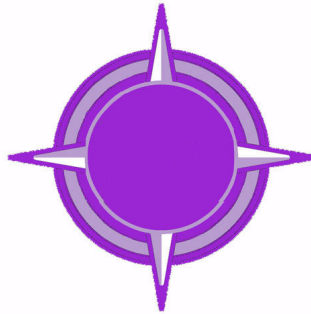




Resource Project for LGBTQ Muslim women



# Country Information Report

## Iran

2004



© Safra Project  
P.O. Box 35929  
London, N17 0WB  
England, UK  
[www.safraproject.org](http://www.safraproject.org)

General email: [info@safraproject.org](mailto:info@safraproject.org)  
Email for asylum related matters: [asylum@safraproject.org](mailto:asylum@safraproject.org)

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## Introduction

The Safra Project is a resource project working on issues relating to lesbian, bisexual and transgender women who identify as Muslim religiously and/or culturally. Please see our website for more information: [www.safraproject.org](http://www.safraproject.org). This report is part of our Country Information Research Project (CIRP). The overall aim of CIRP is to research and provide information on the treatment of lesbian, gay, bisexual and transgender (LGBT) people in countries with a predominantly Muslim population, specifically for the use in asylum cases. CIRP was developed in response to the lack of accessible, up-to-date and good quality information on LGBT people in countries with a majority Muslim population. The reasons for this lack of information are diverse and include:

- many (inter-)national human rights groups and media are not aware of LGBT issues or consider them a 'taboo' or difficult subject and therefore chose not to address it
- some groups, particularly human rights groups based in countries with a Muslim majority or human rights groups on a religious basis, consider persecution of LGBT people not a priority, or think that LGBT issues are not a human rights issue at all
- human rights groups or individual activists, particularly those based in countries with a Muslim majority, risk losing support, credibility, esteem and funding, or they may even face persecution themselves if they take on LGBT issues
- many LGBT people living in countries with Muslim majorities are unwilling to speak out or increase their visibility because they fear repercussions.

The invisibility of LGBT people in countries with a Muslim majority and the lack of information about the issues they are facing perpetuate their marginalisation and keeps abuse and oppression hidden. This in turn complicates asylum claims made by LGBT people outside their country of origin, as legal representatives often can not find sufficient information on the situation for LGBT people in the country of origin to support their client's asylum application. Moreover, some decision makers reason that if LGBT people were really persecuted in a particular country, more information or publicity about this would have been available. Unfortunately, this type of reasoning does not recognise that the 'invisibility' of (the abuse of) LGBT people is an integral part of the problem. Lack of information and publicity does not necessarily indicate that persecution, discrimination and attacks are not taking place. Often lack of publicity is actually an indication

of continued taboos around homosexuality, sexuality and gender diversity as well as of fears to address these issues.<sup>1</sup>

With CIRP the Safra Project hopes to improve the availability and accessibility of relevant information on LGBT issues for the use in asylum cases, thereby decreasing bias in the assessment and processing of the asylum applications of LGBT people from countries with a Muslim majority. Due to the limited resources available for this project, the reports are largely based on secondary sources and do not always include references to current asylum case law. Their main purpose is to provide an overview of existing resources on human rights and country information with regards to LGBT people and to signpost asylum caseworkers and solicitors to these. Where possible and appropriate, the reports will compare sources and criticise conclusions or assumptions made in the existing country information.

### **Homosexuality & Gender Diversity in *Shari'ah***

Some governments of countries with a significant Muslim majority identify themselves as an 'Islamic country' others as 'secular'. In either case, it is relevant to know something about 'Islam's position' on homosexuality and gender diversity in order to contextualise and understand the situation for LGBT people in countries with a Muslim majority. 'Islam's position' on homosexuality and gender diversity can be relevant to understand the (interpretation of) legislation used in prosecutions of LGBT people, whether this legislation explicitly addresses homosexuality, or other 'morality issues'. Knowledge of 'Islam's position' is also relevant to understand the (expected) attitudes of the government, police and judiciary, as well of society and family members towards LGBT people.

It is difficult to give one general, simple answer to what 'Islam's position' on any particular issue is, as this depends on what is meant by 'Islam'. Some talk about "Islam" when referring to a particular culture or certain traditions, others use the word "Islam" to refer to the practice of religious rituals, a certain type of spirituality or a political viewpoint. Nevertheless, most Muslims agree that *shari'ah* (classical Muslim law) should be applied as the proper moral and legal guidance for Muslims. *Shari'ah* is a body of rules, norms and laws according to which, from a traditional viewpoint, Muslims (are supposed to) live their lives. The *shari'ah* rules are largely moral or religious, carrying consequences only in the hereafter. However, some *shari'ah* rules are also considered to be punishable in the here and now, although most Muslim scholars agree that these punishments should only be executed in "true Muslim societies" ran by "true Muslim governments" and are therefore not applicable in modern states.

