



November 5, 2007

INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION

Iran: Stop the Execution of Child Offender Convicted of Sodomy

Summary

The International Gay and Lesbian Human Rights Commission (IGLHRC) has learned that Makvan Mouloudzadeh, a 21-year old Iranian citizen of Kurdish origin from the city of Paveh, in the Western province of Kermanshah, has been sentenced by the government to execution. Makvan has been convicted of multiple counts of anal rape and sentenced to execution for crimes allegedly committed when he was 13 years old. IGLHRC calls for an international response to stop this scheduled execution.

Imposing the death penalty for crimes committed by juveniles is prohibited under international law as well as by the Iranian legal system. In addition, IGLHRC calls on the international community to condemn the use of the death penalty as a punishment for any sex or morality-related crime, whether consensual or non-consensual, as unnecessarily extreme. In this case, since none of the alleged victims ever claimed to have been raped, and all of them admitted to the court that their initial accounts of sexual intercourse with Makvan were false and had been acquired under coercion, the imposition of the death penalty is especially objectionable.

As an organization dedicated to defending the rights of sexual minorities worldwide, the International Gay and Lesbian Human Rights Commission (IGLHRC) objects to any law, policy or ruling that penalizes consensual homosexual relationships among adults.

Action

IGLHRC requests that you send letters in English or Persian to the following Iranian officials, demanding that the order of execution in the case of Makvan Moulloodzadeh be withdrawn:

- The Supreme Leader of the Islamic Republic of Iran, His Eminence Ayatollah Seyed Ali Khamenei, : istiftaa@wilayah.org and info@leader.ir and info@khamenei.ir
- The Honorable Chief Justice, His Eminence Ayatollah Seyed Mahmoud Hashemi Shahrudi: Shahrudi@Dadgostary-tehran.ir and ijpr@iranjudiciary.org
- Iranian President, His Excellency Dr. Mahmood Ahmadinejad: dr-ahmadinejad@president.ir
- Speaker of the Islamic Consultative Council (Parliament), His Excellency Dr. Gholam-Ali Haddad Adel: hadadadel@majlis.ir
- Minister of Foreign Affairs, His Excellency Mr. Manuchehr Motaki: matbuat@mfa.gov.ir

Please also email a copy of your correspondence to IGLHRC at: halizadeh@iglhrc.org

Sample Letter

His Eminence Ayatollah Seyed Ali Khamenei, Supreme Leader of the Islamic Republic of Iran,

Your Eminence,

I am writing with regard to reports of the pending execution of Mr. Makvan Moulloodzadeh, a 21-year old Iranian citizen from the city of Paveh in Kermanshah Province. On June 7, 2007, Mr. Moulloodzadeh was found guilty of multiple counts of anal rape (ighab), allegedly committed as a minor when he was 13 years old. The Seventh District Criminal Court of Kermanshah sentenced him to death. Despite his lawyer's appeal, the Supreme Court has upheld his death sentence.

Mr. Moulloodzadeh's sentence violates international law, as well as various legal codes of the Islamic Republic of Iran. According to Article 6(5) of the International Covenant on Civil and Political Rights and Articles 49 and 111 of the Islamic Penal Code, crimes committed by minors cannot be punished by death.

Moreover, although no one ever accused Mr. Moulloodzadeh of rape, the judge used a principle known as "Knowledge of the Judge" to issue a ruling finding the defendant guilty. This is a violation of Article 120 of the Islamic Penal Code, which clearly states that the knowledge of the judge should be obtained through "conventional methods." All parties involved in this case told the court that their statements made during the investigation were either untruthful or coerced, facts that make the court ruling invalid under Article 116 of the Islamic Penal Code.

Furthermore, unlawful techniques and procedures were used to gather evidence for this case, which according to the Section 3 of Article 3 of the Legal Amendment of the Laws Governing Public and Revolutionary Courts, puts into question the legality of the court ruling.

As the highest-ranking religious and political authority in the Islamic Republic of Iran, it is within your legal and constitutional power to order the postponement or the cancellation of the execution, request a reexamination of the case, and even grant amnesty to Mr. Moulloodzadeh. I plead with you to use your authority to save the life of this innocent citizen.

I would like to thank you in advance for your kind attention to this important legal case, and potentially for saving the life of Mr. Makvan Moulloodzadeh.

Respectfully,

(Name, address. Organization)

Background information

The District Attorney's office issued an order for Makvan's arrest on October 1, 2006, after the local office of the Intelligence Service received a complaint from Makvan's cousin claiming, in rather vague language, that Makvan had "victimized" him when both were minors. During subsequent investigations, the cousin also claimed that Makvan had engaged in homosexual sex with other people when he was aged 13. These individuals were

brought in for questioning and each confessed to having had homosexual sex with Makvan. But according to media reports, none of these individuals claimed to be a victim of rape. During the interrogation process, Makvan was forced to confess to one case of sodomy while he was a middle school student.

