICESCR”) committed by the Islamic Republic of Iran (hereinafter “Iran”) against Lesbian, Gay, Bisexual, and Transgender (hereinafter “LGBT”) individuals.¹

Iran is a State party to the ICESCR, which it ratified on June 24, 1975.² In accordance with Article 9 of the Civil Code of Iran, international treaties which Iran has concluded are legally binding upon it,³ and therefore, Iran is under the obligation to enforce the rights of individuals under the ICESCR. Despite its obligation, Iran has failed to take measures to protect the rights of LGBT individuals as stipulated under the ICESCR, and on numerous occasions, it has also acted in violation of the Covenant.

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² See *International Covenant on Economic, Social, and Cultural Rights*, New York, 16 December 1966, Status as at : 22-02-2013 05:04:15 EDT, United Nations Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en (Feb. 22, 2013).

³ *Civil Code of the Islamic Republic of Iran*, 23 May 1928, <http://www.unhcr.org/refworld/country.LEGAL.LEGISLATION.IRN..49997adb27.0.html> (last visited Feb. 22, 2013), art. 9.

II. EXECUTIVE SUMMARY

On March 11, 2013, Dr. Ahmed Shaheed, the UN Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran presented his report dated February 28, 2013 to the Human Rights Council in its 22nd Session.⁴ He reported that “members of the lesbian, gay, bisexual, and transgender community (LGBT) face harassment, persecution, cruel punishment, and are denied basic human rights.”⁵ This report echoed the Concluding Observations of the Human Rights Committee on Iran dated November 29, 2011,⁶ in which the Committee also expressed its concern “that these persons face discrimination on the basis of their sexual orientation, including with respect to access to employment, housing, education and health care, as well as social exclusion within the community.”⁷

Such report and observations demonstrate that the violations of the rights of LGBT persons in Iran continue to occur at alarming pace, and this warrants joint international actions to stop those violations. In this report, we elaborate the violations of 4 (four) articles under the ICESCR: Article 2, par. 2 (right not to be subject to discrimination), Article 12 (right to health), Article 15 (right to take part in cultural life), and Article 6 (right to work).

⁴ *Human Rights Situation in Iran Warrants Serious Concern, UN Expert Reports*, UN News Center, <http://www.un.org/apps/news/story.asp/h%3Cspan%20class=%27pullme%27%3EIn%20short,%20when%20you%20empower%20a%20woman,%20you%20change%20the%20world%3C/span%3Ehttp://www.unfpa.org/www.fao.org/www.unicef.org/story.asp?NewsID=44344&Cr=iran&Cr1=#.UUF9EDeyIg-> (Mar. 11, 2013).

⁵ Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, submitted to the Human Rights Council, Twenty-second session, A/HRC/22/56, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-56_en.pdf (Feb. 28, 2013) [hereinafter “Report of Special Rapporteur on Human Rights in Iran”] at 20, ¶ 68.

⁶ Concluding Observations of the Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, 103rd session, Oct. 17 – Nov. 4, 2011, CCPR/C/IRN/CO/3, Nov. 29, 2011 [hereinafter “Human Rights Committee Concluding Observations”] at 3, ¶ 10.

⁷ *Id.*

First, the prohibition against discrimination has been violated by virtue of Iran's *de jure* and *de facto* discrimination against LGBT individuals. Iran has committed *de jure* discrimination because it has enacted laws and regulations that deprive LGBT individuals of the rights which non-LGBT individuals enjoy. Iran has also committed *de facto* discrimination because it has failed to take measures to prevent and suppress systematic persecution against LGBT persons. *Second*, the provision on the right to health has been violated by virtue of Iran's policy on sex reassignment surgery and towards those LGBT individuals living with HIV. *Third*, Iran has violated the right of LGBT persons to participate in cultural life by its strict control of the internet and other communication media, therefore breaching the rights of LGBT persons to manifest their cultural identity, membership, and activities. *Fourth*, Iran's policy on military exemption card and its severe neglect of LGBT persons who suffer from continuous and persistent discrimination in employment suggest violations of the right to work.

We note that Iran has been responsive throughout the Pre-Sessional Working Group, 49th Session (21-25 May 2012), in that Iran provided Replies to the List of Issues in Connection with the Consideration of the Second Periodic Report (E/C.12/IRN/2). However, we are of the view that some of the answers that Iran provided are inconsistent with the Committee's interpretation of the scope of States Parties' obligations under the ICESCR.⁸ We also note that Iran has recently approved a new draft Islamic Penal Code, pending signature of the President. However, we regret that it still criminalizes homosexuality and thus, reiterates discrimination.⁹ Therefore, much work remains to be done before Iran acts in compliance with the Covenant.

⁸ See pages 5 – 6 of this report.

⁹ See pages 6 – 7 of this report.

III. SUBSTANTIVE VIOLATIONS

1. Article 2 (2) (Non-Discrimination)

Article 2 paragraph (2) of the ICESCR obliges Iran to protect the rights of everyone under the Covenant “without discrimination of any kind”, including on the basis of “sex” or “other status.”¹⁰

The CESCR in its General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) defines discrimination as:

“[A]ny distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.”¹¹

The Committee observes that discrimination may occur through actions or omissions committed by State organs,¹² either directly or indirectly,¹³ *de jure* or *de facto*.¹⁴ The Committee is also of the view that Article 2 paragraph (2) comprises sexual orientation as one of the grounds on which discrimination may occur, since the words “other status” indicate the non-exhaustive nature of the list of prohibited grounds, and therefore, sexual orientation falls within this list.¹⁵ Contrary to the Committee’s view, Iran asserted in its Replies to the List of Issues in Connection with the Consideration of the Second Periodic Report (E/C.12/IRN/2) that “Article 2, paragraph 2, has nothing to do with sexual orientation and the word “sex” in this paragraph is limited to

¹⁰ International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, art. 2 (2).

