

**Denying Identities, Maiming Bodies:
Human Rights Violations against Individuals
of Diverse Sexual Orientations and Gender
Identities in the Islamic Republic of Iran**



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Cover photo: Sayeh, an Iranian transsexual in a documentary entitled “The Birthday”

Sayeh was one of the many Iranian transgendered people who have experienced the government’s arrests and torture. Sayeh fled Iran to Turkey and was granted asylum status by the UNHCR in Ankara. She left Turkey for Canada in 2007. She started hormone treatments in Turkey after fleeing Iran, and hoped to complete her physical transformation in Canada. But Sayeh was broke. After a year of living in Toronto, she reportedly committed suicide. She was only 28 years old when she died.

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Terminology

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

Cross-dresser: A person who wears the clothing and/or accouterments, such as makeup and accessories, which are considered by society to correspond to the "opposite sex". Unlike transsexuals, cross-dressers typically do not seek to change their physical characteristics and/or manner of expression permanently or desire to live full-time as the opposite gender. Cross-dressers are sometimes called "transvestites," but that term is considered pejorative.

Gender Dimorphic: Occurring in two distinct forms with visual and clear differences between genders.

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

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

Gender Identity: A person's innate deeply felt psychological identification as man, woman or both, which may or may not correspond to the person's body or designated sex.

Gender Expression: All of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another.

Hamjensbaz: A derogatory Persian term for referring to homosexuals. Its literal meaning is same-sex gamer.

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

Hetero-normative: An organized system of norms, attitudes and biases that holds people fall into distinct and complementary genders (man and woman) with natural roles in life. It also holds that heterosexuality is the normal sexual orientation, and states that sexual and marital relations are only fitting between a man and a woman. Consequently, a "heteronormative" view is one that involves alignment of biological sex, sexuality, gender identity, and gender roles

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

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

Lesbian: A woman attracted primarily to other women.

LGBT: Lesbian, gay, bisexual, or transgender; an inclusive term for groups and identities sometimes associated together as "sexual minorities." In this report the term LGBT is generally used to refer to individuals who self-identify as lesbian, gay, bisexual or transgender.

Sexual orientation: The preferred term used when referring to an individual's physical and/or emotional attraction to the same and/or opposite gender. "Heterosexuality," "bisexuality" and "homosexuality" are all sexual orientations. A person's sexual orientation is distinct from a person's gender identity and expression.

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

Sex Change: The process through which a person modifies his or her physical characteristics to be consistent with his or her gender identity. This transition may include hormone therapy, sex-reassignment surgery and other medical procedures such as hysterectomy and mastectomy, and is generally conducted under medical supervision

based on a set of standards developed by medical professionals.

Sex Reassignment Surgery (SRS): SRS refers to surgical interventions to change the body so as to resemble a body of the opposite sex as closely as possible. SRS is usually preceded by a minimum period of hormone therapy to induce secondary sex characteristics of the desired sex.

Transgender: A broad range of people who experience and/or express their gender differently from what most people expect — either in terms of expressing a gender that does not match their designated sex at birth, or physically changing their sex. It is an umbrella term that includes people who are transsexual, cross-dressers or otherwise gender non-conforming. Not all people who consider themselves or who may be perceived as transgender will undergo sex change.

Transsexual: A person has who changed, or is in the process of changing, his or her physical and/or legal sex to conform to his or her internal sense of gender identity. The term can also be used to describe people who, without undergoing medical treatment, identify and live their lives full-time as a member of the gender opposite their birth sex. Transsexuals transitioning from male to female are often referred to as "MTFs." Similarly, female-to-male transsexuals are frequently called "FTMs."

Methodology

Research for this preliminary report was carried out between March 2012 and September 2012. Researchers conducted a review of academic publications and human rights reports on the situation of lesbian, gay, bisexual and transsexual individuals in Iran and examined media articles and documentary movies available on the subject.

Justice For Iran interviewed 19 individuals. Nine of those interviewed identified as lesbian, four as female to male pre-surgical transsexuals and five as male-to-female transsexuals who had either completed their sex reassignment surgeries or were undergoing hormone therapy. The mother of a female-to-male transsexual was interviewed as well. All the individuals had between 21 to 32 years of age with the exception of one who was 52 years old. The majority of the interviewees were from the province of Tehran. Efforts were, however, made to include the narratives of individuals from smaller provinces in the report.

Most of the interviews took place in person with Iranian lesbian and transgender/transsexual who lived in Iran or had recently fled to Turkey and Norway as asylum seekers and refugees. A few of the interviews were conducted with individuals via telephone and Skype because of monetary and security-related constraints. Interviews were entirely conducted in Persian (Farsi). Audio files are available for all the interviews. A few were also video-recorded. Justice For Iran has withheld the real names of the interviewees as well as parts of the information revealed in their interviews based on request and out of security and privacy related concerns.

Most of the interviews took more than one session to complete. Depending on the particular circumstances, each session lasted between one to five hours. Each session was conducted based on a series of questions that emerged out of the previous session. The interviews were detailed and invited the interviewees to describe and discuss their upbringing, the problems they encountered in the society and the treatment they received in all areas of life including the family.

A two and a half-day community research workshop was organized in August 2012 for the purpose of collecting additional information. The participants included six lesbians, a female-to male transsexual and his wife, a bisexual woman and a transgender woman. The workshop began with a discussion on the notions of gender, sex and sexuality and then delved into the personal experiences of the participants and the process through which their sexual and gender identities were formed and transformed. Information was shared with regard to the conditions surrounding sex reassignment surgeries in Iran.

Participants were encouraged to reflect on the following questions:

- 1- What is sex? What is sex change? At which point a person can be said to have made a full transition from one sex to another?
- 2- Is transsexuality an interim state between maleness and femaleness or is it rather a third gender? Have you ever thought about assuming a third gender position or have you always thought that you have to choose between being a man and a woman?
- 3- What leads individuals to desire and have sex reassignment surgeries?
- 4- What was the process of your gender identity formation and transformation?
- 5- Why do you or don't you identify as homosexual?
- 6- When did you become familiar with the concepts of homosexuality and transsexuality and the possibility of sex reassignment surgery?
- 7- What were the sources of your information?
- 8- How would you rate and compare the satisfaction of self-identified transsexuals with that of homosexuals in Iran?
- 9- How do you see the difference between the situation of men and women in Iran and the impact that this may have on their motivation to identify as homosexual or transsexual?
- 10- How does the experience of male-to-female transsexuals differ from that of female-to-male transsexuals?
- 11- What are the specific challenges facing each group?
- 12- How can one overcome these challenges?

13- Do you consider sex change to be a strategy of survival and resistance?

Challenges and Limitations

This report presents only a partial and preliminary picture of the myriad of human rights abuses that lesbian, gay, bisexual and transgender (LGBT) individuals experience in Iran.

Homosexuality remains a social and cultural taboo, leading many LGBT individuals to remain silent about their experiences of oppression. Studies in the area of gender and sexuality are, therefore, very limited. However, there are newspaper articles and LGBT and non-LGBT websites where formal and informal forums and debates on homosexuality and transsexuality in Iran take place among Iranians. Data from these secondary sources have been collected and analyzed in order to understand the concepts of homosexuality and transsexuality and their construction contextually.

The paucity of information is also partially due to the fact that Justice For Iran is still at the early stages of its research and has not yet fully analyzed all the areas of concern identified in the report. Some level of generalization has been, therefore, inevitable. The idea of generalizing the issue of homosexuality and transsexuality in Iran based on a small-scale study such as this one might risk criticism because of the context specificity of the findings and/or due to the insufficiency of materials. However, careful integration of interviews and systematic analysis and comparison of collected materials have been employed to allow generalization to certain degree concerning some of the issues and concerns raised and discussed in the report.

I. Iran's Legal and Regulatory Framework

A. Being LGBT in Iran

To be lesbian, gay, bisexual or transgender (LGBT) in Iran is to live a life predominantly marked by stigma, fear, exclusion and violence. Iranian law, through provisions in the Islamic Penal Code, provides for the arrest, prosecution and execution of persons who engage in homosexual acts of their own free will.¹

Article 111 of the current Penal Code states, “*Lavat* [consummated sexual activity between males, whether penetrative or not] is punishable by death so long as both the active and passive partners are mature, of sound mind, and have acted of free will.” Articles 121 and 122 of the Penal Code provide, *tafkhez* [the rubbing together of thighs or buttocks, or other forms of non-penetrative “foreplay” between men] is punishable by one hundred lashes for each partner. Recidivism is punishable by death on the fourth conviction. Article 123 of the Penal Code adds that “if two men who are not related by blood lie naked under the same cover without any necessity,” each will receive ninety-nine lashes. Lesbianism (*mosahegheh*) is punished with 100 lashes; its fourth repetition invokes death. According to Article 134 of the Penal Code, if two women who are unrelated to one another lie, without necessity, naked under the same cover, they will each be punished by less than 100 lashes of the whip. If the act is repeated and the punishment is in each case administered, on the third occasion the punishment of 100 lashes will be incurred.²

The existence of these criminal provisions has profound and harmful impacts on Iranians in that it fuels discrimination and violence against and harassment of the LGBT community of Iran. LGBT persons continue to be perceived as sexual perverts (*monharef-i jensi*) in need of punishment at worst and sick individuals (*bimar*) in need of

¹ *Islamic Penal Code* [Islamic Republic of Iran], 28 November 1991, available at: <http://www.unhcr.org/refworld/docid/4d384ae32.html>.