*Shari'ah* developed somewhere between the eight and ninth century AD in various Muslim schools of thought where legal and religious rules were derived from the Quran and *hadith*. *Hadith* are recounts of

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<sup>1</sup> See for example the complexities encountered in the few reports that are available: **Ilkharacan, Pinar (ed.), Women for Women's Human Rights** (2000) *Women and Sexuality in Muslim Societies*; **Amnesty International** (June 2001) *Crimes of hate, conspiracy of silence*

the practices and sayings of the Prophet Muhammad that had been passed on from generation to generation. Although *shari'ah* is presented by some conservative Muslim scholars as a monolithic set of rules, it actually includes a variety of opinions between the original schools of thought and differing opinions of individual scholars. It also reflects regional influences and local customs. Many countries with significant Muslim populations have implemented are based state laws on *shari'ah*, particularly in the area of family laws and morality. Only few Muslim countries have legal systems that are (entirely) based on *shari'ah*. Nine countries have laws in place that prescribe the death penalty for same-sex sexual activities: Afghanistan, Arab Emirates, Chechnya, Iran, Mauritania, Pakistan, Saudi Arabia, Sudan, and Yemen. But even if there are no official *shari'ah* laws in a country with a Muslim majority, *shari'ah's* position homosexuality and gender diversity is still relevant as many Muslims believe that they should live their life in accordance with *shari'ah*, whether this is imposed by their government or not.

Generally it can be said that according to *shari'ah* sexual relations are only allowed within a (heterosexual) marriage. Therefore, most sexual relations outside of marriage qualify as adultery or fornication both of which are sinful and punishable by flogging for unmarried men and women, or death for married men and women. Some traditional Muslim scholars have argued that lesbian or gay sexual relations would always take place outside of a marriage (as recognised by *shari'ah*), and that therefore the *shari'ah* prohibition of (heterosexual) adultery and fornication also applies to all same-sex sexual relations. However, most traditional Muslim scholars base their opinion that same-sex sexuality is sinful on the basis of Quranic verses, in particular the story of Lut (similar but not identical to the story of Lot in the Bible) and on several *hadith* condemning same-sex relationships.<sup>2</sup>

As the Quran does not specify any punishment for same-sex sexuality in these verses, some scholars refer back to the *shari'ah* rules on heterosexual adultery or fornication. They therefore argue that anal sex between men, as considered equivalent to heterosexual intercourse, is punishable by one hundred whiplashes for an unmarried man and death by stoning for a married man. Other traditional scholars have ruled that "sodomy" between men is always punishable by death for both partners, whether married or not, based on a *hadith*. The punishment of toppling a wall on two men who practised "sodomy" which is sometimes reported, particularly in Afghanistan, is based on another *hadith*.<sup>3</sup> Most traditional scholars also hold that sexual contacts other than anal sex between men and sexual relations between women are sinful. This is based on analogies to *shari'ah* rules prohibiting illicit heterosexual sexual activities other than full intercourse, as well as on *hadith*. Same-sex sexual activities other than anal sex are usually considered punishable by flogging.<sup>4</sup>

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<sup>2</sup> See e.g.: **Abdur Rahman I. Doi** (1984) *Shari'ah: the Islamic law* [p. 241-243]

<sup>3</sup> As e.g. reported by the **Central Mosque**, *website section on homosexuality*, <http://www.central-mosque.com/fiqh/Homosexuality.htm>.

<sup>4</sup> See e.g.: **Abdur Rahman I. Doi** (1984) *Shari'ah: the Islamic law* [p. 241-243]

In practice, transgender people will often be perceived of as being 'homosexual' and treated as such, therefore we will often also refer to the treatment of transgender people when speaking about the treatment of 'homosexuals'. But there are also specific *shari'ah* rules on gender diversity. For example, there are *hadith* referring to men and women who do not behave in accordance with their prescribed gender role, for example, cursing men who dress like women and women who dress like men, and instructing Muslims to turn "effeminate men" out of their houses as well as "women who assume the manners of men". It is generally held that *shari'ah* does recognise the existence of hermaphrodites or intersex people, and many Muslim countries do allow or even encourage, surgery for those. Some also allow for surgery for transgender people whose biological sex is not ambiguous, but this is rarer. Nevertheless, surgery is not a solution or option for all transgender people, such as those who are not sure, those who do not identify as either male or female, and those who identify as both.

