



Legal Research Series

*Sexual Orientation and Gender Identity: Iran's
International Human Rights Obligations*

Catherine Bevilacqua, Elizabeth Harper, Catherine Kent

June 2014

Executive Summary

This legal research analysis belongs to a series of studies on human rights in Iran authored by the Human Rights in Iran Unit. The Human Rights in Iran Unit in the School of Law at the University of Essex focuses on the Islamic Republic of Iran's compliance with international human rights law. Each study tackles a distinct topic to measure international obligations against domestic law and practice and to identify underlying or systemic problems. The Unit seeks to provide an accessible account of the breadth and complexity of violations in Iran from the standpoint of international law, which may serve scholars, practitioners and anyone concerned with human rights in Iran.

This briefing considers the legal status of persons with regard to their sexual orientation and gender identity in the Islamic Republic of Iran with respect to the State's obligations under international human rights law. The relevant treaties to which Iran is a State party are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The analysis demonstrates that the criminalization of same-sex relations within the Islamic Republic of Iran violates several key obligations imposed by international human rights law:

- **The principle of non-discrimination:** Sexual orientation and gender identity constitutes a distinct group to which this principle applies. As non-discrimination is integral to international human rights law, and binding upon Iran as a State party to the ICCPR and ICESCR, the criminalization of same-sex relations contravenes the fundamental principle of non-discrimination;
- **The prohibition of torture and other cruel, inhuman or degrading treatment or punishment:** Flogging has been recognized by international legal experts as a violation of the prohibition of other cruel or inhuman treatment. Crimes of same-sex relations that are punishable by flogging, such as lesbianism, contravene this legal obligation;
- **The right to life:** Sodomy is punishable by the death penalty within Iran. Considering the criminalization of homosexuality itself is a violation of international human rights law, the application of the death penalty for same-sex relations is a clear violation of Iran's legal obligations under ICCPR article 6 on the basis of arbitrariness. This violation also applies to bisexual and transgendered persons on the basis of a lack of predictability.

This study also considers the prevalence of sex reassignment surgeries within Iran and raises several concerns that imply violations on the basis of the following:

- **Right to information:** Article 19(2) of the ICCPR requires States parties to allow individuals the right to “seek, receive and impart information”. Documentation suggests that due to societal pressure and lack of medical information, persons considering a sex reassignment surgery may not be afforded this right in practice. This right is inextricably linked to the right to informed consent: without comprehensive knowledge of the medical procedure and its effects, the individual’s right to information and right to informed consent will be equally violated.
- **Right to informed consent under the right to health:** The obligation to respect the right to health under article 12 of the ICESCR requires States parties to guarantee freedom from coercive medical procedures and the individual’s right to informed consent. The obligation to protect this right further obliges States to ensure that third parties, such as medical professionals, uphold ethical and professional standards. Reports indicate that poor conditions during surgery may lead to increased complications, which would constitute an additional violation of the right to health.

1. Introduction

This legal research analysis belongs to a series of studies on human rights in Iran authored by the Human Rights in Iran Unit.¹ This study considers the Islamic Republic of Iran's compliance with and its obligations under international human rights law with respect to gender identity and sexual orientation. The relevant treaties to which Iran is a State party are the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

The analysis demonstrates that Iran does not comply with its obligations under international human rights law in domestic law and in practice, as it systematically violates the rights of individuals on the basis of their sexual orientation, including the right to non-discrimination, the right to life, the prohibition of torture and other cruel, inhuman or degrading treatment, the right to health and the right to information.

2. Sexual Orientation in Iran

Iranian laws criminalize same-sex relations.² The only relations recognized and promoted by the State as legitimate are between a man and a woman.³ In the past, Iranian authorities have denied the existence of homosexuality within the country.⁴ However, recent official statements indicate that homosexuality and transgendered individuals have been acknowledged, but only as subjects of illness.⁵

Same-sex relations can be punishable by various sentences, ranging from flogging to the death penalty.⁶ These laws are different for men or women and distinguished on the basis

¹ All research is supervised by Scott Sheeran and Catherine Bevilacqua, Co-Directors of Research in the Human Rights in Iran Unit, School of Law, University of Essex.

² Iranian Penal Code, articles 233-240. Full English translation available at: <<http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html#45>>. The 1926 Penal Code also criminalized sodomy, punishable by death, if it could be proven in accordance with Islamic Shari'a rules.

³ Iranian Penal Code, articles 233-240.

⁴ Iranian Queer Organisation, 'Humanity Denied: The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Iran' Submitted to the Special Rapporteur on the Human Rights Situation in Iran' (September 2011), p. 4, available at: <http://www.hirschfeld-eddy-stiftung.de/fileadmin/images/laenderberichte/Iran/IRQO_Report_September_2011.pdf>

⁵ The Secretary General of Iran's High Council for Human Rights, Mohammad Javad Larijani, has stated, "In our society, homosexuality is regarded as an illness and malady". See Saeed Kamali Dehghan, "Iranian human rights official describes homosexuality as an illness" (*The Guardian*, 14 March 2013), available at: <<http://www.theguardian.com/world/iran-blog/2013/mar/14/iran-official-homosexuality-illness>> ; On transgendered individuals as subjects of "Gender Identity Disorder," see <http://www.asrkhbar.com/fa/news/12574/فرد-دو-جنسی-و-هجنه-نگران-بنا-ه-سکسوال-پست-رادس> دارند

⁶ Articles 233-240 of the Iranian Penal Code.

of which sexual acts have taken place.⁷ There is no reference to sexual orientation within the laws but in practice this punishment could apply to acts by gay, lesbian, bisexual or transgendered (LGBT) persons for engaging in same-sex relations.

Therapeutic treatments and sex reassignment surgeries

Extensive documentation indicates that while same-sex relations (sexual acts) are criminalized, any sexual orientation that is not heterosexual is considered an illness, approached with medical treatments ranging from psychotherapy to sex reassignment surgery.⁸ Psychological therapies assess whether an individual can be “cured” of this illness by changing a person’s orientation to heterosexual through therapy.⁹ Documentation suggests that where medical professionals consider they have “failed to cure” non-heterosexual preferences, the State eventually encourages individuals to change their bodies by undergoing sex reassignment surgeries.¹⁰ From the State perspective, the outcome fixes the problem: for example, a woman who is attracted to women has become a man who is attracted to women.

Sex reassignment surgeries are common within Iran; Iran is responsible for the second highest number of these surgeries worldwide.¹¹ In general, the legalization of sex change operations may count as a protection of individuals’ right to express their sexual identity. Yet the surrounding context – criminalization of same-sex relations, consideration of sexual identities as a medical problem, as well as social pressures¹² – indicates that the

⁷ See, e.g., Islamic Penal Code, Article 239 (100 lashes for crime of lesbianism) and Article 234 (punishment of the death penalty for “passive” men engaging in same-sex relations). See below for further explanation.

⁸ Raha Bahreini, “From Perversion to Pathology: Discourse of Gender Policing in the Islamic Republic of Iran,” (2008) 5(1) Muslim World Journal of Human Rights, 20-22, available at: <<http://www.worldwewant2015.org/node/287187>>; Justice for Iran, “The violation of transgenders’ right to the highest attainable standard of health in the Islamic Republic of Iran” [JFI CESCR] (2013), para. 6, available at: <<http://justiceforiran.org/wp-content/uploads/2013/04/TG-written-submission.pdf>>; Justice for Iran, “Iran: Disciplining bodies, diagnosing identities, Submission to the UN Universal Periodic Review of Iran (20th Session)” [JFI UPR] (2014), para. 16, available at: <<http://justice4iran.org/english/wp-content/uploads/2014/03/IRAN-UPR-Submission-JFI.pdf>>

⁹ JFI UPR, *ibid.*, para. 13; Bahreini, *supra* n.7, p. 14

¹⁰ JFI CESCR, *supra* n.7; JFI UPR, *ibid.*, para. 13.