¹¹ Committee on Economic, Social, and Cultural Rights, *General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)*, adopted in the Committee’s 42nd session, Geneva, 4-22 May 2009, UN Economic and Social Council, E/C.12/GC/20, 10 June 2009, at 3, ¶ 7.

¹² *Id.* at 5, ¶ 14.

¹³ *Id.* at 4, ¶ 10.

¹⁴ *Id.* at 3, ¶ 8. The Committee terms *de jure* discrimination as “formal” discrimination, and *de facto* discrimination as “substantive” discrimination.

¹⁵ *Id.* at 5, ¶ 15; *id.* at 9, ¶ 32.

male and female. We believe question 4 goes beyond the content of the Covenant, and are amazed to see this question.”¹⁶ This assertion reflects Iran’s denial of its obligation to protect the rights of everyone under the ICESCR without discrimination on any basis, including sexual orientation. This discrimination occurred both *de jure* and *de facto*.

Formal or *de jure* discrimination against LGBT persons is evidenced by the fact that Iranian laws not only criminalize homosexuality, but also provide severe punishments inconsistent with international human rights standards. For example, under Articles 232 – 233 of the new draft Islamic Penal Code of Iran,¹⁷ the “passive”¹⁸ partner of a sexual intercourse between men will be sentenced to death, whereas the “active”¹⁹ partner will receive 100 lashes, insofar as he is Moslem, unmarried, and does not commit rape.²⁰ Non-Moslem and/or married men are subject to death penalty regardless of whether or not they are “active”.²¹ According to the new Code, lesbianism and non-penetrative homosexual conducts between men are punishable by 100 lashes.²² The new Code also provides incredibly low thresholds to prove the occurrence of

¹⁶ Replies of the Islamic Republic of Iran to the List of Issues, Jan. 25, 2013, Addendum to the List of Issues in Connection with the Consideration of the Second Periodic Report of the Islamic Republic of Iran, concerning Articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/IRN/2), Committee on Economic, Social and Cultural Rights, UN Economic and Social Council, E/C.12/IRN/Q/2/Add.1, Feb. 15, 2013, at 4, ¶ 7.

¹⁷ Having been approved by the Iranian Parliament in December 2009, the text of the new Islamic Penal Code was ratified and adopted by the Guardian Council in January 2012. The Code will only enter into force after President Mahmoud Ahmadinejad signs it into law and publishes it in the State Gazette. After the President signs the Code, there will be a three-year trial period to assess how the Code will be implemented. Meanwhile, the existing Islamic Penal Code continues to govern. See *Codifying Repression: An Assessment of Iran’s New Penal Code*, Human Rights Watch, http://www.hrw.org/sites/default/files/reports/iran0812webwcover_0.pdf (Aug. 2012) [hereinafter “Human Rights Watch Report on New Penal Code”], at 9.

¹⁸ “Passive partner” in homosexual intercourse is the partner who is penetrated.

¹⁹ “Active partner” is the partner who penetrates.

²⁰ Report of Special Rapporteur on Human Rights in Iran, *supra* note 5.

²¹ *Id.*

²² *Id.*

homosexual acts, such as if two men are “laying naked under the same cover without necessity and out of passion”.²³

Currently, the existing Islamic Penal Code²⁴ provides even harsher sentences. For instance, consensual intercourse between men carries mandatory death penalty for both the active and passive partners.²⁵ The punishment for lesbianism is 100 lashes, and if the act is repeated for the fourth time, it is also punishable by death.²⁶ The evidentiary rules in proving sodomy only require “the testimony of four righteous men who **might** have observed it”²⁷ (emphasis added).

Moreover, Iranian courts regularly sentence persons charged with homosexuality to death. This practice has been constantly reported by the media and human rights groups at least over the past six years: in March 2005, two men were put to death by the Teheran Criminal Court after the wife of one of the men allegedly found a videotape of the men having sex.²⁸ In November 2005, other men named Mokhtar N. and Ali A. were executed in the Shahid Bahonar Square of the northern town of Gorgan after they were convicted of sodomy.²⁹ In 2009, Moshen G. and Nemat Safavi were convicted of consensual homosexual acts in separate cases, and were sentenced to

²³ New draft Islamic Penal Code, arts. 236-237, quoted in Human Rights Watch Report on New Penal Code, *supra* note 17, at 26.

²⁴ *Islamic Penal Code of Iran*, approved on Jul. 30, 1991, ratified on Nov. 28, 1991, amended on May 22, 1996, at <http://www.unhcr.org/refworld/pdfid/4d384ae32.pdf> (last visited Feb. 27, 2013).

²⁵ *Id.*, art. 111.

²⁶ *Id.*, art. 131.

²⁷ *Id.*, art. 117.

