



OUR IDENTITIES UNDER ARREST

A global overview on the enforcement of laws criminalising
consensual same-sex sexual acts between adults and
diverse gender expressions

2021

First Edition



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CONTENT WARNING

This publication contains written descriptions and illustrations depicting physical and sexual violence, abuse, torture, death, and extreme homophobia, transphobia, and prejudice.

These realities of LGBT+ life must be discussed and highlighted.

Reader discretion is advised.

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Foreword from the ILGA World Co-Secretaries General

By Luz Elena Aranda¹ and Ymania Brown²

With 2021 drawing to a close, and as we look back on the trials and tribulations experienced by our communities and member organisations this past year, we are proud to introduce an addition to our flagship research capabilities, a brand new report which highlights and reflects on a most difficult subject: The criminalisation of SOGIESC people and groups, and the curtailing of their rights to express themselves, to advocate publicly, and to love.

We all know the legislation and policies in each country thanks to the tireless work of the researchers at ILGA World, and the invaluable assistance of our friends and allies on the ground. But legislation alone is not the whole story. It's not just the overt SOGIESC legislation, as other laws and statutes are systematically used by states to target individuals and communities based on their SOGIESC. The nebulous and inconsistent ways in which non-heterosexual, trans, intersex, non-binary and gender-diverse bodies across the world are policed often defy any clear-cut categorisation of laws and regulations that are used against us.

That is where this report comes in. It turns the "black letter law" and political jargon into stories, in a way few prior ILGA World reports have done. By compiling an extensive list of cases of enforcement from around the

violent and terrifying human impact of these laws, policies and political doctrines are laid bare. We hope that through this report and its content, this vital service we continue at ILGA World for our members lives on, to let the world know their stories, even when their names have to be concealed for the sake of their own safety.

Such is the nature of the events we are trying to document that reports of this kind are cursed to be ever-incomplete. Many of the cases summarised in the coming pages are only fragmentary, and we may never know the extent to which some violations go entirely unreported or simply missed in the maelstrom of existing public records. Many jurisdictions remain so under-reported and under-studied, that no instances of enforcement could be verified despite their laws explicitly criminalising SOGIESC people. But this incompleteness stands as a testament not to the relative safety of our communities in these countries, but to the vital need to continue this work; to fill in the gaps; and to make heard those pained masses who have been silenced by prejudice and those in power.

For those stories we were able to document, but most importantly, for those we could not, ILGA World and its research team reaffirms its commitment to ensuring that the voices of our people around the world can be heard.

¹ Luz Elena Aranda is a bisexual *artist*. She studied Dramatic Literature at UNAM and Ethnology at ENAH, in addition to a technical career in Production in Media and Communication at the Ansel Adams Photography School. She is the General Director of Las Reinas Chulas Cabaret and Human Rights AC and Director of the International Cabaret Festival. She has worked in different organizations, including ProDesarrollo, Finanzas and Microempresa (where she developed the theater component for the Methodology for the Incorporation of the Gender Approach in the Mexican Microfinance Institutions MEGIM), Faces and Voices FDS, AC (where she created the campaign against poverty I look, I know, I act), and Oxfam Mexico, where she was a consultant for the project Building an integrated approach to inequality: indigenous peoples, rural populations and women victims of violence in Mexico. She obtained the Leadership Scholarship from the MacArthur Foundation through the Mexican Society for Women's Rights AC (SEMILLAS) and the recognition "Women investing in women" by the same institution. She is part of generation 54 of the Global Women in Management program: Advancing Women's Economic Opportunities sponsored by CEDPA and EXXON MOBIL.

² Tuisina Ymania Brown (she/her) is a proud a trans fa'afafine woman of colour from Samoa living and working in Brisbane, Australia on the lands of the Yagara nation and its traditional owners. She is a survivor of child rape, spousal gender-based violence and abuse, racial profiling, and anti-trans violence and persecution throughout her life and has become a fierce advocate for the trans movement. She is an accomplished public speaker, a former intellectual property attorney, and a working mum to two adopted sons, and has recently become a grandmother. She has over 10 years of volunteer experience in international NGOs, and currently heads ILGA World (co-Secretary General) with affiliations with Astraea Lesbian Foundation for Justice (current International Advisory Board member), Global Interfaith Network on Sex, Sexual Orientation, Gender Identity and Expression (former Co-Chair), Samoa Fa'afafine Association (former Technical Director), Copenhagen2021 (former International Advisory Board), and the International Trans Fund (former co-Chair). She is currently the Strategic Adviser/Project Lead for Equality Australia / Sydney World Pride helping to deliver their vision of the largest ever human rights conference in the Asia-Pacific region as part of Sydney World Pride 2023.

Credits

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Mariana Da Silva Braga | *Illustrator*

Mariana Da Silva Braga (she/her) is an illustrator and graphic designer from Uruguay, currently living in Buenos Aires, Argentina. Her past work has included animation, tabletop game design, comic book illustrations, and various editorial projects. Mariana has a passion for bringing characters, worlds, and words to life with pictures. Her portfolio of work can be seen at marianamatistaportfolio.tumblr.com, or on Instagram under [instagram.com/marianamatista](https://www.instagram.com/marianamatista). For commissions or more information, Mariana can be reached at holamarianamatista@gmail.com.

Liesel Blendulf | *Infographic designer*

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The author and editor are grateful to **Daniele Paletta** and those in the ILGA World communications team for their tremendous support. This report reaches the whole world thanks to their commitment.

Special thanks also to ILGA World's Research Interns, **María Roques de Borda** and **Francisco Peña Díaz**, for their invaluable insights into international human rights law and asylum-seeker jurisprudence, captured in this report through their respective essays.

This report owes a significant portion of its content and data to the tireless work of the Media Monitoring consultants on the ILGA World Research Team. Deepest thanks, then, to **Alejandro Hilarión Moncada**, **Alan Cueli**, **Hanlu Hu**, and **Diego Pérez Damasco**. The author and editor are also particularly grateful for the extended support provided by the whole team of **NAFTEC Ltda**.

And of course, a most special thanks to those activists on the ground who contributed case-study essays about their countries for this report. The dedication and bravery of all human rights defenders living and working in criminalising jurisdictions cannot be overstated, and through the inputs of **Jean Paul Enama** (*Humanity First Cameroon Plus*), **Thiyagaraja Waradas** and **Pasan Jayasinghe** (*Community Welfare and Development Fund, Sri Lanka*), **Renate Arisugawa** (*Arus Pelangi, Indonesia*), and the anonymous activists of **Bedayaa (Egypt)**, it is hoped readers of this report will garner a more in-depth and nuanced understanding of the situations in some of these regions than ILGA World could provide alone.

The production of this report was also possible thanks to the support, contributions and assistance provided by numerous people, many of whom need to remain anonymous for safety reasons.

We extend our special thanks to:

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- ECADE (Eastern Caribbean Alliance for Diversity and Equality);
- And three additional anonymous organisations (Ethiopia).

Author's Preface

By Kellyn Botha¹

Our Identities Under Arrest is a brand-new publication by ILGA World aimed at shedding light on a specific, and often under-analysed, aspect of the violence, oppression and discrimination faced by LGBT+ persons and communities across the world. Namely, the enforcement of laws and provisions criminalising persons of diverse sexual orientations, gender identities and expressions (SOGIE).

While ILGA World is aware of the myriad intersecting legal, social, political, cultural and economic factors which can and do impact the lived realities of SOGIE communities around the world, it would be impossible to offer a comprehensive overview of it all. However, to merely include a list of “criminalising” vs “non-criminalising” countries, as ILGA World has done in past publications such as the already invaluable *State-Sponsored Homophobia* and *Trans Legal Mapping* reports, does not always offer an accurate or nuanced depiction of events on the ground. This report seeks to fill a gap, then, by speaking not just to the legislation or policies used to target our communities, but to the real-world impact that such legislation and policies have on SOGIE persons and communities the world over. Our past and ongoing reports have kept our partners, allies, and the media up to date regarding the black letter of the law, but the violent impact of those letters cannot be overstated. These laws are more than intellectual or philosophical conundrums to be debated, but have a tangible effect on real people, all across the world.

This qualitative desktop study, made possible through past reporting, engagements with activists on the ground and a recent expansion in the ILGA World research programme's media monitoring capacity, thus compiles hundreds of examples of enforcement of criminalising legislation from several UN Member States. In particular, it will compile and assess examples of arrests, pre-trial detentions, prosecutions, imprisonment and other State-backed actions against our communities. Beyond simply focusing on consensual-same sex sexual activity, though, which is most often criminalised, this report will also look at countries with legislation explicitly prohibiting or restricting free gender expression.

The distinction between legislative criminalisation and criminal enforcement is vital, as several *de jure* criminalising nations have on more than one occasion opined at the United Nations and elsewhere that it is not

fair or accurate to label them as criminalising countries, on the basis that the criminalising provisions within their statutes are not—or are very rarely—used to target SOGIE persons and communities. It is not uncommon for governments to argue that their criminalising provisions are merely “dormant regulations”, but as is evidenced in this report, such claims are often far from accurate.

This report aims then to debunk this idea of “dormancy”, and to call for greater pressure from the United Nations Human Rights Council, international human rights bodies, businesses, political leaders, legal experts, academics and activists, against those in power who enforce violence against those of diverse SOGIE identities. Because make no mistake—these laws are and always have been an attack on identity.

We believe that this report will be of great value to human rights defenders seeking to provide evidence-based advocacy on the ground or trying to garner international attention for their cause; that it can assist asylum seekers and the legal experts working on their cases in providing the evidence of persecution upon which their futures may hinge; and that it will assist researchers working on SOGIE issues in building an holistic picture of the international criminalisation landscape beyond what ILGA World's law-based reports can do on their own.

Publications such as this do not exist in a vacuum, and it is only through the work of countless others, known and unknown, that it has seen the light of day. *Our Identities Under Arrest* is an extensive—though incomplete—compilation of human suffering and trauma. We hope that readers will do right by those whose stories are outlined here, and those whose past work has led us to this point, by taking action against violence, oppression and discrimination wherever they may encounter it.

Roadmap

a. Main findings

In this section, readers will find the **main findings** and **conclusions** supported by the data compiled for this report.

¹ Kellyn Botha (she/her) is a Research Consultant at ILGA World from Durban, South Africa. Kellyn has worked in SOGIESC advocacy with a focus on media and communications since 2017, tackling various advocacy, research, communications, education, and support roles in organisations such as Irantí, Matimba, GALA, and Scope Facilitation in South Africa—as well as for ILGA World and Pan Africa ILGA. As an ILGA World researcher she has contributed to the organisation's ongoing media monitoring project, and co-authored the *State-Sponsored Homophobia: Global Legislation Overview Update* (2020). She holds a Bachelor of Journalism (Hons. equivalent) from Rhodes University, having majored in TV Journalism and Media Studies, and Politics and International Studies. In 2020 she completed an MA in Film Studies at the University of the Witwatersrand, having researched the problematic representations of transgender women in cinema and the evolution thereof. Beyond media-creation and representation, Kellyn's specific advocacy interests include issues of legal gender recognition, gender-affirming health and social services for trans and gender-diverse individuals, and the impact of legislation and power-structures on the lived realities of SOGIESC persons.

b. *Legal essays*

Two essays written by colleagues in the Research Team provide a legal analysis on the implications of enforcement of criminalising provisions in the fields of **international human rights law** and **international refugee law**. These essays are meant to smoothly walk readers through the complexities of international law in plain language, so that even those who are not well versed in legal issues can access this content.

c. *Case studies*

Four case studies from activists in **Cameroon, Egypt, Indonesia** and **Sri Lanka** work to provide nuanced analyses of the social and legal situations of LGBT+ persons living in criminalising jurisdictions, or seeking to escape them. These “voices from the ground” provide vital context that ILGA World would not be able to offer through a desktop study alone, and highlight some of the work done by human rights defenders in a small sampling of criminalising jurisdictions.

d. *Country entries*

The bulk of this report has been divided into regional chapters roughly analogous to the world's continents or the jurisdictions of ILGA World's regional chapter offices. Readers seeking to locate a particular country of interest or peruse multiple entries will note the chapters **Africa, Asia, Americas,**² **Europe** and **Oceania**, all of which, combined, form the backbone of this document's content. Given the uneven geographic distribution of criminalising States, at the present time, the chapters on Africa and Asia are significantly longer than the others. Additionally, readers will notice that the Africa and Asia chapters are each subdivided into a *de jure* and *de facto* sub-chapters, respectively. All entries from Oceania and the Americas are from *de jure* criminalising countries.

Within each regional chapter, UN Member States appear as individual entries in their alphabetical order. Relevant **Criminalising Provisions** are outlined, followed by an **Enforcement Overview** which provides a summary of local contexts and history, before **Examples of Enforcement** are laid out in chronological order.

² Although ILGA World typically disaggregates Latin America and the Caribbean and North America into two distinct entities, they have been condensed into a single chapter.

Methodology

Our Identities Under Arrest is an exploratory study which compiles hundreds of examples of enforcement of criminalising legislation from several UN Member States, and provides an overview on how these laws appear to have been enforced in each country. In particular, this report incorporates and contextualises various examples of arrests, pre-trial detentions, prosecutions, imprisonment and other State-backed actions against consensual same-sex sexual activity and free gender expression.

1. Subject matter

Being a report on the enforcement of criminalising legislation or policies focused exclusively on consensual same-sex sexual acts and gender expression, the parameters for inclusion of documented instances are necessarily restrictive.

Though some minor exceptions may be found in certain jurisdictions, the scope of this report excludes the following:

- Arrests or legal proceedings on the basis of non-consensual same-sex activity (rape, sexual assault, or incidents involving minors). To this end, two specific elements are always corroborated for every single entry: (a) that the ages of everyone involved in any alleged sexual activity is above 18 years of age, in line with the definition of “child” under the Convention on the Rights of the Child, and regardless of lower local ages of consent; and (b) that the alleged conduct in question was consensual. Instances were discarded where lack of clarity affected any of these two requisites.
- Arrests or legal proceedings brought against individuals of diverse SOGIE on the basis of their real or presumed status as sex workers, persons dealing with narcotics addictions, “vagrants”, etc.¹
- Actions by law enforcement, courts or other State actors against individuals of diverse SOGIE for reasons deemed irrelevant to their identities, sexual activities, gender expressions or public advocacy.
- Incidents of violence, harassment, or intimidation from State actors that appear to be due to personal or institutional prejudice, rather than forming part of any overarching policy.
- Cases of deportation or *refoulement* of individuals of diverse SOGIE from non-criminalising countries back to criminalising ones, unless the incident can be directly tied to a known case of criminal enforcement.
- Acts of discrimination against individuals of diverse SOGIE in the sectors of employment, healthcare, education, housing, etc.
- Issues relating to prohibitions on legal gender recognition and gender-affirming healthcare for trans and gender-diverse persons.
- Detention conditions of trans and gender-diverse persons in prisons, police stations, or other detention facilities not aligned with their gender, unless the detention itself comes as a result of criminalisation.
- Prohibitions on same-sex marriage, adoptions, or rainbow family issues broadly, where the threat of incarceration or criminalisation is not present.
- Restrictions on the right to peaceful assembly and the banning of events and gatherings, such as public protests or Pride marches and celebrations.
- Acts of censorship of media and publications (notwithstanding the inclusion of some instances of targeting against activists).

The entry on the Chechen Republic (Russian Federation) incorporates a grouping of instances that have taken place in that autonomous region that cannot be technically framed under “law enforcement”, as while these cases have occurred as a consequence of policies directly targeting people of diverse SOGIE, they appear to have been implemented in apparent disregard of the rule of law and due process, by means of the authorities kidnapping, disappearing and killing victims.

2. Time period

The scope of this first edition of *Our Identities Under Arrest* is primarily focused on identifying cases of enforcement of criminalising legislation against persons of diverse SOGIE from the time of publication in December 2021, back across roughly the preceding two decades. A focus has been placed on more recent events, and with a few exceptions incidents prior to the year 2000 are not included. Future editions of this report may well only serve as updates of the 12 months preceding publication, but as this document is the first of its kind by ILGA World, it would be a disservice to readers to not make sure to include those criminalising countries which may not have seen clear cases of enforcement within this temporal scope.

