



Iranian Lesbian & Transgender Network

6Rang شش رنگ

Dear Mr. Vitit Muntarbhorn,

Re: PUBLIC CONSULTATION ON PROTECTION AGAINST VIOLENCE AND DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

Thank you for the opportunity to respond in writing to the public consultation on protection against violence and discrimination based on sexual orientation and gender identity.

The Iranian Lesbian and Transgender Network (6Rang) is an organization concerned with the human rights situation of lesbian and transgender people in Iran. It consists of over 100 networkers, the majority of whom are in Iran. It is a member of ILGA. In June 2014, 6Rang published a comprehensive report entitled *Diagnosing Identities, Wounding Bodies* that documents human rights abuses against lesbian, gay and transgender people in health-care settings in Iran.¹ In documenting these abuses, which range from exposure to invasive questioning and humiliation to coerced sterilization and reparative therapies, 6Rang also analysed Iran's flawed framework of gender recognition, which criminalizes same-sex sexual conducts with punishments ranging from flogging to the death penalty, enforces mandatory veiling (*hijab*) against women, and imposes hormone therapy and sterilization as a condition of identity recognition.

In light of 6Rang's research on Iran, we would like to raise three specific issues with regard to the scope of the Independent Expert's work and the priorities set in the January 2017 Concept Note.

1) **Explicit reference to abolishing the death penalty**

The Concept Note lists decriminalization as one of the five linchpins that will help frame the priorities of the Mandate. Though laws that criminalize consensual same-sex conduct with the death penalty fall under this section, 6Rang believes that the use of death penalty for same-sex conducts warrants separate and special mention. The retention of the death penalty for same-sex conducts is the ultimate form of violence based on sexual orientation and represents a huge obstacle to decriminalization and destigmatization efforts.

¹ 6Rang and Justice For Iran, *Diagnosing Identities, Wounding Bodies: Medical abuses and other human rights violations against lesbian, gay and transgender people in Iran*, June 2014, online: <http://6rang.org/english/wp-content/uploads/2016/02/Diagnosing-Identities-Paralyzing-Bodies.pdf>.

Under Iran's 2013 Islamic Penal Code, male individuals who engage in same-sex anal intercourse (*lavat* - Article 234) face different punishments depending on whether they are the "active" or "passive" partners and whether their conduct is characterized as consensual or non-consensual. If the conduct is deemed consensual, the "passive" partner of same-sex anal conduct shall be sentenced to the death penalty. The "active" partner, however, is sentenced to death only if he is married, or if he is not a Muslim and the "passive" partner is a Muslim. If the intercourse is deemed non-consensual (*lavat be onf*), the "active" partner receives the death penalty but the "passive" partner is exempted from punishment and treated as a victim. This legal framework risks creating a situation where willing "recipients" of anal intercourse may feel compelled, when targeted by the authorities, to characterize their consensual sexual activity as rape in order to avoid the death penalty.

Conviction for the fourth time for "same-sex sexual conduct between men without penetration" (*tafkhiz* – Articles 236 and 136)² and conviction for the fourth time for "same-sex sexual conduct between women" (*mosaheqeh* - Articles 238 and 136)³ are also punishable by the death penalty. The punishment is 100 lashes for the first three convictions.

6Rang urges the Mandate to identify the abolition of the death penalty as a priority work area, and develop a specific strategy for dealing with the handful of countries that retain the death penalty for same-sex sexual conducts.

2) Mandatory *hijab* and Cross-dressing

Mandatory *hijab* (veiling) laws in Iran force individuals who are assigned the female gender marker at birth to cover their head and wear loose fitting uniforms in public. In Iran, female individuals who breach this strict dress code are at constant risk of criminalization and penalization and may be sentenced to cash fines and imprisonment. They may also be accused of "cross-dressing" and sentenced to flogging under provisions in the Islamic Penal Code that prohibit conducts deemed "religiously forbidden" (*haram*) or otherwise "offensive to public morals" (Article 638).

Male individuals who wear make-up and display expressions and behaviors stereotypically regarded as "feminine" are similarly at risk of being targeted for arbitrary arrest and detention, torture and other ill-treatment, including sexual violence and rape.

The country's legal gender recognition procedure mandates that individuals obtain a diagnosis of "Gender Identity Disorder" and pursue hormone therapy and sterilization before they discard the veil (in the case of women) and adopt modes of dress that are stereotypically associated with members of the opposite sex.

² According to Article 235 of the 2013 Islamic Penal Code, *tafkhiz* is committed when "a man places his sexual organ between the thighs or buttocks of another man".

³ According to Article 238 of the 2013 Islamic Penal Code, *mosaheqeh* is committed when "a woman places her sexual organ on another woman's sexual organ".

Female junior and high school students have told 6Rang that strict female dress codes cause them extreme anxiety, leading to repeated absence from school and even dropouts.

6Rang recommends that in addressing issues related to decriminalization, destigmatization and legal recognition of gender identity, the Mandate should recognize that mandatory *hijab* laws and other strict gendered dress codes expose lesbian, gay and transgender individuals to criminalization based on their appearance, entrench gendered prejudices and stereotyping, and violate the right to legal recognition of gender identity.

3) Early and forced marriage of girl children

6Rang considers that the prohibition of early and forced marriage is a necessary element of eliminating violence and discrimination against persons on the basis of their sexual orientation from childhood onwards.

In Iran, there is no minimum age of marriage. Girls aged above 13 and boys aged above 15 can be married legally. Girls below 13 and boys below 15 can be married with the consent of their guardian and the approval of a court. Every year, official sources report the marriage of thousands of girls aged between 10 and 14 and several hundred girls under the age of 10.

6Rang encourages the Mandate to address early and forced marriage as a harmful practice that reinforces, among other human rights abuses, prejudice and violence toward non-heterosexual sexual orientations, and to explore its negative impact on girl children who identify as lesbian and transgender.

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