²⁸ Etemad newspaper (25 Esfand 1383/15 March 2005), quoted in Letter from Human Rights Watch to Minister Verdonk, Minister for Integration and Immigration, *Netherlands: Threat to Return Gay or Lesbian Iranians*, <http://www.hrw.org/en/news/2006/03/07/netherlands-threat-return-gay-and-lesbian-iranians-0> (Mar. 7, 2006).

²⁹ *We Are a Buried Generation: Discrimination and Violence against Sexual Minorities in Iran*, Human Rights Watch, http://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf (Dec. 2010), at 29.

death.³⁰ In September 2011, three men who were only known by their initials, M.T, T.T and M.Ch. were hanged in Karoun prison, Ahvaz on the account of sodomy.³¹

Furthermore, under Article 220 of the Islamic Penal Code of Iran, a father who assassinates his children under the pretext of “honor killing” cannot be executed. He only has to pay *Diah* (blood-money) to the descendants of the killed children.³² This article, as well as the religious doctrine of *Amr’e Be Maroof va Nah’ye az Monkar* (enforcing the good deed and forbidding the evil), have often been invoked by fathers, who committed or ordered to commit murders of their own children, who were known to be LGBT individuals. For example, in 2005, a man was burned alive by his own father after the father found out that he was thought to be gay. The father was not prosecuted, because he claimed that he had done an honor killing.³³ In April 2010, two brothers killed their sister, a 24-year-old male-to-female transsexual. They also claimed honor killing to justify their act and stated that their father forgave them. Although they had been prosecuted and were subject to the death penalty, they received only a prison sentence.³⁴

The death penalty has also been reportedly imposed in cases of alleged homosexual rape, even when the alleged victims have withdrawn their accusations and the defendants have retracted their confessions in trials, stating they had been tortured to confess. The execution of Makwan

³⁰ *Id.* at 30.

³¹ *Iran executes three men for sodomy*, The Independent, <http://www.independent.co.uk/news/world/middle-east/iran-executes-three-men-for-sodomy-2350671.html> (Sep. 07, 2011).

³² Abbas Zera'at, *Qanooni Muja'za'ti Islami* [Islamic Criminal Law] [In Persian] 72 (Tehran-2004), quoted in *Iran: Payment Can Save a Murderer from Execution*, Library of Congress, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205401537_text (Aug. 31, 2009).

³³ *Silenced Voices*, Iranian Queer Organization (16 September, 2007), <http://www.irqo.net/English/094.htm>, quoted in Raha Bahreini (under the supervision of Saghi Ghahraman), *Humanity Denied: The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in IRAN*, Iranian Queer Organization, <http://www.irqo.org/?lan=en&page=posts&id=187>, (Sep. 30, 2011).

³⁴ *Men convicted of murdering their sister were sentenced to imprisonment*, Khabar Online (25 August, 2010), <http://www.khabaronline.ir/NEWS-87473.ASPX>, quoted in Raha Bahreini, *id.*

Mouloudzadeh on December 5, 2007³⁵ and the death sentence for Ebrahim Hamidi issued in July 2010³⁶ are some examples of those cases. The Iranian Queer Organization (hereinafter “IRQO”) and the Center for Justice and Human Rights also interviewed “Matin Yar”³⁷, an Iranian homosexual man who fled to Turkey after being tortured, raped, and forced to confess to sodomy. He said that the torture was so severe up to the point where he “couldn’t hold the pen to sign the confession paper”.³⁸ All of these prosecutions, sentences, and police practices amount to formal discrimination.

In addition to formal discrimination, Iran has also committed *de facto* discrimination by virtue of consistent pattern of systematic persecution against LGBT persons. We have both first-hand and second-hand reports confirming widespread acts of torture, detention, corporal punishment, rape, and sexual assault committed by state agents against individuals thought to be LGBT individuals. For instance, in September 2003, several men at a private gathering were arrested, detained, and tortured by the police.³⁹ In 2006, three members of the Army of the Guardians of Islamic Revolution raped A.S., a homosexual man from Mash’had, and battered his lover, after the two were caught being intimate with each other.⁴⁰ In 2007, Iranian hard-line paramilitary, *basij*, was reported to have forcibly picked up a man named Navid, drove him home, battered him, forced him to perform oral sex, and raped him with a flashlight and a baton.⁴¹ In 2011, a homosexual couple was stopped in a street in Teheran by a man who then showed them Parallel

³⁵ Human Rights Watch, *supra* note 29, at 28-29.

³⁶ *Id.* at 30-31.

³⁷ Not his real name; IRQO maintains his anonymity for safety reasons.

³⁸ IRQO and the Center for Justice and Human Rights have Matin’s files on record.

³⁹ *Iran: Two More Executions for Homosexual Conduct*, Human Rights Watch, <http://www.hrw.org/news/2005/11/21/iran-two-more-executions-homosexual-conduct> (Nov. 22, 2005).

⁴⁰ IRQO’s interview with A.S.

⁴¹ *Iran: Discrimination and Violence Against Sexual Minorities*, Human Rights Watch, <http://www.hrw.org/news/2010/12/15/iran-discrimination-and-violence-against-sexual-minorities> (Dec. 15, 2010).

Intelligence and Military Services identification cards.⁴² They were taken to an apartment, ordered to take their clothes off, and repeatedly beaten.⁴³ They were also severely harassed, as the man continued to ask for sexual favors and make sexual remarks.⁴⁴

The latest incident that IRQO documented occurred on June 11, 2012, when nine individuals were gathering at Shiraz airport. They had just said farewell to a friend of theirs who left to seek asylum in Turkey,⁴⁵ when they were arrested by the authorities, brought to trial, and sentenced to lashes. The precise reason of their arrest and subsequent conviction was not known, but based on IRQO's interviews, there are strong indications that they had been sentenced because of their sexual orientation.