¹ Trans and gender-diverse sex workers are disproportionately targeted around the world, though the stigma against sex work as a whole, and the fact that most such cases result in charges and prosecutions for “prostitution”, means that it is often impossible to verify whether any given case involved targeting on the basis of a sex worker’s sexual orientation, gender identity or expression. For more, see the Main Findings section in this report.

3. *De jure vs. de facto*

This report differentiates countries according to the legal status of consensual same-sex sexual acts and the criminalisation of diverse gender expressions under local provisions. Following the terminology adopted by previous ILGA World reports, countries with *de jure* (“by law”) criminalisation and countries with *de facto* (“in fact”) criminalisation.

Under *de jure* we group jurisdictions that explicitly criminalise consensual same-sex sexual activity with criminal provisions on so-called “sodomy” or “buggery”, sexual acts with persons of the same gender, acts against nature, among others, as well as other acts of “indecent”, largely interpreted as criminalising non-penetrative same-sex sexual acts. Additionally, in some jurisdictions, laws directly affect trans and gender-diverse populations with prohibitions on “cross-dressing” and other similar provisions that *de jure* criminalise diverse gender expressions.

Conversely, under the *de facto* category, we group States that do not have any of those laws on their books but substantial and consistent reports indicate that persons are arrested or prosecuted because of their gender expression, their sexual orientation, or their alleged engagement in consensual same-sex intercourse based on other unrelated laws such as laws against debauchery, pornography, immorality or prostitution, among others. Therefore, in these countries there are no laws *explicitly* criminalising such acts or expressions, but in practice (*de facto*) other laws are used to that end. So long as a number of instances have been documented, a State can be included as being a *de facto* criminalising jurisdiction.

4. A note on terminology

Throughout this report, reference to “consensual same-sex sexual acts” is made, and often used interchangeably with variations in the phrase, such as “same-sex acts”. This refers not only to penetrative intercourse between persons of the same sex or gender, but to a wide range of intimate activities commonly associated with sex or romantic interaction.

Reference is also regularly made to “diverse sexual orientations, gender identities and expressions”—i.e., “diverse SOGIE”, which serves here as a broad umbrella term for lesbian, bisexual, gay, transgender, non-binary, pansexual, and many other non-heterosexual or non-cisgender identities, including culturally and geographically unique identities, such as *hijra*. This report will predominantly refer to SOGIE, given that the focus here is on diverse sexual orientations and gender expressions broadly, but may be used interchangeably from time to time with acronyms such as LGBT+.

Aside from speaking broadly on gender identity and expression, “trans” or “transgender”, are used interchangeably. This is used to denote the identities of individual persons, just as specific references are made to persons identified as “gay” or “lesbian”. However, reporting on instances of criminal enforcement often conflates sexual orientation and gender identity, resulting in a significant number of reports of “men in dresses” or “cross-dressers”. Though the erasure of myriad

transgender, transfeminine, transmasculine and gender-diverse identities is evident when such reporting is viewed in its entirety, it would be presumptuous to assign “trans” labels to otherwise unidentified persons. Where reporting is suspect, then, the author has endeavoured to refer to individuals in a gender-neutral manner and highlight the ways in which other sources have referred to them.

Finally, the derogatory nature with which authorities and the media in many criminalising jurisdictions refer to persons of diverse SOGIE means that quite apart from ignorant or exclusionary language, many sources are rife with quotes or other references to outright slurs. It has not been a policy in writing this report to expunge such harmful phrases entirely from the report, though they have not been reproduced here unless directly relevant to the story being documented.

5. Sources

In gathering and verifying information for this report, the following different sources have been relied on, including:

a. *Prior research, publications and statements*

ILGA World has been able to make great use of an existing body of work from around the world to piece together and verify individual stories, or better understand local contexts, in our global overview of criminal enforcement. Publications from fellow human rights organisations, international bodies, legal databases and academia have all found their way into this report.

International human rights advocacy and monitoring organisations have also been immensely useful in the researching of this report, with the extensive archive of publications by Human Rights Watch identifying many cases in individual countries, forming a significant portion of citations herein. Publications by OutRight Action International (formerly known as IGLHRC) have played a similarly vital role, as have outputs by Amnesty International—including their vital urgent appeals—, Human Dignity Trust, and many others.

Research outputs and articles by numerous ILGA World member organisations have also been heavily utilised, as have publications and press statements by ILGA Asia and Pan Africa ILGA. Indeed, through these two regional ILGA chapters, ILGA World also able to set up valuable meetings with local human rights defenders to gain insights not necessarily published elsewhere.

a. *Engagements with activists on the ground*

A report of this nature would simply not be complete without hearing first-hand from activists on the ground. Many human rights defenders with whom ILGA World did engage have had to remain anonymous for their own safety, given that they live and operate in jurisdictions which may target them. Four groups, however—Humanity First (Cameroon), Community Welfare and Development Fund (Sri Lanka), Arus Pelangi (Indonesia), and Bedayaa (Egypt)—have provided case study essays regarding their respective countries for this report, to supplement the existing reporting. Future editions of this

report will endeavour to “rotate” countries and organisations invited to supply such content, to ensure that over time such valuable insights can be made available from all over the world.

b. International supervision (UN Mechanisms)

Of particular value have been the records and reports disseminated by various United Nations mechanisms—in particular Universal Periodic Review outputs, UN Treaty Bodies and UN Special Procedures. Among them are the Special Rapporteurs on Arbitrary detention, Extrajudicial, summary or arbitrary executions, Protecting human rights while countering terrorism, Torture and other cruel, inhuman or degrading treatment or punishment, Freedom of opinion and expression, Freedoms of peaceful assembly and of association, Discrimination against women and girls and—of course—the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

It is thanks to many mandate holders’ urgent appeals—and the responses by some UN Member states to their questions—that ILGA World was able to track numerous instances of enforcement. To date, these calls are one of the most valuable UN Mechanisms to bring international attention to cases of enforcement of criminalising laws.

c. Media and news outlets

With LGBT+ persons and communities being targeted all across the globe, often in areas where human rights defenders are themselves harassed by authorities or otherwise prohibited from carrying out their work, ILGA World’s primary sources for the compilation of this report have been news and media outlets—often publications local to the jurisdictions being covered. Recent expansions in data processing and media monitoring by the ILGA World research team have meant that a truly remarkable number of media outlets and their outputs have been tracked over the course of 2021,

allowing for a more comprehensive scan than ever before for instances of criminal enforcement.

Often, local media outlets publicise stories and cases that would otherwise fall under the radar, and provide incident details that would otherwise be beyond the ILGA World team’s capacity to acquire—such as quotes from police, backlash from local communities, or reasons for the all-too-common postponements of judicial proceedings. However, this reliance on local media outlets comes with significant and unavoidable problems, such as the propensity for many local news outlets to engage in derogatory and inflammatory reporting.

Some sources may also note the names of targets of criminal enforcement, and even publish images of them, not always out of hate but simply as a matter of standard journalistic practice. These sources, however, may also put our communities at risk by shining a spotlight on already vulnerable and criminalised individuals. For this reason, ILGA World has endeavoured to redact any citations which identify LGBT+ persons still residing in criminalising countries. For access to these sources, readers may reach out to ILGA World, and the request will be considered on a case-by-case basis. Sources themselves are often publicly available and accessible via any search engine, but ILGA World has adopted this strategy to minimise as much as possible the potential for causing additional harm.

The role of international and regional media must also be noted, given the sources and connections that journalists not necessarily located within a jurisdiction often have. News outlets such as the *BBC*, *AFP*, *Deutsche Welle*, *Aljazeera*, *The Guardian*, *Reuters/Openly*, *Washington Blade*, *Mamba Online* and others too innumerable to name have been cited throughout this report. Special note must be made of the immense value drawn from articles published by outlets with a particular focus on criminal enforcement, such as *Erasing 76 Crimes*, and human rights violations, such as *Radio Free Europe/Radio Liberty*, among many others.

Limitations

The exploratory nature of this report means that the data presented herein is not meant to be used for quantitative analysis and should be mainly read as an effort to compile information for visibility and advocacy purposes, as well as to understand, compare and contrast common elements present across time and regions.

Besides the limitations imposed by desktop research, time and resource constraints, there is strong indication that arrests and prosecutions are considerably underreported across regions. Even when almost 900 instances are compiled in this report, ILGA World notes that numerous factors operate as considerable obstacles for the collection of data on enforcement of criminalising provisions. In the paragraphs below, most of these obstacles are explored.

ILGA World stresses that more research on how countries enforce criminalising provisions is needed to gain a better understanding of this matter. Some international civil society organisations such as Human Rights Watch, Amnesty International, the Human Dignity Trust and OutRight Action International,¹ have carried out invaluable research projects in numerous criminalising countries and have thus been relied upon as sources for this publication. Numerous local organisations have also conducted research and collected data domestically, and their work has also served as a key source. However, most of these sources have focused on only one country or region at a time, and some jurisdictions still remain largely uncovered.

Further research could lead to the collection and analysis of more official records produced and systematised by States, where available. ILGA World did not engage directly with governments or diplomatic missions for any aspect of the production of this report and cite official records only where they were made publicly available online. Advocacy efforts to engage with criminalising States and request them to produce and disseminate these records depends largely on the possibilities and contexts assessed at the local level in each country.

More contextualised information on how UN Member States and other jurisdictions continue to enforce these provisions is needed in order to hold States accountable to their international human rights obligations and debunk narratives of “dormant” laws or lack of enforcement where needed. Global trends also require further research.

Longitudinal assessments on how enforcement rates have evolved—both globally and within each country—

therefore cannot be carried out based on the data presented in this report alone. Based on years of documentation by ILGA World in annual publications such as the *State-Sponsored Homophobia Report* or the *Trans Legal Mapping Report*, there appears to be a broad global trend toward decriminalisation and the repeal of problematic legislation.² However, what this means specifically for enforcement cannot be applied across the board. Therefore, it is impossible to say based on this report alone whether enforcement rates are increasing or decreasing globally.

A better understanding of the extent to which enforcement of these laws is taking place will also help assess the needs of local organisations, especially with regard to resources needed to provide legal assistance, humanitarian aid and services to those who are arrested, prosecuted or sentenced under these laws. Members of our communities directly targeted by State actors are often deprived of any possibility protection from any official security mechanism and depend largely on community and peer assistance, if it is at all available. The existence of online crowdfunding initiatives to cover the costs of bail and to pay for food and hygiene products for people who were imprisoned for allegedly having engaged in consensual same-sex sexual acts speaks to the state of vulnerability of many of them. While legal reform remains an important aim, providing immediate support to those that are suffering the consequences of the enforcement of these provisions should always be a high priority. By mapping the extent to which these laws are enforced, those who fall victims of these systems of oppression will also be accounted for.

Research specifically focusing on how enforcement is being assessed in asylum claims by migration agencies in receiving States could also assist in identifying best practices—and inadequate standards—in this regard. Indeed, asylum claims based on the applicant’s sexual orientation, gender identity or gender expression are deeply affected by the ways in which enforcement is considered in Country of Origin (COI) research.

Structural difficulties in data gathering

The following is a non-exhaustive list of factors that contribute to the difficulties in accessing data on enforcement of criminalising provisions in numerous countries.

In a nutshell, relevant records of instances of enforcement will often simply not exist and will only be trackable through complementary sources—if at all—such

¹ Many of OutRight’s relevant reports were published when the organisation operated under the name “International Gay and Lesbian Human Rights Commission (IGLHRC)”. Both names are used in citations where appropriate.

² Daryl Yang, “Global Trends on the Decriminalisation of Consensual Same-Sex Sexual Acts (1969 - 2019)” in ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA World, March 2019), 175. Additionally, it should be taken into account that the global trend to decriminalise is not as evident in every single region of the world, especially in the SWANA region.

as testimonies by victims, witnesses, and civil society data collection efforts. Where such records do exist, they may remain inaccessible to the public and researchers, and when they are indeed accessible, they can still be defective, incomplete, or unclear to the extent that many of them will not be of use for data collection.

Additionally, reports obtained through other complementary sources, such as the media, pose a number of challenges and shortcomings that need to be navigated with special care.

a. *Non-existent records*

Police and other authorities in several countries have a propensity for keeping many cases off the books, resulting in incomplete or non-existent data. Testimonies show that this is the case in numerous jurisdictions across regions and may account for a sizeable number of cases that will never get officially recorded.

Even if a detention is not officially recorded by the relevant authorities, arbitrary arrests could be reported and eventually achieve some form of documentation. However, as explained throughout this publication, in criminalising jurisdictions people of diverse SOGIE encounter major obstacles or run the risk of being revictimised while reporting crimes or human rights violations committed against them. Lack of will or an inability to report violations may also stem from a fear of reprisals or the need to keep a low profile after being targeted. Many victims also simply do not have the means to access legal services, or to contact the media or international human rights bodies to seek redress and document the situation. In many countries, professional and personal reputation, as well as family honour, can be tarnished if an arrest or prosecution on the basis of SOGIE becomes known within the community. Authorities throughout this report have been documented to threaten persons of diverse SOGIE with being outed publicly, violence, or even death if they complain.

Further, as noted in several country entries in this publication, large parts of a country's territory may not even be controlled by the central government, in which case keeping track of incidences of enforcement can become all but impossible.

b. *Inaccessible records*

Accessibility of available records represents an additional hurdle for data collection. Records of arrests generated at the lower levels of the administrative divisions of security forces and justice systems are usually not publicly available and need to be compiled and systematised by the authorities in order to become accessible. Resources and capacity to do so may not always be available in all countries, especially where there is little in the way of an institutional culture of record keeping, or the technology required to do so is not available.

Judicial processes themselves can also be opaque, with rulings not being published at all, kept in an accessible format, or being made in traditional, religious, or tribal courts outside of formal reporting systems.

c. *Defective records*

Where data is formally recorded, it is not always disaggregated into a format that permits the verification of the consensual nature of the acts. Where victims are arrested and charged in countries where consensual and non-consensual same-sex sexual acts are prohibited under the same provision, official records can make no distinction of the underlying cause of arrest. This makes it difficult to ascertain whether the acts in question were consensual or not. This legal shortcoming may also affect media reports on these cases (see below).

In jurisdictions where *de facto* criminalisation is enforced, the arrest and charging of suspects under vague, obscure or irrelevant provisions makes it difficult to identify cases. In researching this report, persons of diverse SOGIE have variously been accused of hooliganism, engaging in sex work, distributing pornography, vagrancy, fraud and terrorism. In most instances, these cases may fly under the radar unless additional information or a documented trend of relying on certain provisions to criminalise people of diverse SOGIE is identified. Additionally, specific information on the facts of the case will be required to determine if it is relevant to a report such as this one. For instance, several cases reported by the Bahrain Police Media Center on people being “arrested for indecency” in 2021 could not be included in this publication, as no further details on the specific facts could be gathered.

d. *Issues in media reporting*

Many local media outlets—especially in criminalising jurisdictions in the SWANA region—have displayed a pattern of clear bias against sexual and gender diversity, which brings into question the reliability of some of their reporting. In many countries, media outlets report on cases of people being arrested or convicted for “homosexuality” or “sodomy” in cases of same-sex child abuse and male or anal rape. This can sometimes be explained by the fact that in several countries the term “sodomy” encompasses both consensual and non-consensual sexual acts, but in numerous cases outright prejudice and wilful conflation of sexual and gender diversity will sexual predation and paedophilia is also prevalent.

Another shortcoming in relying on media outlets for information comes from the fact that such bodies rarely appear to follow up on any but the most high-profile of cases. On several occasions, ILGA World has been made aware of reports about an arrest or a pending court case, only for all information about the case to dry up shortly after the initial reports.

One can only assume that the dearth of stories reported to their conclusion also indicates that many more cases of criminalisation go entirely undocumented. It is possible that many media outlets simply do not have the capacity and resources to track more than a few cases at a time, or otherwise lack the interest or mandate to cover such topics. Further, in many countries, especially in rural and peri-urban settings, the overall reach of the media can be very limited as well.