² Iran is in the process of adopting a new penal code. The proposed code maintains the criminal status of homosexuality while altering a number of the definitions. For more information, see Human Rights Watch, *The Problem with Iran's Proposed Penal Code*, 4 September 2012, available at: <http://www.unhcr.org/refworld/docid/5049cd842.html>.

medical treatment at best. Their sexual orientation, gender identity or gender expression generally invokes feelings of anger, disgust, loathing, panic and hatred among the population, forcing LGBT persons to live discreetly and often in total alienation from their parents, relatives, friends, teachers and other community members.

The deep-rooted discrimination and marginalization experienced by members of the LGBT community in Iran is a critical, underlying factor, leading both to the targeting of LGBT adolescents and adults for cruel and degrading treatment, and the denial of their human rights as recognized in the international human rights treaties to which Iran is a party. These human rights include, *inter alia*, the right to life³, liberty and security of person⁴, freedom of expression⁵, privacy⁶, and protection from torture and other cruel, inhuman or degrading treatment or punishment⁷, as guaranteed in the International Covenant on Civil and Political Rights. They also encompass the right to enjoy, on an equal footing, the social and economic rights recognized in the International Covenant on Economic, Social and Cultural Rights, including the right to housing, education, employment and the highest attainable standard of physical and mental health.⁸

In its 2011 review of Iran's human record, the United Nations Human Rights Committee expressed serious concern that "members of the lesbian, gay, bisexual, and transgender community face harassment, persecution, cruel punishment and even the death penalty."⁹ The Committee also noted with concern the discrimination that LGBT individuals "face 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

³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, article 6, online: <http://www2.ohchr.org/english/law/ccpr.htm> [ICCPR].

⁴ *Ibid.* article 9.

⁵ *Ibid.* article 19.

⁶ *Ibid.* article 17.

⁷ *Ibid.* article 7.

⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, articles 11, 13, 6, 12, online: <http://www2.ohchr.org/english/law/cescr.htm>.

⁹ UN Human Rights Committee (HRC), *Concluding observations of the Human Rights Committee: Iran*, 29 November 2011, CCPR/C/IRN/CO/3, para. 10, online: <http://www2.ohchr.org/english/bodies/hrc/hrcs103.htm>.

community.”¹⁰

The Committee called on Iran to “repeal or amend all legislation which provides for or could result in the discrimination, prosecution and punishment of people because of their sexual orientation or gender identity [and] ensure that anyone held solely on account of freely and mutually agreed sexual activities or sexual orientation should be released immediately and unconditionally.”¹¹ It further asked that Iran “take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation.”¹²

This report focuses on one of the legislative and administrative measures that must be taken to implement the Committee’s recommendations; namely, the abolition of medical procedures including sex reassignment surgery (SRS), sterilization and hormonal therapy as a prerequisite for legal recognition of gender identity.

A person’s self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. Iran’s imposition of medical procedures on transgender persons as a requirement for the enjoyment of the right to legal recognition violates the dignity, bodily integrity and humanity of transgender persons. The surgical requirement constitutes an egregious case of discrimination on the basis of gender identity given that for Iranian transgender persons, lacking legal recognition means being denied the right to life, security of the person, freedom from arbitrary arrest and detention, privacy, family, work and education.

The requirement also amounts to cruel, inhuman and degrading treatment, and possibly even torture, in light of the abuses that pervade and characterize the procedures and processes of psychological and medical testing and treatment of transgenders in Iran.

Justice For Iran’s research indicates that Iran’s restrictive framework for gender recognition is increasingly harming not only transgender persons but also many lesbians

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

who are turning to debilitating hormone treatments and disfiguring sex change operations in order to “trans” themselves, and therefore overcome the social and legal forces that render them perverse and illegitimate.

It is needless to say that Justice For Iran does not expect all the existing human rights concerns with respect to the situation of Iranian LGBTs to be removed once the issue of forced medical procedures is addressed. Nor does the organization believe that the problem of state-imposed medical interventions is of greater significance for every LGBT person than any of the other human rights violations they experience. A human-rights-compliant framework for legal recognition of gender identity is nonetheless a necessary, if not a sufficient, step toward addressing other human rights abuses experienced by members of the lesbian, gay, bisexual, and transgender community in Iran.

B. Iran’s Claim to Being a Role Model on Transsexual Rights

Today, there is much self-congratulation by the government of Iran about the recognition of transsexuality and permissibility of sex reassignment surgeries:

Iran has the best social services in the world for transsexuals. First of all, no other country on earth changes the gender on your birth certificate. However, Iran, because of religion and custom, does this for you. The first supreme leader, the first religious authority in the whole world to give a ruling on sex change is Imam Khomeini.¹³

A state radio reporter proudly states in a 2008 documentary about the state of transsexuals in Iran.

Over the past decade, many Western reports and Iranian sex change surgeons have shared the celebratory tone evident in the above statement. According to *The Guardian*, “today, the Islamic Republic of Iran occupies the unlikely role of global leader for sex change.”¹⁴

¹³ Tanaz Eshaghian, *Be Like Others*, 2008, DVD (Distributed by Wolfe Video).

¹⁴ Robert Tait, “A fatwa for freedom” *The Guardian* (27 July, 2005), online: <http://www.guardian.co.uk/world/2005/jul/27/gayrights.iran>. See also Vanessa Barford, “Iran’s ‘diagnosed transsexuals’” *BBC NEWS* (25 February, 2008), online: <http://news.bbc.co.uk/1/hi/7259057.stm>; Frances

“Iran is a paradise for transsexuals,” says Dr. Bahram Mir-Jalali, a leading surgeon in Tehran who boasts about having done more SRS surgeries in a year than of all France’s surgeons have in a decade.¹⁵

These accounts are not wrong if one were to look at numbers alone. Iran reportedly carries out more sex change operations than any other country in the world except for Thailand.¹⁶ At the first national symposium, held in Mashhad in May 2005 under the title “Studying Sexual Identity Disorder”, Dr. Alireza Kahani reported that between 1987 and 2001, 200 young men and 70 young women had submitted sex-change petitions to the Legal Medical Board, 214 of which had been approved. Between 2001 and 2004, another 200 petitions had been received.¹⁷ Official statistics for 2007 put the number of transsexuals in Iran between 15,000 and 20,000 people, with unofficial estimates suggesting many more -- up to 150,000.¹⁸

Iranian surgeons are conscious of the peculiarity of these large numbers. According to Dr. Bahram Mir-Jalali, “in a European country, ... he would have carried but fewer than 40 such procedures [instead of 320] over the same period. The reason for the discrepancy, he says, is Iran’s strict ban on homosexuality.”¹⁹

Harrison, “Iran’s sex-change operations” *BBC Newsnight* (5 January, 2005), online: <http://news.bbc.co.uk/1/hi/programmes/newsnight/4115535.stm>; Aresu Egbali, “Iran’s transsexuals get Islamic approval, but!” *Middle East Online* (30 September, 2004), online: <http://www.middle-east-online.com/english/?id=11423>; Nazila Fathi, “As Repression Eases, More Iranians Change Their Sex,” *The New York Times* (2 August, 2004), online: <http://www.nytimes.com/2004/08/02/world/as-repression-eases-more-iranians-change-their-sex.html>; and Angus McDowall and Stephen Khan, “The ayatollah and the transsexual,” *The Independent* (25 November, 2004), online: <http://www.independent.co.uk/news/world/middle-east/the-ayatollah-and-the-transsexual-8023152.html>.

¹⁵ David Graham, “Iran’s solution to ‘gay problem’? State-Funded sex change surgery,” *Toronto Star* (13 November 2010), online: <http://www.thestar.com/living/article/890223--iran-s-solution-to-gay-problem-state-funded-sex-change-surgery>.

¹⁶ Robert Tait, “Sex Change Funding undermines no gays claim” *Guardian* (26 September, 2007), online: <http://www.guardian.co.uk/world/2007/sep/26/iran.gender>.