### Legal provisions on homosexuality

The Iranian Constitution states that the country is to be governed as an Islamic Republic. As part of its identity as an Islamic country, much of Iran's legislation is based on *shari'ah*, including the Iranian Islamic Punishment Act (1996). This act specifies that homosexuality is illegal and that same-sex sexual relations are punishable by flogging or the death penalty.<sup>5</sup> The Iranian Islamic Punishment Act (1996) includes the following provisions:

#### **Male sexual relations<sup>6</sup>**

*Art. 110: The prescribed punishment for homosexual relations in case of intercourse is execution and the mode of the execution is at the discretion of the religious judge.*

*Art. 111: Homosexual intercourse leads to execution provided that both the active and the passive party are of age, sane and consenting.*

*Art. 112: Where a person of age commits homosexual intercourse with an adolescent, the active party shall be executed and the passive party, if he has not been reluctant, shall receive a flogging of up to 74 lashes.*

*Art. 113: Where an adolescent commits homosexual intercourse with another adolescent, they shall receive a flogging of up to 74 strokes of the whip unless one of them has been reluctant.*

*Art. 121-122: 'Tafhiz' (the rubbing of the thighs or buttocks) and the like committed by two men is punished by 100 lashes. On the fourth occasion, the punishment is death.*

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<sup>5</sup> See e.g.: **Canadian IRB** (20 January 2003) *IRN39862.E*; **CIPU** (October 2003) [section 5.53] and see the legal provisions quoted in this report

<sup>6</sup> Sources: **UNHCR/ACCORD** (June 2001) [Chapter II.4]; **CIPU** (October 2003) [section 6.169]; **ILGA** (last updated 10 October 1999) *World legal Survey: Iran*

Art. 123-124: If two men "stand naked under one cover without any necessity", both are punished with up to 99 lashes; if a man "kisses another with lust" the punishment is 60 lashes.

### **Female sexual relations<sup>7</sup>**

Art. 127: *Mosaheqeh* (lesbianism) is the homosexuality of women by genitals.

Art 128: The ways of proving lesbianism are the same by which the homosexuality (of men) is proved

Art 129: Punishment for lesbianism is one hundred (100) lashes for each party

Art 130: Punishment for lesbianism will be established vis-à-vis someone who is mature, of sound mind, has free will and intention. Note: In the punishment for lesbianism there will be no distinction between the doer and the subject as well as a Muslim or non-Muslim.

Art 131: If the act of lesbianism is repeated three times and punishment is enforced each time, (a) death sentence will be issued the fourth time.

Art 132: If a lesbian repents before the giving of testimony by the witnesses, the punishment will be quashed; if she does so after the giving of testimony, the punishment will not be quashed.

Art 133: If the act of lesbianism is proved by the confession of the doer and she repents accordingly, the *shari'ah* judge may request the leader (*valie amr*) to pardon her.

Art 134: If two women not related by consanguinity stand naked under one cover without necessity, they will be punished to less than (one) hundred (100) lashes (*ta'azir*). In case of its repetition as well as the repetition of punishment, (one) hundred (100) lashes will be hit the third time.

### **Evidence & Repentance**

Articles 114 to 126 establish how to prove homosexual intercourse.

In summary, the required evidence can be any of the following:<sup>8</sup>

- four confessions from the accused, *or*
- the testimony of four 'righteous men' who witnessed the act, *or*
- through the knowledge of a *Shari'ah* judge 'derived through customary methods'

Articles 125 and 126 further specify that if sodomy, or the lesser crimes referred to above, are proved by confession, and the person concerned repents, the *Shari'ah* judge may request that he be pardoned. If a person who has committed the 'lesser crimes', i.e. homosexual activities other than sodomy, repents before the giving of testimony by the witnesses, the punishment is quashed.

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<sup>7</sup> Translation by Law Offices of A. Atai and Associates Tehran, as published in: Vahme-Sabz (2000) 'Violence against lesbians in Iran', in: Pinar Ilkkaracan (ed.) (2000) *Women for Women's Human Rights, Women and Sexuality in Muslim Societies*. These articles are also mentioned in the following sources: ILGA (last updated 10 October 1999) *World legal Survey: Iran*; UNHCR/ACCORD (June 2001) [Chapter II.4]; CIPU (October 2003) [section 6.169]; Afkhami, Mahnaz and Erika Friedl (eds.) (1994) *In the Eye of the Storm: Women in Post-revolutionary Iran* [Extract: Islamic Penal Code: Excerpts relating to women]

<sup>8</sup> Sources: CIPU (October 2003) [section 6.168-169]; ILGA (last updated 10 October 1999) *World legal Survey: Iran*

Article 128 states that the ways of proving lesbianism in court are the same as for male homosexuality, whilst articles 132 and 133 specify that the rules for the quashing of sentences, or for pardoning, are the same as for the male homosexual offences other than sodomy.<sup>9</sup>