Iranian officials also frequently make disturbing anti-LGBT remarks, which implicate the government in its intentional discrimination against LGBT individuals in Iran. For example, in January 2012, Mohammad Javad Larijani, the Secretary-General of the Iranian High Council for Human Rights stated that “[t]he West says that the marriage of homosexuals should be allowed under the human rights charter... However, we think it is sexual immorality and a disease.”⁴⁶ Iran's official anti-homosexual policy was highlighted by president Mahmoud Ahmadinejad in his speech at Columbia University, New York on September 24, 2007, in which he said, “[i]n Iran, we don't have homosexuals, like in your country.”⁴⁷ He reaffirmed this stance five years

⁴² IRQO's interview with the couple. For safety reasons, IRQO wishes to keep their names confidential.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ The names of the ten individuals are on IRQO's record.

⁴⁶ *Mohammad Javad Larijani, Iran Human Rights Official, Calls Homosexuality 'A Disease'*, Huffington Post, http://www.huffingtonpost.com/2012/01/09/mohammad-javad-larijani-iran-human-rights-homosexuality_n_1194259.html (Jan. 09, 2012).

⁴⁷ *Ahmadinejad Speaks; Outrage and Controversy Follow*, CNN, <http://www.cnn.com/2007/US/09/24/us.iran/index.html> (Sep. 24, 2007).

later, in September 2012, when he referred to homosexuality as an “ugly behavior” and “ugly deed”.⁴⁸

These facts demonstrate that Iran, by virtue of its actions and omissions, has imposed, *de jure* and *de facto*, directly and indirectly, distinctions, exclusions, restrictions, preferences, and other differential treatments on the basis of sexual orientation with the intent and effect of denying, nullifying, and impairing the exercise of the rights of LGBT persons under the ICESCR. Therefore, Iran has committed discrimination in violation of Article 2 paragraph (2) of the Covenant.

2. Article 12 (Right to Health)

Article 12 of the ICESCR protects the right of everyone to “the highest attainable standard of physical and mental health.” This right has been violated by Iran by virtue of its policy on sex reassignment surgeries and on LGBT individuals living with HIV.

a. Sex reassignment surgery

Sex reassignment has been legal in Iran since 1987, when Ayatollah Khomeini, the spiritual leader of the 1979 Islamic revolution authorized it under a *fatwa* (religious edict).⁴⁹ As a result, the government classified transsexuals as persons with “gender identity disorder” in need of medical treatment,⁵⁰ and the State provides financial support for this surgery.⁵¹ However, many

⁴⁸ *Iran's President Ranges Far in Interview: Talks Israel, Slams Homosexuality*, CNN, <http://www.cnn.com/2012/09/24/world/meast/iran-ahmadinejad-interview> (Sep. 25, 2012).

⁴⁹ Human Rights Watch, *supra* note 29, at 79.

⁵⁰ Raha Bahreini, *supra* note 33.

⁵¹ *Sex Change Funding Undermines No Gays Claim*, The Guardian, <http://www.guardian.co.uk/world/2007/sep/26/iran.gender> (Sep. 25, 2007).

individuals who choose to change their sexes are not transsexuals; they are homosexuals who fear of persecution and death if they do not submit to this sexual surgery. Sayeh, a male-to-female transsexual activist said in an interview with IRQO on April 5, 2007, “[t]here are only a small percentage of people who get a sex-change operation who are actually transgendered. Out of some 100 transsexuals whom I’ve encountered, only 20 of them were genuinely transgendered, and the rest are gay.”⁵² The reason why this happens can be seen from the statement of Hojatol Islam Muhammad Mehdi Kariminia, a religious cleric responsible for gender reassignment: “Islam has a cure for people suffering from this problem”.⁵³ He continued, “[w]e’re against homosexuality ... But we have said that if homosexuals want to change their gender, this way is open to them.”⁵⁴ This statement suggests that the threat of the death penalty coerces homosexuals to undergo sex change surgery.

In some cases, LGBT individuals in Iran are openly forced to undergo the surgery. IRQO spoke to a 24-year-old Iranian gay man who said that after he was diagnosed with “gender disorder symptoms” by the doctor, he was ordered by the court to undergo sex change surgery.⁵⁵ The court also specified that if he refused, the matter would be referred to the Office of the Shari’a Judges.⁵⁶ In 2006, Maryam, a lesbian, said that after her sexual orientation was revealed to the public, she was taken to the University of Shahid Beheshti health services and was “treated” by

⁵² Interview with Sayeh (also known as Atrian) by Arsham Parsi, former executive director of IRQO, April 5, 2007, quoted in Doug Ireland, *Change Sex or Die: An Exclusive Interview with an Iranian Transgendered Activist on Iran's Surgical "Cure" for Homosexuality*, Direland, http://direland.typepad.com/direland/2007/05/change_sex_or_d.html (May 11, 2007).

⁵³ Vanessa Barford, *Iran's 'Diagnosed' Transsexuals*, BBC, <http://news.bbc.co.uk/2/hi/7259057.stm> (Feb. 25, 2008).