¹⁷ Afsaneh Najmabadi, “Transing and Tanspasing Across Sex-Gender Walls in Iran” (2008) 36(3-4) *Women’s Studies Quarterly* 23-42, online: http://dash.harvard.edu/bitstream/handle/1/2450776/Najmabadi_Transing.pdf.

¹⁸ Robert Tait, “Sex Change Funding undermines no gays claim” *Guardian* (26 September, 2007), online: <http://www.guardian.co.uk/world/2007/sep/26/iran.gender>. See also Sasha von Oldershausen, “Iran’s Sex Change Operations Provided Nearly Free of Cost” *Huffington Post* (6 April, 2012), online: http://www.huffingtonpost.com/2012/06/04/iran-sex-change-operation_n_1568604.html.

¹⁹ Robert Tait, “A fatwa for freedom” *The Guardian* (27 July, 2005), online:

Iran divides individuals who live outside dimorphic, hetero-normative gender relations into two distinct, yet interrelated, categories: transsexual patients and (homo)sexual perverts. The former encompasses individuals who suffer from a “gender identity disorder” (*ekhtelal-i hoviat-i jensy*) and must be “cured” through hormonal conversations and sex reassignment surgery while the latter includes morally bankrupt individuals who engage in sinful (homo)sexual behavior outside the bounds of gender normalcy and must be prosecuted and have appropriate punishment meted out to them.

Iran’s seemingly progressive stance on transsexuality and sex change should be understood through the lens of this troubling discourse which regards homosexuality and more generally any sexual or gender non-conformity as unintelligible, perverse, and unlawful, except for those willing to transform their “wrong bodies”.

C. Sin v. Sickness: A Comparative Review of Official Discourses on Homosexuality and Transsexuality

*Islam has a cure for people suffering from this problem. In other words, if they want to change their gender, the path is open. The same is true for those who have two genders. They are also allowed, via sex change operation, to become either a male or a female ... this is completely separate from homosexuality. Homosexuals are doing something unnatural and against religion.*²⁰

When you are still a boy and you haven’t yet completed your operation to become a girl, the law, religion and custom does not allow you to dress as a girl. Once you’re given the official permit to have the operation, put it in your pocket and when the police stop you, pull it out and no one will then bother you... If you want to continue to dress like a girl but keep your male body, you are not a transsexual anymore; you are a transvestite; you may even be suspected of being a homosexual [meaning you have no right to complain about being policed, persecuted and punished]...so make up your mind. Either you want to be a man or

<http://www.guardian.co.uk/world/2005/jul/27/gayrights.iran>.

²⁰ Quote by Hujjat al-Islam Mehdi Kariminia in Tanaz Eshaghian, *Be Like Others*, 2008, DVD (Distributed by Wolfe Video).

*a woman...it is my duty to know if someone is a man or a woman.*²¹

In the early years after the 1979 revolution, transgender individuals were classified as immoral sexual perverts (*monharef-i jensi va akhlaghi*) worthy of criminalization. They were frequently lumped into the pejorative category of *hamjensbaz* (a derogatory term and common slur used in Iran against homosexual individuals) and subjected to a wide range of human rights violations including torture and the death penalty.²² These violations were committed in the name of eliminating corruption (*fesad*) and restoring social order and security (*nazm va amniat-i ejtemayee*).²³

Iran's approach to transgender individuals, however, underwent a conceptual shift with the issuance of Ayatollah Khomeini's 1983 *fatwa* authorizing sex change operations for transsexual persons. Pursuant to this ruling, "sex change, if prescribed by a trusted doctor does not pose a problem under Shari'a."²⁴

This ruling was grounded in the earlier discussions of many Islamist jurists on the legality of sex reassignment surgeries for intersex individuals (*do jensi*).²⁵ In these discussions, sex reassignment surgery was generally understood as the medical transformation of the external appearance of the body to match the individual's true gender and therefore to ward off the possible threat of gender transgression.²⁶ In line with this jurisprudence,

²¹ A conservative state-radio reporter makes this statement during a heated argument with a transsexual person in the clinic of Mir Damad in Tehran. See Tanaz Eshaghian, *Be Like Others*, 2008, DVD (Distributed by Wolfe Video).

²² Nazila Fathi, "As Repression Eases, More Iranians Change Their Sex" *New York Times* (2 August, 2004), online: <http://www.nytimes.com/2004/08/02/world/as-repression-eases-more-iranians-change-their-sex.html?pagewanted=all&src=pm>.

²³ For more information, see Hammed Shahidian, *Women in Iran: Gender Politics in the Islamic Republic* (Westport, Connecticut: Greenwood Press, 2002) at 161-216.

²⁴ The image file of the fatwa, as written by Ayatollah Khomeini, can be found here: <http://forum.gid.org.ir/showthread.php?tid=100>.

²⁵ Afsaneh Najmabadi, "Transing and Tanspasing Across Sex-Gender Walls in Iran" (2008) 36(3-4) *Women's Studies Quarterly* 23-42, online: http://dash.harvard.edu/bitstream/handle/1/2450776/Najmabadi_Transing.pdf; Afsaneh Najmabadi, "Mapping Transformations of Sex, gender and Sexuality in modern Iran," *Social Analysis* 49, no. 2 (2005): 72.

²⁶ See Paula Sanders, "Gendering the Ungendered Body: Hermaphrodites in Medieval Islamic Law" in *Women in Middle Eastern History*, eds. Beth Baron and Nikki R. Keddi (New Haven and London: Yale University Press, 1991). For contemporary examples, see the statements of Ayatollah Yousef Saneyee and

Khomeini recorded his opinion on sex change as follows:

The prima facie view is that there is no prohibition against changing the sex of a man into a woman, or a woman into a man, with a surgical operation ... Is such an operation necessary if a woman sees in herself tendencies which are male, or if she sees in herself certain traces of masculinity; or if a man sees in himself traces or certain tendencies of the opposite sex? The prima facie view is that it [sex change] is not obligatory if the person is truly of one sex, and changing his/her sex to the opposite sex is possible.

...

If knowledge proves, before the operation, that *inside* he is the opposite sex, and therefore the operation does not change one sex for the other, but rather uncovers what was hidden, then there is no doubt concerning the necessity of putting into proper order the true sex and getting rid of the traces of the visual sex. So if he knows that he is a man, then his religious duties are a man's duties, and what is prohibited for men is also prohibited for him, and vice versa for a woman.²⁷

The interpretation of this ruling has been the subject of much contestation. In the view of many transgender and transsexual individuals, the ruling does not make transgender recognition dependent on hormonal or somatic changes. Iran's legal and religious authorities hold a different view however. Wary of what they consider "abuse by homosexuals", they interpret the ruling as requiring a complete transformation from one sex to another. According to Hujjat al-Islam Mehdi Kariminia, a Islamic scholar who has devoted much of his research to the topic of transsexuality,

Ayatollah Makarem Shirazi as quoted in Raha Bahreini, "From Perversion to Pathology: Discourses and Practices of Gender Policing in the Islamic Republic of Iran" (2008) 5(1) *Muslim World Journal of Human Rights* Article 2 at 19-20.

²⁷ Ruhullah Khomeini, "Changing of Sex, Issues 1 and 2" in *Tahrir al-wasila*, volume 2 (Qum: Mu'assasah-I Tanzim va Nashr-I asr-I Imam Khomeini, 2000) at 596-598.

Sex change must be real and complete. If only some of the sexual characteristics of the opposite sex appear, that is not a valid sex change. The person must be changed exactly and precisely to the opposite sex.²⁸

This interpretation is animated by the twin desires of reproducing the binary gender order and insulating sexuality from the “stain” of homosexuality. Concerned by the intrusion of homosexuality into Iran’s transsexuality regime, Hujjat al-Islam Kariminia emphasizes,

Islam has a cure for people suffering from this problem [transsexuality]. If they want to change their gender, the path is open. The same is true for those with two genders. They need surgery. They are allowed, via a sex operation, to become either male or female. This issue is fundamentally different from that regarding homosexuals. They’re absolutely not related. Homosexuals are doing something unnatural and against religion.²⁹

When asked about the possibility of inaugurating a non-surgical transgender position, Hujjat al-Islam Mehdi Kariminia notes,

There were people in the past who were passing themselves off as women and there were women who tried to pass themselves off as men. It is clearly stated in our Islamic law that such behavior is not allowed because it violates moral rules and disrupts social order.³⁰

The anxiety to police gender and sexuality and produce governable gender dimorphic individuals is well apparent in these statements. A legitimate gender identity is described as one that is gender-dimorphic and singular. Conversely, a non-dimorphic and multi-gendered identity is conceived as a “problem” in sex and gender role orientation. Transsexual and transgender persons are certified as “gender identity disorder” patients if

²⁸ Hujjat al-Islam Mehdi Kariminia, “Barresy-i Mabany-i Fegh’hi va Hoghughy-i Taghir-i Jensiati” [An Analysis of the Religious and Legal Bases of Sex-Change] (2008) *Iranian Society for Supporting Individuals with Gender Identity Disorder*, online: http://www.gid.org.ir/main_f.htm.

