

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Letter to Immigration Minister Vedonk

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On behalf of Human Rights Watch, I am writing with regard to the existing moratorium on the deportation of gay and lesbian asylum-seekers to Iran--and to urge you in the strongest possible terms not to resume such deportations.

Within the region, Iran is distinguished by the overt severity of the penalties it imposes on consensual, adult homosexual conduct. Sodomy or lavatconsummated sexual activity between males, whether penetrative or notis punishable by execution. (Article 111 of the Islamic Penal Code states that Lavat is punishable by death so long as both the active and passive partners are mature, of sound mind, and have acted of free will.) Tafkhiz (the rubbing together of thighs or buttocks or other forms of non-penetrative foreplay between men) is punishable by one hundred lashes for each partner, according to Articles 121 and122 of the Penal Code. Recidivism is punishable by death on the fourth conviction. In addition, Article 123 of the Penal Code further provides that If two men who are not related by blood lie naked under the same cover without any necessity, each one will receive ninety-nine lashes. Articles 127 to 134 stipulate that the punishment for sexual intercourse between women is one hundred lashes and if the offense is repeated three times, the punishment is execution. 1

Irans Penal Code requires that sodomy will be considered proven if the accused person reiterates a confession to the act four times or if four righteous men testify that they have witnessed the act. Yet the Code also offers a way of circumventing this ostensibly high standard of evidence. Article 120 allows judges to lodge a conviction for sodomy based on the knowledge of the judge, in practice allowing a wide range of circumstantial evidence to be adduced as proof. Furthermore, the practice of torture is prevalent in Iran, and the practice of torturing prisoners to extract confessions is common. Forced confessions are openly accepted as evidence in criminal trials. In June 2002, Irans Council of Guardiansa committee of twelve senior clericsvetoed a bill which had been passed by the Majlis (Parliament) which would have placed certain restrictions on the use of torture and would have limited the judicial use of confessions obtained under duress. Even that bill provided inadequate protections against torture; it would have set no limit, for instance, on the length of time that a person could be detained incommunicado, and would have exempted altogether from its protections certain categories of arrestees, including mohareb (people at war with God), a general category for dissidents or moral offenders which could also be interpreted to include homosexuals. The refusal of Irans government to enact even rudimentary safeguards against torture sent a clear message that confessions can be obtained from arrestees by any means. In word and deed, that government has also continued to stigmatize certain categories of arrestees as undeserving of even the most minimal protections.

As is well known, Ayatollah Ruhollah Khomeini in 1979 called for homosexuals to be extirpated as parasites and corruptors of the nation who spread the stain of wickedness. In a further sign of the general judicial attitude to homosexual conduct, Ayatollah Musavi-Ardebili, at the time the head of the Supreme Council of Judiciary, said in a sermon delivered in 1990 at Teheran University: For homosexuals, men or women, Islam has prescribed the most severe punishments Do you know how homosexuals are treated in Islam? After it has been prov[en] on the basis of Shariah, they should seize him [or her]they should keep him standing, they should split him in two with a sword, they should either cut off his neck or they should split him from the head. He will fall down. They get what they deserve (BBC Monitoring, May 21, 1990).

In such an environment, it is clear that the death penalty for lavat is not merely a paper punishment in Iran: it is enforced. Trials on morals charges in Iran are held in camera, and international outrage over the frequency of executions (Iran has the highest rate of executions per capita in the world) has led the government to exercise tight controls over press reporting of the death penalty. For these reasons, confirming the frequency of executions for lavat is effectively impossible. However, as reported by the newspaper Etemad (25 Esfand 1383/15 March 2005), two men were sentenced to death by the Teheran Criminal Court earlier this year. The wife of one of the men discovered a videotape of the two engaging in homosexual acts and reported them to the authorities.

The general rate of executionswhich diminished early in the presidency of Mohammed Khatami, but began to rise even before his second

term ended, as conservative forces regained effective control over the judiciary has significantly increased under the Ahmedinejad administration. Old sentences which were not carried out have been revived; new sentences have been imposed. Recent months have shown increasing rigor in prosecutions and sentencing for morals offences. Reliable information received by Human Rights Watch indicates, for instance, that eight women and two men are now facing sentences of stoning for adultery.