Regarding obtaining evidence, the UK Home Office's CIPU report repeats after the UNHCR/ACCORD report that "the burden of proof is quite high and it would be difficult to prove homosexual liaisons or intercourse."<sup>10</sup> The CIPU report also quotes the Canadian IRB, stating that "In practice it is only public transgressions of Islamic morals that is condemned and therefore Islamic law stresses the role of eye-witnesses to an offence."<sup>11</sup> The CIPU report quotes another Canadian IRB report stating that "lesbian cases rarely come before the courts, as the case usually fails the test of proof (four righteous witnesses)".<sup>12</sup>

However, as may be clear from the legal provisions outlined above, the statement of four witnesses is not always required to come to a conviction as four confessions from the accused would also suffice, which is worrying in a country where torture and abuse are regularly reported. Moreover, there is the elusive manner of obtaining evidence through the knowledge of a *shari'ah* judge 'derived through customary methods'. It is not clear how this process exactly takes place, and the evidence required in practice could therefore be quite flexible. Moreover, the UNHCR/ACCORD report points to the importance of the mere presence of a death sentence for homosexuality as a relevant factor in the assessment of asylum claims, *irrespective* of the standard/burden of prove required for such a punishment to be carried out. In addition, the social consequences for someone who has been 'accused' of homosexuality are likely to be devastating (See also below under 'public attitudes and social issues').

Regarding the quashing of penalties as a result of repentance, the UK Home Office's CIPU report quotes a Canadian IRB report of May 1997, allegedly stating that "if the accused repents *before* the witnesses testify, the penalty will be quashed".<sup>13</sup> We were not able to locate this Canadian IRB report, but according to the translation of the relevant articles above as well as the information of provided by ILGA , this particular legal provision only applies to sexual relations between women and to men committing 'lesser crimes', i.e. not sodomy. In these cases if the accused 'repents' before the witnesses testify, he or she effectively has confessed to having committed the crime(s). This may in turn have consequences for providing evidence through confessions rather than through witnesses! In addition, the 'repenting' and therefore confession of having had homosexual relations will have serious social consequences (see also below). For those accused of sodomy the sentence is **not** automatically quashed through repentance. At the

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<sup>9</sup> Source: ILGA (last updated 10 October 1999) *World legal Survey: Iran*

<sup>10</sup> UNHCR/ACCORD (June 2001) [Chapter II.4]; CIPU (October 2003) [section 6.170]

<sup>11</sup> CIPU (October 2003) [section 6.174]

<sup>12</sup> CIPU (October 2003) [section 6.177]

<sup>13</sup> CIPU (October 2003) [section 6.168]



most, a judge may *request* for a pardon in these case, but only if the crime was proved by confession rather than through witnesses or through the ‘knowledge of the *Shari’ah* judge’.

## Prosecutions and Punishments

The Iranian Constitution states that the spirituality and ethics of Islam are to be the basis for political, social and economic relations,<sup>14</sup> and the defence of Islamic principles in state and society is taken very seriously by the ‘Council of Guardians’. Much of the proposed reform legislation that is passed by the Parliament is blocked by the clergy.<sup>15</sup> The religious leader Ayatollah Khamenei remains the ‘Supreme Leader’ or ‘Head of State’.<sup>16</sup> The Iranian Government and clergy generally exert a strict control over morality issues. Some reports stated that since the election of President Khatami in 1997, this control initially reduced somewhat. However, as part of the struggle between conservative and reformist forces in the Government, control over morality and punishment of (perceived) immorality has actually increased, particularly since 2001.<sup>17</sup> The backlash appears to be (at least in part) a reaction against proposed reforms that the judiciary and clergy aim to undermine by increasing the number of harsh punishments and executions.<sup>18</sup> The US Department of State for example reported that public floggings were increasingly used for a wide range of social offences, including breaches of the dress codes, wearing make up, drinking alcohol, making sexual advances, dancing and kissing.<sup>19</sup> It also reported that vigilante groups with strong ties to certain members of the Government enforce their interpretation of appropriate social behaviour through intimidation and violence.<sup>20</sup> The prosecution and persecution of LGBT people in Iran must be understood in this general context as control of sexuality and enforced compliance with gender roles go to the core of governmental control over morality.