¹¹ Vanessa Barford, “Iran’s ‘diagnosed transsexuals’” (*BBC News*, 25 February 2008), available at: <<http://news.bbc.co.uk/1/hi/7259057.stm>>; Sasha von Oldershausen, “Iran’s sex-change operations provided nearly free of cost” (*The World Post*, 04 June 2012), available at: <http://www.huffingtonpost.com/2012/06/04/iran-sex-change-operation_n_1568604.html>.

¹² The pressure placed upon LGBT persons by family members is cited as a significant factor in individuals’ decisions to undergo a sex reassignment surgery. These social pressures may constitute an external factor, outside the policies adopted by the State, that contribute to the prevalence of sex reassignment surgeries within Iran. See, e.g., Marie Doezema, “Sex change operations legal in Iran but perilous” (*The Investigative Fund*, 17 May 2013), available at: <http://www.theinvestigativefund.org/investigations/gender/1797/sex_change_operations_legal_in_iran_but_perilous/>; Bahreini, *supra* n. 7, transcript on p. 29-30; Iranian Queer Organization, Heartland Alliance and International Human Rights Clinic at Harvard University, “Shadow Report submitted to the Committee on Economic, Social and Cultural Rights” (IQO/HA/IHRC) [2013], p. 14, available at: <<http://hrp.law.harvard.edu/wp->

State privileges relations and attraction between men and women and violates a range of its human rights obligations.

Relevant international standards

Out of nine core international human rights treaties,¹³ Iran is party to and legally bound by five of them.¹⁴ The treaties most relevant to sexual orientation within Iran are the International Covenant on Civil and Political Rights (ICCPR)¹⁵ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁶ The United Nations treaty bodies, namely, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR), assist with the interpretation and enhancement of the obligations imposed by treaty provisions.¹⁷ As a State party to these treaties, Iran is legally obliged to uphold the rights enshrined therein and cannot invoke internal law as justification for violation of these provisions.¹⁸

Article 2(1) of the ICCPR and article 2(2) of the ICESCR require States parties to implement all provisions of these Covenants in accordance with the principle of non-discrimination.¹⁹ While sexual orientation and gender identity are not explicitly mentioned as grounds for discrimination within the Covenants, the Human Rights

[content/uploads/2011/01/JointHeartlandAlliance_IRQO_IHRC_Iran_CESCR50.pdf](#)> [regarding post-surgery alienation from families].

¹³ The list of all core universal human rights treaties is available at the OHCHR website:

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>>

¹⁴ Iran has ratified each of the five following treaties: (1) *International Covenant on Civil and Political Rights* (UN General Assembly, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171); (2) *International Covenant on Economic, Social and Cultural Rights* (UN General Assembly, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3); (3) *International Convention on the Elimination of All Forms of Racial Discrimination* (UN General Assembly, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195); (4) *Convention on the Rights of the Child* (UN General Assembly, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3); (5) *Convention on the Rights of Persons with Disabilities* (UN General Assembly, 13 December 2006, UN Doc A/RES/61/106, Annex I)

¹⁵ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

¹⁶ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

¹⁷ While treaty bodies' General Comments and decisions on communications are generally considered as authoritative, there is some debate as to whether these views are on par with the VCLT rules of interpretation (UNGA, Report of the International Law Commission, Sixty-Fifth session, UN Doc A/68/10, p. 23, para. 10 (Chapter IV, Section C(2), Conclusion 2, Commentary); Keller & Ulfstein (eds.) *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP, 2012), p. 409-410). It is generally accepted, however, that these treaty bodies provide useful tools for interpretation, as their authoritative expertise assists with clarification of States' legal obligations and provides further understanding of how human rights treaties can be implemented within national law (Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, N.P. Engel, 2005), Introduction, XXII, para. 6).

¹⁸ Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, article 27.

¹⁹ See also Human Rights Committee, *General Comment No. 18: Non-discrimination* (HRC GC18), UN Doc HRC/GEN/1/Rev.1 at 26 (1994), para. 1; Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)* [HRC GC28], UN Doc CCPR?C/21/Rev.1/Add.10 (2000), para. 2-3.

Committee²⁰ and CESCR²¹ have affirmed the growing recognition within the UN system²² of sexual orientation and gender identity as a distinct group to which the principle of non-discrimination applies equally. This recognition has also been strengthened considerably both by the acceptance of sexual orientation and gender identity as grounds for obtaining refugee status,²³ and by non-binding international legal standards. Most notably, the Yogyakarta Principles provide clear guidelines to States and the international community on how international human rights law applies to sexual orientation and gender identity.²⁴

As the analysis shows, criminalization of certain types of sexual orientation is a violation of the right to non-discrimination under international law²⁵ and of Iran's treaty obligations under the ICCPR and ICESCR. The 'medical approach' to certain sexual

²⁰ The ICCPR includes sexual orientation under the term "sex" in article 2(1). *Toonen v Australia*, Human Rights Committee Communication No. 488/1992, UN Doc CCPR/C/50/D/488/1992 (1994), para. 8.7; Human Rights Committee, *Concluding Observations of the third periodic report of the Islamic Republic of Iran*, UN Doc CCPR/C/IRN/CO/3 (2011), para. 10, where the Committee reaffirmed that "all of these matters [including discrimination on the basis of sexual orientation and gender identity] fall entirely within the purview of the rights contained in the Covenant". See also, e.g., *Irina Fedotova v the Russian Federation*, Human Rights Committee Communication No. 1932/2010, UN Doc CCPR/C/106/D/1932/2010, (2012), where the Committee found that the applicant, who openly identifies as a lesbian, was subjected to a violation of her freedom of expression, in conjunction with article 26 (the principle of equality), on the basis of "giving expression to her sexual identity and seeking understanding of it" (para. 10.7-11).

²¹ The Committee on Economic, Social and Cultural Rights (CESCR) explicitly states that the phrase "other status" in the ICESCR includes sexual orientation and gender identity. CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights* (CESCR GC20), UN Doc E/C.12/GC/20 (2009), para. 32.

²² For examples of international recognition, see, e.g., Human Rights Council, *Resolution on Human rights, sexual orientation and gender identity*, UN Doc A/HRC/RES/17/19 (2011); Report of the UN High Commissioner for Human Rights, "Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity", UN Doc A/HRC/19/41 (2011); Report of the UN High Commissioner for Human Rights, "Born free and equal: Sexual orientation and gender identity in international human rights law" (2012), available at: <<http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>>; UN General Assembly, *Resolution on Extrajudicial, summary or arbitrary executions*, UN Doc A/RES/67/168 (2013), para. 6(b) [which urges all States to "ensure the effective protection of the right to life of all persons under their jurisdiction, to investigate promptly and thoroughly all killings, including those targeted at specific... [persons] because of their sexual orientation or gender identity"].

²³ See Supreme Court of the United Kingdom, *HJ (Iran) & HT (Cameroon) v Secretary of State for the Home Department* (7 July 2010) UKSC 31; United Nations High Commissioner for Refugees, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (23 October 2012) Doc. HCR/GIP/12/09.