⁵⁴ Megan K. Stack, *Iran Bans Being Gay, but Allows Sex Change*, The Seattle Times, http://seattletimes.com/html/nationworld/2002164729_irangender30.html (Jan. 30, 2005).

⁵⁵ IRQO wishes to keep his identity confidential.

⁵⁶ His files are on IRQO’s record.

two psychologists.⁵⁷ Eventually, they ordered her to go through sex change surgery, because otherwise, “your future will be a death sentence,” they said.⁵⁸

Furthermore, there have been instances of botched sex reassignment surgeries, which have left some people with permanent and irreparable physical damage. As Sayeh said, “[t]he doctors performing the operations in Iran are so careless - for them, it is like cutting paper and not flesh ... just because it's a highly profitable business ... they perform all these operations improperly, and often incompletely.”⁵⁹

IRQO has documented a number of such cases. In the first case, IRQO was able to obtain the medical report of a female-to-male transsexual whose breast removal surgery has left his left arm paralyzed⁶⁰ (his left pectoral muscle group was completely torn.⁶¹) In addition, his genital surgery was also a failure, since his right scrotal prosthesis has migrated down towards his rectum.⁶² He also complained of severe back pain caused by the prolonged administration of epidural anesthesia during his surgery.⁶³ In the second case, P.G., also a female-to-male transsexual had his sex change surgery in his early thirties.⁶⁴ However, his surgery was incomplete, since he only had breast removal and hysterectomy.⁶⁵ When he applied for a new identification document as a male, he was strip-searched by the Guards (*Harasat*), who

⁵⁷ Doug Ireland, *Iran: A Lesbian Torture Victim Speaks*, Direland, http://direland.typepad.com/direland/2006/08/iran_a_lesbian_.html (Aug. 19, 2006).

⁵⁸ *Id.*

⁵⁹ IRQO's interview with Sayeh, *supra* note 52.

⁶⁰ His files are kept in IRQO's archives.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

discovered that he still had a vagina.⁶⁶ He was subsequently arrested and sexually assaulted.⁶⁷ In the third case, Shiva, a male-to-female transsexual complained that her surgery has left her with a vagina too small for intercourse.⁶⁸ As a result, not only is she unable to have sex, but she also suffers from vaginal pain and discomfort, as well as difficult urination.⁶⁹ IRQO found that besides Shiva, some other 40 male-to-female transsexuals also complained of the improper size of their sex organs after surgery, which resulted in their inability to have sexual intercourse.⁷⁰

Sex reassignment is not a “cure” and only creates more problems for LGBT individuals. In addition to post-surgery physical and emotional distress, they are shunned by their families and persecuted by the society. Sayeh explained that when she visited a gay man who just had a sex change surgery at the hospital, the latter cried uncontrollably, while saying “I have committed a huge mistake ... I would give anything to go back to my previous state.”⁷¹ Negar, a male-to-female transsexual explained that her family completely disowned her after her surgery.⁷² She said that “[t]hey pray for me to die soon. If I’d known that my family would truly shun me like this, I would never have done it.”⁷³ In another case, Hooliya, a transwoman from Teheran described how she was raped by two government officials after they had made fun of her appearance.⁷⁴

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Her files are kept in IRQO’s archives.

⁶⁹ *Id.*

⁷⁰ IRQO’s archives.

⁷¹ IRQO’s interview with Sayeh, *supra* note 52.

⁷² Vanessa Barford, *supra* note 53.

⁷³ *Id.*

⁷⁴ Human Rights Watch interview with Hooliya, November 7, 2008, quoted in Human Rights Watch, *supra* note 29, at 83.

These facts constitute violations of Article 12 of the ICESCR. By outlawing homosexuality and legalizing sex reassignment, while at the same time failing to prevent, investigate, prosecute and punish violence against LGBT persons, the government has created a situation where LGBT individuals are coerced to undergo sex reassignment surgery for fear of persecution or worse—a death sentence. This is clearly a violation of the “right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference”, as outlined in the CESCR General Comment No. 14.⁷⁵ Furthermore, Iran has done little to ensure the quality of medical services offering sex reassignment operations: in cases that constitute malpractice, we found no evidence that those victimized have had legal recourse or that the government has taken steps to remedy them. Moreover, we have found no evidence that the State has taken measures to address the emotional trauma and compromised mental health of individuals who have had sex reassignment surgeries, which were caused by, *inter alia*, their repudiation by their family members as well as continuous persecution and harassment.

Indeed, the constant persecution against members of the LGBT community in Iran, particularly transgenders⁷⁶ and transsexuals⁷⁷, has been proven detrimental. Sayeh, the source that IRQO interviewed above, having faced intensive persecution herself, committed suicide in July 2008.⁷⁸

This shows how the Iranian government has paid little or no attention to the mental health of LGBT individuals suffering from discrimination and persecution.

⁷⁵ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4), ¶ 8.

⁷⁶ A transgender is “one whose inner gender identity or outward gender expression differs from the physical characteristics of their body at birth”, *see* Human Rights Watch, *supra* note 29, at 2.

⁷⁷ A transsexual is “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”, *see* Human Rights Watch, *supra* note 29, at 2.