“The Tip of the Iceberg”

Structural difficulties in gathering data on criminal enforcement

Data available thanks to

- **Reporting and documentation from ILGA members organisations and allies.**
- **Urgent calls made by UN Special Procedures.**
- **CSO research reports.**
- **Testimonies by refugees.**
- **Government-issued statistics.**

Data not available due to

- **Inexistent Records**

No formal records kept of arrests by law enforcement.

Victims unable or unwilling to report due to lack of adequate mechanisms or fear of reprisals.

Regions of the country remain outside of the effective control of the central government.

- **Inaccessible records**

Police records remain out of reach when not collected or systematised.

Judicial decisions (or of religious or tribal bodies) are not registered, systematized or published.

- **Defective records**

Key data in original records are incomplete, unclear or not disaggregated.

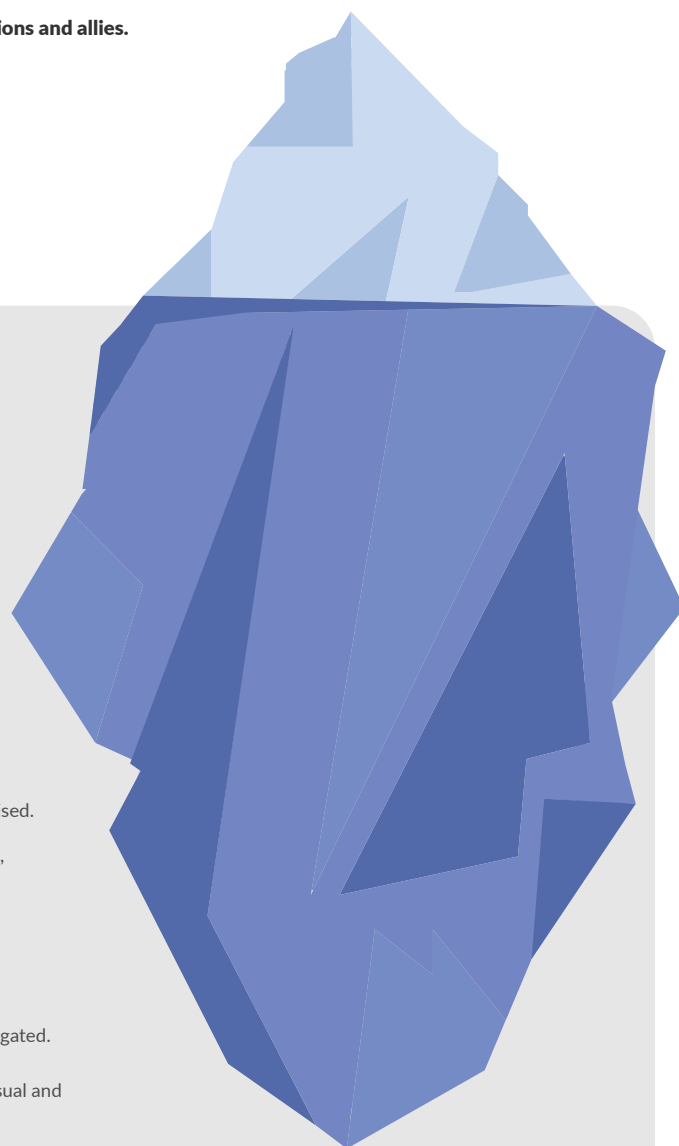
Records are produced based on provisions that criminalize consensual and non-consensual sexual acts at the same time, which often makes disaggregation impossible.

- **Issues in Media Reporting**

Limitations based on the lack of interest or capacity to cover these events by local media.

Inaccurate, incomplete or unclear reports regarding the consensual nature of the relevant acts or whether children were involved.

Linguistic or translation limitations.



Main Findings

This report selected, compiled, and analysed over 900 examples of instances of criminal enforcement from 72 different countries.¹ As stated in the limitations section—and reiterated throughout this report—these numbers do reflect only a fraction of the actual number of instances, and represent only the limited portion of cases that get documented in some way.² However, upon observation and analysis of the information available, certain facts and commonalities could be identified:

1. Arrests and prosecutions for consensual same-sex sexual acts or for diverse gender expressions continued to take place in 2021;
2. There is strong indication that arrests and prosecutions are considerably underreported across regions;
3. Consensual same-sex sexual acts continued to be punished with fines, imprisonment, corporal punishment and (possibly) the death penalty in several countries;
4. Enforcement within each country can vary greatly in frequency and intensity on short notice;
5. Judicial prosecution is a poor indicator to assess levels of enforcement;
6. Gender expression appears to play a key role in numerous instances of enforcement;
7. Binary and essentialist notions of gender make trans and gender-diverse people prone to being targeted for so-called “same-sex” sexual acts;
8. The media can play an important role in how States enforce criminalising provisions;
9. Certain methods of arrest appear to be common across different regions;
10. Certain forms of “evidence” are commonly used to arrest and charge people across regions;
11. Police abuse and mistreatment of detainees appears to be present in almost all documented instances of enforcement;
12. A person’s economic status can play a key role in evading enforcement;

In the following pages, further detail for each of these main findings is provided.

1. Arrests and prosecutions for consensual same-sex sexual acts or for diverse gender expressions continued to take place in 2021

The data collected for this report shows that arrests and prosecutions for consensual same-sex sexual acts or for diverse gender expressions continue to take place around the world.

ILGA World notes that the limited data available shows that in 2021 at least 29 UN Member States actively enforced criminalising provisions, but the actual figure could be much higher. Of the 72 jurisdictions included in this report, at least 44 were documented to have actively targeted persons on the basis of SOGIE status the last three years, with the remainder featuring only documented incidents prior to the start of 2019.

However, these are just reflections of the limited data available and do not show trends but rather provide a rough idea of the number of countries that, at the very least, appear to be arresting, prosecuting and sentencing people for engaging in consensual same-sex sexual acts or for having a diverse gender expression.

It should also be noted that there is no correlation between the number of enforcing countries and the number of people affected by these arrests and prosecutions, as certain countries appear to be responsible for a much larger number of instances than others, and the number of people affected by each instance can vary greatly as well.

Additionally, the boundaries of *de facto* criminalisation of gender expression are blurred by the plethora of laws and regulations that can be used to harass and arrest trans and gender-diverse people around the world, many of which lie beyond the scope of this report.³ Therefore, actual numbers of arrests related to the *de facto* criminalisation of gender expression are expected to be considerably higher.

¹ The full list of countries includes: **Africa (de jure)**: Algeria, Burundi, Cameroon, Chad, Comoros, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mauritania, Morocco, Nigeria, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe; **Africa (de facto)**: Central African Republic, Côte d’Ivoire, Democratic Republic of the Congo, Egypt, Equatorial Guinea, Gabon, Mali, Rwanda; **Asia (de jure)**: Afghanistan, Bangladesh, Brunei, Indonesia, Iran, Kuwait, Lebanon, Malaysia, Maldives, Myanmar, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen; **Asia (de facto)**: Bahrain, Iraq, Jordan, Kyrgyzstan, Tajikistan; **Americas**: Antigua and Barbuda, Dominica, Grenada, Guyana, Jamaica; **Oceania**: Papua New Guinea; **Europe**: Azerbaijan, Georgia, Turkey, and Chechen Republic (Russian Federation).

² For a thorough explanation on the difficulties of gathering data regarding enforcement of criminalising laws please read the “Limitations” section of this report.

³ For more information on the scope of this report, please read the Methodology section.

2. There is strong indication that arrests and prosecutions are considerably underreported across countries

The data compiled for this report shows that there are strong reasons to believe that the number of instances of enforcement included in this publication represent only a small fraction of the actual number of arrests and prosecutions that take place around the world.

The first one of these reasons resides in the striking gap between official records published by certain governments and the number of instances documented through other sources that ILGA World was able to collect for this report. Indeed, at least four UN Member States have, at some point, published official statistical records on enforcement of provisions criminalising consensual same-sex sexual acts, namely Morocco, Cameroon, Uzbekistan and Sri Lanka.

- In 2016 Cameroon informed the UN Human Rights Committee that in 2011 there were 36 criminal investigations into “homosexuality”, resulting in 16 trials and 14 convictions. The number of disaggregated instances that ILGA World was able to document for that year amount to just three—all of which resulted in convictions. This means a difference of 366.7% for known convictions, and 1,100% for all known cases that year.
- In a 2018 performance report, Sri Lankan police noted that 2016 saw 17 cases of “homosexuality”, all of which were prosecuted. ILGA World could identify just one individually disaggregated arrest made that year. This amounts to a difference of 1,600%.⁴
- In 2018, Morocco’s Public Prosecutor reported that 170 people had been charged with “homosexuality” in 147 separate cases that year. ILGA World was unable to identify any individually disaggregated instances of enforcement from that year from any other source.
- In April 2021, Uzbekistan’s Interior Ministry reportedly indicated that 49 persons remained incarcerated for “sodomy” under Article 120 of the Criminal Code, with nine of those being arrested in 2020 alone. ILGA World was able to document only one such incident for 2020, amounting to a difference of 800%.

These figures are particularly disturbing and provide a rough idea of the sheer dimension of the enormous gap in data we may be facing.

Needless to say, official records reflect the number of cases that have been formally registered, so even with these records, numerous arrests still fall outside of these figures. Indeed, testimonies provided by victims frequently include accounts of numerous arrests that never make it into any form of formal record, especially

when detainees are extorted or forced to pay bribes to police officers in order to be liberated without being charged.

For those countries where official records are not accessible or non-existent, the task of compiling data on enforcement is affected by all the limitations enumerated in the limitations section of this report.⁵

These considerations support the idea that the data compiled in this report is considerably limited and represents just the proverbial “tip of the iceberg”. Further research and improved mechanisms for data collection and monitoring of enforcement are urgently needed to have a clearer understanding of the dimension of this problem.

3. Consensual same-sex sexual acts continued to be punished with fines, imprisonment, corporal punishment and (possibly) the death penalty

Formal prosecution leading to the imposition of the penalties established by law continued to take place in several countries in 2021 and in previous years.

Fines and high bail fees have often been imposed by courts as ancillary penalties to suspended or effective imprisonment, with additional prison time being imposed on many who do not have the financial means to pay.

Terms of imprisonment imposed by courts vary greatly across time and regions, ranging from imprisonment for a couple of months or a year to more prolonged sentences: up to 10 or 15 years in certain documented cases. Exceptionally, when a case makes international headlines, victims have been reportedly pardoned or liberated by an “act of grace” of the Executive.

Among the documented cases that ILGA World compiled and analysed for this report, at least 22 resulted in the imposition of corporal punishment, consisting mainly in lashes or strokes of the cane (also referred to as “flogging”). Punishment of this kind was identified in at least 10 jurisdictions.⁶ The modalities and intensity of this type of punishment can vary greatly, ranging from 6 lashes in one 2019 case from Malaysia, up to a striking 14,200 lashes distributed along multiple flogging sessions in a 2005 case from Saudi Arabia.

Having access to documented instances of enforcement of the death penalty continued to be challenging, with numerous instances being reported in ways that make it very difficult to ascertain whether people have effectively been executed exclusively or partly for consensual same-sex sexual acts. Possible executions were identified in at least two countries (Iran and Saudi Arabia), with an additional number of summary executions carried out by insurgent groups that gained effective control over a certain portion of territory in at

⁴ It is not clear, however, whether all of these cases involved consensual acts, as the report only identified rape in regard to women and minors.

⁵ For a thorough explanation on the difficulties of gathering data regarding enforcement of criminalising laws please read the “Limitations” section of this report.

⁶ These include: Iran, Malaysia, Qatar, Saudi Arabia, Somalia, Sudan, United Arab Emirates, and Yemen, as well as parts of Nigeria and Indonesia.

least six other countries (Somalia, Libya, Yemen, Iraq, Syria, and Afghanistan).⁷

As for the current legal situation in Afghanistan, given the 2021 supplanting of central government authority with Taliban forces and the uncertain nature of the ongoing changes in that jurisdiction, the legislative status of the death penalty remains uncertain. However, several killings have been noted since August 2021.

4. Enforcement within each country can vary greatly in frequency and intensity on short notice

The data compiled in this report shows that the frequency and intensity with which countries enforce criminalising provisions can vary greatly across time, with steep increases in the number of documented examples, followed by periods of time—either long or short—with no documented instances of official enforcement.

In many countries, authorities and law enforcement officials enforce criminalising provisions spasmodically and in ways that can become difficult to anticipate. Certain countries that at one point in time may widely have been regarded as “safe” or “quiet” due to lack of information on enforcement of criminalising provisions can—and have—seen sudden shifts on relatively short notice. This has even been the case in one country where a moratorium on the enforcement of provisions criminalising consensual same-sex sexual acts had previously been declared by the Executive branch.

In some countries, such spikes have often come as a result of growing hate speech against sexual and gender diversity, either from political figures or religious and community leaders, and often in the form of crackdowns or organised campaigns. However, this is not always the case, as arrests and prosecutions may surface even in the absence of such specific context. Past instances of enforcement and official attitudes with regard to this issue can potentially offer indications that the authorities can and will resort to enforcing these provisions without prior notice.

This finding is of particular relevance to the risk assessment carried out by migration authorities deciding on asylum petitions in receiving States, as the risk of persecution is often considered to be lower in jurisdictions with minimal or no record of past enforcement.⁸ For instance, countries such as Algeria, Mauritania and Zambia, once regarded as jurisdictions where criminalising provisions were “rarely enforced”, have in recent years seen multiple arrests, prosecutions, and the overall aggravation of the socio-political landscape against persons of diverse SOGIE. And indeed

States such as Malawi, where a moratorium on arrests for those suspected of same-sex conduct was implemented, did see a resurgence in arrests as well.

Therefore, given the unpredictability of criminal enforcement, any assessment of the extent to which a provision may be actively enforced in the future should look beyond the mere number of past documented instances and take into account the local context of hostility, official rhetoric, incitement to hatred, violence or discrimination by influential groups or organisations, the local record of police abuse, the practice of stirring up anti-diversity sentiments for clout, and the existence of strong anti-diversity sentiment among the population at large.

In other words, authorities should try to identify signs of coming increases in levels of criminal enforcement and violence. Otherwise, receiving States run the risk of sending asylum seekers back to countries where the situation may be quickly deteriorating, when decisions are based only on the formalistic consideration that the country of origin has “only rarely” enforced criminalising provisions in the past.

5. Judicial prosecution is a poor indicator to assess levels of enforcement

The majority of documented instances included in this report shows that arrests and detentions not followed by formal judicial proceedings appear to be the primary way in which criminalising provisions are enforced. In many cases, detention without trial can extend to several days, weeks, or even months without any form of judicial or administrative review.

The crux of the enforcement of provisions that criminalise gender expression and consensual same-sex sexual acts occurs at the level of security forces, which deprive people of their liberty often in wanton disregard of procedural safeguards. Elements of police forces entrusted with law enforcement in general are responsible for most arrests, but in some jurisdictions special brigades or commissions specifically mandated to monitor and protect “morality” are also heavily involved in enforcing criminalising provisions or religious precepts.

The data collected by ILGA World shows that, with notable exceptions, in numerous criminalising countries the judiciary remains largely uninvolved in enforcement and in some others it intervenes summarily often to dismiss charges, usually for lack of proper evidence to substantiate a case.⁹ In several documented cases, prosecutors fail to make a strong case or provide evidence, causing court proceedings to be repeatedly postponed and eventually thrown out.

⁷ Many such instances are not disaggregated within this report, given the often-unclear distinction between executions carried out by some new *de facto* government authority and less organised prejudicial violence in an already chaotic and poorly documented region.

⁸ For more information on this, please read the essay authored by Francisco Peña Díaz in this report.

⁹ Nevertheless, as stated above, formal judicial prosecutions do exist and lead to sentences of imprisonment, fines, corporal punishment and possibly even the death penalty. See point 3 above.