²⁴ 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). The rights contained within these Principles link closely to those found within the ICCPR and ICESCR. See especially article 2 on non-discrimination and article 3 on the right to legal recognition, both of which refer to these rights as enshrined in the ICCPR (article 2(1) on non-discrimination and article 16 on legal recognition) and the ICESCR (article 2(2) on non-discrimination).

²⁵ The principle of non-discrimination can be found in all international human rights treaties; all provisions within the ICCPR and ICESCR should be read in conjunction with this principle. See Article 2(1) ICCPR; article 2(2) ICESCR; HRC GC18, *supra* n. 18, para. 1; HRC GC28, *supra* n. 8, para. 2-3.

orientations in Iran stands in violation of a range of rights, also protected by these binding Covenants.

3. Iran's International Human Rights Obligations: Application to Domestic Law and Practice

3.1 Criminalisation of homosexuality

The newly revised Islamic Penal Code,²⁶ which was ratified by the Islamic Consultative Assembly in 2009 and by the Guardian Council later in 2013,²⁷ provides that sexual relationships between two men or two women shall be subject to punishments known as *hudud* (singular, *hadd*) under Shari'a law.²⁸ The State determines the relevant interpretation of Islamic laws, based on "Islamic criteria", which is specific to the Iranian State.²⁹

Under its obligations as a State party to the ICCPR and ICESCR, Iran is required to respect the right to non-discrimination, a basic tenet of international human rights law, in its implementation of all Covenant rights.³⁰ This right to non-discrimination also encompasses sexual orientation and gender identity.³¹ The Penal Code provisions that criminalize same-sex relations directly contravene this right in conjunction with several other rights, including the rights to life, health, information, freedom of expression and

²⁶ The Islamic Penal Code of Iran was first ratified by Judicial Committee of the Islamic Consultative Assembly on 30 July 1991 and then ratified by the Expediency Discernment Council on 28 November 1991 (Official Newspaper of the Islamic Republic of Iran, Wednesday 2 August 1991, 47th Year, No. 1364).

²⁷ Guardian Council: Available at:

<http://www.shora-gc.ir/Portal/Home/ShowPage.aspx?Object=NEWS&ID=97b9be00-f413-435f-b4c4-Icedf633ac1c&WebPartID=eaaaa1e1-efd7-4bf8-91cd-e8154ab52c31&CategoryID=e2beada8-28bd-4ff4-a9f8-84d4ee0a2973>

²⁸ *Hudud*, or *hadd* in the singular form, is a "punishment for which the grounds for, type, amount and conditions of execution are specified in holy Shari'a" (Iranian Penal Code, article 15). In other words, these punishments are prescribed by Shari'a law. It should be noted, however, that Iran utilizes a unique interpretation of Shari'a. One aspect of this interpretation is the Constitutional provision that requires all laws to be "based on Islamic criteria" (Iranian Constitution, article 4). This provision provides an exception

²⁹ Article 4 of the Iranian Constitution provides that all laws must be based on Islamic criteria; this rule "applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations." The fuqaha', or Islamist jurists of the Guardian Council, shall judge compliance with this principle.

³⁰ ICCPR article 2(1); ICESCR article 2(2)

³¹ The ICCPR includes sexual orientation under the term "sex" in article 2(1). *Toonen v Australia*, *supra* n. 19, para. 8.7; Human Rights Committee, *Concluding Observations of the third periodic report of the Islamic Republic of Iran* (HRC CO 2011), UN Doc CCPR/C/IRN/CO/3 (2011), para. 10, where the Committee reaffirmed that "all of these matters [including discrimination on the basis of sexual orientation and gender identity] fall entirely within the purview of the rights contained in the Covenant". The Committee on Economic, Social and Cultural Rights (CESCR) explicitly states that the phrase "other status" in the ICESCR includes sexual orientation and gender identity. CESCR GC 20, *supra* n. 20, para. 32.

the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as discussed below.³²

(i) Flogging as a punishment for same-sex relations

According to Iranian domestic law, flogging (severely beating or whipping) “is implemented using a thread leather strap”, which should be approximately one meter long and 1/5 centimeters wide.³³ Flogging is used to punish certain same-sex relations, both between men and women.

Tafkhiz (foreplay between men) refers to sexual relations between two men that does not amount to penetration but still involves sexual organs.³⁴ The standard mandatory punishment for *tafhkiz* is 100 lashes.³⁵ Domestic law provides that flogging as punishment for *tafhkiz* should be implemented with greater vigorousness than for punishments such as alcohol consumption.³⁶

The Penal code defines *mosaheqeh* (lesbianism) as an act where a “woman places her sexual organs on the sexual organs of [another woman]”.³⁷ The Penal Code punishes this act with 100 lashes.³⁸

The Penal code also criminalizes same-sex conduct between two women or two men not involving sexual organs, such as “kissing or touching as a result of lust”.³⁹ These crimes are punishable by flogging, regardless of the sex of the couple.⁴⁰

The Human Rights Committee,⁴¹ the Committee against Torture⁴² and several Special Rapporteurs⁴³ have recognized flogging as an act of torture; as such, this punishment

³² See analysis below as well as: HRC CO 2011, *ibid*, para. 10; Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, UN Doc E/C.12/IRN/CO/2 (2013), para. 7.

³³ The Directive on Implementation Regulations for Sentences of Retribution-in-Kind, Stoning, Murder, Crucifixion, Death Penalty, and Flogging, Chapter 3, article 27, available at: <http://www.wunrn.com/news/2009/02_09/02_23_09/022309_iran.htm>

³⁴ Iranian Penal Code, Article 235.

³⁵ Iranian Penal Code, Article 235. As a *hadd* punishment, this penalty is seen as prescribed by God and is therefore absolute. For further analysis, see Mohammad Nayyeri, *New Islamic Penal Code of the Islamic Republic of Iran: An Overview* (March 2012, Human Rights in Iran Unit), p. 6, available at: <http://www.essex.ac.uk/hri/documents/HRIU_Research_Paper-IRI_Criminal_Code-Overview.pdf>

³⁶ The Directive on Implementation Regulations for Sentences of Retribution-in-Kind, Stoning, Murder, Crucifixion, Death Penalty, and Flogging, Chapter 3, article 30, available at: <http://www.wunrn.com/news/2009/02_09/02_23_09/022309_iran.htm>

³⁷ Iranian Penal Code, Article 237.

³⁸ Iranian Penal Code, Article 239.

³⁹ Iranian Penal Code, Article 237.

⁴⁰ Iranian Penal Code, Article 237. See also Report of the Special Rapporteur on the human rights situation in Iran, UN Doc A/68/503 (2013), para. 28, where the Special Rapporteur condemns the use of flogging for crimes such as “acts incompatible with chastity”, “illicit” relationships and same-sex relations.

⁴¹ HRC CO 2011, *supra* n. 29, para. 16. See also, e.g., *Concluding observations of the fourth periodic report of Iraq*, UN Doc CCPR/C/79/Add.84 (1997), para. 12; Human Rights Committee, *Concluding observations of the second periodic report of Sudan*, UN Doc CCPR/C/79/Add.85 (1997), para. 9; Human

stands in violation of Iran's international treaty obligations under the ICCPR, as well as general international law which recognizes torture as an international crime under customary international law.⁴⁴

(ii) Death penalty as a punishment for same-sex relations

Iran is one of the few countries in the world where gay, lesbian, bisexual and transgendered (LGBT) persons still face the possibility of execution as a criminal punishment for same-sex relations.⁴⁵

The right to life under international law is non-derogable and is considered to be the "supreme human right" – where a State disregards an individual's right to life, all other human rights will no longer be engaged.⁴⁶ Under international human rights law, the death penalty is permitted under the right to life but only as an exceptional measure, subject to the strict limitations described in the Covenant.⁴⁷

A trend exists within the international community towards abolition of the death penalty.⁴⁸ However, reports indicate that Iran has the highest per capita rate of death penalty executions in the world.⁴⁹ In general, the death penalty in Iran is arbitrary in the

Rights Committee, *Concluding observations of the third periodic report of the Libyan Arab Jamahiriya*, UN Doc CCPR/C/79/Add.101 (1998), para. 11.