²⁹ Tanaz Eshaghian, *Be Like Others*, 2008, DVD (Distributed by Wolfe Video).

³⁰ *Ibid.*

they agree to undergo surgical correction to fit into their “proper” gender location. In the case of resistance to “corrective measures” however, they risk being criminalized as homosexuals and permanent cross-dressers whose safety and security can no longer be guaranteed.

In Iran, human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitutes a national and entrenched pattern of serious concern.³¹ Authorities impose gender and sexual orientation norms on individuals through custom, law and violence and seek to control how they experience personal relationships and how they identify and express themselves.

Strict enforcement of boundaries between men and women remains a major force behind this continued policing of gender and sexuality. Iran segregates all public spaces such as schools, city buses, beaches, sport stadiums, and mosques on the basis of gender. It imposes strict dress codes upon women and discriminates against them with respect to access to employment, housing, education, political office, and divorce and child custody, as well as in such areas as criminal law, inheritance law and citizenship law.³²

Lesbian, gay and transgender persons, by virtue of their diverse gender identities and sexual orientations, pose an existential threat to this bipolar hetero-normative order; hence the denial of their existence at the discursive level³³ and their subjection to violence, harassment and discrimination in reality. The recent reconceptualization of gender non-conformity as a medically curable “gender identity disorder” has, however, provided the government with a convenient way to assimilate “butch” lesbians, “effeminate” gay men and transgender persons into its hetero-normative order without

³¹ See Human Rights Watch, “We are a Buried Generation: Discrimination and Violence against Sexual Minorities in Iran” (15 December, 2010), online: <http://www.hrw.org/reports/2010/12/15/we-are-buried-generation-0>.

³² See Hammed Shahidian, “Patriarchy Blessed: Gender Teleology and Violence” in *Women in Iran: Gender Politics in the Islamic Republic*, ed. Hammed Shahidian (Westport, Connecticut: Greenwood Press, 2002) at 161-216.

³³ The infamous statement of President Mahmoud Ahmadinejad at the Columbia University on 25 September 2007 best illustrates this denial. The statement was as follows: “In Iran, we don't have homosexuals like in your country. In Iran we don't have this phenomenon. I don't know who has told you we have it.”

threatening the integrity or totality of its disciplinary apparatus of gender.

Our research suggests that the relevant sense of recognition that comes with this process of pathologization/legitimization is compelling many gender-variant individuals to disavow the same-sex desires in themselves, and reinvent their selves as “transsexuals” trapped in the “wrong bodies” - men “imprisoned in a female body” or women “imprisoned in a male body”.

As will be discussed in Part II however, many of these individuals might not be as inclined to identify as members of the other sex and opt for sex change operations if there was less legal and societal condemnation of homosexuality and more leeway in traditional masculine and feminine role behavior.

D. Legal and Medical Procedures for Certification of Transsexuality

The process of obtaining legal sex change in Iran is marked by inconsistency, conflicting views and arbitrary standards of proof. Justice For Iran has not, yet, arrived at a proper understanding of the procedures that transgender and transsexual persons in provinces other than Tehran go through. As a result, this section is limited to discussing the procedures that have been established for applicants who reside in Tehran.

In order to start the process, a transsexual candidate typically obtains a letter of referral from a trusted psychologist and takes the letter along with a number of identification documents to a general court office. A court officer holds a private session with the applicant and then refers the applicant to the Psychiatric Patients Ward of the Legal Medicine Organization of Iran (LMOI). Composed of psychiatrists and clinical psychologists, this LMOI ward is in charge of making decisions on sex change application. The LMOI ward requires all applicants to undergo physical examination, hormonal tests, chromosomal identification, radiology and ultrasound and receive an average of only twelve psychotherapy sessions with a commission of publicly funded psychiatrists at the Tehran Psychiatric Institute (TPI), a psychiatric center associated with the Iran University of Medical Sciences. The commission is tasked with reviewing the legitimacy and credibility of the applicant’s declared need for sex reassignment surgery

and making recommendations to the LMOI as to the approval or rejection of the application.

Justice For Iran is in the process of researching the working methods and practices of the Commission. Evidence collected to date points to a diagnostic process marked by deep-seated homophobia and prejudiced obsession with female male binaries. Individuals appearing before the Commission are expected to delineate their transsexual identity as an “illness” in need of hormonal and surgical correction and completely distinct from sexual and behavioral deviations, particularly, homosexuality. They must place their transsexuality in the realm of confusion, depression, isolation and impairment and trace the origins of these feelings to being in the “wrong” sex and body. The psychologists controlling the process never seem to ask whether the hetero-normative norms that take gender and sexuality as fixed, intransigent and inherently heterosexual may be a source of these feelings of distress and anxiety and they readily link any expression of gender and sexual non-conformity to an internal pathology and disorder.

If the Commission, at the end of this interrogative process, decides that the applicant is a “real transsexual”, it will recommend him/her to the LMOI’s Psychiatric Patients Ward for sex reassignment surgery. This Ward is in charge of the final step in the certification process, that is, “the confirmation of affliction with gender identity disorders and issuance of permit for sex change in case of those individuals who cannot tolerate their biologic identity as a result of this affliction.”³⁴

This certification authorizes the approved applicant to seek hormonal treatment and sex reassignment surgery as well as financial assistance and military service exemption. The applicant is not, however, allowed to dress as a member of the other sex and live in society as such until she or he undergoes hormone therapy and other medical procedures.³⁵ This requirement compels many applicants to (self)administer hormone

³⁴ Sayyid Mahdi Saberi (head of the Psychiatric Patients Ward of the Legal Medicine Organization of Iran) and Mohammad Reza Mohammadi (Chair of Department of Psychiatry, Tehran University of Medical Sciences), *Nigarishi nau beh ravanpizishki-i qanuni* [A new look at legal psychiatry] (Tehran: Taymuzadeh, 2005) at 16.

³⁵ This is in stark contrast to the diagnostic requirement in many advanced medical systems that a person

therapy in a rushed manner and without a proper understanding of all the negative effects that hormone therapy can have upon their bodies.³⁶

The certification also instructs courts to allow the name change of the applicant and the issuance of new national identification papers provided that s/he meets the surgical requirements of legal sex change. Transsexual applicants must show that their body has been altered so as to resemble a body of the opposite sex by means of hormone therapy and sex reassignment surgeries. In the case of FTM persons, the surgical reconstruction of a penis may or may not be required. The surgical removal of uterus, ovaries and breasts is, however a necessity. No Account is taken of pre-existing medical conditions (e.g., hepatitis C, clotting disorders, AIDS) or psychological, religious and financial constraints that may render surgery risky, prohibitive or undesirable. The surgical requirements are deemed necessary for the protection of public order, public health and morals.

live full time in the preferred gender for at least 1 or 2 years, excluding periods of stress.

³⁶ Hormones are not a benign or recreational medication, and their misuse without proper supervision can have critical results. Continued or extreme abuse of hormone therapy can cause a break in the client's health and has in some cases resulted in death.

II. Narratives of Abuse, Survival and Resistance

A. “It’s an acceptable identity”: Constructing “Transsexual” at the Intersection of Rejection, Discrimination and Persecution

Many of the lesbian and transgender persons we interviewed held that their experiences of stigma, rejection and violence played a determinative role in their motivation for sex reassignment surgery. Ashkan told us:

I cannot begin to tell you about all the occasions I was harassed and assaulted by *basiji* forces for cross-dressing and simulating male attire. One time, I was walking with my girlfriend in the street. It was late at night. They stopped us because they thought we are girlfriend and boyfriend. They asked for our identification cards. I panicked and told them that I am actually a girl and I came out like this [wearing male clothing] because I wanted to buy a telephone card to call my mother who lives in a different town for something urgent and I did not feel safe to leave the house at this time of the night dressed as a woman. Their eyes suddenly glared with excitement as though they had caught a dangerous criminal. They pushed me into their car. There were three of them. The one who had asked for my identification card did not take his eyes off me and repeatedly asked if I was really a girl. He continuously laughed at me and touched me. I asked him to get his hands off my body and whatever I am is none of his business. The man who was sitting in the front row shouted that I have no right to speak and I should just shut up. I was really scared ... they did not stop touching my. They put their hands on my breasts and between my legs. They said they want to know if I am really a girl or boy. I don’t know if they had never seen someone like me or if that was just their way of harassing people like me ... anyway I was released the next day after spending a night of absolute agony in a cell with two other girls who has been arrested for *bad-hejabi* [improper veiling]. I was asked to sign a letter of commitment, stating that I will never appear in such attire again or else I will be expelled from university. I was also told that I should be grateful that I was not charged and taken to the court ... In sum, it was in the context of

such abuses and other legal and social deprivations that I reached the conclusion that undergoing surgery could bring me some level of safety and recognition. After all, being transsexual is a more acceptable identity.³⁷