In numerous documented instances, law enforcement will release detainees after extorting bribes and favours, often in exchange for not referring them to formal prosecution. Other times, activists, friends or relatives will intervene and secure the release of a detainee prior to prosecution or formal charges. This tends to happen in the absence of formal records, and in contexts where power abuse and corruption is rife. For instance, in some jurisdictions formal prosecutions tend to be rare on the basis that activists and lawyers work to secure the release of detainees before charges are formally filed. This is reportedly the only way to prevent prosecution in court, meaning that a majority of cases of State-targeting have no formal record at all.

Furthermore, in countries where the rule of law has faded, possibly due to internal conflict or civil war, and where central governments have lost effective control over parts of the territory, the infrastructure required to conduct formal prosecutions can be extremely limited or non-existent. In these contexts, vigilante, tribal or insurgent groups can enforce their own rules and decisions through means that do not amount to or even resemble formal judicial prosecutions, but in practice have the same effect of imposing a penalty for consensual same-sex sexual acts or diverse gender expressions.

Therefore, assessing the extent to which criminalising provisions are enforced based on whether a State formally prosecutes people or not for consensual same-sex sexual acts or for their gender expression fails to capture the true dimension of criminal enforcement. This extremely high threshold appears to be divorced from the local realities in most countries around the world and further compounds the existing difficulties on gathering data on enforcement, leading to unrealistic and formalistic approaches to the assessment of the risk that people may face in numerous criminalising countries and the level of protection they offer. In other words, suggesting that State protection can be inferred from the absence of prosecutions is a proposition that does not resist a serious analysis.

6. Gender expression appears to play a key role in numerous instances of enforcement

In numerous instances compiled in this report, diverse gender expressions (also referred to as “non-conforming gender expressions” or “non-normative gender expressions”) appear to be a main target and a central element triggering arrests. This occurs despite the fact that the vast majority of criminalising jurisdictions do not have legislation expressly targeting diverse gender expressions.

Diverse gender expressions defy and subvert culturally-established norms on how each of the two fixed binary genders should appear, dress, behave, speak and groom, among other many aspects. The subversion or questioning of these rigid cultural norms still triggers harsh, prejudiced reactions from members of society—especially in conservative and religious contexts—including from elements of law enforcement. On the one hand, diverse gender expressions are often framed as

affronts to “good mores” and “decency” in and of themselves, prompting law enforcement to react based on the idea that such gender expressions are scandalous or contrary to morality. On the other hand, the conflation of gender expression with sexual orientation, and the presumption that those of diverse sexual orientations are guilty of engaging in same-sex acts, has resulted in a warped, circular logic within the law enforcement and court systems of virtually all criminalising jurisdictions. In other words, the perception of gender expressions that do not align with local cultural norms triggers the suspicion that a person is “homosexual” and that they usually engage in the “criminal act of sodomy” and hence, are seen as criminal subjects, susceptible to arrest. Therefore, in many jurisdictions, it is far more likely for someone to be targeted for their appearance or mannerisms than for any verifiable illicit activity.

Perhaps one of the most high-profile cases in recent months saw two trans women in Cameroon sentenced in 2021 to five years behind bars for “attempted homosexuality, private indecency, [and] lack of a national identity card” on the basis that they slept in the same house overnight and had feminine gender expressions. The same year, another person in Cameroon was arrested when police noticed they were wearing a red thong, and in 2020 in Chad a person identified as “a man in a dress” was arrested, despite claims by the individual that they were forced to put women’s clothes on against their will. Numerous cases of authorities targeting trans women for “cross-dressing” have been identified over the years, with some bordering on the farcical. Examples include a woman who was detained for having images of kittens on her pyjamas, and another case in which a woman was accused of “cross-dressing” for wearing a bra to support her breasts, but was otherwise not wearing women’s clothing.

Even where people do not have clearly non-normative gender expressions, but carry themselves in a manner that may “alert” police that they might be “gay” or otherwise non-cisgender or non-heterosexual under stereotypical views, violence and targeting occurs. Examples have been documented in multiple jurisdictions, such as in 2013 in Tanzania where two gay men were arrested because one was “walking like a woman”, and in 2020 in Nigeria where a young man was threatened with arrest because police felt that his piercings and tattoo made him “look like a gay”. One official from Chad is documented as saying: “A homosexual is difficult to spot, but we look at their behaviours and their manner of dress. Then, the courts will determine”. Cisgender women are targeted through this kind of profiling, too. For example, a presumed lesbian woman was detained in Burundi in 2011, with police claiming her hairstyle had alerted them to the fact that she was a “homosexual”. Another woman was also arrested and beaten in Cameroon on account of her “weird hairstyle”.

Furthermore, in cases where persons of diverse gender expressions and identities are not directly targeted because of how they look, authorities still may notice a mismatch between their appearance and the legally registered gender on their ID documents. Arrests or violence often ensue. This is illustrated in numerous cases included throughout this publication.

The issue of the media misgendering, or simply not being clear on the gender identities of suspects and victims, has been a recurring one in regard to accurately documenting cases for this report, though “men in dresses”, “cross-dressers”, “waria”, “hijra”, “third-sex” and “trans women”—in short, persons of feminine gender expression—have faced disproportionate harassment, incarceration, physical violence and sexual abuse by police, prison staff, inmates and members of their communities. This is a recurring issue in almost all jurisdictions to some degree or another.

While exact numbers are hard to come by, it appears on the basis of compiling this report that persons targeted for their gender expression, or other identifiers that lead to presumptions about their gender identity or sexual orientation, make up a significant portion of cases. At the very least, such situations might well exceed the number of arrests on the basis of being “caught in the act” of same-sex intercourse. This, despite the fact that it is usually only the intercourse itself, and not the gender expression, being criminalised in most countries.

Factors contributing to the criminalisation of diverse gender expressions (reference to scope of report)



In conclusion, diverse gender expressions or non-normative behaviour is largely read as evidence or indication of non-heterosexuality and thus is considered indicative of probable “criminal activity”. In this way, physical appearance becomes an indicator of identity, and identity is linked to presumed private behaviour, and the presumed private behaviour is largely illegal. Hence, as both appearance and identity become conflated, diverse gender expressions and identities are targeted. At the level of law enforcement, this is enough to warrant an arrest, which may result in several days, weeks or months in detention without trial. This is not a new trend, with IGLHRC (now Outright Action International) reporting on Africa back in 2007 that

[t]he vast majority of arrests of men and women on charges related to homosexuality are not based on the witnessing or reporting of a same-sex act, but on the presumed identity of the individual.¹⁰

7. Binary and essentialist notions of gender make trans and gender-diverse people prone to being targeted for consensual same-sex sexual acts

Many documented instances compiled for this report show how trans and gender diverse people are targeted under laws criminalising consensual same-sex sexual acts. This finding corroborates information previously presented by ILGA World in the third edition of the *Trans Legal Mapping Report* in 2019.¹¹

Besides the conflation between gender expression and sexual orientation explained above, bio-essentialist notions of gender held by local authorities—compounded by the legal impossibility of trans and gender diverse people amending their identification documents—means that trans women engaging in consensual sex with each other or with cisgender men, and trans men engaging in consensual sex with each other or cisgender women, will be framed as criminal. In all likelihood, non-binary people will be treated according to their gender assigned at birth, too.

One high-profile case took place in Malawi in 2009, when a trans woman and a cisgender man participated in a traditional engagement ceremony and were arrested and sentenced to 14 years’ hard labour as a result. In the eyes of Malawi’s courts trans women—and indeed all transfeminine persons—are “men” and thus subject to laws criminalising homosexuality. Similar cases were identified in Pakistan—with the identities of trans individuals coming under scrutiny on suspicion of their engaging in “same-sex” sexual acts—as well as in several other countries.

8. The media can play an important role in how States enforce criminalising provisions

Mainstream media (magazines, newspapers, news websites and radio stations, both State-funded and private), as well as social media and blogs, have an impact on how criminalising provisions are enforced which simply cannot be overstated.

Media outlets, as the primary carriers and disseminators of information, including hostile rhetoric from politicians and religious figures, play an outsized role in stoking community backlash, violence and hatred against sexual and gender diversity, or in amplifying certain negative social attitudes in such a way as to provide law enforcement and other State actors with a “mandate” to enforce criminalising provisions.

Political leadership have on occasion been accused of “being soft on homosexuality” by the media or opposition parties seeking to play off of negative social attitudes to score points, potentially pushing those in leadership positions to expand the targeting of suspected people of diverse SOGIE, in an effort to maintain their own popularity and power. It is not only the opposition which engages in this, however, with those in power regularly also scapegoating or speaking derogatorily about sexual and gender diversity. This has also included hostile speech and inflammatory rhetoric from both Christian and Muslim clerics.

Further, the use of the names, photos, or other identifiers of victims of violence or State targeting in articles has led to the targeting and persecution of those victims. Thus, when hostility is evident, and the media is deliberately weaponised against marginalised communities, the impact becomes even more damaging. Hostile or detractor media will outright work to stoke violence or aid police.¹² Several articles posted by news outlets within criminalising countries have identified suspects declared to be “fugitives”, and called upon readers to supply the authorities with any information they can. Others might simply speak in a derogatory manner about specific victims, their acts, or about SOGIE issues broadly.

Several high-profile examples can be mentioned for illustrative purposes:

1. In late 2014, Egyptian TV presenter Mona Iraqi played a key role in the raid carried out on a bathhouse in El Cairo which resulted the arrest of 26 men and gave a new boost to the moral panic against homosexuality initiated by the Queen Boat arrests in 2001. The presenter proudly posted pictures of herself filming the line of crouched naked men being humiliated and taken into custody while stating that her TV show was revealing “the biggest den of group perversion [*shuzooz gama’ay*] in

¹⁰ Cary Alan Johnson, *Off the Map: How HIV/Aids programming is failing same-sex practicing people in Africa* (New York: IGLHRC, 2007), 20.

¹¹ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020).

¹² Wherever sources located in criminalising countries have named or posted images of victims or suspects, ILGA World has endeavoured to redact the source as a security measure. In some cases, where persons are prominent public figures, have passed away, or worked in public collaboration with allied organisations, identifying details might not have been redacted.

the heart of Cairo”, which—she alleged—was responsible for the spread of Aids in Egypt. The men were physically and verbally tortured during their time in custody, and subjected to forced anal examinations. After being released, one of the men set himself alight.

2. In 2012 in Lebanon, a local media outlet also broadcast a video showing a cinema allegedly being used as a gay dating spot, which resulted in a police raid and the arrest of 36 people in an entirely different cinema that had no links to the inflammatory video.
3. In 2008, the Senegalese magazine, *lcône*, published an unsubstantiated story which incited a chain of arrests and persecution against suspected gay men. The media continued to fuel public outrage and endanger the men even after they were freed, encouraging people to hunt them from town to town across the country.
4. In 2006 the Uganda tabloid *Red Pepper* published lists of nearly 50 men and women they claimed to be “homosexuals” and inviting readers to “send in names of these deviants so that we publish and shame them, rid our motherland of this deadly vice” [sic]. The resultant “outing” sent a number of those named into hiding and generated a rash of arbitrary arrests of suspected gay men around the country.

Moreover, the impact of international media, and sites based in the Global North, can also have a negative impact. In several cases, lack of caution with which some news outlets in non-criminalising countries treat sensitive information can—and has—put vulnerable persons in extreme danger.

9. Certain methods of arrest appear to be common across different regions

Based on the number of documented instances compiled for this report, certain common methods of arrest could be identified across regions. These include:

a. *Catching suspects “in flagrante delicto” (red handed)*

While some of the techniques outlined further below may assist police in catching people “in the act”, there is often an element of happenstance to arrests of this nature. Several cases throughout the report indicate that police patrols would arrest couples having sex or making out in parked cars deemed “suspicious”, or otherwise spotting individuals engaging in some form of public display of affection. Sometimes police will claim that they caught suspects engaging in same-sex sexual activity during a raid, while other times cases of entrapment will involve police setting up a scenario which would allow them to apprehend a person in the act. Claims by police that they caught a suspect while engaged in sexual intercourse or public displays of affection are widespread enough that they form a feature across virtually all criminalising jurisdictions to some degree, though such cases appear to be a minority of the total.

b. *Raids*

Through various means of evidence gathering (which includes flimsy evidence based on prejudice or misinformation), police will often coordinate to target a location they feel is hosting illegal activities or events.

The homes of suspected gay couples or groups have notably been raided in numerous countries and, to expand the definition of “home”, 2020 and 2021 saw two raids of LGBT+ shelters in Uganda. Such raids have also been documented as targeting human rights defenders, the offices of civil society organisations, and HIV healthcare service providers.

Night-clubs and parties are also commonly raided, particularly in the SWANA (South-West Asia and North Africa) region, with numerous parties and celebrations claimed by authorities to be “gay weddings” also being targeted. Indeed, raids on presumed “gay weddings” seem to reflect a kind of social anxiety regarding SOGIE visibility and non-normative behaviour far more than they represent actual cases of weddings taking place. Raids on venues such as spas or saunas believed to be frequented by gay men have also been documented in numerous jurisdictions.

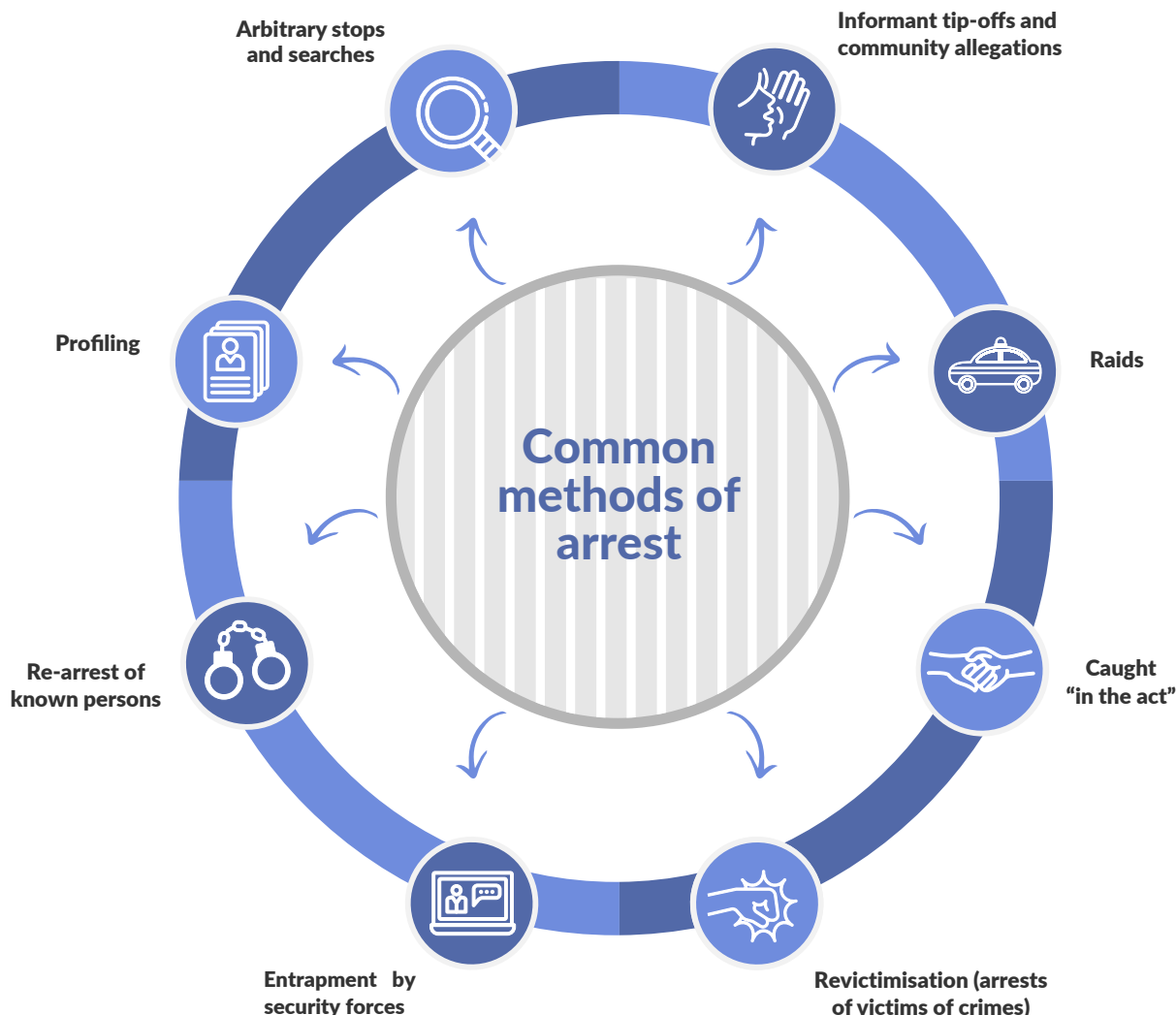
c. *Arbitrary stops and searches*

Arbitrary stops and searches appear most common in jurisdictions with a heightened military presence, widespread police checkpoints, or some form of “state of emergency” in place, though the practice is by no means unique to such jurisdictions and examples can be found across virtually all criminalising countries. Police have been known to randomly stop suspects in the street or at checkpoints and search their personal belongings for anything illicit, though sometimes this is far from random and in fact informed through police profiling and prejudice. In some cases the presence of condoms or antiretroviral medication will arouse suspicion, in others the possession of makeup by someone not legally recognised as a woman. Human rights defenders with educational materials or publications on their person are also regularly detained.