Human Rights Watch has interviewed a number of lesbian, gay, bisexual, and transgender Iranians, both inside and outside Iran. Their accounts largely confirm the picture of a society where the social stigma, and attendant violence, attached to homosexual conduct is high and where police and authorities repeatedly target and persecute people suspected of homosexual conduct in the name of social cleansing. For example:

Societal as well as official scrutiny of deviant behavior is widespread in Iran, with neighbors and even family members enlisted to support the states moral policing. Lesbian women have reported familial violence and forced marriages, and Human Rights Watch has also received reports of lesbian women subjected to forced medical treatment.

Semi-official and vigilante organizations dedicated to enforcing public morality regularly proliferate in Iran, supported by the police and judiciary, as well as by conservative clerics. In 2002, for instance, the Teheran police department sponsored the formation of sixty special patrols (called Special Units, or Yegan-i-Vizhe) to monitor public conduct in the city. (See Charles Recknagel and Azam Gorgin, Iran: New Morality Police Units Generate Controversy, RFE/RL, July 25, 2002). Most recently, in late 2004, the national judiciary began establishing, under its own supervision, a new group to police moral crimes called the Setad-e Hefazat-e Ejtemai or Social Protection Division. This organization drawing, like many parallel groups, on unemployed ex-military draftees to fill its ranks aims to control the social ills of each neighborhood and region as well as deviant individuals (according to its Articles of Association which were leaked to the Iranian press). In July 2005 a senior judicial official in Qom told reporters that 210 units of the Social Protection division employing 1,970 formally accredited volunteers had been set up throughout that city. These divisions would report serious moral offenses to the disciplinary forces of the judiciary for further action to be taken. (ISNA News Agency, 10 Tir 1384/1 July 2005). These developments suggest the degree of social and legal control over deviance considered necessary by the Iranian government.

Human Rights Watch is deeply disturbed by the assumption in your February statement that simply keeping ones sexuality covert and ones selfhood hidden is a safe and acceptable response to the likelihood of persecution. It is an assumption mirrored by your assertion, in the same letter, that Only when Christians and converted Muslims [in Iran] present themselves with their faith too actively can they come to the negative attention of the authorities. Both sexual orientation and religious belief are deeply felt and central aspects of the human person. No one should be expected to conceal them simply in order to stay alive. Such silencing is not a recourse from persecution: it is itself persecution. It is embarrassing for a high official of the Dutch government to endorse the notion that those who fear to speak out under the threat of death, can still be called free.

You are undoubtedly aware that a fundamental obligation rests upon the Netherlands not to return persons fleeing persecution to countries where they face the real risk of torture or execution. The European Convention on Human Rights prohibits the Netherlands from deporting a person to a place where they are at risk of torture, inhuman or degrading treatment or punishment. In *Said v Netherlands* (Application no. 2345/02, judgment of July 5, 2005, confirmed by the Grand Chamber on October 5, 2005) the European Court of Human Rights specifically reminded the Dutch government that:

the expulsion of an alien by a Contracting State may give rise to an issue under Article 3 (prohibition of torture and inhuman or degrading treatment), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among other authorities, H.L.R. v. France, judgment of 29 April 1997, Reports of Judgments and Decisions 1997-III, p. 757, 33-34).

The Court went on to rule that the deportation of the applicant to Eritrea by the Dutch government would be a violation of the absolute prohibition under Article 3 of the European Convention on Human Rights.

The European Court has further held that so-called diplomatic assurances -- promises made by a government not to mistreat a returned person -- cannot justify returns to countries where torture is endemic, or a recalcitrant and enduring problem. (See *Chahal v. the United Kingdom*, judgment of 15 November 1996, Reports 1996-V).

As you also know, the Netherlands is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which specifically states, in Article 3, that No State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. It also requires that For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant, or mass violations of human rights.

Finally, we would also recall that the United Nations High Commission for Refugees (UNHCR) has repeatedly urged states to recognize people facing persecution because of their sexual orientation as protected under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. These require that no state shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. The UNHCR has declared that persons facing attack, inhumane treatment, or serious discrimination because of their homosexuality, and whose governments are unable or unwilling to protect them, should be recognized as refugees" (UNHCR/PI/Q&A-UK1.PM5/Feb. 1996). We urge you to fulfill the moral and legal obligations upon your government by retaining the ban on returning LGBT refugees to Iran.

Sincerely,

Scott Long
Director, Lesbian, Gay, Bisexual, and Transgender Rights Program
Human Rights Watch

Filtration and the Crime of Forcibly Transferring Ukrainian Civilians to Russia

Belarus and Polands Shared Responsibility for Border Abuses

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