Akan similarly told us:

Before coming to Turkey as an asylum seeker, I had become set on having sex change surgery and identifying myself as a trans because I was not accepted the way I am and this really distressed and depressed me. I, therefore, wanted to prove to everyone that I am a man ... My father beat me and said that I have become brainwashed and must get it out my mind that I am anything but a woman ... he wanted me to get married soon in the vein hope that I may turn into what he wants but my mother courageously resisted and saved me ... I also had problems in school. I was constantly harassed and prevented from participating in school activities. I was told that I am a *hamjensbaz* and have a corrupting effect on my fellows. I used to play in the soccer premier league but the school administration did not allow me to participate in the competitions. They said I demoralize my schoolmates. I was like someone in solitary confinement. I was not allowed to have personal relationships with any one and the administration followed all my moves and friendships.³⁸

Akan reported a drastic change in his self-perception after his move to Turkey however:

Since my move to Turkey, my girlfriend has helped me to accept myself the way I am. I now want to seriously think about the implications of having a sex change surgery before making any decision and I may actually never have it ... the community that I come from expects to see me as a man within the next few years. My mind has moved beyond these categories though. I now want to be neither a man nor a woman. I want to be myself and be accepted and loved as such. I owe this all to my girlfriend because she has accepted and loved me for

³⁷ Justice For Iran Interview with Ashkan, Kayseri, July 2012,

³⁸ Justice For Iran Interview with Akan, Kayseri, July 2012.

who I am. I am afraid that if she had also put pressure on me to undergo sex change and decide where I stand [gender-wise], I would have gone and done something harmful to myself... I feel I can now live the way I want and achieve my life goals without having to disguise and disfigure my body. I am in a loving relationship and have found the sense of security and comfort that I have been searching for all these years. I may lose it all if I have the operations.³⁹

We discerned a similar pattern in the evolution of other interviewees' self-perception after their move to an environment less preoccupied with moral condemnation of homosexuality, medical treatment of gender "disorders" and strict enforcement of binary sex and gender codes. Saman, an asylum seeker in Turkey whose decision to have his breast and ovaries removed had been in part motivated by the prospect of receiving legal recognition, said:

I am now opposed to labeling ourselves as man or woman. We must break out of these categories. We are not here to hear from anyone that we should do this or that thing because we are trans. We are here to break the taboos. Every person must be able to express oneself as s/he enjoys, even if others perceive that as being *abnormal* [the word as pronounced by Saman in Farsi]. I think we should not feel lost or confused or constantly search for our gender identity. Having gone through it myself, I can say that being in search of one's gender identity is the worst thing that can happen to a person. I now think we must be who we are, even if that means acting one day like a man and another day like a woman. I think we should not waste the precious years of our life trying to discover who we really are – our "true" gender I mean. Why should we constantly define and categorize our behaviors? I have had hormone treatment, mastectomy and hysterectomy myself and if I were to give one advice, it would be that we should think much harder about having such risky operations carried out on our bodies because once a part of our body goes under the knife, it will lose its sensation for ever. It will never look and feel the same again. I am telling you; sex change surgery is not a

³⁹ *Ibid.*

game!⁴⁰

Almost all of the lesbian women who participated in the Justice For Iran's community research workshop in Turkey held that Iran's approach of making gender non-conformity ineligible except for those willing to correct their "wrong bodies" is an affront to their dignity. Bahareh's following statement is reflective of the sense of frustration expressed throughout the three-day-long workshop:

As a lesbian, I am deeply frustrated that I am identified as a trans because I am not one! I am a Bahareh who was born this way. I would have had sex change if I were not satisfied with my body. But I am fine and I am not a trans. Between lesbians like me and transsexuals lies a line that is as thin as a strand of hair and this line is not being recognized and respected and this really disturbs me. I am strongly opposed to labeling. I am someone who was born this way and I don't like certain things for myself. I don't like to wear makeup for example. I don't like to marry a member of the opposite sex. I don't like to get pregnant. I like to live with someone of the same sex, make love with her and feel her. It troubles me as a lesbian to be put in the same category as a transsexual and be thought of as such. I am a woman who likes this kind of an appearance for herself, and I don't have any problem with myself.⁴¹

Even those participants who used to identify as female-to-male transsexuals, expressed frustration with having sex reassignment surgery as a criteria for legal recognition of their gender identity. Bardia said,

I sometimes wish that I was born a man but why should I mutilate my body because of that? I have learned to accept my body. I can have a sex change operation, but that cannot change my body into that of a man, it is impossible. FTM operations in Iran are never successful and they just lead to horrendous medical complications. The surgeons don't have the expertise. So you're never

⁴⁰ Justice For Iran Interview with Saman, Kayseri, August 2012.

⁴¹ Bahareh, Justice For Iran Community Research Workshop, Kayseri, August 2012.

going to have the body of someone who was born as a man. Why then should I subject myself to the surgeon's scalpel?⁴²

That homophobia and widespread discrimination and exclusion on the basis of gender identity and sexual orientation contributes to the motivation for sex change surgery is alluded to in many of the documentaries released to date on Iranian transgenders and transsexuals.

In the documentary *Be Like Others*, Ali, the partner of a male-to-female transsexual describes the situation with his partner prior to surgery as follows:

I'd like you to see what it's like walking down the street with her [his partner]. Ninety percent of the people we pass turn to us and say something nasty. You can't help but hear. Derogatory statements like "oh look at these ones. They are *hamjensbaz*."⁴³

When asked if he thinks the situation will improve after his partner has a sex change surgery, he responds:

Definitely. When she [his partner] goes out in female cloths and has female appearance, it is easier for me to persuade myself that she is a girl. It makes the relationship better. I was kind of mean to her before, when she wore male clothing I mean. I did not like it. But this was only because of the way people around me treated us. They put me under a lot of pressure. After her sex change, it will be a lot better.⁴⁴

In the documentary *The Birthday*, we hear through a character called Afshin about the great pressure that transgender persons experience to bring their gender and body into conformity with each other and the psychological suffering that results from this pressure. Afshin says:

⁴² Bardia, Justice For Iran Community Research Workshop, Kayseri, August 2012.

⁴³ Tanaz Eshaghian, *Be Like Others*, 2008, DVD (Wolfe Video).

⁴⁴ *Ibid.*

I knew that I had to have myself corrected one way or the other. For three years, I wore only female clothing, but then I thought I don't really want to get married. When men showed interest in me, I felt disgusted. I did not want any contact with them ... I reached a point where I felt I had no identity anymore. I did not know if I was a man or a woman. If I was a woman, then I had to get married. I had to have maternal feelings. But I did not have any of them. And if I was a man, I had to go out and earn a living. This was an enormous dilemma for me ... I have not been operated on and I have not yet taken any steps, not even hormone therapy ⁴⁵

The brutality of this socially constructed dilemma is particularly laid bare when one reads the response of this transgender person to the question of whether s/he would have had surgery if s/he were not in Iran:

Of course not. I have to operate so as to access my rights and legal entitlements. All of us are having operations for this reason. I can't go to work like this. I cant live like this. I don't have any rights now. I want to go to school. Is having your family more important or this [having surgery]? They are deserting me right now. So imagine how much I am suffering that I am willing to do this at the price of never seeing my family again.⁴⁶

In another clip, we hear the following heated exchange between a transsexual and a state radio journalist who insists that transgender persons must conform to the prevailing dichotomous sex/gender scheme if they want to avoid persecution and be treated with humanity and dignity:

J: When you are still a boy and you haven't yet completed your operation to become a girl, the law, religion and custom does not allow you to dress as a girl. Once you're given the official permit to have the operation, put it in your pocket and when the police stop you, pull it out and no one will then bother you... If you want to continue to dress like a girl but keep your male body, you are not a

⁴⁵ Negin Klanfar and Daisy Mohr, *The Birthday*, 2006, DVD (Gijs van de Westelaken).

⁴⁶ *Ibid.*

transsexual anymore; you are a transvestite; you may even be suspected of being a homosexual [meaning you have no right to complain about being policed, persecuted and punished]...so make up your mind. Either you want to be a man or a woman...it is my duty to know if someone is a man or a woman.

T: You're telling me if I want to live, I have to accept these conditions.

J: I suspect you want to have it both ways.

T: What do you think makes people come to this clinic, demanding that they be turned into a man or a woman?

J: Are you saying that these people shouldn't change their body and must only go ahead and wear women's clothing?