The UNHCR/ACCORD and CIPU reports state that “notwithstanding the issues regarding the burden of proof”, jurisprudence certainly has ‘accused’ individuals of homosexuality. Often this charge is mentioned amongst other charges and sometimes it is an added charge in cases where people are really prosecuted for political reasons.<sup>21</sup> The UNHCR/ACCORD workshop report states that “So far, UNHCR has

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<sup>14</sup> CIPU (October 2003) [section 5.1]

<sup>15</sup> US Department of State (March 2003) [section 3]

<sup>16</sup> US Department of State (March 2003) [introduction]

<sup>17</sup> See for example various BBC News articles published in 2001 (see the list of resources) and the examples mentioned in US Department of State (March 2003) [section 1d]

<sup>18</sup> See e.g. Human Rights Watch (2003); BBC News (15 Augustus 2001) *Row over public floggings in Iran*; BBC News (23 July 2001) *Iranian minister condemns floggings*; US Department of State (March 2003) [section 1c]; BBC News (1 December 2001) *Iran dismisses UN execution resolutions*;

<sup>19</sup> US Department of State (March 2003) [sections 1c, 1d, 1f] (quoting Human Rights Watch as it’s source)

<sup>20</sup> US Department of State (March 2003) [introduction]

<sup>21</sup> UNHCR/ACCORD (June 2001) [Chapter II.4]; CIPU (October 2003) [section 6.172]

not been able to trace any cases of execution only on the grounds of homosexual relations".<sup>22</sup> The UK Home Office's CIPU also states that "(...) no cases of execution only on the grounds of homosexual relations have been identified."<sup>23</sup> The Canadian IRB research of January 2003 states that they found no reports of persons being penalised for homosexuality.<sup>24</sup> There are references in the UNHCR/ACCORD and UK Home Office's CIPU report to instances of executions of "homosexuals" reported in local papers but "it was not confirmed whether the homosexual act alone led to execution or whether the person was accused on other charges too".<sup>25</sup>

Prosecution on multiple charges is not unusual in Iran, particularly when morality issues are invoked. In the Islamic Iranian context charges are often compounded by charges such as 'acts against God' and 'corruption on earth'.<sup>26</sup> Prosecution and/or punishment of LGBT people on a combination of such charges does therefore not disprove that they are targeted specifically because of their sexual orientation or gender identity. According to the UK Home Office's CIPU report the most recent documented case of stoning to death on charges of 'repeated sodomy and adultery' was in 1995.<sup>27</sup> ILGA also reports on this case, as well as on several other instances of executions of persons charged with breaking laws against homosexuality. These include: the beheading of at least three gay men and two lesbians in January 1990; the execution of Dr Ali Mozafarian, a Sunni Muslim leader in April 1992 who was convicted on charges of espionage, adultery and sodomy, and the execution by hanging in 1998 of Ali Sharifi who was convicted of sodomy, adultery, drinking alcohol and drug dealing.<sup>28</sup> In 2003 a report was made of the hanging of three men in the city of Mashhad for a number of offences, including 'homosexual acts'.<sup>29</sup> The number of reports of prosecutions of LGB people in Iran is likely to be limited due to widespread taboos as well as the legal and social restrictions preventing LGBT organisations to exist, and other human rights organisations to work on LGBT issues in Iran. This means that much of the 'unofficial' abuse and killings of LGBT people by both the police and others in society remains invisible, as it does in many other countries.<sup>30</sup>

Moreover, the report of the UNHCR/ACCORD workshop points out that the psychological effect of legislation prescribing the death sentence to homosexuality is also relevant in the assessment of asylum applications. "It would be inappropriate to water down the existence of the death sentence with arguments of a high burden of proof, relative tolerance or the fact that there is no systematic effort to prosecute

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<sup>22</sup> UNHCR/ACCORD (June 2001) [Chapter II.4]

<sup>23</sup> CIPU (October 2003) [section 6.170]

<sup>24</sup> Canadian IRB (20 January 2003), IRN39862.E

<sup>25</sup> UNHCR/ACCORD (June 2001) [Chapter II.4]; CIPU (October 2003) [section 6.170]

<sup>26</sup> For more information on this latter charge, see: Canadian IRB (15 March 2002) IRN3874.E

<sup>27</sup> CIPU (October 2003) [section 6.173]

<sup>28</sup> Source: ILGA (last updated 10 October 1999) *World legal Survey: Iran*

<sup>29</sup> Advocate Magazine (14 May 2003) *Iranians hanged for committing "homosexual acts"*

<sup>30</sup> See e.g.: Amnesty International (June 2001) *Crimes of hate, conspiracy of silence*

homosexuals".<sup>31</sup> Notably, the UK Home Office's CIPU report does not include this information, despite the fact that it includes nearly all other information on LGBT people included in the report of the UNHCR/ACCORD workshop.