⁴² Committee against Torture, *Concluding observations of the initial periodic report of Saudi Arabia*, UN Doc CAT/C/CR/28/5 (2002), para. 5; Committee against Torture, *Concluding observations of the initial report of Yemen*, UN Doc CAT/C/CR/31/4 (2004), para. 6.

⁴³ Report of the Special Rapporteur on the human rights situation in Iran, UN Doc A/68/503 (2013), para. 28; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc A/60/316 (2005), para. 19-23.

⁴⁴ Article 7 ICCPR; on the status of torture under international law, see Antonio Cassese, *International Law* (2nd edn, OUP, 2005), p. 447.

⁴⁵ Saeed Kamali Dehghan, "Yes, there are gays in Iran" (*Iran Wire*), available at: <http://en.iranwire.com/features/2092/>

⁴⁶ Article 4(2) ICCPR; Human Rights Committee, *General Comment No. 6: Article 6 (Right to Life)* [HRC GC6], UN Doc HRI/GEN/1/Rev.1 at 6 (1994), para. 1.

⁴⁷ The death penalty can only be used for the "most serious crimes" (article 6(2) ICCPR). The Report of the UN High Commissioner on Human Rights states, "The Commission on Human Rights [now the Human Rights Council] and the Human Rights Committee have confirmed that the use of the death penalty for non-violent acts, including sexual relations between consenting adults, constitutes a violation of international human rights law". ("Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity", UN Doc A/HRC/19/14 (2011), para. 45).

⁴⁸ Human Rights in Iran Unit, *The Death Penalty for Drug Crimes: Analysis of Iran's International Human Rights Obligations* (March 2014), p. 8, available at: <http://www.essex.ac.uk/hri/documents.aspx>; Report of the Secretary-General on Capital Punishment, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, UN Doc. E/2010/10 (2009), p. 19.

⁴⁹ Iran has the second highest total rate of executions behind China. Report of the Secretary-General, "Capital Punishment, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty", UN Doc. E/2010/10 (2009), p. 20-21; Amnesty International, "Death sentences and executions in 2011", AI Index ACT 50/001/2012 (March 2012), p. 55; UK Foreign & Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, pg. 251

way it is applied, falling short of legal requirements.⁵⁰ The application of the death penalty in Iran may for instance contravene individuals' rights to due process and a fair trial (articles 9 and 14 ICCPR).⁵¹

An individual also must not be "arbitrarily deprived of his life" (ICCPR article 6(1)). This concept of "arbitrariness" includes "elements of inappropriateness, injustice and lack of predictability".⁵² Criminally punishing same-sex relations is clearly unjust under international law and, as such, the punishment of the death penalty for same-sex relations does not meet the "arbitrariness" requirement set forth within international law.

Punishment for sexual acts between men

Lavat (sodomy) is defined within the Iranian Penal Code as penetrative sex between two men (articles 233-234) and is punished more harshly than sexual acts between two women. While the Penal Code takes into account whether the activity was consensual with regard to the "active" participant, the punishment for the "passive" partner is the death penalty, "in any case (whether *mohsan* [married] or not)", regardless of consent.⁵³ The "active" participant will not be subject to the death penalty unless he is married or has engaged in rape.⁵⁴ The harsher punishment for men violates the principle of non-discrimination on the grounds of both sexual orientation and sex, in conjunction with the right to life. Additionally, the distinction between the two men according to sexual position constitutes a further element of arbitrariness in the deprivation of the right to life.

The Penal Code also discriminates between Muslim and non-Muslim men, both with regard to penetrative (*lavat*) and non-penetrative (*tafkhez*) sexual relations. If an "active" non-Muslim man has sexual relations with a "passive" Muslim man, the Penal Code

⁵⁰ See the analysis in Human Rights in Iran Unit, *The Death Penalty for Drug Crimes: Analysis of Iran's International Human Rights Obligations* (March 2014), available at:

<<http://www.essex.ac.uk/hri/documents.aspx>>

⁵¹ See also, e.g., Report of the Secretary-General on the question of the death penalty, UN Doc A/HRC/24/18 (2013), para. 73 (specifically referencing Iran). Executions that take place in public settings will likely also entail further arbitrary elements. See Human Rights in Iran Unit, *The Death Penalty for Drug Crimes: Analysis of Iran's International Human Rights Obligations* (March 2014), p. 16-17, available at: <<http://www.essex.ac.uk/hri/documents.aspx>>. Reports indicate that public executions have been utilised as punishment for the crime of homosexuality. See, e.g., Human Rights Watch, "Iran: Two more executions for homosexual conduct" (22 November 2005), available at: <<http://www.hrw.org/news/2005/11/21/iran-two-more-executions-homosexual-conduct>>

⁵² *Van Alphen v. The Netherlands*, Human Rights Committee Communication No. 305/1988, UN Doc CCPR/C/39/D/305/1988 (1990), para. 5.8; *Mukong v Cameroon*, Human Rights Committee Communication No. 458/1991, UN Doc CCPR/C/51/D/458/1991 (1994), para. 9.8 [in the context of arbitrary detention]; William Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn., CUP, 2002), p. 73; UN Secretary General, *Annotations on the text of the draft International Covenants on Human Rights*, UN Doc A/2929 (1955), p. 30, para. 3. For details on the official negotiations of these terms during the drafting of the treaty, see Human Rights in Iran Unit, *The Death Penalty for Drug Crimes: Analysis of Iran's International Human Rights Obligations* (March 2014), p. 16-17, available at: <<http://www.essex.ac.uk/hri/documents.aspx>>

⁵³ Iranian Penal Code, Article 234. See also the Report of the Special Rapporteur on the human rights situation in Iran, UN Doc A/HRC/22/56 (2013), para. 68.

⁵⁴ Iranian Penal Code, Article 233. The old code required judges to sentence both partners to death.

requires judges to punish the non-Muslim man with the death penalty, regardless of whether the act is non-penetrative⁵⁵ or penetrative.⁵⁶ By distinguishing the severity of punishment between Muslims and non-Muslims, these laws violate the right to non-discrimination on the basis of both sexual orientation and religion (articles 2 of the ICCPR and ICESCR).

Punishment for sexual acts between women

While women may be subject to the death penalty for same-sex relations under Iranian law, the “crime” of lesbianism will only result in this penalty if a woman is caught engaging in sexual relations four times.⁵⁷ This punishment is not specific to women, as anyone found committing the same offence punishable by *hadd* will be subject to the death penalty upon the fourth offence.⁵⁸ However, conviction for the “crime” of lesbianism is rare insofar as four male witnesses are required for the crime to be proven.⁵⁹ Given the extent of gender segregation in Iran, it is unlikely that this would ever be the case in practice.⁶⁰

In the case of LGBT persons, the criminalization of same-sex relations is unlawful in and of itself. The imposition of the death penalty on this basis thus cannot meet the restrictions placed upon the right to life.⁶¹ Specifically, the death penalty must not be imposed on the basis of discrimination.⁶²

Therefore, the imposition of the death penalty constitutes a violation of LGBT persons’ right to life both on the basis of its discriminatory application and its arbitrariness. Such laws also interfere with individuals’ right to privacy under international human rights law (article 17 ICCPR).⁶³ The criminalization of consensual same-sex relations within Iran,

⁵⁵ Iranian Penal Code, Article 235, note. See also Human Rights in Iran Unit, *New Islamic Penal Code in the Islamic Republic of Iran: An Overview* (March 2012), available at:

<<http://www.essex.ac.uk/hri/documents.aspx>>; Human Rights Watch, “Codifying Repression: An Assessment of Iran’s New Penal Code” (2012), available at: <http://www.hrw.org/sites/default/files/reports/iran0812webwcover_0.pdf>

⁵⁶ Iranian Penal Code, Article 233, note 1.