T: I am saying that the rule that forces me to do this takes away my right to any sort of choice. And that rule is imposed by you and the likes of [interrupted]

J: Are you saying that you don't intend to have surgery?

T: What do you mean! I have no choice but to undergo surgery. Because of society.

J: Why society?

T: I'll tell you. My family does not accept me. I am an Iranian. I want to live here and this society tells you: you have to be either a man or a woman [interrupted]

J: So you decided to become a woman.

T: I did not decide! This is something the society forces me to do.⁴⁷

This exchange speaks for itself. By Criminalizing homosexuality, prohibiting cross-

⁴⁷ *Ibid.*

dressing, and making gender recognition dependent upon hormone treatment and sex reassignment surgery, the Islamic Republic of Iran is in effect leaving transgender persons with two options which pose an equal risk to their health and safety: to seek risky, costly and invasive hormonal treatments and surgical operations or to continue a dangerous and clandestine life unremittingly overshadowed by harassment, discrimination in employment and education, arbitrary arrest and detention, and risk of killing, physical attacks, rape and torture.

B. Taking Torture as Treatment: Transgender Health Care in Iran

According to the Standards of Care of the World Professional Association for Transgender Health,

In persons diagnosed with transsexualism or profound GID [gender identity disorder], sex reassignment surgery, along with hormone therapy and real- life experience, is a treatment that has proven to be effective. Such a therapeutic regimen, when prescribed or recommended by qualified practitioners, is medically indicated and medically necessary. Sex reassignment is not “experimental,” “investigational,” “elective,” “cosmetic,” or optional in any meaningful sense.⁴⁸

The same body of standards emphasizes, however, that the medical necessity of SRS is dependent upon individual needs and must be assessed on a case-by-case basis:

After the diagnosis of GID is made, the therapeutic approach usually includes three elements or phases (sometimes labeled triadic therapy): a real-life experience in the desired role, hormones of the desired gender, and surgery to change the genitalia and other sex characteristics ... However, the diagnosis of GID invites the consideration of a variety of therapeutic options, only one of which is the complete therapeutic triad. Clinicians have increasingly become aware that not all persons with gender identity disorders need or want all three

⁴⁸ World Professional Association for Transgender Health, “Standards of Care for Gender Identity Disorders,” Sixth Version (February 2001) at p. 18, online: <http://www.wpath.org/documents2/socv6.pdf>.

elements of triadic therapy.⁴⁹

The Standards of Care, as with general human rights norms, require that the best interests of the individual be the primary consideration in the provision of medical treatment, and therefore lay out carefully designed procedures to decide whether irreversible changes to the body are indeed an appropriate form of assistance for an individual diagnosed with gender identity disorder.⁵⁰

Iran's regulatory framework, which makes legal recognition of gender conditional on SRS, stands in stark contrast to the standards. The situation acquires greater urgency when one considers the extremely poor medical standards that characterize the medical procedures of sex change in Iran. Iranian medical schools and hospitals offer no specialized courses of study or teaching clinics for SRS surgeons. Many surgeons are, therefore, untrained and learn their techniques through trial and practice. Documentation of protocols for care of patients undergoing transition is severely limited. Techniques for remedial care of complications are not well developed. Finally, many patients lack demonstrable knowledge of the required lengths of hospitalization, likely complications and post-surgical rehabilitation requirements of various surgical approaches.

This situation raises serious questions about the ethical responsibilities of medical professionals in Iran who are prescribing and performing medically unnecessary and thus inappropriate surgeries, frequently leading to decreased erogenous sensations and serious medical complications such as bleeding, infections, recto-vaginal or urethral fistula, vaginal or urethral stricture or stenosis and partial or complete flap necrosis, amongst others. As put by one transsexual,

These doctors do not care if patients really know whether they want to or should change their sex, whether the surgery is carried out properly, or what the possible complications are. There are doctors who ... keep raising the prices and sell

⁴⁹ *Ibid.* at p. 3.

⁵⁰ *Ibid.* at pp. 20-21.

themselves under false pretenses. Trans patients are like steps that these doctors use to climb to profits.⁵¹

The transgenders interviewed by Justice For Iran described their operation experience as degrading, inhuman and a form of torture. Saman, a self-identified FTM who has had mastectomy and hysterectomy, told us:

I was harassed throughout the entire process of my hospitalization which lasted 4 days. I had my surgery in a poorly-resourced public hospital in the city of Karaj. I was hospitalized in the men's general section but the hospital wrote my previous female name and the words hysterectomy and mastectomy on the identification board on top of my bed. The male nurses constantly abused me, both physically and verbally. They made nasty comments about me and tried to aggravate my pain by denying me care. The very first night after my surgery was the worst. I was alone that night. The male nurse forcefully inserted urethral sounds into me and said "You see how pleasurable it is. You must have stayed a woman. Get it. Enjoy it." I was bleeding and I could not move out of my bed. It was excruciatingly painful. I have recurring nightmares about that night. Once I was discharged, I went to the hospital to file a complaint against the male nurse. The administration dismissed my complaint though and said that I was not raped and have therefore no case.⁵²

Saman's mother described Saman's day of surgery as follows:

Almost everyone around me in the waiting room was chattering about him. Saman was taken out of the surgery room on a stretcher. He was still unconscious. The hospital staff and some random people in the waiting room area rushed

⁵¹ Human Rights Watch, "We are a Buried Generation: Discrimination and Violence against Sexual Minorities in Iran" (15 December, 2010) at 82, online: <http://www.hrw.org/reports/2010/12/15/we-are-buried-generation-0>.

⁵² Saman, Justice For Iran Community Research Workshop, Kayseri, August 2012.

toward the stretcher and began debating whether he was a man or a woman. They looked at his face which was manly and wanted to know what lied between his legs. They were making dirty comments. It felt like they were raping him. I was weeping but the situation was so hostile that I did not dare to go upfront and say I am his mother. My heart ached with pain.⁵³

Stories of harassment and abuse at the hands of health care professionals also abound in the context of psychotherapy sessions that transsexual persons must undergo in order to get their transsexuality certification. Trans persons often encounter ignorance about the basic aspects of transsexuality and find themselves required to conform to the psychologists and psychiatrists' prejudiced perceptions of how a transsexual person should act and/or appear, in order to get the certification. Many report hostile and aggressive methods of questioning on the part of psychiatrists and such forced psychiatric interventions as drugging with neuroleptics and electroshocks; these "treatments" have in many cases shattered the trans persons' sense of dignity and humanity, undermined their physical and mental health, and pushed them to edge of despair and suicide.

Justice For Iran is currently in the process of gathering and documenting the accounts of the survivors of these pervasive abuses in the transgender health care system of Iran.

⁵³ Justice For Iran Community Research Workshop, Kayseri, August 2012.

III. International Legal Framework

A. Applicable International Standards and Obligations

There are multiple and inter-related forms of human rights abuses to which this report points to incontrovertibly: The Islamic Republic of Iran criminalizes all homosexual acts and actively punishes certain homosexual acts with death; allows sexual orientation or gender identity to be the basis for arrest or detention; promotes discrimination on the basis of gender identity in employment; subjects students of diverse gender identities to all forms of social exclusion and violence within the school environment, including bullying and harassment; encourages violence, threats of violence, incitement to violence and related harassment on the basis of sexual orientation and gender identity in all spheres of life including the family; classifies non-dimorphic gender identities as medical disorders to be treated and cured; and forces individuals to undergo medical procedures, including sex reassignment surgery, sterilization, or hormonal therapy, as a requirement for legal recognition of their gender identity.

These abuses violate the integrity and dignity of LGBT persons, undermine their physical and psychological health, and lead many to conceal or suppress their identity and to live lives of fear and invisibility. They also deprive LGBT individuals of the opportunity to make their own decisions regarding medical treatment, on the basis of genuinely informed consent and without discriminatory considerations relating to sexual orientation and gender identity.

The Islamic Republic of Iran stands as such in serious breach of its international obligations to prevent violence and discrimination based on sexual orientation and gender identity. These obligations are summarized in the 2011 report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity⁵⁴ as

⁵⁴ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, 17 November 2011, available at: <http://www.unhcr.org/refworld/docid/4ef092022.html>.

follows:

1. To protect the right to life, liberty and security of persons irrespective of sexual orientation or gender identity

Under article 3 of the Universal Declaration of Human Rights, “everyone has the right to life, liberty and the security of person.” Article 6 of the ICCPR affirms, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” States have an obligation to exercise due diligence to prevent, punish and redress deprivations of life, and to investigate and prosecute all acts of targeted violence.⁵⁵

2. To prevent torture and other cruel, inhuman or degrading treatment on grounds of sexual orientation or gender identity

The right to be free from torture and other cruel, inhuman or degrading treatment is absolute. Article 5 of the Universal Declaration of Human Rights and article 7 of the ICCPR provide that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 7 also expressly prohibits medical treatment without the free consent of the person concerned. States are obligated, per article 2(1) of the ICCPR, to protect from torture and ill-treatment all persons without distinction of any kind and regardless of sexual orientation or transgender identity.⁵⁶

3. To protect the right to privacy and against arbitrary detention on the basis of sexual orientation or gender identity

The right to privacy is enshrined in article 12 of the Universal Declaration of Human Rights and article 17 of the ICCPR, which state that no one should be subjected to “arbitrary or unlawful interference with his privacy, family, home or correspondence” Articles 9 of the Universal Declaration and ICCPR further protect individuals from “arbitrary arrest and detention”. In its general comment

⁵⁵ Human Rights Committee, *General Comment No. 6: The Right to Life (art.6)*, 30 April 1982, online: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument).