In comparison, the punishment of (heterosexual) adulterers is also likely to be more widespread than reported. The Iranian Islamic regime has killed hundreds of women and men for adultery.<sup>32</sup> For a list of executions by stoning between 1980 and 1998, see the report of the Iran-e-Azad Organisation (undated).<sup>33</sup> Although convictions to stoning to death continue, the number of public and reported executions appeared to have dropped after public riots in 1997.<sup>34</sup> The BBC reported that in 1998 at least four women and three men were executed.<sup>35</sup> The Canadian IRB reported in 1999 that a specialist stated that men were being flogged in the capital Tehran for adultery.<sup>36</sup> The most recent reports of stoning to death for adultery were during 2001 and involved the execution of at least two women and the sentencing to death by stoning of a third woman, taking place in Evin Prison in Tehran.<sup>37</sup> The US State Department reported that "a few persons" were sentenced to death by stoning in 2002.<sup>38</sup> It is likely that many stonings are not reported because the authorities wish to prevent bad publicity.<sup>39</sup> Due to the Government being more sensitive to international attention, many executions are not officially reported in domestic newspapers anymore.<sup>40</sup>

## Public Attitudes and Social Issues

As homosexuality is illegal and considered sinful, the attitude of public figures towards LGBT people is generally condemning and negative. The Embassy of Iran in The Hague wrote in 1987 that "homosexuality in Iran, treated according to the Islamic law, is a sin in the eyes of God and a crime for society. In Islam generally homosexuality is among the worst possible sins you can imagine"<sup>41</sup> During a UN General

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<sup>31</sup> UNHCR/ACCORD (June 2001) [Chapter II.4]

<sup>32</sup> Ahadi, Mina, **International Committee against Stoning** (undated, website visited 12 February 2004) *The Criminal Regime of Iran Stoned Another Woman to death*; **US Department of State** (March 2003) [section: 1c]

<sup>33</sup> **Iran-e-Azad Organisation** (website visited 11 February 2004) [www.iranncrfac.org](http://www.iranncrfac.org)

<sup>34</sup> Sharifi, Sohalia (undated, website visited 11 February 2004) *Stoning in Iran, the witch burning of modern age*

<sup>35</sup> **BBC News** (22 November 1998) *Lucky escape from execution*

<sup>36</sup> **Canadian IRB** (30 March 1999) *IRN31378.E*

<sup>37</sup> **US Department of State** (March 2003) [sections: 1c]; **BBC News** (12 July 2001) *Iranian adulteress stoned to death*; Sharifi, Sohalia (undated, website visited 11 February 2004) *Stoning in Iran, the witch burning of modern age*; Ahadi, Mina, **International Committee against Stoning** (undated, website visited 12 February 2004) *The Criminal Regime of Iran Stoned Another Woman to death*; **Amnesty International** (11 July 2001) *News Flash: Iran: Stoning should stop*

<sup>38</sup> **US Department of State** (March 2003) [sections: 1c]

<sup>39</sup> **BBC News** (22 November 1998) *Lucky escape from execution*,

<sup>40</sup> **US Department of State** (March 2003) [sections: 1a]; **OMCT Appeals** (13 February 2003) *Iran: continuing widespread corporal punishment, executions (including that of a child) and arbitrary arrests - Case IRN 130203 / IRN 130203.CC*

<sup>41</sup> **ILGA** (last updated 10 October 1999) *World legal Survey: Iran*

Assembly Special Session on HIV/AIDS in 2001, Iranian delegates (amongst others) attempted to ban a representative from the International Gay and Lesbian Human Rights Commission (IGLHRC) from speaking, and they criticised any recognition of sexual minorities.<sup>42</sup> The Iranian regime portrays homosexuality as the symbol of immorality in the West.<sup>43</sup> Homosexuality is considered so unacceptable that even opposition movements and activists for reform based outside Iran are not willing to address lesbian and gay issues.<sup>44</sup>

The UNHCR/ACCORD report states that homosexuality is never spoken about in Iran and thus a hidden issue.<sup>45</sup> “Most people consider it evil. At best, they think it’s an illness.”<sup>46</sup> According to the International Encyclopaedia of Sexuality, homosexuality in a family member can not be acknowledged.<sup>47</sup> One gay Iranian man stated that “the typical Iranian family would rather see their son dead than gay.”<sup>48</sup> A women’s human rights group points out that “lesbians in Iran face violence and harassment not only from the state, but also within their families and their communities.”<sup>49</sup> Many LGBT people are pressurised by their family and society to conform to a heterosexual lifestyle which includes pressure to get married. This can in some cases even lead to forced marriage. Unmarried men and women who have reached a certain age are considered ‘suspect’ and will often be asked to explain their situation. According to the International Encyclopaedia of Sexuality, unmarried men are sometimes described as ‘not-men’, implying a phallic underdevelopment or dysfunction.<sup>50</sup> The Encyclopaedia also notes that because of the lack of freedom of movement and because most women will be (forced into) marriage, often at a younger age than men, “homosexual orientation in females has (...) little chance of expression”.<sup>51</sup> One Iranian gay man stated: “(t)he pressure to marry is so unbearable that many gay men and lesbians succumb to it and surrender. Forcing a gay adult male to marry a woman equals psychological mutilation.”<sup>52</sup>

A married woman is legally required to live with her husband. If she does not, she can be ordered by her husband to come and live with him and he may call upon the police in Iran to force her to live with