The widespread searching of smartphones and computers for incriminating evidence, either arbitrarily in the street or after the detention of a suspect, has also been documented. Inspection of pictures stored in smartphones or conversations on social media and dating apps appear to be a primary source of “incriminating” evidence in numerous documented instances.

d. *Entrapment (by security forces)*

Entrapment, usually online, has been identified as a common tactic worldwide. Entrapment is not exclusively utilised by police, as vigilante groups might also engage in this behaviour to lure and assault suspected gay men and MSM, or simply to hand those they entrap over to police themselves. But regardless of the perpetrator, some key features are common in such cases, such as the use of apps specifically meant for dating; the arrangement of an in-person meeting at the home of one of the parties, a hotel, or in a public space such as a park or coffee shop; and the presence of police either at the scene or waiting nearby. Often, police will approach the suspect with



Certain methods of arrest appear to be common across different regions

cameras to document the encounter, or otherwise use the digital record of communications between the suspect and the entrapper as evidence upon which to lay charges, or simply demand a bribe.

Notably, police entrapment plays an outsized role in arrests and targeting in jurisdictions such as Egypt, to a degree which suggests it has taken on an almost-formal status as a part of police procedure.

e. Informant tip-offs and community allegations

A significant number of examples of enforcement throughout this report, in virtually all regions, come from community allegations or information supplied by third parties. Some of the tactics used for online entrapment

involve the use of an informant (or sometimes a victim working to identify a new target for police in exchange for their freedom). Law enforcement also regularly receive calls from neighbours, colleagues and even family members. On occasion, a mob caught assaulting a person of diverse SOGIE, or some other individual guilty of theft or assault against the person, will evade justice by identifying their victim as a member of the LGBT+ community.

The standard of evidence in many of these cases is astoundingly low. Interpersonal animosity, suspicion of anyone behaving outside of social norms, or simple misunderstandings can often lead to almost immediate action by authorities. Where investigations do take place, they will usually occur while suspects are in detention as

a means to retroactively seek evidence and justify acting on hearsay.

f. Profiling

Each region has its own stereotypes about the appearance, behaviour and motivations of people of diverse SOGIE. These often lead to law enforcement or informants simply detaining those deemed non-normative by local standards. This may result in the targeting those with diverse gender expressions, as outlined above, or it may manifest as police frequenting known or suspected “hangouts”. Men who live on the same property, or sit together in a parked car, are often profiled as being gay, while lesbian women can be targeted for simply refusing the advances of the men around them (including police officers), hugging in public, or having unusual hairstyles. Trans women, and indeed many persons of diverse SOGIE identities, are also often profiled as sex workers and thus targeted on that basis if found loitering in public for extended periods. Many such cases of profiling are not included in this report, however, given the uncertainty around whether victims were indeed targeted directly as a result of their SOGIE status, or rather on the basis of “prostitution”.

g. Revictimisation (arrests of victims of crimes)

Numerous instances documented in this report show how people of diverse SOGIE who were victims of crimes were arrested when trying to report those crimes to the police, on the basis that their testimonies or behaviours arouse police suspicion. This has even been the case with victims trying to report sexual abuse and rape and receiving incarceration as a response.

These cases represent clear evidence that in numerous criminalising jurisdictions the State provides no protection to people of diverse SOGIE, even when in need of assistance. Where diverse gender expression—or another trait or known characteristic—has the potential to render any interaction with authorities a venture that brings with it the risk of imprisonment, State protection becomes virtually non-existent.

The risk of victims being revictimised and arrested upon reporting crimes they suffered has even been acknowledged by the Cameroonian delegation to the UN when it noted in 2016 that the criminalisation of same-sex sexual activity might preclude LGBT+ from feeling safe to do so.¹³

Additionally, in many criminalising jurisdictions people previously arrested by police will be rearrested or revictimised. Sometimes police recognise them, or possibly maintain some kind of database, while other times the stigma of arrest results in repeated allegations

by neighbours or community members, resulting in a self-perpetuating cycle.

10. Certain forms of “evidence” are commonly used to arrest and charge people across regions;

Based on the number of documented instances compiled for this report, certain forms of questionable evidence commonly used by authorities to arrest and charge people could be identified across regions. These include:

a. First-hand accounts

As identified above, testimonies from witnesses, as well as police witnessing same-sex activity and catching suspects “in the act” form a significant portion of the evidence in a great deal of instances of enforcement.

While investigations will often seek other forms of evidence, or attempt to coerce confessions from detainees, the evidentiary requirements from witnesses is quite often low, often resulting in hasty arrests and lengthy pretrial detentions.

Notably, several Sharia courts require four male witnesses for convictions, especially in cases where the death penalty may be meted out.¹⁴ This, however, only occasionally seems to happen in these jurisdictions, with some notable examples being of judges in Iran supplementing a lack of witnesses with their “discretionary knowledge”.¹⁵

b. “Incriminating” items and online content

Across many jurisdictions which criminalise “cross-dressing” and “impersonating the opposite sex”, the mere possession of makeup by persons not legally recognised as women has resulted in their arrest, regardless of whether they were presenting in a feminine manner at the time of their encounter with law enforcement. Many trans women who have undergone medical transition by taking feminising hormones will also have their own bodies used against them, being accused of impersonation on account of having feminine facial features or breasts. Persons of diverse SOGIE also remain susceptible to arrest if found with condoms, lubricant, or other items associated by authorities with anal sex. HIV-related medication, literature on sexual health, or publications on SOGIE advocacy and human rights, have also been used as evidence against suspects.

Numerous cases from many different jurisdictions also demonstrate the use of digital photographs or videos (both those posted online or kept privately on phones

¹³ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure. Fifth periodic reports of States parties due in 2013: Cameroon*, CCPR/C/CMR/5, 29 December 2016, para. 46.

¹⁴ ILGA World, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020); Mai Sato and Christopher Alexander, *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty* (2021).

¹⁵ UNHRC, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston* Addendum*, A/HRC/14/24/Add.1 (2010), para. 450; Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 21-22.

and computers), and explicit conversations between suspects and third parties, as another form of evidence.

c. *Forced anal examinations*

Numerous jurisdictions covered in this report have been documented as forcing persons suspected of engaging in same-sex activity (primarily trans women, gay men and MSM) to undergo anal examinations. Anal examinations have long been denounced as human rights violations and torture by bodies such as the UN Special Rapporteur on Torture and the International Rehabilitation Council for Torture Victims, to name but a few.¹⁶ Anal exams are an inaccurate method for gathering so-called “evidence” of anal intercourse. This invasive and pseudo-scientific practice usually involves a law enforcement officer or medical practitioner visually examining and feeling a detainee’s rectum to determine its shape.¹⁷ A “conical” rectal cavity is often wrongly assumed to be evidence of regular and repeated anal intercourse. Such tests have been documented as being used against victims of rape as well, with authorities reportedly refusing to arrest alleged rapists on the basis that their victim had a presumed history of anal intercourse, often resulting in the victim being arrested and charged instead. Notably, widespread outcry regarding this practice did lead to its prohibition in Lebanon in 2012 and Kenya in 2016, though in the years after the bans several detainees would still be subjected to anal examination by authorities. Tunisia also banned *forced* anal examinations in 2017, but permitted suspects to submit themselves voluntarily to the practice. Since then several examples have been documented of police and courts interpreting suspects’ refusals to undergo the exams voluntarily as evidence that they are attempting to hide their guilt.

The practice of vaginal examination or “virginity testing” has also been identified in numerous countries. This practice—less widely documented but no less invasive or inaccurate than anal examination—is often used to determine the sexual histories of lesbian women and trans men.

d. *Confessions*

Though some suspects may confess willingly to police that they had engaged in same-sex sexual activity, either not realising that they would incriminate themselves as having engaged in illegal acts, or believing it would result in clemency from the authorities, confessions are not always given willingly. Across the board, ILGA World has noted cases of confessions allegedly extracted through torture and beatings, deprivation of food or other basic human rights, or as a result of authorities falsely promising to release the accused in exchange for a confession. Several cases have been documented in which police draft confessions for detainees to sign, paying no heed to whether the content therein is accurate and often not even giving them an opportunity to read or dispute the document before making them sign it. The confession of the accused is often treated as the highest possible proof that a crime has been committed, but across the globe a great number of

confessions appear to have been made under such conditions that their validity should be strongly questioned.

e. *No evidence*

Based on the details around the primary types of evidence put forward by authorities against suspects, and the widespread nature of police prejudicial profiling against non-normative persons, it should come as no surprise that a significant number of cases simply are not based on any evidence, whatsoever. In numerous jurisdictions, a mere accusation, suspicion, or interpersonal gripe can land someone in police custody. Police have sometimes been accused of planting evidence when they failed to find any at the scene of an arrest.

A lack of evidence can and does regularly lead to suspects being released without having to go to trial, or being acquitted in court, but the impact of the abuse and detention on innocent persons in such situations cannot be overstated.

11. Police abuse and mistreatment of detainees appears to be present in every documented instance of enforcement

There is overwhelming documentation of police beating, humiliating, torturing, raping or otherwise abusing people of diverse SOGIE while arresting and detaining them. This is evident in virtually all countries identified in this report.

Requests for sexual favours appear to be a recurrent practice, especially when trans women are arrested. Profanity and derogatory language have been largely removed from each individual entry throughout the report, but in almost every single case mistreatment appears to be the rule. In many documented cases, while detainees are locked up in police stations, officers incite or allow abuse to be perpetrated by other inmates with impunity, which may even include rape and other forms of sexual, physical and psychological violence.

A common tactic of psychological violence against trans women and transfeminine persons is forced “masculinisation”, in which authorities will shave their hair or make them undergo rigorous physical activities, often akin to military bootcamps. This attempt at enforcing State power through humiliation has been noted in numerous jurisdictions, but of course has no efficacy on the gender identities of detainees.

The existence of criminalising provisions appears, then, to give law enforcement officers a sense of power over their victims, allowing them to abuse suspected persons of diverse SOGIE with impunity, or extort bribes from

¹⁶ “Tunisia: UN Panel Condemns Forced Anal Exams”, *Human Rights Watch*, 23 May 2016; International Rehabilitation Council for Torture Victims, *Statement on Anal Examinations in Cases of Alleged Homosexuality* (accessed November 2021).

¹⁷ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016).

them. Many victims of such violations do not lay formal complaints for fear of revictimisation.

12. A person's economic status can play a key role in evading enforcement

Enforcement of provisions criminalising consensual same-sex sexual acts and gender expression do not escape the logics and the dynamics of criminal enforcement in general. Hence, as with other forms of institutional violence, economic status tends to serve as a major factor in protection against the most serious violations, with criminal systems disproportionately targeting the poor and the destitute.

In numerous jurisdictions where police corruption is rife, the impact of criminal enforcement often varies greatly depending on an individual's ability to bribe law enforcement and "buy" their way out of lockup, or avoid it altogether. In this regard, avoiding imprisonment can be crucial to avoid a context in which numerous other—and often more serious—violations frequently occur.

Additionally, even within the boundaries of the law, prohibitive monetary bail costs mean that those who cannot afford them—or do not have a support network from which to receive help—will usually remain incarcerated for longer periods of time and will thus likely be exposed to more violence, humiliation and rights violations.

Among the many related issues not covered in this publication, one that appears to remain largely unexplored is the lived reality of people who have either been arrested, prosecuted or even sentenced for consensual same-sex sexual acts or gender expression, especially after they were liberated. Besides the stigma that is known to be carried by those who fall victim of the criminal system for these "crimes", very little appears to have been documented about their fates, their possibilities of redoing their lives in their communities, their need to flee their country, or their survival strategies.

What does international law say about the enforcement of laws that criminalise us?

By María Roques de Borda ¹

A problematic legal basis

The main focus of this report is on documented instances of people being arrested, prosecuted, charged and convicted in court on the basis of their gender expression, or for having consensual sex with another person of the same gender. In many countries (currently more than 65) this occurs under laws that explicitly or implicitly criminalise such acts. All of these laws, which ILGA World has highlighted over the past years in reports such as *State Homophobia* and *Trans Legal Mapping*, are incompatible with international human rights law. Therefore, any State procedure carried out on the basis of them is always arbitrary and, as will be discussed in this article, is in and of itself a violation of human rights.

To understand how these norms have been declared incompatible with international law, it is essential to review how the highest international bodies dedicated to the protection of human rights, both at the universal and regional levels, have ruled. Their decisions and recommendations are of vital importance in order to know the relevant standards and thus understand how States that still maintain these types of norms—and especially those that apply them—are in violation of international law.

