

Concluding observations Committee on Economic, Social and Cultural Rights E/C.12/IRN/CO/2

Full recommendation

The Committee recommends that the State party repeal or amend all legislation that results or could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity. The Committee recommends that the State party take steps to combat and prevent discrimination and societal stigma against members of the lesbian, gay, bisexual and transgender community, and ensure their enjoyment of all the rights enshrined in the Covenant, including unhindered access to employment, social services, health care and education, in line with article 2, paragraph 2, of the Covenant and the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Assessment using Impact Iran human rights indicators¹

A. Repeal or amend all legislation that results or could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity

Article 19 of the Constitution of the Islamic Republic of Iran guarantees that all people enjoy equal rights, “whatever the ethnic group or tribe to which they belong” and that “color, race, language, and the like, do not bestow any privilege”.² However, the Constitution lacks an explicit provision recognizing sexual orientation and/or gender identity as protected characteristics. Article 20 of the constitution states that “All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria”.³ The stipulation of “Islamic criteria” excludes lesbian, gay and bisexual individuals from this legal guarantee as same sex relations are penalized under the Iranian ‘Islamic Penal Code’.⁴

The 2013 Penal Code of the Islamic Republic of Iran explicitly forbids sexual relations between same-sex partners, whether such relations are consensual or coerced.

The offences and punishments for males engaged in same-sex sexual or intimate conduct (including acts such as kissing or lustful touching) are described in Articles 233 to 237. Depending on whether the convicted individual is active/passive partner, married/single, or whether they are Muslim/non-Muslim, the punishment can range from flogging to the death penalty. The 2013 Penal Code also criminalizes female same-sex relations and intimate

¹ ESCR.2.2.S.1; ESCR.12.2.4.S.1; ESCR.13.1.S.1
ESCR.2.2.P.1; ESCR.2.2.P.2; ESCR.2.2.P.3

ESCR.2.2.O.2; ESCR.6.1.O.3; ESCR.9.1.O.7; ESCR.12.1.O.9; ESCR.12.2.4.O.1; ESCR.13.2.O.3; ESCR.13.1.S.1; ESCR.13.2.O.6

² Constitution of the Islamic Republic of Iran, http://www.iranchamber.com/government/laws/constitution_ch03.php

³ Constitution of the Islamic Republic of Iran, http://www.iranchamber.com/government/laws/constitution_ch03.php

⁴ Iran Human Rights Documentation Center, <https://iranhrdc.org/denied-identity-human-rights-abuses-against-irans-lgbt-community/#2>

conduct through Articles 238 to 240, the punishment for which is flogging regardless of circumstance.⁵ There are no official, readily available statistics on the number of executions for same-sex relations.⁶ However, NGO reports have shown that it occurs and suggest the incidence rate is high.^{7 8 9 10 11}

In 1986, then Supreme Leader Ayatollah Khomeini, issued a *fatwa* (a ruling or a religious decree on a point of Islamic law given by a recognized authority) permitting the acceptance of sex reassignment surgery for transgender people.¹² Sex reassignment surgery is now codified in Article 4 of the Family Law (2013), which stipulates that those seeking medical intervention should obtain prior judicial and medical approval officially stating that they have been diagnosed with Gender Identity Disorder.¹³ The Ministry of Health has overall responsibility for implementation of this law, by ensuring the provision of medical care to recognized transgender people. The State Welfare Office provides social and psychological support and a number of state institutions, such as the Ministry of Labor, are involved in supporting transgender individuals who pursue or have been through sex reassignment procedures.¹⁴ Although State recognition and support have given transgender individuals a certain level of legal legitimization, it also has reinforced the societal stigma due to the pathologisation of transgender identities: that trans persons suffer from a medical condition which requires treatment. Additionally, medical assessment in the Islamic Republic of Iran conflates a variety of sexual and gender identities with transsexuality, resulting in those for whom surgery is neither appropriate nor necessary being ‘treated’ in line with the prevailing medical opinion: that any divergence from cisgendered heterosexuality can only be due to a person’s gender dysphoria and transsexual identity.^{15 16} Further, among these individuals, only those who are officially diagnosed with Gender Identity Disorder and who obtained a permit to undergo sex reassignment surgery can have their gender legally recognized by the government. Others cannot benefit from the State Welfare’s services including sex change procedures or counselling and as a result cannot receive a state-issued identity card which legally affirms their gender.¹⁷ As a result, individuals of varying sexual and gender identities who cannot or will not pursue medical transition are not protected from abuses, including arrest, detention and prosecution.¹⁸