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<sup>42</sup> **Canadian IRB** (20 January 2003) *IRN39862.E*; **Human Rights Watch** (Spring 2002) *World Report 2002: Events of 2001, Lesbian, Gay, Bisexual and Transgender Rights*

<sup>43</sup> **Gay Persia** (undated, website visited 12 February 2004) *The state of homosexuality in Iran since the Islamic Revolution*, [www.geocities.com/gay\\_persia/discussions.html](http://www.geocities.com/gay_persia/discussions.html)

<sup>44</sup> See e.g. **The Gully** (23 January 2002) *Queering Democracy in Iran*

<sup>45</sup> **UNHCR/ACCORD** (June 2001) [Chapter II.4]

<sup>46</sup> **The Gully** (22 September 2002) *Secrets in Tehran [personal account]*

<sup>47</sup> **Drew, Paula E.** (1997) ‘Iran’, in: *International Encyclopedia of Sexuality*, Humboldt University of Berlin- Germany

<sup>48</sup> **The Gully** (20 November 2003) *The Iranian closet. When you family would rather see you dead than gay [personal account by Dr. Ali Zarrabi]*

<sup>49</sup> **Ilkharacan, Pinar (ed.), Women for Women’s Human Rights** (2000) *Women and Sexuality in Muslim Societies*

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him. A husband is required to pay a dowry to his wife and to provide suitable maintenance to her. The legal options for a woman to obtain a divorce are extremely limited.<sup>53</sup> It has been reported that the divorce law and its application is designed to punish women, destined to bring them poverty and destitution.<sup>54</sup> Marital relations in practice largely depend on factors such as (local) culture, class, wealth, level of education, personal convictions etc.

The UNHCR/ACCORD workshop report mentions that individuals hiding their sexual orientation in public are most likely not at risk of persecution.<sup>55</sup> Moreover, the report suggests that it is not difficult to encounter “homosexuals” in Iran in parks known to be meeting places.<sup>56</sup> In addition, the report states that “homosexuality is practised every day, and as long as this happens behind closed doors within your own four walls, and as long as people do not intend to proselytise 'transvestitism' or homosexuality, they will most likely remain unharmed”.<sup>57</sup> Most of this information is rephrased in the UK Home Office’s CIPU report. The CIPU report however does *not* include the additional information in the UNHCR/ACCORD workshop stating that in assessing asylum applications “one should consider on a case by case basis how intolerable it is for the asylum seeker not to be able to openly express his/her sexual orientation, not only because of the social context but also because it is considered to be against the law and punishable by death.”<sup>58</sup>

To our knowledge, there are no public or openly known social groups, organisations, cafés or other meeting places for LGBT people in Iran, any socialising must take place ‘underground’ and illegally. According to an article on Iran published by the Turkish NGO women for women’s human rights, “widespread legal and social persecution of sexual minorities makes it impossible for lesbians to form organizations or to live openly in any aspect of their lives”.<sup>59</sup> Existing meeting places are restricted, secretive and dangerous to go to in view of the legal restrictions and current attitudes. The suggested possibilities for LGBT people to meet in public parks or ‘behind closed doors’ are problematic.

Firstly, this possibility is only open to those who have the freedom of movement to go to such public places, usually at night, and/or those who have a private space available to them where they could meet someone. This makes access to such meeting places - in general - more relevant to men than to

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<sup>53</sup> For more information please see: **Islamic Family Law Project** (undated, website visited 12 February 2004) *Iran*, [www.law.emory.edu/IFL/legal/iran.htm](http://www.law.emory.edu/IFL/legal/iran.htm)

<sup>54</sup> **Mather, Yassamine** (May 1999) ‘Gender and Islamic Fundamentalism in Iran’, in: *Iran Bulletin*

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<sup>56</sup> **UNHCR/ACCORD** (June 2001) [Chapter II.4]; **CIPU** (October 2003) [section 6.167]

<sup>57</sup> **UNHCR/ACCORD** (June 2001) [Chapter II.4]; **CIPU** (October 2003) [section 6.167]

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<sup>59</sup> **Ilkcaracan, Pinar (ed.), Women for Women’s Human Rights** (2000) *Women and Sexuality in Muslim Societies*

women, as women in Iran are much more restricted in their freedom of movement and have less access to private spaces.<sup>60</sup>

Secondly, the information does not reflect the dangers LGBT people are exposed to when meeting in public spaces such as parks. They may be arrested and prosecuted or they may be subjected to hate crime, particularly in places that are known to be used as gay meeting places. If a person is attacked in known gay meeting places, it is unlikely they will seek protection from the police or medical assistance, as it will be obvious they were engaging in 'illegal activities'. As suggested in the UNHCR/ACCORD and CIRP report, many LGB people will 'hide their sexual orientation in public' to prevent persecution but this means they are not able to meet other LGBT people, leaving them extremely isolated.