⁵⁷ Iranian Penal Code, Article 131.

⁵⁸ See, e.g., Iranian Penal Code, Articles 90 and 122.

⁵⁹ Iranian Penal Code, Articles 118 and 128.

⁶⁰ Canada: Immigration and Refugee Board of Canada, *Iran: Treatment of lesbians* (1 July 1999) Doc. IRN31893.E, available at: <http://www.refworld.org/docid/3ae6ad8bc.html> [accessed 19 June 2014].

⁶¹ In *Mbenge v Zaire*, the Human Rights Committee concluded that article 6(2) of the ICCPR requires that the “substantive and procedural law in the application of which the death penalty was imposed was not contrary to the provisions of the Covenant, and also that the death penalty was imposed in accordance with that law and therefore in accordance with the provisions of the Covenant” (Communication No. 16/1977, UN Doc CCPR/C/OP/2 at 76 (1990), para. 17).

⁶² The imposition of the death penalty must be in accordance with the provisions of the Covenant, which includes the principle of non-discrimination. See HRC GC6, *supra* n.44, para. 7.

⁶³ Even if State conduct is provided for by domestic law, such conduct must be “in accordance with the provisions, aims and objectives of the ICCPR”, including non-discrimination (Human Rights Committee, *General Comment No. 16: Article 17 (Right to Privacy)*, UN Doc HRI/GEN/1/Rev.1 at 21 (1994), para. 4). See also Alex Conte and Richard Burhill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (Ashgate, 2nd edn, 2009), p. 50-51. The Special Rapporteur on

and the potential for criminal punishment in the form of the death penalty, contravenes Iran's international legal human rights obligations under the ICCPR, particularly articles 2 (non-discrimination), 6 (life), 7 (torture and other ill-treatment) and 17 (privacy).⁶⁴

Bisexual and transgendered persons

For persons who identify as bisexual,⁶⁵ the laws will likely be applied on the basis of the circumstances of the crime, e.g. if a bisexual woman has relations with another woman (rather than a man). Transgendered persons⁶⁶ may be subject to punishments for same-sex relations as a result of their identity not being legally recognized. While this allows bisexual and transgendered individuals to live partially within an unambiguous legal framework, these persons will be forced to live between two very different sets of laws that incur a wide range of punishments on the basis of choice of partner.

As mentioned above, the principle of arbitrariness includes several elements, one of which focuses upon whether a lack of predictability exists.⁶⁷ Although the criminalization of same-sex relations is in itself unlawful, this lack of predictability in legal punishment for bisexual and transgendered persons' sexual relations may lead to an additional violation of the prohibition of torture or other ill-treatment or the right to life on the basis of arbitrariness if a transgendered person is sentenced to flogging or the death penalty on the basis of engaging in same-sex relations.

3.2 Human rights implications of sex change operations in Iran

State authorities within Iran consider homosexuality to be an "illness."⁶⁸ Transgendered individuals are considered to have a "Gender Identity Disorder."⁶⁹ In practice, individuals whose sexual orientation does not fall within the State's legal distinction between men

the human rights situation in Iran has expressed similar concerns, specifically with regard to the criminalization of same-sex relations within Iran leading to violations of "the right to life, the right to liberty, the right to be free from discrimination as well as the right to be protected against unreasonable interference with privacy" (Report of the Special Rapporteur on the human rights situation in Iran, UN Doc A/HRC/22/56 (2013), para. 69).

⁶⁴ For further analysis on the death penalty within Iran, see Human Rights in Iran Unit, *The Death Penalty for Drug Crimes: Analysis of Iran's International Human Rights Obligations* (March 2014), available at: <<http://www.essex.ac.uk/hri/documents.aspx>>. See also Human Rights Committee, *Concluding observations on the third periodic report of the Islamic Republic of Iran*, UN Doc CCPR/C/IRN/CO/3 (2011), para. 10.

⁶⁵ For the purposes of the current analysis, "bisexual persons" refers to individuals who are not clearly attracted to one sex or gender (e.g. a woman who is attracted to men, women and transgendered persons). This term is subject to varying definitions. See The Bisexual Index, "Bi by definition", available at <<http://www.bisexualindex.org.uk/index.php/Definitions>> for additional information.

⁶⁶ Transgendered persons are individuals that identify as the opposite sex (e.g. a man who identifies as a woman), or persons whose gender is ambiguous (also referred to as bi-gendered). See National Center for Transgender Equality, "Transgender terminology" (updated January 2014), available at: <http://transequality.org/Resources/TransTerminology_2014.pdf>

⁶⁷ *Van Alphen v. the Netherlands*, *supra* n. 50, para. 5.8

⁶⁸ Saeed Kamali Dehghan, *supra* n. 5.

⁶⁹ <http://www.asrkhbar.com/fa/news/12574/> فرق-طردجود نسی-و-هجند سگر ایان-ب-ا-ه-سک سوال-یست-ت-رادس/ دارد

and women may be subjected to a variety of measures, ranging from therapeutic treatments to sex reassignment surgery. In order to undergo surgery, individuals are allegedly required to take part in prior psychological treatments.⁷⁰ These treatments may include electroshock treatment and administration of antipsychotic medications (neuroleptics), which can have mind-altering side effects.⁷¹

Reports indicate that if, after the full range of therapeutic treatments has been undertaken, medical professionals conclude that the person cannot be “cured” of his or her sexual orientation, the individual will be approved for sex reassignment surgery.⁷²

Sex reassignment operations are legal in Iran according to a fatwa (or religious ruling) pronounced by the Supreme Leader, Ayatollah Khomeini, in 1987.⁷³ The high rate of surgeries undertaken within Iran per year⁷⁴ raises cause for concern, as documentation suggests that coercion may be a contributing factor to individuals’ decisions to undergo sex reassignment surgery.⁷⁵

Reports also indicate that surgeries are undertaken with haste and often are not fully completed.⁷⁶ The alleged lack of care in the conduct of these surgeries has reportedly led to post-operation complications, such as paralysis, improper sizing of sexual organs, incontinence and infectious diseases.⁷⁷ On this basis, these surgeries are not being performed in accordance with Iran’s international legal obligations under the right to health in relation to standards of quality and professionalism.⁷⁸ Reports also suggest that where malpractice has occurred, there is a clear lack of access to legal recourse.⁷⁹ This indicates an additional violation of the right to an effective remedy under international law.

⁷⁰ Bahreini, *supra* n. 7, p. 20-22

⁷¹ JFI UPR, *supra* n. 7, para. 16; Bahreini, *supra* n. 7, p. 33-34.