⁷⁸ Raha Bahreini, *supra* note 33.

b. LGBT individuals living with HIV

The nationwide stigma and prejudice against LGBT individuals doubly affect those living with HIV. They continue to be blamed for causing the HIV/AIDS epidemic. For example, Health Minister Kamran Bagheri Lankarani in 2008 said that the virus was transmitted through “illegal sexual relations,” including homosexuality.⁷⁹

Although deemed taboo in the beginning, there has been an increasing education on HIV and sex in Iran.⁸⁰ However, the content of the education emphasizes religion, family values, avoiding extra-marital sex, and providing young people with opportunities to marry.⁸¹ Although one source reported condoms were mentioned in safe sex lessons for high school students,⁸² another source reported that the government had hacked a website dedicated to HIV awareness in Iran and cancelled talk on safe sex.⁸³

This indicates how hard it is for Iranians, especially LGBT individuals to acquire information about prevention of HIV transmission. This is confirmed by “Ali”⁸⁴, a young Iranian gay man seeking asylum in Canada, who said “I didn't have any information about the virus before I was diagnosed with it.”⁸⁵ As a result of the stigma, “[m]any people with HIV can't find work and are

⁷⁹ *Iran: More than 18,000 HIV-Positive Citizens*, USA Today, http://usatoday30.usatoday.com/news/world/2008-12-01-iran-hiv_N.htm (Dec. 1, 2008).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Iran's HIV/Aids Sufferers Struggle for Survival*, BBC, <http://www.bbc.co.uk/news/world-middle-east-20579164> (Dec. 3, 2012).

⁸⁴ A pseudonym.

⁸⁵ BBC, *supra* note 83.

sleeping on the streets,” said “Amir”⁸⁶, an Iranian living with HIV.⁸⁷ He said that once he was even given drugs that had expired.⁸⁸

Discrimination against those living with HIV presents a barrier to accessing HIV prevention information as well as treatment. Discrimination not only stigmatizes LGBT individuals living with HIV; it also violates their right to health.

The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover wrote in his 2010 report that domestic laws criminalizing homosexuality have “adverse consequences on the enjoyment of the right to health ... through the creation of the societal perception that they are “abnormal” and criminals.”⁸⁹ He continued, “[t]he fear of judgement and punishment can deter those engaging in consensual same-sex conduct from seeking out and gaining access to health services.”⁹⁰ When he presented his report in the Human Rights Council Fourteenth Session in June 2010, the Iranian delegation responded that “Iran deeply regretted that the Special Rapporteur ... had chosen to reflect upon controversial issues in his report, such as sexual orientation ... Iran also believed that the recommendation made for the decriminalisation of sexual orientation... contradicted with the rights of sovereign States to enact laws in accordance with their legal norms and standards.”⁹¹ Finally, Iran called such report “totally unacceptable” and “very biased.”⁹²

⁸⁶ A pseudonym.

⁸⁷ BBC, *supra* note 83.

⁸⁸ *Id.*

⁸⁹ Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, submitted to the Human Rights Council in its 14th session, UN General Assembly, A/HRC/14/20, Apr. 27, 2010, at 8, ¶ 17.

⁹⁰ *Id.*, ¶ 18.

⁹¹ *Human Rights Council Concludes Interactive Dialogue on Right to Health, Human Rights and Extreme Poverty, and Violence against Women*, Human Rights Council,

3. Article 15 (Right to Take Part in Cultural Life)

The CESCR in General Comment No. 21 has interpreted Article 15 to protect the right of minorities “to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership.”⁹³ This means that “States parties must abolish censorship of cultural activities in the arts and other forms of expression.”⁹⁴ Therefore, LGBT individuals, as minorities in Iran, enjoy the right to their culture. However, this right has been violated by Iran as a result of its strict control of media content, limitation of individuals’ access to information, and surveillance of LGBT-oriented websites and chatrooms.

For instance, in August 2007, Iranian Press Advisory Board closed down *Shargh* daily for publishing an interview with Saghi Ghahraman, the Director of IRQO.⁹⁵ *Shargh* was accused of having interviewed “this homosexual woman while being aware of her sexual perversion, her dissident views, and her obscene porno-style personality.”⁹⁶ In 2009, the Iranian government enacted Cyber Crimes Penal Code, which contains provisions that directly affect LGBT individuals’ freedom of expression, since posting LGBT-related content on the internet may be classified as a “crime against public decency and morality.”⁹⁷ Based on this Code, the government has been filtering all websites and blogs that may contain LGBT-oriented material,

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10120&LangID=E> (Jun. 7, 2010).

⁹² *Id.*

⁹³ CESCR, General Comment No. 21 E/C.12/GC/21 (21 December 2001), at 8-9, ¶ 32.

⁹⁴ *Id.*, at 12, ¶ 49 (c).

⁹⁵ Raha Bahreini, *supra* note 33.

