

HUMAN RIGHTS WATCH

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October 9, 2015

Dear Minister and Deputy-Minister,

We write to you in response to the Deputy-Minister's letter (# 658533) to the Dutch House of Representatives, dated July 21, 2015 and to the Dutch government's new thematic country report on the situation of Iranian Christians and LGBT persons, dated May 7, 2015, which Human Rights Watch and OutRight Action International have received and carefully reviewed. Both documents will be used to assess claims of Iranian LGBT (lesbian, gay, bisexual, and transgender) asylum seekers.

In the July 21st, 2015 letter the Deputy-Minister announces that the Dutch government wants to continue the policy in assessing asylum claims from LGBT Iranians. Basically this policy means that it is assumed that Iranian LGBT asylum seekers have a well-founded fear of persecution, unless it follows from their individual asylum statement that they don't need protection. In that case they will be returned to Iran.

In this letter we focus on the continuing, systematic state persecution in the Islamic Republic of Iran of individuals perceived to be gender-non-conformist, and urge the Dutch authorities to exercise the utmost care when assessing asylum claims made by such individuals.

The new report states that Iran criminalizes only homosexual conduct, but not orientation, and asserts that gays and bisexuals who do not openly manifest themselves and keep a low profile can live freely in society. Both statements are incorrect. Iran's amended penal code, which came into

effect in early 2013, specifically article 237, references “homosexual” for the first time, suggesting not only that same-sex conduct such as “sodomy” is a criminal act, but that one’s sexual orientation itself is being targeted as evidenced by acts such as kissing and tender touching or hugging between males. Clearly, the amended penal code criminalization of such acts restricts the right to freedom of expression. Moreover, according to a November 7, 2013 ruling of the Court of Justice of the European Union, sexual orientation and sexual conduct are integrated and indivisible.

For at least the past decade, the Iranian authorities have used articles of the Islamic Penal Code that criminalize consensual same-sex relations - as well as other laws and regulations governing dress, public conduct, online communications, public employment, and press and publications - to target individuals based on their actual or perceived sexual orientation and/or gender expression, or even based on their opinions about these issues. In December 2010, Human Rights Watch issued a comprehensive report documenting some of the gross rights violations perpetrated by the state against this population ("[We are a Buried Generation: Discrimination and Violence Against Sexual Minorities in Iran](#)").

Human Rights Watch continues to monitor the situation in Iran closely and our research continues to show that little has changed for Iran’s lesbian, gay, bisexual or transgender people since the publication of that report more than four years ago. They remain vulnerable to official harassment, arbitrary arrest and detention, prosecution, and ill-treatment or torture. Even in the case of transgender individuals, who are legally allowed to undergo sex-reassignment surgery, Iran’s law does not provide any protection against discrimination and abuse, including domestic violence and work-place discrimination. Furthermore, the policy that allows reassignment is the result of a *fatwa*, or religious edict; it is not codified in law and is subject to varying interpretations. Sometimes the right to sex-reassignment is dismissed.

The Islamic Penal Code now in force criminalizes all freely and mutually agreed same-sex relations, with penalties ranging from 100 lashes for consensual sexual relations between women (Article 239) to the death penalty for consensual sexual intercourse between men (Article 234). The law also criminalizes other acts between members of the same sex, including touching and intimate kissing, punishable by up to 74 lashes (Article 237).

These prohibitions and penalties remain in force despite the election of President Hassan Rouhani in June 2013, who pledged that he would improve the general rights situation for all Iranians when campaigning for office, and despite the amendments to the penal code that came into effect in early 2013. In practice, President Rouhani and his government have little control over Iran’s powerful security and intelligence apparatus, and the judiciary, and officials linked to these bodies often resort to the laws criminalizing same-sex sexual conduct to monitor and regulate the private relations of consenting individuals, and to violate the fundamental rights of those they alleged are involved in same-sex sexual relations.

On October 8, 2013, for example, around 50 members of the Revolutionary Guards raided a peaceful, private birthday function in a suburb of the city of Kermanshah in western Iran. According to a statement issued by Kermanshah province Basij Forces, their goal was to disband an alleged “homosexual and Satan-worshipping network with dozens of [members].” The official statement of the

Basij confirmed that the people attending the party had been “under surveillance for several months by the Revolutionary Guard’s Security Unit.”

According to witnesses, armed Revolutionary Guards assaulted and verbally abused many of the 80 or so people attending the party, as well as waiters and other staff. Witnesses said security forces divided the attendees into small groups, and confiscated their electronic devices, including cell phones and cameras, fingerprinted, filmed, and photographed them, and recorded their contact and personal information. Officers severely beat several participants who refused to surrender their private belongings.

Officers took at least 17 individuals into custody, blindfolded them, and without explanation, transported them to a nearby, but secret, detention center. There, according to the accounts of some of those involved, officers stripped detainees naked and filmed them, beat them, and preparing them as if for execution. The authorities released all of those they had detained by October 14, 2013, warning them that they would face charges in the following weeks.

The Iranian government’s criminalization of same-sex conduct does not just affect sexual or gender nonconformists, but also those expressing views deemed to advocate or support, or simply tolerate, such conduct. The Dutch government’s recent report fails to recognize or address this.

On September 4, 2013, for example, Hojatoleslam Dr. Sadraddin Shariati, the former president of Allameh Tabatabai University in Tehran, told *Kayhan* newspaper that he had dismissed a sociology professor because she had discussed “homosexuality” in her class. On June 23, 2012, then-Minister of Culture and Islamic Guidance Seyyed Mohammad Hosseini told reporters that the authorities had terminated the license of Cheshmeh Publications to publish books and accused its publisher of “promoting Western culture and loose behavior,” including “homosexuality.” In January 2011, a Revolutionary Court in Tehran sentenced journalist Siamak Ghaderi to four years in prison, sixty lashes, and a fine, for articles that he wrote based on interviews he had conducted with members of Iran’s lesbian, gay, or bisexual community.

Iranian authorities also target individuals who try to discuss issues related to same-sex relations online. Iran’s cyber police, locally known as FATA, monitor online activity and arrest individuals suspected of using social media either to meet members of the same sex (see, for example, Farsnews, September 23, 2014) or “promote homosexuality” (see, for example, ISNA News Agency, February 5, 2015). In December 2014, Lili, an Iranian lesbian from Rasht, told Outright Action International that Iranian security forces arrested her after acquaintances drew their attention to comments she had made on Facebook defending same-sex relations, then forced her to attend a mandatory “re-orientation class” at which they interrogated her for long periods, tortured her by scalding her with hot water, and verbally abused her.

The Dutch government, which has a long and commendable record of speaking out in support of lesbian, gay, bisexual, and transgender rights both at home and abroad, needs to recognize that Iranian LGBT asylum seekers should qualify for refugee status. While assessing individual asylum claims, we urge the

Dutch authorities to exercise the utmost care before deciding to forcibly return an LGBT asylum seeker to Iran.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Leah Whitson', written over a light gray rectangular background.

Sarah Leah Whitson
Executive Director
Middle East and North Africa Division

A handwritten signature in black ink, appearing to read 'Jessica Stern', written in a cursive style.

Jessica Stern
Director
OutRight Action International

CC The House of Representatives of the Netherlands, members of parliament, the Standing Committee on Security and Justice.