⁷² Bahreini, *supra* n. 7, p. 14-15

⁷³ International Gay and Lesbian Human Rights Commission and Iranian Queer Organization, Submission to the 20th session of the UN Universal Periodic Review (2014), p. 4, available at: <<http://iglhrc.org/sites/default/files/UPRSubmission.pdf>>; IQO/HA/IHRC, *supra* n. 11, p. 11

⁷⁴ Iran has the second highest number of sexual reassignment surgeries performed in the world. See Mehrmaz Samimi, “Fatwa allows sex changes in Iran, but stigma remains” (*Iran Pulse*, 7 October 2013), available at:

<<http://www.al-monitor.com/pulse/fr/originals/2013/10/iran-subsidizes-sex-change-surgery.html>>

⁷⁵ The Iranian Queer Organization has stated that many individuals that undergo the process of sex reassignment surgery are actually “homosexuals who [have a] fear of persecution and death if they do not submit to this sexual surgery”. This organization has also documented cases of individuals who have been court ordered to undergo the surgery. (IQO/HA/IHRC, *supra* n. 11, p. 11-13). See also Bahreini, *supra* n. 7.

⁷⁶ IQO/HA/IHRC, *supra* n. 11, p. 13-14; JFI UPR, *supra* n. 7, para. 16

⁷⁷ *Ibid.*

⁷⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (art. 12 of the Covenant)* [CESCR GC14], UN Doc E/C.12/2000/4 (2000), para. 12(d), 35.

⁷⁹ IQO/HA/IHRC, *supra* n. 11, p. 15

From an international human rights law perspective, the right to health, which is enshrined in article 12 of the ICESCR,⁸⁰ also requires States parties to ensure that coercive medical treatments are not applied and that ethical standards are met, which includes the core principle of the right to informed consent.⁸¹ As a State party to the ICESCR,⁸² Iran is required to respect and protect this right;⁸³ accordingly, any form of coercion that is placed upon individuals to undergo sexual reassignment surgery, whether applied directly by law or indirectly by practice, violates the individual's right to health under international human rights law.

Right to health, Right to information and informed consent

(i) Deciding whether to have a sex change

Depending on a person's ability to access information, it is possible that individuals in Iran who are gay, lesbian, bisexual or transgendered will not be aware that they do not suffer an illness, and that their feelings and desires do not require them to change their bodies. While Iranian doctors submit that sex reassignment surgeries are applicable as a "cure" for persons with a "Gender Identity Disorder" (transgendered persons),⁸⁴ documentation suggests that gay, lesbian and bisexual men and women may identify as transgendered, or feel pressured to undergo treatment as the only avenue to legitimize

⁸⁰ The right to health is considered to be "indispensable for the exercise of other rights" and extends beyond simply a right to health care, instead embracing "a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment" (CESCR GC14, *supra* n. 76, paras. 1 and 4).

⁸¹ CESCR GC14, *supra* n. 76, paras. 8, 34-35. The right to informed consent is considered an "absolutely fundamental precept of modern medical ethics" (OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and other cruel, inhuman or degrading treatment or punishment*, Professional Training Series No. 8/Rev. 1 (2004), para. 63-64, available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>).

⁸² Iran ratified the ICESCR in 1975 (UNTC, https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty).

⁸³ Protection of the right to health requires States to ensure that third parties meet appropriate professional and ethical standards and to take measures to protect vulnerable persons within society. For further information on State obligations to respect and protect the right to health, see CESCR GC14, *supra* n. 76, paras. 34-35. See also the Concluding Observations of CESCR, which "recommends the State party to repeal or amend all legislation that results or could result in discrimination, prosecution and punishment of peoples 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..." (emphasis added). CESCR, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, UN Doc E/C.12/IRN/CO/2 (2013), para. 7.

⁸⁴ A Aghabikloo, M Bahrami, et. al, "Gender identity disorders in Iran; Request for sex reassignment surgery" (2012) 2(4) *International Journal of Medical Toxicology and Forensic Medicine* 128 at 129. One of the four authors of this study is attributed to the Tehran Legal Medicine Organization, which is the same body that determines whether a person can be medically considered as afflicted by a "Gender Identity Disorder", which determines eligibility for sex reassignment surgeries. (JFI UPR, *supra* n. 7, fn. 12 (p. 4); Bahreini, *supra* n. 7, p. 20)

their identity.⁸⁵ This inability to understand, form and affirm one's own identity has significant effects upon the right to informed consent, as integrated into the right to health (article 12 ICESCR). One of the freedoms contained in the right to health under the ICESCR is "the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from ... non-consensual medical treatment."⁸⁶

State authorities are also obliged to allow free access to such information in order to allow persons contemplating sex reassignment surgery the ability to make an informed, consensual decision. As noted by the Special Rapporteur on the right to the highest attainable standard of health:

Informed consent is valid only when documented prior to a medical procedure and provided voluntarily, meaning *without coercion, undue influence or misrepresentation*. While consent for simple procedures may sometimes be implied by a patient, *more complex, invasive treatments require explicit consent* [emphasis added].⁸⁷

Medical professionals have a duty to obtain informed consent prior to performing any procedures, especially when those procedures are of an invasive nature. The right to refuse non-consensual medical treatment is one of the basic entitlements of the right to health.⁸⁸ In other words, where a medical professional misrepresents information regarding a procedure or does not provide the patient with adequate information to make an informed decision regarding consent to the procedure, this treatment will constitute a violation of the right to informed consent, thereby violating the right to health, as well as the right to information under international law.⁸⁹

(ii) *Understanding the procedure and potential risk*

Information provided to the Human Rights Council's Universal Periodic Review on Iran in 2010 indicates that medical professionals responsible for performing these surgeries do

⁸⁵ UN General Assembly, Written statement submitted by Verein Sudwind Entwicklungspolitik, A/HRC/24/NGO/112, p. 2, available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/167/77/PDF/G1316777.pdf?OpenElement>>; JFI UPR, *supra* n. 7, para. 13; IQO/HA/IHRC, *supra* n. 11, p. 11-12; Marie Doezema, "Sex change operations legal in Iran but perilous" (*The Investigative Fund*, 17 May 2013), available at: <http://www.theinvestigativefund.org/investigations/gender/1797/sex_change_operations_legal_in_iran_bu_t_perilous/>; Bahreini, *supra* n. 7, p. 19-20

⁸⁶ CESCR GC14, *supra* n. 76, para. 8

⁸⁷ Report of the Special Rapporteur on the right to the highest attainable standard of health, Anand Grover, UN Doc A/64/272 (2009), para. 13.

⁸⁸ Report of the Special Rapporteur on the right to the highest attainable standard of health, Paul Hunt, UN Doc E/CN.4/2003/58 (2003), para. 24

⁸⁹ See CESCR GC14, *supra* n. 76, para. 50, which specifically states, "Violations of the obligation to respect are those State actions, policies or laws that contravene the standards set out in article 12 of the Covenant and are likely to result in bodily harm, unnecessary morbidity and preventable mortality. Examples include... the deliberate withholding or misrepresentation of information vital to health protection or treatment".

not always provide persons with comprehensive information regarding international standards on sexual reassignment⁹⁰ and often misrepresent the possible complications involved in obtaining a procedure of this kind.⁹¹ The lack of information given to individuals contemplating sex reassignment surgery violates the right of all persons to “seek, receive and impart information” (article 19 ICCPR).⁹²

The Committee on Economic, Social and Cultural Rights has indicated that the State obligation to protect the right to health also requires the State to ensure that medical professionals meet appropriate ethical and professional standards.⁹³ If a medical professional did choose to provide more comprehensive information, in accordance with medical ethical standards,⁹⁴ and as a result came under pressure by the State, this pressure would then be considered a violation of the right to health. The well-documented repression of such information, which includes a range of activities from suppression of documentation on progressive international standards⁹⁵ to the arbitrary detention of LGBT activists,⁹⁶ indicates violations of international legal obligations such as the right to non-discrimination, right to informed consent and to health, and the freedom of expression. As a State party to the ICCPR and ICESCR, Iran has committed itself to amending its domestic laws that result in such violations, either in law or in practice.