⁹⁶ *Iran shuts down leading reformist newspaper*, CanWest News Service, <http://www.canada.com/windsorstar/news/story.html?id=11bccbe7-4274-40e9-8f15-45df4476f0f3> (Aug. 6, 2007), quoted in Raha Bahreini, *id.*

⁹⁷ Raha Bahreini, *supra* note 33.

such as the IRQO website or gay dating websites.⁹⁸ IRQO noticed that on several occasions, sources from unknown IP addresses located in Iran have visited several LGBT websites. After research, IRQO discovered that these IP addresses belonged to the Iranian intelligence agency.⁹⁹ Due to the government's surveillance of LGBT websites, as well as its repeated warnings that affiliation with these websites and blogs carries heavy penalties, many bloggers have been forced to shut down their blogs.¹⁰⁰

The Iranian government through its agencies and institutions has also been monitoring LGBT online chatrooms. In a 2010 interview with IRQO, Soroush, a gay man who frequented a gay-oriented chat room said that he had received threats from someone with username "Sepah", who said that he was acting in violation of Iran's cyber laws and could face prosecution.¹⁰¹ In 2010, Rahman, a gay man from Kerman, informed IRQO that the police had convinced a transgender in Kerman to meet them after they had a conversation in a gay chatroom.¹⁰² This turned out to be a set-up, as he was subsequently arrested, and the police threatened to prevent him from undergoing a sex change if he did not introduce the city's homosexuals to them.¹⁰³ This led to the arrest and prosecution of a number of gay men in Kerma.¹⁰⁴ Numerous other LGBT individuals have accused the *basij* to have entrapped and lured them into meeting other "homosexuals", which has led to their arrest and prosecution.¹⁰⁵

⁹⁸ *Id.*

⁹⁹ IRQO keeps the research material in its archives.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See Human Rights Watch, *supra* note 29, at 48-49, 54-60.

It is fairly clear that the Iranian government, by virtue of its internet and media policy *vis-à-vis* LGBT's activities, has breached its obligation to protect the right of individuals to take part in cultural life as stipulated under Article 15.

4. Article 6 (Right to Work)

The right to work is guaranteed under Article 6 of the Covenant. Enjoyment of this right is jeopardized by Iran by failing to take measures to prevent and address discrimination in employment against LGBT individuals, especially those who are exempt from military service.

In Iran, every man aged 19 years is obliged to serve in the military¹⁰⁶ for 18 months,¹⁰⁷ unless exempt. LGBT individuals are exempt from serving because they are considered to have “behavioral disorders” and “sexual deviancy,”¹⁰⁸ thus “suffering from physical or mental illnesses.”¹⁰⁹ The Department of Mandatory Military Service renders gay men exempt, only after they submit to a series of check-ups carried out by the Medical Council¹¹⁰ (since February 2010, transsexuals have no longer been classified as persons with “behavioral disorders”, but rather “people with hormonal imbalance” or “diabetics.”¹¹¹ They are exempt on the ground of “physical illness.”)

¹⁰⁶ *Military Service Law*, Material 2, Embassy of the Islamic Republic of Iran in The Hague, the Netherlands, <http://iranianembassy.nl/en/consular.php?content=2101> (last visited Mar. 11, 2013).

¹⁰⁷ Ben Piven, *Iran and Israel: Comparing Military Machines*, Aljazeera, <http://www.aljazeera.com/indepth/features/2012/03/2012326131343853636.html> (Apr. 24, 2012).

¹⁰⁸ Examination and Medical Exemptions Regulations, Iran, art. 33, no. 8, quoted in Human Rights Watch, *supra* note 29, at 24.

¹⁰⁹ *See Medical & Health-related Exemptions*, Embassy of the Islamic Republic of Iran in The Hague, the Netherlands, <http://iranianembassy.nl/en/consular.php?content=2103> (last visited Mar. 11, 2013).

¹¹⁰ *Id.* Several individuals who were interviewed by the Human Rights Watch said that only homosexuals who could prove that they were “passive partners”, as opposed to “active partners” would be considered for the exemption, *see* Human Rights Watch, *supra* note 29, at 24 n.67.

¹¹¹ *Transgenders No Longer Classified as having Behavioral Disorders on their Military Exemption Cards*, BBC Persian, Jan. 6, 2010, http://www.bbc.co.uk/persian/iran/2010/01/100106_107_transsexual_iran_sarbazi_armyexemption.shtml

This exemption impacts negatively on gay men in Iran, as their military exemption card states the reason of their exemption—a stigmatized status that ensures discrimination. Various gay men have ascribed this card to be the reason why they find it difficult to obtain a job.¹¹² For example, Yousef,¹¹³ an Iranian homosexual who fled to Turkey said that his military exemption card reads “Article 33, paragraph 8,” the provision under Iranian military regulation which exempts LGBT individuals from serving by reason of “behavioral disorders.”¹¹⁴ He further said, “I wanted to work at a magazine, but I couldn’t because of what was written on my card.”¹¹⁵

Moreover, many gay men report that they found it very difficult to find an employment or that they lost their jobs, either because of their sexual orientation or because of their physical appearance which may be associated with homosexuality. For instance, an IRQO’s client described how his colleagues took his laptop and found out about the gay websites he had accessed.¹¹⁶ They reported him to the authorities, and he was summoned to court.¹¹⁷ Fearing persecution, he fled Iran, with the consequence of losing his job.¹¹⁸ Another client of IRQO, N.H., was interrogated and harassed multiple times due to his rather feminine appearance, which forced him to leave Iran, as well as his job.¹¹⁹ A similar story was told by Afsaneh, a transwoman

(accessed Aug. 23, 2010), quoted in Human Rights Watch, *supra* note 29, at 24 n.66.

¹¹² Human Rights Watch, *supra* note 29, at 24.

¹¹³ He asked to be identified only by his first name.

¹¹⁴ Omid Memarian and Roxana Saberi, ‘Outed’ by the Military, Some Gays Fleeing Iran, *The Daily Beast*, <http://www.thedailybeast.com/articles/2012/07/28/outed-by-the-military-some-gays-fleeing-iran.html> (Jul. 28, 2012).