⁵ Islamic Penal Code 2013, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁶ Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

⁷ Amnesty International, 2017, <https://www.amnesty.org/en/latest/news/2016/08/iran-hanging-of-teenager-shows-brazen-disregard-for-international-law/>

⁸ Amnesty International, 2018, <https://www.amnesty.org.uk/urgent-alireza-arrested-15-tortured-confession-be-executed-tomorrow>

⁹ Iran Human Rights, 2019, <https://iranhr.net/en/articles/3611/>

¹⁰ Human Dignity Trust, <https://www.humandignitytrust.org/country-profile/iran/>

¹¹ International Lesbian Gay Bisexual Trans and Intersex Association (ILGA), 2019, https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

¹² Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

¹³ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

¹⁴ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

¹⁵ Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

¹⁶ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

¹⁷ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

¹⁸ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

Besides the criminalization of same-sex conduct, a number of other legal provisions directly impact on the rights of lesbian, gay, bisexual and transgender (LGBT) individuals, in particularly Iranian laws related to public decency. For instance, Article 639 of the 2013 Islamic Penal Code criminalizes the facilitation or encouragement of “people to immorality or prostitution”.¹⁹ Article 6 of the Press Law (1986) prohibits the dissemination of material “which violates public chastity” including “forbidden practices”²⁰ such as same sex relations. Similarly, Article 14 of Law on Computer Crimes criminalizes the distribution of “immoral content”.²¹ Governmental-mandated organizations set up to preserve “public morality”, notably the *Basij* militia, reportedly harassed, arrested, detained and abused LGBT individuals on the basis of the aforementioned regulations.^{22 23 24} Similarly, law enforcement forces have been reportedly arresting and detaining transgender individuals for appearing cross-dressed in public, an act considered *haram* (forbidden under Islamic law) until a ‘disorder’ could be medically and legally established.²⁵ Additionally, Article 638 of the 2013 Penal Code provides that all women must appear in public wearing the mandatory *hijab*,²⁶ a provision that has been reportedly used against both transgender men pressured into wearing a *hijab* and transgender women accused of “cross-dressing” in public, regardless of whether their change in gender has been legally recognised.²⁷ In a number of reported cases, transgender individuals arrested on such charges have been detained, prosecuted and sentenced to flogging.²⁸ Due to the lack of official reporting and victims’ fear of social stigma, the number of cases of abuses and discriminations against individuals on the grounds of their sexual orientation and gender identity is likely much higher than those reported by human rights organizations.^{29 30}

There is, as of now, no evidence that the Iranian government is currently considering repealing or amending aforementioned laws that result or could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity.

B. Take steps to combat and prevent discrimination and societal stigma against members of the lesbian, gay, bisexual and transgender community, and ensure

¹⁹ Islamic Penal Code (2013), Iran Human Rights Documentation Center, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

²⁰ International Lesbian Gay Bisexual Trans and Intersex Association (ILGA), 2019, https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

²¹ International Lesbian Gay Bisexual Trans and Intersex Association (ILGA), 2019, https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

²² Iranian Lesbian & Transgender Network (6Rang), 2014, <http://6rang.org/english/wp-content/uploads/2014/06/Pathologizing-Identities-Paralyzing-Bodies.pdf>

²³ Iranian Railroad for Queer Refugees (IRQR), 2018, <https://irqr.net/wp-content/uploads/2018/09/IQW-Report.pdf>

²⁴ OutRight International, 2016, https://outrightinternational.org/sites/default/files/OutRightLesbianReport.pdf?_ga=2.78516692.1992181521.1595330838-780871412.1595330838

²⁵ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

²⁶ Outright International, 2016, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

²⁷ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

²⁸ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

²⁹ Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

³⁰ Iranian Lesbian & Transgender Network (6Rang), 2015, https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19808_E.pdf

their enjoyment of all the rights enshrined in the Covenant, including unhindered access to employment, social services, health care and education