⁵⁶ For an authoritative interpretation of Article 2 in relation to sexual orientation, see *Toonen v. Australia*, communication No. 488/1992 (CCPR/C/50/D/488/1992).

no. 16, the Human Rights Committee confirmed that any interference with privacy, even if provided for by law, “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.”

Since *Toonen* in 1994, the Human Rights Committee has held that laws used to criminalize private, adult, consensual same-sex sexual relations violate the right to privacy. The Committee has rejected the argument that criminalization may be justified as “reasonable” on grounds of protection of public health or morals, noting that the use of criminal law in such circumstances is neither necessary nor proportionate.⁵⁷ In their concluding observations, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have urged States to reform such laws and, where relevant, have welcomed their repeal.⁵⁸ The Working Group on Arbitrary Detention has held that detaining someone on the basis of sexual orientation constitutes arbitrary detention in breach of article 9 of the International Covenant on Civil and Political Rights.⁵⁹

4. To protect individuals from discrimination on grounds of sexual orientation and gender identity

The right to be free from discrimination is included in the Universal Declaration of Human Rights (art. 2) and core international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (art. 2) and the Convention on the Rights of the Child (art. 2). Article 26 of the ICCPR

⁵⁷ *Ibid.* paras. 8.3-8.7.

⁵⁸ See Human Rights Committee concluding observations on Togo (CCPR/C/TGO/CO/4), para. 14; Uzbekistan (CCPR/C/UZB/CO/3), para. 22; and Grenada (CCPR/C/GRD/CO/1), para. 21; Committee on Economic, Social and Cultural Rights, concluding observations on Cyprus (E/C.12/1/Add.28), para.7; Committee on the Elimination of Discrimination against Women, concluding observations on Uganda (CEDAW/C/UGA/CO/7), paras. 43-44; and Kyrgyzstan (Official Records of the General Assembly, Fifty-fourth session, Supplement No. 38 (A/54/38/Rev.1)), paras. 127-128; and Committee on the Rights of the Child, concluding observations on Chile (CRC/C/CHL/CO/3), para. 29.

⁵⁹ See opinions No. 22/2006 on Cameroon (A/HRC/4/40/Add.1), and No. 42/2008 on Egypt (A/HRC/13/30/Add.1). See also A/HRC/16/47, annex, para. 8 (e).

guarantees equality before the law, requiring States to prohibit discrimination.

In their general comments, concluding observations and views on communications, human rights treaty bodies have confirmed that States have an obligation to protect everyone from discrimination on grounds of sexual orientation or gender identity. The fact that someone is lesbian, gay, bisexual or transgender does not limit their entitlement to enjoy the full range of human rights.

The Human Rights Committee has urged State parties to “guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation”⁶⁰, and welcomed legislation that includes sexual orientation among prohibited grounds of discrimination.⁶¹ The Committee on Economic, Social and Cultural Rights has affirmed the principle of non-discrimination on grounds of sexual orientation in general comments on the rights to work, water, social security and the highest attainable standard of health.⁶² In addition, in its general comment on discrimination, the Committee included both sexual orientation and gender identity as prohibited grounds of discrimination under the Covenant.⁶³ In their general comments and concluding observations, the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Elimination of Discrimination against Women have included recommendations on countering discrimination based on sexual orientation and gender identity.⁶⁴

⁶⁰ See concluding observations on Chile (CCPR/C/CHL/CO/5), para. 16. See also concluding observations on San Marino (CCPR/C/SMR/CO/2), para. 7; and Austria (CCPR/C/AUT/CO/4), para. 8.

⁶¹ See concluding observations on El Salvador (CCPR/C/SLV/CO/6), para. 3 (c); Greece (CCPR/CO/83/GRC), para. 5; Finland (CCPR/CO/82/FIN), para. 3 (a); and Slovakia (CCPR/CO/78/SVK), para. 4.

⁶² See general comments No. 18 (E/C.12/GC/18) (right to work), para. 12 (b) (i); No. 15 (E/C.12/2002/11) (right to water), para. 13; No. 19 (E/C.12/GC/19) (right to social security), para. 29; and No. 14 (E/C.12/2000/4) (right to the highest attainable standard of health), para. 18.

⁶³ See general comment no. 20 (E/C.12/GC/20), para. 32.

⁶⁴ See Committee on the Rights of the Child, general comment No. 4 (CRC/GC/2003/4), para.6; Committee against Torture, general comment No. 2 (CAT/C/GC/2), para. 21; and Committee on the Elimination of Discrimination against Women, general comment No. 28 (CEDAW/C/GC/28), para. 18. See also Committee on the Elimination of Discrimination against Women, concluding observations on South Africa (CEDAW/C/ZAF/CO/4), para. 40; and Costa Rica (CEDAW/C/CRI/CO/5-6), para. 41.

As noted at the outset, Iran’s legal framework for the recognition of gender identity should be contextualized and understood in relation to the widespread and systematic violence and discrimination that is inflicted upon LGBT individuals, contrary to the international human rights obligations listed above.

B. The Right to Gender Recognition

Iranian authorities have long taken pride in Iran’s transsexuality regime, noting the inability of transgender persons in many Western Europeans to obtain legal recognition of their preferred gender, including a change in recorded sex and first name on State-issued identity document. This is while in recent years many European states have abolished the legal condition of sex reassignment surgery and other compulsory medical treatment as a requirement for legal recognition of a person’s identity.

In January 2011, the Constitutional Court in Germany found sex reassignment surgery to “constitute a massive impairment of physical integrity” and struck down the requirement of surgery for the legal recognition of the gender identity of transsexual people as unconstitutional. In reaching this conclusion, the Court observed:

According to the current state of scientific knowledge, it [SRS] is not always medically indicated even in the case of a diagnosis of transsexuality that is certain to a large extent. The permanent nature and irreversibility of transsexual persons’ perceived gender cannot be assessed against the degree of the surgical adaptation of their external genitals but rather against the consistency with which they live in their perceived gender. The unconditional prerequisite of a surgical gender reassignment . . . constituted an excessive requirement because it requires of transsexual persons to undergo surgery and to tolerate health detriments even if this is not medically indicated in the respective case and if it is not necessary for ascertaining the permanent nature of the transsexuality.⁶⁵

⁶⁵ Federal Constitutional Court (Bundesverfassungsgericht), “Prerequisites for the statutory recognition of transsexuals according to § 8.1 nos. 3 and 4 of the Transsexuals Act are unconstitutional, Order of January 11, 2011” (“Voraussetzungen für die rechtliche Anerkennung von Transsexuellen nach § 8 Abs. 1 Nr. 3 und 4 Transsexuellengesetz verfassungswidrig, Beschluss vom 11. January 2011”), Press release no.

In relation to the infertility requirement, the Court similarly stated:

By this prerequisite, the legislature admittedly pursues the legitimate objective to preclude that persons who legally belong to the male sex give birth to children or that persons who legally belong to the female sex procreate children because this would contradict the concept of the sexes and would have far-reaching consequences for the legal order. Within the context of the required weighing, however, these reasons cannot justify the considerable impairment of the fundamental rights of the persons concerned because the transsexual persons' right to sexual self-determination safeguarding their physical integrity is to be accorded greater weight.⁶⁶

In February 2009 the Austrian Administrative High Court similarly found mandatory SRS as a condition for legal recognition of gender identity to be unlawful.⁶⁷

Numerous other countries including Portugal, United Kingdom, Spain, Uruguay and Hungary have adopted progressive laws, which enable transgender persons to obtain new identity documents with their preferred gender without having to meet the requirements of hormone therapy, SRS, infertility or other medical conditions of any kind.⁶⁸

Iran's claim to be a leader in recognition of transsexual gender identity is, therefore,

7/2011, January 28, 2011, 1 BvR 3295/07 (English translation provided by the court), online:

http://www.bundesverfassungsgericht.de/entscheidungen/rs20110111_1bvr329507.htm.