⁹⁰ These standards include, for instance, the discontinuation of considering homosexuality as an illness and the recognition that not all transgendered persons want to obtain sex reassignment surgery (As cited in JFI UPR, *supra* n. 7, p. 6 at fn. 19).

⁹¹ JFI CESCR, *supra* n. 7, para. 4

⁹² This violation is also relevant to LGBT individuals with regard to prevention of HIV transmission. (IQO/HA/IHRC, *supra* n. 11, p. 16)

⁹³ CESCR GC14, *supra* n. 76, para. 35. As a demonstrative example, see also inadmissible ECtHR case of *Rappaz v Switzerland*, where a similar conflict occurred between a medical professional upholding international ethical standards in relation to force-feeding and the State’s imposition of a policy that required the medical professional to proceed with force-feeding the applicant. The Court did not come to a conclusion on this conflict (App. No. 73175/10, 26 March 2013, available in French only).

⁹⁴ See, e.g., OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and other cruel, inhuman or degrading treatment or punishment*, Professional Training Series No. 8/Rev. 1 (2004), para. 63-64, available at:

<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>; World Medical Association, *Declaration of Lisbon on the Rights of the Patient*, adopted September/October 1981, last revised October 2005, article 3(b); Council of Europe, *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine*, Oviedo, 4.IV.1997 (1997), article 5; World Health Organization’s Regional Office for Europe, *Declaration on the Promotion of Patients’ Rights in Europe*, 45 International Digest of Health Legislation 411 (1995), article 3 (particularly article 3.1, which states that informed consent is a prerequisite for any medical intervention).

⁹⁵ The Iranian Railroad for Queer Refugees, for example, was established to assist queer Iranian refugees or asylum seekers who are attempting to or have left Iran by promoting public awareness of the issues and providing continued support (“Why was IRQR founded?”, available at: <http://english.irqr.net/>). The head of the Iranian Queer Organization, based in Toronto, has also affirmed that “it remains difficult for outside or alternative information to reach many people in Iran”. (Marie Doezema, “Profiling Iran’s LGBT refugees: From double life to greater freedom abroad” (Global Post, 29 August 2013), available at: <http://www.globalpost.com/dispatches/globalpost-blogs/rights/Iran-LGBT-refugees-double-life-freedom>)

⁹⁶ According to Amnesty International, Siamak Ghaderi was sentenced to four years in prison, in part for conducting and posting interviews with LGBT persons on his blog in 2007. He was reportedly flogged in August 2013, along with 13 other political prisoners, in Evin Prison. (Amnesty International, “Annual Report 2013: Iran”, available at: <http://www.amnesty.org/en/region/iran/report-2013#section-66-5>)

4. Conclusion

Same-sex relations are criminalized within Iran and are punishable by varying sentences, depending on the nature of the acts and the religion of the individuals involved. Such criminalization is in contravention of the principle of non-discrimination, which is a fundamental tenet of international human rights law and is enshrined within both the ICCPR and ICESCR. As the criminalization of same-sex relations violates Iran's obligations under international human rights law, the imposition of the death penalty on this basis is arbitrary and fails to meet the requisite threshold for such a punishment to be imposed.

Non-heterosexual orientation and gender identities in Iran are viewed as an illness to be cured. Sex reassignment surgeries are relatively commonplace within Iran; this is likely due to both the policies in place by the State and the intense social pressures to which LGBT individuals are subjected. The prevalence of these surgeries and the poor conditions in which they are performed raises issues of systemic coercion, informed consent and ethical standards. These concerns imply structural violations of both the right to information and the right to health.

Bibliography

International Treaties and Conventions

UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)

UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

UN General Assembly, Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331

UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, UN Doc A/RES/61/106, Annex I

Other international instruments

Treaty-based

(i) Human Rights Committee (HRC)

General Comments

Human Rights Committee, *General Comment No. 6: Article 6 (Right to Life)*, UN Doc HRI/GEN/1/Rev.1 at 6 (1994)

Human Rights Committee, *General Comment No. 16: Article 17 (Right to Privacy)*, UN Doc HRI/GEN/1/Rev.1 at 21 (1994)

Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc HRI/GEN/1/Rev.1 at 26 (1994)

Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)*, UN Doc CCPR/C/21/Rev.1/Add.10 (2000)

Concluding Observations

Human Rights Committee, *Concluding observations of the fourth periodic report of Iraq*, UN Doc CCPR/C/79/Add.84 (1997)

Human Rights Committee, *Concluding observations of the second periodic report of Sudan*, UN Doc CCPR/C/79/Add.85 (1997)

Human Rights Committee, *Concluding observations of the third periodic report of the Libyan Arab Jamahiriya*, UN Doc CCPR/C/79/Add.101 (1998)

Human Rights Committee, *Concluding Observations of the third periodic report of the Islamic Republic of Iran*, UN Doc CCPR/C/IRN/CO/3 (2011)

(ii) Committee on Economic, Social and Cultural Rights (CESCR)

General Comments

CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc E/C.12/2000/4 (2000)

CESCR, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)*, UN Doc E/C.12/2005/4 (2005)

CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc E/C.12/GC/20 (2009)

Concluding Observations

CESCR, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, UN Doc E/C.12/IRN/CO/2 (2013)

(iii) Committee against Torture

Concluding Observations

Committee against Torture, *Concluding observations of the initial periodic report of Saudi Arabia*, UN Doc CAT/C/CR/28/5 (2002)

Committee against Torture, *Concluding observations of the initial report of Yemen*, UN Doc CAT/C/CR/31/4 (2004)

Charter-Based

(i) UN Human Rights Commission/Human Rights Council

Special Rapporteur Reports

Report of the Special Rapporteur on the right to the highest attainable standard of health, Paul Hunt, UN Doc E/CN.4/2003/58 (2003)

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc A/60/316 (2005)

Report of the Special Rapporteur on the right to the highest attainable standard of health, Anand Grover, UN Doc A/64/272 (2009)

Report of the Special Rapporteur on the human rights situation in Iran, Dr Ahmed Shaheed, UN Doc A/HRC/22/56 (2013)

Report of the Special Rapporteur on the human rights situation in Iran, Dr Ahmed Shaheed, UN Doc A/68/503 (2013)

Report of the Special Rapporteur on the human rights situation in Iran, Dr Ahmed Shaheed, UN Doc A/HRC/25/61 (2014)

UN High Commissioner Reports

Report of the UN High Commissioner for Human Rights, “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity”, UN Doc A/HRC/19/41 (2011)

Report of the UN High Commissioner for Human Rights, “Born free and equal: Sexual orientation and gender identity in international human rights law” (2012), available at: <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

Secretary General Reports

Report of the Secretary-General on Capital Punishment, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, UN Doc. E/2010/10 (2009)

Report of the Secretary-General on the question of the death penalty, UN Doc A/HRC/24/18 (2013)

Resolutions

Human Rights Council, *Resolution on Human rights, sexual orientation and gender identity*, UN Doc A/HRC/RES/17/19 (2011)

(ii) UN General Assembly

UNGA, Report of the International Law Commission, Sixty-Fifth session, UN Doc A/68/10 (2013)