Article 3 of the Constitution of the Islamic Republic of Iran stipulates that the government “has the duty of directing all its resources” to, among other goals, “the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and intellectual spheres”.³¹ Article 19 of the Constitution stipulates that all people of Iran enjoy equal rights “whatever the ethnic group or tribe” and that “color, race, language and the like, do not bestow any privilege”.³² Sexual orientation and gender identity are omitted as protected characteristics. Additionally, Article 20 states that all citizens enjoy all “human, political, economic, social and cultural rights, in conformity with Islamic criteria”. As same sex relations are criminalized under the Iranian Islamic Penal Code,³³ the “Islamic criteria” condition restricts the enjoyment of human rights for the LGBT community, including the right to work, to social security, to health and education.

The Iranian states’ behaviour towards lesbian, gay and bisexual individuals has been hostile and Iranian authorities publicly criticize the country’s lesbian, gay and bisexual community. In 2013, Mohammad Javad Larijani, secretary of Iran’s high council for human rights said that homosexuality was regarded as “an illness and malady” in the Islamic Republic of Iran.³⁴ Negative comments from Iranian officials have been regularly and recently reported, where they used terms such as “immoral”, “corrupt”, “animals”, “sick” or “Western” to qualify homosexual individuals.³⁵ Such openly hostile behaviour towards the lesbian, gay and bisexual community from government officials may further impair LGBT persons’ access to employment, social services, health care and education as it creates a permissive environment for the exclusion and societal stigmatization against LGBT individuals in Iran.^{36 37 38 39 40 41} There is no readily available information that might indicate the existence of state measures to address discrimination against lesbian, gay, bisexual and non-legally recognized transgender individuals.

³¹ The Constitution of the Islamic Republic of Iran, English translation, <https://www.refworld.org/docid/3ae6b56710.html>

³² The Constitution of the Islamic Republic of Iran, English translation, <https://www.refworld.org/docid/3ae6b56710.html>

³³ Iran Human Rights Documentation Center, <https://iranhrdc.org/denied-identity-human-rights-abuses-against-irans-lgbt-community/#2>

³⁴ The Guardian, 2013, <https://www.theguardian.com/world/iran-blog/2013/mar/14/iran-official-homosexuality-illness>

³⁵ Iranian Lesbian & Transgender Network (6Rang), 2017, <http://6rang.org/english/wp-content/uploads/2017/12/Official-Hate-Speech-against-LGBT-People-in-Iran.pdf>

³⁶ Iran Human Rights Documentation Center, <https://iranhrdc.org/denied-identity-human-rights-abuses-against-irans-lgbt-community/#2>

³⁷ Iranian Lesbian & Transgender Network (6Rang), 2015, https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19808_E.pdf

³⁸ OutRight International, 2016, https://outrightinternational.org/sites/default/files/OutRightLesbianReport.pdf?_ga=2.78516692.1992181521.1595330838-780871412.1595330838

³⁹ Iranian Lesbian & Transgender Network (6Rang), 2015, https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19808_E.pdf

⁴⁰ Committee on the Rights of the Child, 2016, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/IRN/CO/3-4&Lang=En

⁴¹ Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

In 2017, the Supreme Leader Ali Khamenei criticized the UNESCO Education 2030's initiative as a vehicle of Western influence in Iran and other prominent official figures accused it of promoting homosexuality or 'perversion', as it advocates against the use of violence against students and therefore may discourage teachers from confronting students of diverse sexual orientation or gender identity.⁴² Students are reportedly physically and mentally abused by teachers and school administrators because of their sexual orientation and/or gender identity, pushing them in some cases to drop out from school.⁴³ In 2016, the Committee on the Rights of the Child specifically raised concerns about lesbian, gay, bisexual, transgender and intersex children in the Islamic Republic of Iran facing discrimination because of their real or perceived sexual orientation or identity.⁴⁴