¹¹⁵ *Id.*

¹¹⁶ IRQO wishes to maintain the anonymity of this person. His files are on IRQO’s record.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ His files are on IRQO’s record.

who described how difficult it was to look for a job despite having had a sex reassignment surgery and legally changed her identity.¹²⁰

These incidents raise concerns about the government of Iran with respect to Article 6. By introducing military exemption card which stigmatizes LGBT persons, the government has induced discrimination based on sexual orientation. This is contrary to the scope of Iran's obligation under Article 6, as interpreted by the CESCR in General Comment No. 18, namely "refraining from denying or limiting equal access to decent work for all persons, especially **disadvantaged and marginalized individuals and groups, including ... members of minorities** ... In particular, States parties are bound by the obligation to ... take measures to **combat discrimination** and to **promote equal access and opportunities**"¹²¹ (emphasis added). Also, by failing to take positive actions to prevent and suppress discrimination in employment faced by LGBT persons, the government has also committed "violation of the obligation to fulfill", namely "the failure of States parties to take all necessary steps to ensure the realization of the right to work," such as "**the failure to adopt or implement a national employment policy designed to ensure the right to work for everyone**" and "**the failure to monitor the realization of the right to work** at the national level..."¹²² (General Comment No. 18, emphasis added).

¹²⁰ Human Rights Watch interview with Afsaneh, April 11, 2010, quoted in Human Rights Watch, *supra* note 29, at 84.

¹²¹ Committee on Economic, Social, and Cultural Rights, *General Comment No. 18, Article 6 of the International Covenant on Economic, Social and Cultural Rights*, adopted on 24 November 2005, Thirty-fifth session, Geneva, 7-25 November 2005, UN Economic and Social Council, E/C.12/GC/18, 6 February 2006, at 7, ¶ 23.

¹²² *Id.*, at 10, ¶ 36.

IV. CONCLUSION

Due to its actions and omissions, Iran has violated the economic, social, and cultural rights of LGBT individuals under the ICESCR, namely: the right not to be subject to discrimination (Article 2, par. 2), the right to health (Article 12), the right to take part in cultural life (Article 15), and the right to work (Article 6). The violations are largely attributed to homophobia which has been deeply rooted in the Iranian society, taught and promoted in every generation, and wholeheartedly sponsored by the State. This can be seen from president Ahmadinejad's statement in 2007, in which he denied the existence of homosexuals in Iran. Indeed, this sent a powerful message to the world: the fact that the President of Iran rejected the existence of LGBT persons means that they are outcasts in Iran. They do not exist, and neither do their rights. This premise may explain years of injustice faced by Iranian LGBT community.

V. RECOMMENDATIONS

The Iranian government should:

1. Repeal all discriminatory laws and regulations which deprive LGBT individuals of their rights under the Covenant on the ground of their sexual orientations;
2. Bring anyone responsible for murder, torture, rape, and other forms of violence against LGBT persons to justice;
3. Adopt legislation to regulate the practices of sex reassignment surgery, ensure their quality, and provide protection to patients in case of malpractice;
4. Adopt legislation to outlaw forcible sex reassignment surgery;
5. Establish counseling facilities and strengthen the role of psychologists for LGBT individuals whose mental health is compromised;

6. Provide the widest access to medical care for LGBT individuals living with HIV;
7. Abolish corporal punishment and death penalty for “non-serious crimes”;
8. Abolish censorship and cease interference with LGBT activities on the internet and other communication media;
9. Repeal all laws and regulations that classify homosexuality as “behavioral disorder” or “sexual deviancy”, and consequently, adopt legislation to prohibit the inclusion of such derogatory labels in military exemption cards;
10. Adopt a national employment policy designed to ensure the right to work for everyone and to monitor the realization of the LGBT persons’ right to work.

VI. PROPOSED QUESTIONS FOR THE GOVERNMENT OF IRAN

1. Does the government of Iran take into account that its obligation under Article 2 par. (2) of the Covenant includes the obligation not to discriminate on the basis of “other status”, including “sexual orientation”, in accordance with the CESCR General Comment No. 20? If not, why?
2. How does the government of Iran perceive the CESCR General Comments? Has the government followed the General Comments in implementing its obligations under the Covenant? If not, why?
3. Is the government aware of any persecution, torture, ill-treatment, arbitrary arrest, harassment, rape, and other forms of sexual violence possibly committed by the State authorities against members of the LGBT community? Has there been investigation or prosecution of potentially responsible individuals?
4. What measures, if any, has the government taken to:

- a) ensure the quality of medical services offering sex reassignment operations, so as not to lead to botched surgeries, and in cases where they occurred, has the government taken steps to remedy the victims or hold the healthcare providers accountable?
- b) address the emotional trauma and compromised mental health of individuals who have had sex reassignment surgeries, which were caused by, *inter alia*, their separation from their family members as well as continuous persecution and harassment?
- c) provide LGBT individuals living with HIV with the broadest access possible to appropriate medical treatments and proper medications?
- d) ensure the right of LGBT individuals to manifestation of their cultural identity, membership, and activities through the internet and other communication media?
- e) ensure that military exemption cards do not impede LGBT individuals from obtaining employments?
- f) prevent and combat discrimination in employment on the basis of sexual orientation, such as by adopting a national employment policy designed to ensure the right to work for everyone and to monitor the realization of the LGBT persons' right to work?