UN General Assembly, *Resolution on Extrajudicial, summary or arbitrary executions*, UN Doc A/RES/67/168 (2013)

(iii) Other UN sources

United Nations High Commissioner for Refugees, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (23 October 2012) Doc. HCR/GIP/12/09

UN Secretary General, Annotations on the text of the draft International Covenants on Human Rights, 1 July 1955, UN Doc A/2929

Non-binding Legal Standards

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)

OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and other cruel, inhuman or degrading treatment or punishment*, Professional Training Series No. 8/Rev. 1 (2004), available at:

<<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>>

World Health Organization's Regional Office for Europe, Declaration on the Promotion

of Patients' Rights in Europe, 45 International Digest of Health Legislation 411 (1995)

World Medical Association, *Declaration of Lisbon on the Rights of the Patient*, adopted September/October 1981, last revised October 2005

International Jurisprudence

Valcada v Uruguay, Human Rights Committee Communication No. 9/1977, UN Doc CCPR/C/8/D/9/1977 (1979)

Mbenge v Zaire, Human Rights Committee Communication No. 16/1977, UN Doc CCPR/C/OP/2 at 76 (1990)

Van Alphen v. The Netherlands, Human Rights Committee Communication No. 305/1988, UN Doc CCPR/C/39/D/305/1988 (1990)

Mukong v Cameroon, Human Rights Committee Communication No. 458/1991, UN Doc CCPR/C/51/D/458/1991 (1994)

Toonen v Australia, Human Rights Committee Communication No. 488/1992, UN Doc CCPR/C/50/D/488/1992 (1994)

Irina Fedotova v the Russian Federation, Human Rights Committee Communication No. 1932/2010, UN Doc CCPR/C/106/D/1932/2010 (2012)

Regional Conventions and Treaties

Council of Europe, Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Oviedo, 4.IV.1997 (1997)

Regional Jurisprudence

Rappaz v Switzerland, App. No. 73175/10 (European Court of Human Rights), 26 March 2013

Third Country Jurisprudence

Supreme Court of the United Kingdom, *HJ (Iran) & HT (Cameroon) v Secretary of State for the Home Department* (7 July 2010) UKSC 31

National Instruments

Domestic Legislation

1928 Civil Code of the Islamic Republic of Iran, available at:
<<http://www.alaviandassociates.com/documents/civilcode.pdf>>

1979 Constitution of the Islamic Republic of Iran (as amended in 1989), available at:
<<http://www.iranonline.com/iran/iran-info/government/constitution.html>>

1991 Islamic Penal Code of the Islamic Republic of Iran, as amended in 1996, available at:
<<http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html#45>>

Other State sources

The Directive on Implementation Regulations for Sentences of Retribution-in-Kind, Stoning, Murder, Crucifixion, Death Penalty, and Flogging, available at:
<http://www.wunrn.com/news/2009/02_09/02_23_09/022309_iran.htm>

Academic Sources

(i) General

Alex Conte and Richard Burhill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (Ashgate, 2nd edn, 2009)

Keller & Ulfstein (eds.) *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP, 2012)

Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, N.P. Engel, 2005)

William Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, CUP, 2002)

(ii) Iran Specific

Raha Bahreini, "From Perversion to Pathology: Discourse of Gender Policing in the Islamic Republic of Iran," (2008) 5(1) *Muslim World Journal of Human Rights*, available at: <<http://www.worldwewant2015.org/node/287187>>

Mohammad Nayyeri, *New Islamic Penal Code of the Islamic Republic of Iran: An Overview* (March 2012, Human Rights in Iran Unit), available at:
<<http://www.essex.ac.uk/hri/documents.aspx>>

Non-Governmental Organizations

Amnesty International, “Annual Report 2013: Iran”, available at:

<<http://www.amnesty.org/en/region/iran/report-2013#section-66-5>>

Amnesty International, “Death sentences and executions in 2011”, AI Index ACT 50/001/2012 (March 2012)

Human Rights Watch, “Codifying Repression: An Assessment of Iran’s New Penal Code” (2012), available at:

<http://www.hrw.org/sites/default/files/reports/iran0812webwcover_0.pdf>

International Gay and Lesbian Human Rights Commission and Iranian Queer Organization, Submission to the 20th session of the UN Universal Periodic Review (2014), available at: <<http://iglhrc.org/sites/default/files/UPRSubmission.pdf>>

Iranian Queer Organisation, ‘Humanity Denied: The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Iran. Submitted to the Special Rapporteur on the Human Rights Situation in Iran,’ (September 2011), p. 4, available at:

<http://www.hirschfeld-eddy-stiftung.de/fileadmin/images/laenderberichte/Iran/IRQO_Report_September_2011.pdf>

Iranian Queer Organization, Shadow Report submitted to the Committee on Economic, Social and Cultural Rights (2013), p. 11, available at: <http://www.irqo.org/persian/wp-content/uploads/docs/Final%20Report_Iran's%20Violations%20of%20ICESCR_Submitted%20by%20HA-IRQO-IHRC.pdf>

Iranian Railroad for Queer Refugees, “Why was IRQR founded?”, available at:

<<http://english.irqr.net/>>

Justice for Iran, “The violation of transgenders’ right to the highest attainable standard of health in the Islamic Republic of Iran” (2013), available at: <<http://justiceforiran.org/wp-content/uploads/2013/04/TG-written-submission.pdf>>

Justice for Iran, “Iran: Disciplining bodies, diagnosing identities, Submission to the UN Universal Periodic Review of Iran (20th Session)” (2014), available at:

<<http://justice4iran.org/english/wp-content/uploads/2014/03/IRAN-UPR-Submission-JFI.pdf>>.

National Center for Transgender Equality, “Transgender terminology” (updated January 2014), available at: <http://transequality.org/Resources/TransTerminology_2014.pdf>

News Media

Vanessa Barford, “Iran’s ‘diagnosed transsexuals’” (*BBC News*, 25 February 2008), available at: <<http://news.bbc.co.uk/1/hi/7259057.stm>>

Saeed Kamali Dehghan, “Iranian human rights official describes homosexuality as an illness” (*The Guardian*, 14 March 2013), available at: <<http://www.theguardian.com/world/iran-blog/2013/mar/14/iran-official-homosexuality-illness>>

Saeed Kamali Dehghan, “Yes, there are gays in Iran” (*Iran Wire*), available at: <<http://en.iranwire.com/features/2092/>>

Marie Doezema, “Profiling Iran’s LGBT refugees: From double life to greater freedom abroad” (*Global Post*, 29 August 2013), available at: <<http://www.globalpost.com/dispatches/globalpost-blogs/rights/Iran-LGBT-refugees-double-life-freedom>>

Mehrnaz Samimi, “Fatwa allows sex changes in Iran, but stigma remains” (*Iran Pulse*, 7 October 2013), available at: <<http://www.al-monitor.com/pulse/fr/originals/2013/10/iran-subsidizes-sex-change-surgery.html>>

Sasha von Oldershausen, “Iran’s sex-change operations provided nearly free of cost” (*The World Post*, 04 June 2012), available at: <http://www.huffingtonpost.com/2012/06/04/iran-sex-change-operation_n_1568604.html>

Other Documents

The Bisexual Index, “Bi by definition”, available at <<http://www.bisexualindex.org.uk/index.php/Definitions>>

Canada: Immigration and Refugee Board of Canada, *Iran: Treatment of lesbians* (1 July 1999) Doc. IRN31893.E, available at: <http://www.refworld.org/docid/3ae6ad8bc.html>

UK Foreign & Commonwealth Office, Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report, April 2012