Criminalisation of consensual same-sex sexual acts between adults

The first international human rights court to declare such laws incompatible with international law was the European Court of Human Rights (ECHR) in the case of *Dudgeon v. United Kingdom*. In this case, the ECHR ruled that the existence of these laws violated the right to privacy (protected under the European Convention on Human Rights),² which served as a precedent for subsequent cases. This decision resulted in Northern

Ireland (a constituent country of the United Kingdom) repealing laws criminalising consensual sexual acts between adults of the same sex in private. Subsequently, in *Norris v. Ireland*, the same Court recognised that although there was no risk of prosecution in the particular case because the laws had fallen into disuse—i.e. there was no record of their actual enforcement—their *very existence* was dangerous. This is because in the absence of a rule preventing their effective enforcement, there was a possibility that they could be used in the future if, for example, there was a change in policy. Accordingly, the ECHR found that David Norris was "at risk of suffering directly from the effects of the contested legislation" and thus of having his right to privacy affected.³

At the United Nations level, the legality of laws criminalising consensual same-sex sexual relations between adults was first debated by the Human Rights Committee in 1994 in the *Toonen v. Australia* case. This decision resulted in the repeal of "sodomy" laws that existed in a sub-national jurisdiction in Australia (Tasmania). The Committee found that such legislation was incompatible with the right to privacy and, notably, also incompatible with the right to equality before the law.⁴ The Committee also explained that it was irrelevant whether the laws are enforced in practice or not, as their very existence is a continuing and direct interference with the privacy of individuals.⁵

This standard was reinforced by the Inter-American Commission on Human Rights (IACHR) in the case of *Gareth Henry and Simone Carline Edward v. Jamaica* in 2020, as it was made clear that these laws—in addition to representing a violation of the right to privacy⁶—also

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² European Court of Human Rights, *Dudgeon v. United Kingdom* (Judgment No. 7525/76), 22 October 1981, para. 41

³ European Court of Human Rights, *Norris v. Ireland* (Judgment No. 10581/83), 26 October 1988, para. 33

⁴ Human Rights Committee, Communication No. 488/1992, *Toonen v. Australia*, CCPR/C/50/D/488/1992, 31 March 1994, paras. 8.1 y 8.2

⁵ *Id.*, para. 8.2

⁶ Inter-American Commission on Human Rights, *Gareth Henry and Simone Carline Edwards v. Jamaica*, Merits Report, (OEA/Ser.L/V/II.173), 31 December 2020, para. 85.

violate the principle of equality and non-discrimination, a pillar of human rights.⁷

Since its inception, the mandate of the UN Independent Expert on discrimination and violence based on sexual orientation and gender identity (hereinafter "IE SOGI") has repeatedly spoken out against laws that criminalise sexual acts between adults of the same sex.⁸ Similarly, over the years and based on these pronouncements, other human rights mechanisms and UN agencies have been making similar pronouncements in thematic or periodic statements and reports.⁹

Criminalisation of diverse gender expressions

The development of specific international standards on the criminalisation of diverse gender expressions has only recently been consolidated. Although the number of countries that *de jure* criminalise such expressions is relatively limited, this does not imply that the problem is any less serious, as there are a large number of non-explicit legal provisions that continue to be used throughout the world to criminalise trans and gender-diverse people.¹⁰

The UN Working Group on Arbitrary Detention has made explicit reference to norms that criminalise "cross-dressing" or the "imitation of persons of the opposite sex" in order to point out their incompatibility with international human rights standards.¹¹ Several UN mechanisms, including the Human Rights Committee,¹² the Committee on Economic, Social and Cultural Rights,¹³

the IE SOGI,¹⁴ the Special Rapporteur on extrajudicial executions,¹⁵ the Special Rapporteur on the right to health,¹⁶ the Special Rapporteur on the right to privacy,¹⁷ and the Working Group on discrimination against women and girls,¹⁸ among others, have themselves made similar pronouncements on the matter.¹⁹

More specifically, the IE SOGI highlighted that there are many types of laws that criminalise diverse gender identities and expressions. These include provisions on "impersonation", laws on begging, HIV, sex work, or regulations on disorderly conduct and loitering, which are applied in ways that are punitive to transgender people and especially transgender women.²⁰ The IE SOGI also noted that several States have taken steps to decriminalise trans people, citing as an example Samoa, where the "impersonation of a woman" provisions used to arrest and fine trans and *fa'afafine* people were repealed.²¹

For its part, in 2020, in declaring the incompatibility of "anti-vagrancy laws" with the African Charter, the African Court of Human and Peoples' Rights expressly included gender non-conforming people among those who are effectively targeted by these provisions, and stressed that these laws "serve to aggravate their situation by further depriving them of their right to be treated equally before the law".²²

In the Americas, the Inter-American Commission on Human Rights made its contribution in 2015, referring to laws in force in Guyana that criminalised the wearing of clothing traditionally associated with another gender

⁷ Note: Although the Inter-American Court has not yet had the opportunity to rule on this type of criminal law of general enforcement, in the case of *Homero Flor Freire v. Ecuador*, the Court found that the Ecuadorian Military Disciplinary Regulations regulated the commission of sexual acts within the armed forces in two different ways and established, among other issues, that by imposing harsher penalties for sexual acts between persons of the same sex, the regulation was discriminatory on the basis of sexual orientation. See: IACourtHR, *Case of Flor Freire v. Ecuador (Preliminary Objections, Merits, Reparations and Costs)*, 31 August 2016.

⁸ Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity*, A/72/172, 19 July 2017, para. 31.

⁹ For example, in 2015, twelve agencies issued a joint statement calling for the repeal of laws that criminalise same-sex sexual acts between consenting adults and diverse gender expressions, as well as other laws used to arrest, punish or discriminate against people on the basis of their sexual orientation, gender identity or gender expression. See: *United Nations entities call on States to act urgently to end violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children* (2015).

¹⁰ See, among others: ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020); Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts* (2019).

¹¹ Human Rights Council, *Report of the Working Group on Arbitrary Detention*, A/HRC/48/55, 6 August 2021, para. 41.

¹² Human Rights Committee, *Concluding observations on the third periodic report of Kuwait*, CCPR/C/KWT/CO/3, 11 August 2016, para. 13.

¹³ Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/22, 2 May 2016, para. 23.

¹⁴ United Nations General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity*, A/73/152, 12 July 2018, para. 7.

¹⁵ UN General Assembly, *Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions*, A/73/314, 7 August 2018, para. 81.

¹⁶ Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Indonesia*, A/HRC/38/36/Add.1, 5 April 2018, para. 87; *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/32/33, 4 April 2016, para. 61.

¹⁷ Human Rights Council, *Report of the Special Rapporteur on the right to privacy*, A/HRC/43/52, 24 March 2020, para. 28; *Report of the Special Rapporteur on the right to privacy*, A/HRC/43/52, para. 37.

¹⁸ Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and practice on its mission to Kuwait*, A/HRC/35/29/Add.2, 24 May 2017, para. 35. Here the Working Group expressed concern about the amendment of article 198 of the Kuwaiti Penal Code in 2007-which states that anyone who "imitates the opposite sex in any manner" is liable to a one-year prison sentence and a fine of KD1,000-saying that it leaves transgender women in Kuwait vulnerable to discrimination on the basis of sexual orientation and gender identity.

¹⁹ See: *United Nations entities call on States to act urgently to end violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children* (2015).

²⁰ United Nations General Assembly, *Report of the Independent Expert on protection against violence and discrimination on the basis of sexual orientation or gender identity*, A/72/172, para. 48.

²¹ *Id.*, para. 30.

²² African Court of Human and Peoples' Rights, *Advisory Opinion 1/2018: The compatibility of vagrancy laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa*, 4 December 2020, para.

(*cross-dressing*), stating that these provisions are discriminatory on the basis of gender identity and expression and that they contributed to the reinforcement of gender stereotypes.²³ It also urged States in the region to repeal these laws and, until such time, to declare explicit moratoriums on their enforcement.²⁴

Of particular relevance also is the 2018 decision of the Caribbean Court of Justice, which confirmed that provisions criminalising *cross-dressing* represent fundamental human rights violations by ordering the repeal of section 153(1) of Guyana's Summary Offences and Trial Act.²⁵

Corollary

In conclusion, in light of the rulings of the highest international courts and bodies, it is clear that the mere existence of norms criminalising consensual sexual acts between adults of the same sex and those criminalising diverse gender expressions is contrary to international law and human rights standards. Consequently, any State action based on these norms will also violate these standards. In other words, the concrete enforcement of these norms by security forces will inevitably be incompatible with States' human rights obligations. There can be no other conclusion than that. What this report compiles, then, is an extensive and lamentable collection of human rights violations against people of diverse sexual orientations, gender identities and expressions around the world.

Direct violations as a result of the enforcement of criminalising laws

The concrete enforcement of laws criminalising same-sex sexual relations between consenting adults and diverse gender expressions is put into practice through arrests, prosecutions and convictions that blatantly affect the rights of the people who are victims of these procedures.

Firstly, people suffer violations of their **personal liberty** when they are detained under such laws. Secondly, as reflected in the content of this publication, in the vast majority of cases during the time in which they are deprived of their liberty in detention centres, their **physical and psychological integrity** is violated due to the cruel, inhuman and degrading treatment to which they are subjected. The discriminatory nature of the laws that give rise to these detentions means that each instance of their enforcement also constitutes a violation of the **right to equality before the law** and the **right to non-discrimination**. Likewise, in certain cases, their **right to**

life can even be affected when the death penalty may be applied as a form of punishment.

There are also a large number of other rights that are often violated indirectly, or in a related way by the enforcement of these norms, which will also be addressed in the following sections.

Violation of the right to liberty

Individuals suffer violations of their right to **liberty** when they are detained under such laws, as such detentions are in and of themselves usually arbitrary. This is contrary to the State's obligation to protect the right to liberty and security of the person, which includes the right to be free from unlawful or arbitrary arrest and detention.²⁶

Among the United Nations human rights mechanisms that have focused specifically on this type of violation is the Working Group on Arbitrary Detention. Indeed, the standard clearly delineated by the mandate in this area points out that:

Criminalisation of sexual relations between consenting adults or of a person's gender identity and expression, such as laws prohibiting "cross-dressing" or "impersonation of persons of the opposite sex", is *prima facie* discriminatory and constitutes arbitrary interference with the privacy of individuals in violation of Article 17 of the Covenant and Article 12 of the Universal Declaration of Human Rights. Accordingly, the arrest and detention of LGBTIQ+ persons on the basis of such laws is arbitrary not only because it constitutes a violation of international law on grounds of discrimination based on sexual orientation or gender identity, but also because there is no legal basis for such detention, as such laws violate States' obligations under the Covenant and the Universal Declaration of Human Rights.²⁷

This has been the position that the Working Group has consistently maintained when pronouncing on concrete cases that have come to its attention from victims of this type of violation,²⁸ or during visits to countries that criminalise.²⁹

Furthermore, in 2012, the Working Group included detentions based on discriminatory grounds such as sexual orientation or gender among those that violate principles of customary international law.³⁰ The Working Group further made clear its stance on these detentions by explicitly referring to norms that *de facto* criminalise

²³ IACHR, *Violence against LGBTI persons in the Americas*, OAS/Ser.L/V/II.rev.2 Doc. 36, 12 November 2015, para. 71.

²⁴ *Id.*, para. 425.

²⁵ Caribbean Court of Justice, *CCJ Declares Guyana's Cross-Dressing Law Unconstitutional*, 13 November 2018.

²⁶ Human Rights Council, *Discrimination and violence against persons on the basis of their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015, para. 15.

²⁷ UN General Assembly, *Report of the Working Group on Arbitrary Detention*, A/HRC/48/55, 6 August 2021, para. 41.

²⁸ See, for example: *Opinion No. 7/2002* (Egypt), 23 January 2003; *Opinion No. 22/2006* (Cameroon), 31 August 2006; *Opinion No. 42/2008* (Egypt), 25 November 2008; *Opinion No. 25/2009* (Egypt), 24 November 2009.

²⁹ See, for example: *Visit to Qatar: Report of the Working Group on Arbitrary Detention*, A/HRC/45/16/Add.2, 30 July 2020, para. 92(g).

³⁰ Human Rights Council, *Report of the Working Group on Arbitrary Detention*, A/HRC/22/44, 24 December 2012, para. 38(e).

persons of diverse sexual orientations or gender expressions, stating that:

The arrest and detention of LGBTIQ+ persons on the basis of their sexual orientation or gender identity, such as in relation to "morality", "debauchery", "crimes against the order of nature", "public or serious scandals", or offences of "indecent acts" are equally discriminatory and in violation of international law.³¹

Hence, the Working Group has consistently recommended that States urgently review any laws criminalising consensual same-sex sexual acts between adults of the same sex and diverse gender expressions and, consequently, refrain from detaining persons under such laws.³²

Violation of the right to physical and psychological integrity

The enforcement of these norms does not merely deprive people of their liberty in an arbitrary manner. Once people are deprived of their liberty, violations of their human rights very often continue and worsen in detention centres, affecting several closely related rights such as the right to be free from torture, cruel, inhuman and degrading treatment, the right to physical and psychological integrity and the right to humane treatment in detention.

This has been noted by the Subcommittee on Prevention of Torture, which has noted that violence against LGBT+ persons "is exacerbated" for the duration of their stay in detention centres.³³ Indeed, several UN mechanisms have consistently expressed concern about torture and ill-treatment of LGBT+ persons in detention perpetrated by State agents.³⁴

In addition, as documented throughout this report, forced anal examinations—an invasive pseudo-scientific practice that has been widely discredited and declared contrary to the prohibition of torture and ill-treatment—continue to be used as "evidence" in a number of jurisdictions.³⁵ In this regard, the Working Group on Arbitrary Detention has added that such examinations can also be carried out as methods of punishment and coercion to extract confessions.³⁶

For her part, the Special Rapporteur on violence against women has noted that persons who do not have a heterosexual orientation, or whose gender expression does not fit exactly into binary categories, are particularly vulnerable to abuse by both prison staff and other inmates.³⁷ Women with more typically masculine gender expressions are often subjected to harassment and physical abuse, suffering humiliation and "forced feminisation".³⁸ In the case of trans, non-binary or gender-diverse people, deprivation of liberty often involves being housed according to the sex assigned at birth. For example, trans women are regularly housed in cells with cis men, and are thus exposed to a considerably higher risk of sexual and physical violence.

Based on the above, it is not difficult to appreciate the extremely burdensome context that a person who is subjected to such conditions while in detention must go through. The physical and psychological suffering of being humiliated, repudiated and violated on a daily basis during the period of detention will be complemented by the stigma that usually accompanies these people even after their release. Although there is not much research on documented life experiences of people after being subjected to these processes, it can be assumed that there will be considerable difficulties in settling back into one's own community, and living life in a dignified manner without the risk of further violence or discrimination.

Violation of the right to equality before the law and freedom from discrimination

As outlined above, numerous human rights mechanisms have identified the discriminatory nature of norms criminalising consensual same-sex sexual acts between adults or diverse gender expressions. Hence, any State action based on these norms is equally discriminatory and contrary to the right to equality before the law.

On the one hand, laws on consensual sexual acts—even when drafted in a way that affects people of different genders—have a disproportionate impact, both in theory and in practice, on non-heterosexual people.³⁹ On the other hand, where laws prohibit the wearing of clothing of the "opposite sex", or the "imitation of persons of the opposite sex", the laws establish discriminatory differential treatment on the basis of gender and gender expression. In other words, persons whose gender

³¹ UN General Assembly, *Report of the Working Group on Arbitrary Detention*, A/HRC/48/55, 6 August 2021, para. 42.

³² Human Rights Council, *Discrimination and violence against persons on the basis of their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015, para. 15; UN General Assembly, *Report of the Working Group on Arbitrary Detention*, A/HRC/48/55, 6 August 2021, para. 43.

³³ Committee against Torture, *Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/OP/C/57/4, 22 March 2016, para. 60-67;

³⁴ See, inter alia: Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, para. 13; Human Rights Council, *Discrimination and violence against persons on the basis of their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015, para. 34.

³⁵ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, A/HRC/22/53, 1 February 2013, paras. 76, 79.

³⁶ Working Group on Arbitrary Detention, *Opinion No. 25/2009* (Egypt), 24 November 2009, para. 28.

³⁷ *Discrimination and violence against persons on the basis of their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015, para. 36.

³⁸ *Ibid.*

³⁹ In many countries, the rules used to criminalise consensual sexual acts between adults of the same sex also prohibit certain sexual acts between people of different genders, such as extramarital sex, anal sex or oral sex. For more information, see: ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State Sponsored Homophobia: A Global Legislative Landscape Update* (2020).

expression conforms to culturally accepted parameters of "femininity" and "masculinity" will not be affected by these laws. Hence, these norms particularly affect trans, non-binary and gender-diverse people, although they can also have oppressive effects on cis people.

In this way, the original flaw in the laws that give rise to these arrests is carried over to all acts that are carried out by derivation.

Violation of the right to life

We will conclude this section by referring to a final right that is directly affected by the enforcement of laws that impose the death penalty as a punishment for consensual same-sex sexual relations between adults.

In 2020, ILGA World published a special dossier on the imposition of the death penalty for consensual same-sex sexual acts in which the relevant international standards on the matter are analysed. The dossier also takes a detailed look at which UN Member States still impose (or are likely to impose) the death penalty, detailing the specific legal framework in each jurisdiction, international advocacy on the issue, and the history of enforcement of the death penalty in each jurisdiction. For the sake of brevity within this report we encourage readers to refer to that publication for more detailed information.⁴⁰

It is worth mentioning that, indirectly, the concrete enforcement of these laws may expose a person to arrest, prosecution or conviction for which they may eventually be exonerated, but the stigma and shame that such a circumstance brings may be sufficient reason for the family in many contexts to decide to kill the person in what have been termed "honour killings". In such circumstances, the prevailing logic demands that the stigma be purged by killing the "perpetrator".

Possible violations of other related rights as a result of the enforcement of criminalising norms

The rights discussed so far are not the only ones undermined by the enforcement of norms criminalising consensual same-sex sexual acts between adults and diverse gender expressions. The actual implementation, as well as the mere existence of these norms, can lead to violations of other related rights on multiple levels. Only a few of these are discussed below.