Access to information about STDs/STIs and their appropriate targeted treatment, as well as general safe-sex advice is very limited in Iran, restricting significantly the access to sexual health for the heterosexual cisgender population, and almost entirely for the LGBT community.⁴⁵ As Iranian authorities consider minority sexual orientations and gender identities as disorders that can be corrected through medical treatment, it is particularly difficult for LGBT individuals to seek proper healthcare, including mental healthcare, as they are actively pushed to "treat" their homosexuality, through counselling or reassignment surgery.^{46 47} In a number of reported cases, such medical interventions have been carried out without prior informed consent or individuals were subjected to forced administration of hormones and medication,^{48 49 50} which is a grave violation of the right to health⁵¹ and may amount to torture.⁵²

In the Islamic Republic of Iran, the lack of laws or legal mechanisms protecting transgender individuals against discrimination and the absence of recognition of transgender individuals who do not pursue sex reassignment surgery leave them without legal guarantee to their rights afforded by the International Covenant on Economic Social and Cultural Rights. Transgender individuals who do not wish, cannot or have not been medically allowed to go through sex reassignment surgery are not eligible to obtain legal recognition corresponding to their gender identity. As a consequence, they face barriers to access higher education, employment and

⁴² Quote from Assembly of Experts member Ahmad Alamolhoda, among other examples, cited in Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

⁴³ Iranian Lesbian & Transgender Network (6Rang), 2015, https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19808_E.pdf

⁴⁴ Committee on the Rights of the Child, 2016, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/IRN/CO/3-4&Lang=En

⁴⁵ Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

⁴⁶ Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

⁴⁷ OutRight International, 2016, https://outrightinternational.org/sites/default/files/OutRightLesbianReport.pdf?_ga=2.78516692.1992181521.1595330838-780871412.1595330838

⁴⁸ Iranian Lesbian & Transgender Network (6Rang), 2014, <http://6rang.org/english/wp-content/uploads/2016/02/Diagnosing-Identities-Paralyzing-Bodies.pdf>

⁴⁹ Report of the Secretary General on the situation of human rights in the Islamic Republic of Iran, 2019, <https://undocs.org/en/A/74/273>

⁵⁰ Iranian Lesbian & Transgender Network (6Rang), 2018, <http://6rang.org/english/2422>

⁵¹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, August 2009, <https://undocs.org/A/64/272>

⁵² Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, July 2008, <https://undocs.org/en/A/63/175>

housing as they cannot obtain relevant legal permits without denying their sexual orientation and/or gender identity.^{53 54} Moreover, they are not eligible for social services and health assistance provided by the State for recognized transgender individuals. Additionally, gender segregation is enforced in some instances in higher education, restricting access of non-recognised transgender individuals and contributing to the risk of harassment and bullying.⁵⁵^{56 57} Even with state recognition, transgender individuals suffer from social stigma, impacting their opportunity to seek and obtain employment.⁵⁸

In its general comment on non-discrimination, the UN Committee on Economic, Social and Cultural Rights, has recognized sexual orientation and gender identity as among the prohibited grounds of discrimination.⁵⁹ In addition, the Committee has affirmed the principle of non-discrimination on grounds of sexual orientation and gender identity in its general comments on the rights to work, social security and the highest attainable standard of health.⁶⁰ However, discrimination and societal stigma has been implicitly tolerated, if not explicitly encouraged in the Islamic Republic of Iran.

Recommendation Status:

This recommendation has **NOT** been implemented.

⁵³ OutRight International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

⁵⁴ Iranian Railroad for Queer Refugees (IRQR), 2018, <https://irqr.net/wp-content/uploads/2018/09/IQW-Report.pdf>

⁵⁵ OutRight International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

⁵⁶ Human Rights Watch, 2012, <https://www.hrw.org/news/2012/09/22/iran-ensure-equal-access-higher-education>

⁵⁷ Iranian Lesbian & Transgender Network (6Rang), 2015,

https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19808_E.pdf

⁵⁸ OutRight International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

⁵⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) (E/C.12/GC/20), para. 32. <https://www.refworld.org/docid/4a60961f2.html>

⁶⁰ See General Comment No. 18 (E/C.12/GC/18) (right to work), para. 12 (b) (i)

<https://www.refworld.org/docid/4415453b4.html> ; No. 19 (E/C.12/GC/19) (right to social security), para. 29;

<https://www.refworld.org/docid/47b17b5b39c.html> ; No. 14 (E/C.12/2000/4) (right to the highest attainable standard of health), para. 18 <https://www.refworld.org/pdfid/4538838d0.pdf>