Thirdly, the statement that LGBT people may be able to meet in parks or 'practise homosexuality' behind closed doors reduces their identity to the ability to have occasional (secret) sexual relations. It denies the desire of many LGBT people to live together with their partner and/or to be able to express their identity. As one Iranian lesbian women stated: "Everybody wants to be able to speak freely about their feelings, to live with the person they love. There are some places where LGBT people meet, but not everybody can become a member. I heard from someone that there are LGBT parties in Iran, but unfortunately it is very risky to go."<sup>61</sup> For many LGBT people in Iran, it will not be sufficient to 'hide their sexual orientation (or gender identity) in public' as most will also have to hide this at home. The psychological effects of hiding and denying one's gender identity or sexual orientation can be enormous. Hiding may also not always be possible, for example, 'feminine' men or 'masculine' women, including transgender people can be targeted and/or 'accused' of being gay.<sup>62</sup> Moreover, many LGBT people always live in fear of being found out and they live under the constant pressure to conform to a heterosexual lifestyle, including marriage.

The statement made in the UK Home Office's CIPU report that "lesbian behaviour in public is impossible to distinguish from accepted social contact between women in Iran",<sup>63</sup> as well as the assertion that men are known to be affectionate in public and that therefore gay men are unlikely to be recognised as such, demonstrates at best a complete lack of knowledge and awareness of the realities of LGBT people's lives, and at worst a homophobic attitude of the UK Home Office. Being lesbian, gay or bisexual can not be reduced to the (occasional) ability to walk hand in hand with someone of the same sex! However, it is

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<sup>60</sup> **Drew, Paula E.** (1997) 'Iran', in: *International Encyclopedia of Sexuality*, Humboldt University of Berlin- Germany

<sup>61</sup> **The Gully** (22 September 2002) *Secrets in Tehran [personal account]*

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<sup>63</sup> **CIPU** (October 2003) [section 6.177]

unlikely that two men or women would be able to set up house together, “because of strong societal pressures against any unmarried person living beyond the pale of family control.”<sup>64</sup>

## Gender Diversity

Iran is a highly ‘gendered’ society where specific roles and manners of behaviour are prescribed for both men and women, generally to the disadvantage of women.<sup>65</sup> People who do not comply with these gender stereotypes or are not able to fit within the prescribed gender roles, will experience great difficulties in society. For example, men who’s gait or voice is considered effeminate are describe with derogatory terms in Iran and it is suggested they are gay.<sup>66</sup> Transgender people are likely to be considered gay or to be ostracised otherwise for not conforming to gender roles.<sup>67</sup>

The UNHCR/ACCORD report states that sex changes are permitted and that operations are frequently and openly carried out.<sup>68</sup> The source of this information is not quoted, but we have come across reports that Ayatullah Imam Khomeini does allow for sex reassignment surgery. However, it is not clear whether this is also (or as readily) available for those who’s biological sex is not ambiguous. Moreover, not all transgender people wish to change their biological sex through surgery. There are problems with the current procedures in Iran for sex-changes as often the normally recommended year of transition before a sex-change operation is skipped, because until the surgery is complete people can be considered to be ‘homosexual’ and thereby might be breaking the law. In addition, there is a risk that people involved in homosexual relationships who may not be transgender, are pressured into undergoing a sex-change operation in order to avoid being ‘illegal’. There are some news articles about the difficulties experienced by transsexuals in Iran.<sup>69</sup>

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<sup>64</sup> **Drew, Paula E.** (1997) ‘Iran’, in: *International Encyclopedia of Sexuality*, Humboldt University of Berlin- Germany

<sup>65</sup> See for example: **Iran-e-Azad Organisation** (website visited 11 February 2004) [www.iranncrfac.org](http://www.iranncrfac.org)

<sup>66</sup> **Drew, Paula E.** (1997) ‘Iran’, in: *International Encyclopedia of Sexuality*, Humboldt University of Berlin- Germany

<sup>67</sup> See e.g. **The Gully** (13 November 2000) *A mother takes on the Ayatollah*

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<sup>69</sup> See e.g.: **Reuters** (31 December 1998) *Iran court hears transsexual inheritance case*; **AFP** (21 December 1998) *More on the transsexual case*; **Arabia.com / Reuters** (19 June 2000) *Iran transsexual unhappy with experience as woman*; **The Gully** (13 November 2000) *A mother takes on the Ayatollah*

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**Gay Persia** (based outside Iran)

A website on LGBT issues in relation to Iran and Persians, includes articles

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Iranian Lesbian, Gay, Bisexual and Transgendered Organisation (with an international remit, the only currently active chapter is based in Los Angeles, USA)

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