Right to health

The concrete enforcement of such laws can have a strong impact on the right to health. Indeed, for those who have suffered detention, prosecution and custodial sentences as a result of these laws, the physical and psychological effects of all that is involved in going through the processes described above have the

potential to easily erode one's physical and mental health.

Likewise, without a social network of support and containment, access to adequate food is often difficult, which is aggravated by the generally inhumane conditions in which many people are detained around the world.

Furthermore, the fact that same-sex sexual acts constitute a criminal offence is used as a reason for the non-distribution of condoms inside prisons, which increases the risk of transmission of sexually transmitted infections inside detention facilities. During times of deprivation of liberty, it is common for authorities to obstruct or fail to provide adequate distribution of antiretroviral medication for people living with HIV and even deprive them of medical care, further aggravating their health situation.

In the same vein, governments prohibit the distribution of sexual prophylaxis and care methods, such as condoms and lubricants, on the grounds that they supposedly encourage and promote criminal activity. This is another way in which the enforcement of norms criminalising consensual adult same-sex sexual relations and gender expression affects the right to health.

Right to employment

Some of the cases surveyed in this report show that people who are subjected to arrest and prosecution based on norms that criminalise same-sex sexual acts or diverse gender expressions are often socially stigmatised, which can lead to dismissal from their jobs and loss of livelihoods.

While these laws have the effect of hindering access to the labour market and contributing strongly to high rates of poverty among people of diverse sexual orientations and gender identities, in the specific case of a person who has publicly experienced the "scorn" of being detained or prosecuted under these laws, the marginalisation to which they may be subjected is clearly greater.

Right to housing

Just as the stigma of going through a detention or prosecution process implies a concrete risk of losing one's job or limiting future employability, so too can one's right to housing. This can happen both to people living with their families or in a foster home who may be disowned by their relatives and caregivers, and for people who rent housing who are at risk of sudden and often violent eviction from their landlords.

⁴⁰ See: *Special Dossier: Death Penalty as Punishment for Consensual Same-Sex Sexual Acts* in: ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 31-85.

Right to access to justice

One of the aspects documented in numerous instances in this report is the way in which LGBT+ people are detained when they want to file a complaint for a crime of which they have been victims. This paradoxical situation takes place on the basis of State agents' perceptions of the identities or appearances of LGBT+ people, who - as the report explains - come to be seen as criminals themselves.

This has been corroborated on several occasions and in different jurisdictions, including in cases where victims intended to report serious crimes such as rape, and were automatically re-victimised because of their appearance or because they reported a person of the same sex as the perpetrator. This situation renders any claim of protection by the authorities illusory and leaves the victim helpless in seeking redress. Thus, many victims choose not to report crimes they have suffered for fear of being subjected to further criminal charges. This also leads to a loss of confidence in the judicial system, given the almost absolute certainty that investigations into such crimes will not be conducted.

Finally, the additional burdensome consequence of this phenomenon is that it largely invisibilises official documentation of violence against LGBT+ people. Thus, laws that criminalise consensual same-sex sexual acts and diverse gender expressions are not only a matter of the legislation, but also of law enforcement and access to justice.

Right to freedom of association

Often, the enforcement of these standards has a concrete effect on the right to freedom of association. Indeed, numerous documented instances of activists being targeted for their human rights work are detailed throughout this report. Beyond the inhibiting effect that criminalising laws have on the possibility of formally registering civil organisations in order to advocate for legal and social change,⁴¹ the enforcement of laws criminalising consensual sexual acts or diverse gender expressions in cases of human rights defenders has a particularly chilling effect on others who wish to engage locally in social impact initiatives.

Right to receive and impart education

Related to the effects they may have on the right to freedom of association, the enforcement of these laws can seriously interfere with the educational work that many human rights defenders and advocates carry out. Indeed, there have been documented instances of people being arrested or prosecuted for giving workshops or

disseminating information related to sexual and gender diversity, prevention of sexually transmitted infections, or healthy relationships. This is because these materials, or content related to them, are regularly considered to be tools of criminal activity, or "pornographic" and "immoral" material.

This also has the effect of limiting the possibilities for the provision of comprehensive sexuality education that guarantees the right to access scientific, age-appropriate information and enables informed sexual health decision-making. Thus, the right to education is curtailed when the dissemination of such information is considered criminal. As a result, the lack of comprehensive sexuality education leads to the use of materials laden with stereotypes and prejudices that contribute to violence against people with diverse sexual orientations and gender identities.

Conclusion

In conclusion, the enforcement of norms that criminalise consensual same-sex sexual relations and diverse gender expressions violates international human rights law and standards. Consequently, detention, prosecution and conviction based on criminalising legislation are in violation of international standards.

There is also interference with the right to health, the right to freedom of expression and association—both directly and indirectly. In addition, the right to education is violated and the right to access to justice is severely affected, as well as the right to employment. All of this is framed by the legitimisation that the enforcement of these norms provides for a context of violence, where cruelty towards people with diverse sexual orientations and gender identities is protected by the State. In this way, States violate their international obligations to protect their citizens.

Both the aforementioned direct and indirect consequences arising from the enforcement of these norms result in people with diverse sexual orientations and gender identities being discriminated against and at constant risk. As a result, this often results in the need to flee in order to find physical and psychological safety. But in fleeing their place of origin in search of peace, they often encounter multiple barriers to being recognised as refugees and obtaining such protection. This is because prejudices unfortunately still exist around the world, interfering with the protections they should be afforded. The challenges they face once they flee their State and seek refuge will be further explored below.

⁴¹ For more information see section on "Legal restrictions on the registration or operation of organisations working on sexual and gender diversity issues" in ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State Sponsored Homophobia 2020: A Global Legislative Landscape Update* (Geneva; ILGA, December 2020).

The Enforcement Standard: Too high a bar for LGBT refugees

By Francisco Peña Díaz¹

The violence and discrimination that LGBT people face around the world drives many of them to flee their countries to seek the protection that their States are unwilling or unable to provide. However, those fleeing such persecution often face asylum systems that are hostile to their claims, encountering significant obstacles even in countries deemed to be more 'open' to sexual and gender diversity.

Many of these obstacles stem from the very nature of the asylum procedure. In short, for an asylum claim to be decided favourably, it must be established that the LGBT applicant has fled their country because they have a **well-founded fear of persecution** on grounds of sexual orientation, gender identity or gender expression, and that their State is unable or unwilling to protect them from such persecution. In other words, it must be proven that there is a probable risk of a violation of their most basic human rights if the applicant is returned to their country of origin.

The assessment of an asylum claim is therefore primarily a forward-looking analysis. Although host states can only factually assess the past and current circumstances at the time of the application, they must consider the likelihood that, should the person subsequently be returned to their country, they would face persecution.

In this context, the term "persecution" is not a term used in its ordinary meaning, but has a specific one, and is of particular relevance to issues relating to the criminalisation of persons on the basis of their sexual orientation, gender identity or expression.

Criminalisation as an act of persecution in and of itself

'Persecution' has been described in legal doctrine as the sum of two elements: (1) the gross violation of the applicant's human rights and (2) the unwillingness or inability of their State to protect them from that violation.²

With regard to the former, the severity will depend on the specific circumstances of the applicant. Thus, the stigmatisation and discrimination faced by LGBT persons, while they may not be considered acts of persecution, may result in restrictions on their human rights that are of such a magnitude that they can actually entail to persecution.³ A clear example of this possibility is the criminalisation of consensual same-sex sexual relations between adults, as well as of diverse gender identities and expressions, either through explicit rules or through vague laws that are arbitrarily applied.

Although these laws are discriminatory and contrary to international human rights standards, there is no international consensus that they are "acts of persecution" *per se*,⁴ but rather that "persecution" often **requires these rules to be applied in practice**. That is, they must be used by local authorities to actively arrest, prosecute and convict individuals.

This requirement means that applicants will have to provide evidence that criminalising laws are applied in practice in order for them to be considered a form of "persecution". Otherwise, the inability to do so will often

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² Hathaway, J. C.; Foster, M., *The Law of Refugee Status*, Cambridge University Press, Cambridge, 2014, 185 ; Storey, H., "Persecution: towards a working definition", in CHETAIL, V.; BAULOZ, C. (ed.), *Research handbook on Migration and International Law*, Edward Elgar Publishing, Cheltenham/Northampton, 2014, 459-460.

³ UNHCR, *Guidelines on International Protection No. 9: Refugee Claims Related to Sexual Orientation and/or Gender Identity in the Context of Article 1A(2) of the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol*, (hereinafter "Guidelines No. 9"), 2012, §24-25.

⁴ Hooper, L.; Zilli, L., *Refugee status claims based on sexual orientation and gender identity - a practitioner's guide*, International Commission of Jurists, Geneva, 2016, 140.

be considered an element that mitigates the risk of persecution the person will face if returned to their country.

Often, for "persecution" to exist it is required that the criminalising norms be applied in practice.

However, as the United Nations High Commissioner for Refugees (UNHCR) explains, the mere existence of these laws has an oppressive, stigmatising and discriminatory impact that creates the optimal conditions for persecution to develop, "even when they are not directly applied".⁵ In other words, they contribute to a context of oppression and discrimination that makes LGBTI people more vulnerable to human rights abuses and violations. At the same time, they make it easier for attacks to go unpunished, as they prevent victims of violence based on sexual orientation, gender identity or gender expression from seeking protection from the authorities.⁶ For example, this report documents cases of people who were arrested and prosecuted after going to law enforcement agencies to report violence they had suffered, often at the hands of the police themselves.⁷

Ultimately, as the UN High Commissioner for Human Rights has indicated, criminalising laws "act as barriers to reporting and may contribute to incidents of secondary victimisation in which victims of violent acts suffer harassment, humiliation, abuse or detention when they try to report attacks and seek protection from the police".⁸ Unfortunately, despite these pernicious effects of criminalisation, only a few host States, such as Italy, have considered the possibility that the existence of these laws is an act of persecution in and of itself.⁹

On the opposite side, other states have demanded unreasonably restrictive standards, setting the bar of persecution so high the asylum procedure becomes useless for those persecuted on SOGIE grounds. A paradigmatic example is the jurisprudence of the Spanish Supreme Court during the first decade of the 21st century, which denied international protection to several Cuban applicants on the grounds that the criminalising

norms then in force in Cuba had not entailed "any harmful consequences to their person", while granting it to another applicant who had suffered direct reprisals.¹⁰

The requirement to apply criminalising norms as the most common standard

Despite (or probably because of) this difference in standards between European States, it is primarily in Europe that the analysis of criminalisation as an act of persecution in and of itself has had the greatest legal and jurisprudential development.

At the European Union (EU) level, the Recognition Directive, which defines in Article 9 situations that might be considered as acts of persecution, should be taken into account.¹¹ This definition is a minimum standard to be followed by all EU States and is therefore of particular importance in this region. Specifically, Article 9 states that acts of persecution derive, either by itself or through the cumulation of several measures, from a **serious violation of human rights**. This provision also mentions some forms in which persecution may occur, including several that are highly relevant to the analysis of criminalisation as an act of persecution, such as "legislative, administrative, law enforcement or judicial measures that are discriminatory in themselves or are applied in a discriminatory manner" or "prosecutions or penalties that are disproportionate or discriminatory".¹²

The Court of Justice of the European Union (CJEU) concluded that criminalisation could be considered an act of persecution in the case of *X, Y and Z*.¹³ However, the solution reached by the CJEU, despite representing an advance over the usual practice in Member States such as Spain, is not adequate to protect LGBT refugees, insofar as it considers that criminalisation (in this case, of diverse sexual orientations) does not amount to an act of persecution *per se*, setting a much higher bar than UNHCR. According to the Court, a rule prohibiting consensual relations between adults of the same gender will be an act of persecution only if it meets two requirements: (1) that the envisaged penalty affects a "non-derogable" fundamental right, and (2) that it is applied in practice.¹⁴

On the one hand, the Court considers the mere criminalisation of diverse sexual orientations to not constitute an act of persecution, arguing that "rights

⁵ UNHCR, *Guidelines on International Protection No. 9: Refugee Claims Related to Sexual Orientation and/or Gender Identity in the Context of Article 1A(2) of the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol*, 2012, §27.

⁶ *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity - "Diversity in humanity, humanity in diversity"*, A/HRC/35/36, 19 April 2017, §15.

⁷ For more information on specific cases compiled in this report, see the Main Findings section and the specific references therein.

⁸ OHCHR, *Living Free and Equal*, 2016, 32.

⁹ See, for example: Italy, Corte di Cassazione, No. 13282/2018 as of 17 May 2019.

¹⁰ Spain, Supreme Court, STS 6142/2008, 28 November 2008, FJ 4, in which the Supreme Court compares its judgments of 29 September 2006 (RJ 4511/2003) and 13 December 2007 (RJ 4529/2004).

¹¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted (recast), OJ L 337, 20 December 2011, 9-26.

¹² Article 9 provides that there must be a causal link between these acts of persecution and the reasons for them. Since Article 10 includes membership of a particular social group on grounds of sexual orientation or gender identity among the possible grounds for persecution, it can be inferred that there is a sufficient legal basis for understanding criminalisation as an act of persecution in the EU.

¹³ Judgment of 7 November 2013, *Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*, C-199/12 to 201/12, ECLI:EU:C:2013:720.

¹⁴ Judgment of 7 November 2013, *Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*, C-199/12 to 201/12, ECLI:EU:C:2013:720, §55-61.

specifically related to sexual orientation" are not among the non-derogable rights of Article 15(2) of the European Convention on Human Rights (to which Article 9 of the Qualification Directive expressly refers).¹⁵ Unfortunately, this conclusion completely ignores that criminalisation affects a wide range of human rights, including some of those mentioned in Article 15(2), such as the right to freedom from torture, inhuman or degrading treatment or punishment. Our communities are entitled to enjoy all human rights, so such hierarchical rankings of rights according to their alleged "specific relationship to sexual orientation" are unfounded.

On the other hand, the *X, Y and Z* judgment, in demanding the effective application of the criminalising rules, omits the second paragraph of Article 9 which, as has been pointed out, expressly mentions among the acts of persecution legislative, administrative, police or judicial measures, as well as discriminatory prosecutions or penalties. The CJEU never explains why it has avoided an assessment of this provision, which is clearly applicable to cases of laws criminalising consensual sexual relations between persons of the same gender. Moreover, this requirement creates numerous problems to demonstrate that there is a risk of persecution, which results in new obstacles for LGBT asylum seekers in accessing international protection.

Meanwhile, the European Court of Human Rights (ECtHR) maintains a similar doctrine to that of the CJEU. In a 2004 decision, the Strasbourg Court stated that, insofar as no one had recently been prosecuted solely on the basis of their sexual orientation, it was established that the rule was not being applied with assiduity.¹⁶ This is an absurdly high bar that ignores how accusations of homosexuality often arise in the context of investigations for other crimes (as in the *Dudgeon case*—decided by the Court over 40 years ago)¹⁷ and shows the hostility and incredulity with which asylum claims on grounds of sexual orientation, gender identity or gender expression are received and processed. Indeed, it was not until 2020 that the ECtHR would declare for the first time that the human rights of an LGBT asylum-seeker were violated. The Strasbourg Court refined its position in *B and C v. Switzerland*.¹⁸ While reaffirming that criminalisation does not *in and of itself* preclude the return of a homosexual person to their country of origin, the ECtHR understood that host States must also evaluate whether criminalisation renders effective protection against persecution by non-State actors unattainable. The Court has thus relaxed the restrictive criterion derived from *X, Y and Z* and has extended it to all States that are

members of the Council of Europe (47 states, as opposed to 27 in the EU).