⁶⁶ Federal Constitutional Court (Bundesverfassungsgericht), Press release no. 7/2011, January 28, 2011, 1 BvR 3295/07 (English translation provided by the court), online:

http://www.bundesverfassungsgericht.de/entscheidungen/rs20110111_1bvr329507.html, consideration 2.b.

⁶⁷ Administrative High Court (Verwaltungsgerichtshof), no. 2008/17/0054, judgment of February 27, 2009, http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2008170054_20090227X00. See also Rechtskomitee Lambda, "Austrian Administrative High Court lifts Mandatory Surgery for Transsexuals," press release April 28, 2009, online: <http://www.RKLambda.at>.

⁶⁸ See for example, European Parliament's Intergroup on LGBT Rights, "MEPs welcome new gender change law in Portugal; concerned about Lithuania" (21 March, 2011), online: <http://www.lgbt-ep.eu>; Transgender Europe, "Portugal Adopts Trans Law: 8 Days for Legal Gender Recognition" (27 November, 2010), online: http://www.tgeu.org/PR_Portuese_Trans_Law; The Rectification of Gender in the Civil Registry" ("Rectificación registral de la mención relativa al sexo de las personas"), Law 3/2007 of March 15, 2007, art. 4(2); European Union Agency for Fundamental Rights (FRA), "Thematic Study Spain," February 2010, pp. 47-52; Gender Recognition Act, *United Kingdom Parliament*, 2004 Chapter 7; European Union Agency for Fundamental Rights (FRA), "Thematic Study United Kingdom," February 2010, pp. 50-57.

highly unfounded. This is not to mention that in the context of Iran, the consequences of non-recognition for transgender persons are far graver given that that transsexuality is repeatedly defined in relation to homosexuality. Failure to undergo surgery creates the perception of homosexuality, which can in turn put transgender persons at risk of physical attacks, arbitrary detention, rape and torture, and discrimination in employment and education.

In an interview with BBC in 2005, Hujjat al-Islam Kariminia said, “I want to suggest that the right of transsexuals to change their gender is a human right.”⁶⁹ This is indeed a welcome statement. In creating a human rights-compliant legal framework for the recognition of trans persons’ gender identity, Iran must at a minimum abolish the legal condition of hormone therapy, sterilization and other compulsory medical treatment as a requirement for legal recognition of a person’s gender identity. Iran must further take appropriate legislative, administrative, educational and other measures to prohibit violence and discriminate on grounds of sexual orientation and gender identity and guarantee the full legal recognition of a person’s gender identity in all areas of life, in particular by making possible the change of name and gender in official documents. It is only then the decision by an individual transgender person of whether in fact to undergo SRS would be restored to its proper domain, namely that of the health and wellbeing of the individual in question.

⁶⁹ Frances Harrison, “Iran’s sex-change operations” *BBC Newsnight* (5 January, 2005), online: <http://news.bbc.co.uk/1/hi/programmes/newsnight/4115535.stm>.

Recommendations

This section reproduces some of the internationally developed Principles on the application of international human rights law in relation to sexual orientation and gender identity including the Yogyakarta Principles⁷⁰, based on the specific types of human rights violations that are of concern in the particular context of Iran.

To the Government of Iran:

Protection of Lives

- Abolish all laws that criminalize consensual sexual activity among persons of the same sex who are over the age of consent and until such provisions are repealed, refrain from imposing the death penalty on any person convicted under them;
- Revoke sentences of death and release all those currently awaiting execution for crimes relating to consensual sexual activity;
- Cease state-sponsored or state-condoned attacks on the lives of persons based on sexual orientation or gender identity, and ensure that all such attacks, whether by government officials or by any individual or group, are vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished.

Security of the Person

- Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity;
- Take all necessary legislative measures to impose appropriate criminal penalties

⁷⁰ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at: <http://www.unhcr.org/refworld/docid/48244e602.html>.

- for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family;
- Take all necessary legislative, administrative and other measures to ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence;
 - Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation;
 - Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.

Recognition

- Take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity;
- Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all state-issued identification papers which indicate a person's gender/sex reflect the person's profound self-defined gender identity;
- Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;
- Ensure that changes to identity documents will be recognized in all contexts where the identification or disaggregation of persons by gender is required by law or policy;
- Undertake targeted programs to provide social support for all persons experiencing gender transitioning or reassignment.

Privacy

- Repeal all law that prohibit or criminalize the expression of gender identity, including through dress, speech or mannerisms, or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity;
- Ensure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others;
- Take all necessary legislative, administrative and other measures to ensure the right of each person, regardless of sexual orientation or gender identity, to enjoy the private sphere, intimate decisions, and human relations, including consensual sexual activity among persons who are over the age of consent, without arbitrary interference.

Freedom from Arbitrary Detention and Arrest

- Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice;
- Undertake programs of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person's sexual orientation or gender identity.

Freedom from Torture and Cruel, Inhuman or Degrading Treatment

- Take all necessary legislative, administrative and other measures to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender

- identity of the victim, as well as the incitement of such acts;
- Undertake programs of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in a position to perpetrate or to prevent such acts.

Health

- Develop and implement programmes to address discrimination, prejudice and other social factors which undermine the health of persons because of their sexual orientation or gender identity;
- Ensure that all persons are informed and empowered to make their own decisions regarding medical treatment and care, on the basis of genuinely informed consent, without discrimination on the basis of sexual orientation or gender identity;
- Ensure that healthcare facilities, goods and services are designed to improve the health status of, and respond to the needs of, all persons without discrimination on the basis of, and taking into account, sexual orientation and gender identity, and that medical records in this respect are treated with confidentiality;
- Facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support;
- Ensure that all health service providers treat clients and their partners without discrimination on the basis of sexual orientation or gender identity,

Protection from Medical Abuse

- Take all necessary legislative, administrative and other measures to ensure full protection against harmful medical practices based on sexual orientation or gender identity, including on the basis of stereotypes, whether derived from culture or otherwise, regarding conduct, physical appearance or perceived gender norms;
- Ensure protection of persons of diverse sexual orientations and gender identities against unethical or involuntary medical procedures;
- Ensure that any medical or psychological treatment or counseling does not,

explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed.

Work

- Take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment.

Education

- Take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity;
- Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment;
- Ensure that students subjected to such exclusion or violence are not marginalized or segregated for reasons of protection, and that their best interests are identified and respected in a participatory manner.

Participation in Public Life

- Take all appropriate measures to eliminate stereotypes and prejudices regarding sexual orientation and gender identity that prevent or restrict participation in public life;
- Ensure the right of each person to participate in the formulation of policies affecting their welfare, without discrimination on the basis of, and with full respect for, their sexual orientation and gender identity.

To the United Nations Human Rights Council, the United Nations Special Rapporteur on the Situation of Human Rights in Iran and Other UN Organs

- Give substantive consideration to Iran's human rights violations against individuals based on sexual orientation or gender identity, with a view to promoting its compliance with these recommendations;
- Pay due attention to human rights violations based on sexual orientation or gender identity in Iran, and integrate these recommendations into the implementation of any respective mandate.

To Non-Governmental Human Rights Organizations

- Promote respect the human rights of persons of diverse sexual orientations or gender identities;
- Give substantive consideration to Iran's human rights violations against individuals based on sexual orientation or gender identity, with a view to promoting respect for these recommendations within the framework of any specific mandates.

To Iranian Medical Organizations and Health Care Professionals

- Review all relevant practices and guidelines to ensure that they vigorously promote the implementation of these recommendations, including the ones relating to health and protection from medical abuses;
- Avoid harmful medical practices based on sexual orientation or gender identity, including on the basis of stereotypes, whether derived from culture or otherwise, regarding conduct, physical appearance or perceived gender norms;
- Protect persons of diverse sexual orientations and gender identities against unethical or involuntary medical procedures;
- Ensure that any medical or psychological treatment or counseling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical

conditions to be treated, cured or suppressed.

- Treat clients and their partners without discrimination on the basis of sexual orientation or gender identity
- Empower patients to make their own decisions regarding medical treatment and care, on the basis of genuinely informed consent, without discrimination on the basis of sexual orientation or gender identity;
- Undertake programs of peer training and public awareness raising to address discrimination, prejudice and other social factors which undermine the health of persons because of their sexual orientation or gender identity.

To Iranian Mass Media

- Avoid the use of stereotypes in relation to sexual orientation and gender identity, and promote tolerance and the acceptance of diversity of human sexual orientation and gender identity, and raise awareness around these issues;
- Pay due attention to human rights violations based on sexual orientation or gender identity in Iran governmental and private funders provide financial assistance,

To governmental and private funders

- Provide financial assistance, to non-governmental and other organizations to undertake research about human rights violations based on sexual orientation or gender identity in Iran and promote respect for the human rights of persons of diverse sexual orientations and gender identities.