Makvan's trial took place at the local branch of the Criminal Court in Kermanshah City. However, several key witnesses refused to appear in court, and the three witnesses who did appear before the judge each retracted their earlier testimony, claiming to have lied to the authorities under duress. Makvan also told the court that his confession was made under coercion and pleaded not guilty. But the judge refused to accept the witnesses' retractions. Although it is standard practice in the Iranian legal system to send alleged rape victims for a medical examination to check for evidence of sexual crimes, including sodomy, the judge did not require this procedure in this case, which could have potentially proved the innocence of the defendant.

In the absence of adequate evidence, the judge used an Iranian legal principle known as "Knowledge of the Judge," to declare that he was certain Makvan had raped his victims. According to the Iranian legal code, when there is not enough evidence to convict a defendant of sexual crimes, the judge may use his knowledge (in a deductive process based on the evidence that already exists) to determine whether the crime took place or not.

The judge found Makvan guilty of full penetrative homosexual sex (ighab) and sentenced him to death on June 7, 2007. The following month, Makvan's lawyer lodged an appeal with the Iranian Supreme Court. In a ruling on August 1, 2007, the Supreme Court upheld the lower court's decision.

Makvan is currently in Kermanshah's city's jail. Since the execution order has already been issued by the Attorney General's office, he is in danger of being the victim of a public hanging at any time.

International Law and Iranian Law

Makvan was born on March 31, 1986, making him a minor at the

time of the crime back in 1999. Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR) states that, “[A] sentence of death shall not be imposed for crimes committed by persons below eighteen years of age.” The Iranian parliament ratified the ICCPR in 1975 and has not subsequently passed any legislation to nullify this treaty.

While International Law prohibits the execution of minors, Iranian law is equally clear-cut on the subject.

According to Article 49 of the Islamic Penal Code, minors, if found guilty, are free from criminal responsibility. Note 1 of Article 49 stipulates that minors are those individuals who have not reached what Islam considers to be the age of discretion. The 1991 Amendment of Article 1210 (1) of the Iranian Civil Code declares that the Islamic age of discretion is 15 full lunar years of age for boys and 9 full lunar years of age for girls.

Moreover, Article 111 of the Islamic Penal Code states that, “Sodomy is only punishable by death if both parties are adults and of sound mind.” Article 113 of the Islamic Penal Code declares: “ If a minor sodomizes another minor, both should be punished by up to 74 lashes, unless one of them is forced to do so.” The alleged sodomy happened when the defendant and his alleged partners were 13 years old, and hence the death penalty should not be applicable in this case.

Other irregularities related to Iranian Law

1 The initial investigation into this case was conducted by the District Attorney’s office. Section 3 of Article 3 of the Legal Amendment of the Laws Governing Public and Revolutionary Courts (passed by the Islamic Consultative Council on October 20, 2002 and ratified by the Constitutional Council on November 3, 2002) states that, “Sodomy ... [and] cases involving crimes committed by minors should be handled exclusively by the Criminal Courts. The District Attorney can only be involved in these cases if there is a need for investigating other aspects of the case.” Since the alleged crimes in this case involved sodomy committed by minors, the

District Attorney's office was not authorized to be involved in gathering evidence. Hence the evidence collected in this case should have been legally inadmissible.

- 2 Although Iranian law recognizes "Knowledge of the Judge" as a way to prove sodomy cases, Article 120 of the Islamic Penal Code clearly states that this should be acquired through "conventional methods." Given that all the alleged victims in this case retracted their claims of having been sodomized, and also given that the defendant pleaded not guilty and there was no medical examination conducted to verify the allegations, it is not clear how the judge could know with certainty that sodomy took place.
- 3 The judge decided that the initial confessions in this case could be used as evidence despite testimony in court that the victims had either lied or were forced into making their original confessions. This is against Article 116 of the Islamic Penal Code, which clearly states that the, "Confession to [sodomy] is only admissible if the person who confesses is adult, of sound mind, under no pressure, and is willing to testify."

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The International Gay and Lesbian Human Rights Commission (IGLHRC) is a leading human rights organization solely devoted to improving the rights of people around the world who are targeted for imprisonment, abuse or death because of their sexuality, gender identity or HIV/AIDS status. IGLHRC addresses human rights violations by partnering with and supporting activists in countries around the world, monitoring and documenting human rights abuses, engaging offending governments, and educating international human rights officials. A non-profit, non-governmental organization, IGLHRC is based in New York, with offices in Johannesburg and Buenos Aires. Visit <http://www.iglhrc.org> for more information