Host States should assess the possibility that criminalisation may preclude effective protection against persecution for persecution by non-State actors

Beyond the European regional context, standards of protection are similar in other countries that provide refuge to thousands of people persecuted because of their sexual orientation, gender identity or gender expression. In a set of guidelines published in 2017, the Immigration and Refugee Commission of Canada explicitly mentions the context of oppression, stigmatisation and impunity created by criminalising norms *even when they are not enforced*. However, in the *Sebastiao* case¹⁹ (expressly mentioned as a reference for these guidelines), the Canadian Federal Court held that it was necessary to prove that criminalising rules are applied in practice.²⁰ Similar criteria are followed by the US Department of Justice,²¹ and the New Zealand Immigration and Protection Tribunal.²²

Difficulties in proving the effective application of criminalising norms

Insofar as the effective enforcement of criminalising laws is a common requirement in host countries protecting LGBT asylum seekers, it is of the utmost importance to analyse how such enforcement can be demonstrated.

Despite it being a much protective standard than requiring *targeted* action *against* the applicant, the way in which this issue is analysed in the context of an asylum procedure is problematic. In addition to ignoring the aforementioned context of oppression and impunity created by criminalisation, host countries that follow this approach have a number of problems in assessing the evidence of enforcement in the country of origin.

Too often, a lack of information on the situation of sexual and gender minorities has been taken as evidence that there is no persecution in the country of origin.²³

¹⁵ Judgment of 7 November 2013, *Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*, C-199/12 to 201/12, ECLI:EU:C:2013:720, §54.

¹⁶ *I.I.N. v. the Netherlands* (dec.), No. 2035/04 of 9 December 2004.

¹⁷ *Dudgeon v. the United Kingdom*, 22 October 1981, Series A No. 45. Moreover, the *I.I.N. v. the Netherlands* decision itself mentions cases of persons prosecuted both for their sexual orientation and for crimes of a political nature, which should already have raised some suspicion in the Court.

¹⁸ *B. and C. v. Switzerland*, Nos. 889/19 and 43987/16 of 17 November 2020.

¹⁹ Canada, Federal Court, *Sebastiao v. Canada (Immigration, Refugees and Citizenship)*, 2016 FC 803 (CanLII), 13 July 2016.

²⁰ Canada, Federal Court, *Sebastiao v. Canada (Immigration, Refugees and Citizenship)*, 2016 FC 803 (CanLII), 13 July 2016, §34.

²¹ United States, Board of Immigration Appeals, *Malu v. United States AG*, 764 F.3d 1282 (11th Cir. 2014), 19 August 2014.

²² New Zealand, Immigration and Protection Tribunal, *AE (Egypt)*, [2012] NZIPT 800226, 24 April 2012.

²³ Jansen, S.; Spijkerboer, T., *Fleeing homophobia - asylum claims related to sexual orientation and gender identity in Europe*, V.U. University Amsterdam, Amsterdam, 2011, 71.

However, there are numerous reasons—many of them assessed in this report—for the absence of information on the situation of LGBT persons in their country of origin.²⁴ Among them, the UNHCR has highlighted the non-existence of LGBT organisations or the numerous legal and structural obstacles they face in their operations, the persecution that activists may suffer, or the very invisibilisation and stigmatisation of LGBT people in a context of widespread repression.²⁵

All of these problems are exacerbated in the cases of jurisdictions that criminalise consensual relationships between adults of the same gender. In many host countries, the lack of information on the application of these criminalising laws is commonly understood as unequivocal evidence that they are not enforced in practice. However, this conclusion is divorced from reality for several reasons.

First, the general context of the country of origin can significantly reduce the number of convictions that are documented. As explained in other sections of this report, where statistics on arrests and prosecutions do exist, they are not always accessible, do not follow a clear systematic pattern, or mix convictions for consensual acts between adults with convictions for acts of sexual violence, among other shortcomings. Usually, there are not even official records of these offenses, as victims are prosecuted outside legal channels (whether by State, religious or tribal authorities), fear of reprisals prevents them from reporting their situation, or there is no mechanism for them to denounce it. In these cases, the data provided by the media may be the only available source, but—as this report reiterates time and again—this information should be interpreted as the *tip of the iceberg*. After all, local media do not always have the capacity to, or the interest, in reporting on all the arrests, inspections, interrogations, prosecutions or convictions to which our communities are subjected.

According to the ECtHR, a law that criminalises can be applied at any time, even if it has not been applied for a long time.

At the same time, evidence suggests that the application of criminalising norms is highly unpredictable. Long periods with no prosecutions at all can be followed by

others in which dozens of people are arrested. As the European Court of Human Rights rightly declared in the *Norris case*, a law in force can be applied at any time **even if it has not been applied for a long time**,²⁶ so it cannot be ruled out that the applicant's fear of future persecution is well-founded. Since the analysis of an asylum claim must assess the risk of persecution that the applicant would face if they are returned to their country of origin, this unpredictability must always be taken into account.

Therefore, in cases where information is missing or incomplete, the decision-making authorities must avoid insufficiently thought and automatic decisions based on the assumption that there is no persecution simply because there is not current data on the enforcement of criminalising laws. Moreover, even when such information does exist, it is not always correctly assessed by asylum authorities. Thus, cases have been documented in which it is used selectively and arbitrarily.²⁷ At the European level, EU law obliges States to collect "accurate and up-to-date" information on the general situation in countries of origin and transit in order to make it available to the examining personnel.²⁸ In order to facilitate the most appropriate information on LGBT persons, the European Asylum Support Office (EASO), whose guidelines shall be taken into account by Member States,²⁹ has published a guide for researching the situation in countries of origin.³⁰

Criminalisation and lack of protection by the State of origin

As stated at the beginning of this article, persecution is usually understood as the sum of two elements: (1) the gross violation of the human rights of the LGBT asylum seeker and (2) the unwillingness or inability of their State to protect them. Having established that criminalisation seriously violates human rights *even when it is not enforced* and, therefore, should always be understood as an act of persecution in itself, it is necessary to analyse the second element: is it reasonable for an LGBT asylum seeker to expect their country to protect them? The answer seems clear in cases where the person is fleeing the authorities' enforcement of criminalising rules: absolutely not, as the State is itself the agent of persecution.

However, in the case of LGBTI persons, persecutors are often non-State actors, such as family, community members or criminal gangs.³¹ According to the UNHCR's *Handbook*, acts committed by non-State actors may

²⁴ For a detailed list of these reasons, see the Methodology section of this report, and in particular the section on constraints.

²⁵ UNHCR, *Guidelines on International Protection No. 9: Refugee Claims Related to Sexual Orientation and/or Gender Identity in the Context of Article 1A(2) of the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol*, 2012, para. 66.

²⁶ ECtHR, *Norris v. Ireland*, 26 October 1988, Series A No. 142, §33.

²⁷ Jansen, S.; Spijkerboer, T., *Fleeing homophobia...*, cit. supra, p. 74. This work cites various judgments of the Spanish National Court. While in some the court dismissed the country of origin information favourable to the applicant on this ground, in others it admitted the general information provided by the Spanish government to support the refusal of the application.

²⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29 June 2013 ("Procedures Directive"), art. 10(3)(b).

²⁹ Procedures Directive, Recital 10.

³⁰ EASO, *Researching the situation of lesbian, gay and bisexual persons (LGB) in countries of origin*, 2015. Although the guide focuses explicitly on LGB persons, it also includes terminological explanations and sources of information on trans and intersex persons. See EASO, *Researching LGB*, cit. supra, 8.

³¹ UNHCR, *Guidelines No. 9*, cit. supra, §23; JANSEN, S., "Introduction: fleeing homophobia, asylum claims related to sexual orientation and gender identity in Europe", in SPIJKERBOER, T., *Fleeing homophobia - sexual orientation, gender identity and asylum*, Routledge, London/New York, 2013, 11.

constitute persecution if the State fails to provide effective protection against them, either because it is unwilling or unable to do so.³² As the UNHCR explains, it must be presumed that the State has neither the will nor the capacity to protect the applicant when it criminalises sexual orientations or diverse gender identities and expressions,³³ as it is unreasonable to expect that the LGBT asylum seeker would turn to the authorities in the case of a violation of their human rights. As we have already mentioned, this report includes throughout its pages numerous examples of LGBTI people being detained when they reported to security forces the crimes they had been victims of, including rape, violent assault, blackmail, robbery, and theft, among others. Many other sources also report inaction by security forces even when they witnessed violent attacks on LGBT people in public.

In short, when faced with an asylum claim based on persecution for reasons of sexual orientation, gender identity or gender expression, it is essential that the authorities analyse all the factual circumstances that contextualise it in order to verify to what extent criminalising laws reinforce the oppression,

discrimination, violence and impunity of the aggressors in the country of origin. In other words, the host State authorities must assess how the existence of these laws in and of itself constitutes an act of persecution.

Unfortunately, many of the asylum systems that claim to be more LGBT-friendly still demand standards. Their authorities should bear in mind that the absence of data on arrests and prosecutions does not imply that they do not exist, or that they do not have a decisive impact on the rights of our communities in their countries of origin.

This report compiles numerous examples of instances of enforcement and can be a valuable source for determining that criminalising norms are being applied in a particular jurisdiction, but it **does not prove that such laws are not being applied** in States for which we do not have data. It is therefore essential that the available country of origin information is interpreted correctly, without jumping to conclusions. Otherwise, the international protection system will still be letting down and excluding our communities.

³² UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Document HCR/1P/4/SPA/REV. 3, December 2011, ("Handbook"), §19. *Vid.*

³³ UNHCR, *Guidelines on International Protection No. 9: Refugee Claims Related to Sexual Orientation and/or Gender Identity in the Context of Article 1A(2) of the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol*, 2012, §36.

VOICES FROM THE GROUND

Activist case studies on criminalising jurisdictions

Author's Introductory Words

It must be acknowledged that to compile a report of this nature from “the outside” will always fall short in some manner when it comes to understanding the diverse local contexts in which criminal enforcement takes place. While this is unavoidable, it is perhaps mitigated by the valued participation of human rights defenders working on the ground in these countries.

The following essays from activists in Cameroon, Egypt, Indonesia and Sri Lanka offer a more nuanced look at four very distinct local contexts than ILGA World could provide on its own, though this remains a mere snapshot of the broader situation, given the number of jurisdictions which could not be placed in this first edition of the report.



Cameroon

By Jean Paul Enama (Humanity First Cameroon Plus)

Cameroon is currently one of 67 countries in the world where same-sex relations are *de jure* criminalised. Indeed, Article 347-1 of the Code of Criminal Procedure provides that: "Any person who has sexual intercourse with a person of his sex shall be punished by imprisonment from six months to five years and a fine of 20 000 to 200 000 francs". This proverbial sword of Damocles hovers over the heads of sexual and gender minorities (SGMs) in Cameroon, and exposes them to wide-scale violence and rights violations.

A 2020 report titled "Transphobia: The Face of a New Crisis", produced by the *Unity Platform*, identified a total of 2,031 cases of violations made on the basis of sexual orientation and gender identity. Among these, there has been an increase in arbitrary arrests and abusive detentions by law enforcement agencies. In such an oppressive context, civil society organisations dealing with SGM issues struggle to work effectively, or even to exist. They rely on a health-rights based approach to provide sexual health services, particularly in the fight against HIV. Indeed, the Ministry of Public Health identifies men who have sex with men (MSM) and transgender people as among the key populations at high risk of HIV infection.¹ Awareness-raising and advocacy actions to combat discrimination and stigmatisation are therefore planned as part of these HIV programmes. This review will not only show the role of the law in the

resurgence of violations against SGMs, but also highlight the work done by local organisations with the aim of establishing an inclusive social environment for SGMs in Cameroon.

There has been an increase in arbitrary arrests and abusive detentions by law enforcement agencies.

Violations emerging from Article 347-1 of the Penal Code

According to the literal interpretation of Law 347-1 of the Penal Code, persons can only be arrested for same-sex sexual activity *in flagrante delicto* (i.e., when caught in the act), or when the accused offer voluntary confessions. But it is clear that many cases of violence and violations are made under the cover of this law even outside of its scope. These include abuses such as arbitrary arrests, inhumane detentions, acts of torture, and convictions of transgender people on the basis of their outward gender expression.

¹ See: Cameroon Ministry of Public Health, *Integrated Biological and Behaviour Survey* (2016).

Over the past five years in Cameroon, there have been numerous such cases of arbitrary arrest and detention perpetrated by law enforcement agencies on SGMs. It is possible for any citizen to be arrested and convicted merely on the presumption of homosexuality. It is not uncommon to see people convicted on the basis of denunciations made by neighbours or simply because of rumours. In 2020, the SGM violation report recorded more than 98 cases of legal violence (i.e., cases of abuse recorded during the legal processing of homosexuality cases). Although Cameroon accepted a recommendation during the UN Universal Periodic Review in 2013 from Belgium to end the arbitrary arrest of LGBTI people, we note that this recommendation was not implemented. Informal sources also indicate that the President of the Republic had previously ordered a tacit moratorium on SGMs being arrested, but unfortunately the facts on the ground have not changed. In 2020, for example, we note the case of the 50 people arrested in Bafoussam on 17 May during the ceremony for the International Day Against Homophobia, Biphobia and Transphobia (IDAHOBIT) organised by the Colibri Association.

During these arrests, it is not uncommon for those detained to be subjected to torture in order to obtain confessions that would condemn them. While it is difficult to obtain a formal conviction for homosexuality, law enforcement agencies often use other grounds to conceal their underlying cause for holding and charging suspects. For example, in February 2021 two transgender women were charged in Douala for lack of identity cards, even though they had initially been arrested for practicing homosexuality.

Many transgender people are arrested for the crime of *délit de faciès* (the crime of their physical appearance).

Transgender people are often the most likely to be victims of these arrests. In Cameroon, it is not legally forbidden to wear clothing contrary to one's biological sex, so there is no law to convict a "man wearing a woman's clothes" and vice versa. But it is clear that many transgender people are arrested for the crime of *délit de faciès* (the crime of their physical appearance). In fact, beyond being targeted by law enforcement, they are often exhibited on social networks and presented as fairground beasts.

Working at the local level

Civil society organisations working alongside LGBT people in Cameroon are trying to provide solutions to violations made under the cover of Article 347-1.

We at *Humanity First Cameroon* use a human rights-based approach to improve access to care for sexual and gender minorities. To this end, we tackle all the legal barriers that hinder access to care for these populations. We carry out missions to document cases of violations made on the basis of sexual orientation and gender identity. *Humanity First* participates in the drafting of violation reports that serve as an advocacy tool for decision-makers. Further, we provide legal assistance to persons involved in legal proceedings on the basis of alleged or actual sexual orientation, and work closely with a law firm that intervenes quickly in the event of arrest. We also carry out awareness-raising campaigns with law enforcement agencies. For example, we raise awareness about the relationship between homophobia and vulnerability to HIV. This has allowed us to establish informal relations with certain authorities who can sometimes help us in case of arbitrary arrest.

We also use UN mechanisms to lead advocacy for the establishment of an enabling environment for MSGs in Cameroon. We submitted an alternative report during the third cycle of the Universal Periodic Review in 2018, which resulted in Cameroon receiving 12 recommendations on SOGIESC issues. We regret that the recommendations have all been rejected, but this does not discourage us, we are preparing for the next editions.

Next steps

Faced with the oppressive legal context towards MSGs in Cameroon, it is appropriate to question legislators on the unconstitutional nature of Law 347-1 of the Penal Code. It is totally out of step with the conventions and treaties signed and ratified by the State of Cameroon. This law goes against, for example, Resolution 275 of the African Commission on Human and Peoples' Rights, and exacerbates violence done on the basis of real or perceived sexual orientation and gender identity. Cameroon must therefore be held accountable for all actions taken against ratified international texts.

The criminalisation of homosexuality should be repealed in Cameroon, and it is imperative to adopt a new law to protect MSGs. Health programmes that target MSGs should place considerable emphasis on combating violence in order to improve access to care and achieve the country's Sustainable Development Goals, as no one should be left behind.



By Bedayaa (Legal Support Programme)²

Even though the Egyptian government is accountable for the protection of all the Egyptian citizens regardless their differences in religion, origin, sexual orientation and gender identity, the State has prosecuted members of the LGBTIQ+ community under its “debauchery” and “prostitution” laws. Other laws that are used to prosecute LGBTIQ+ persons in Egypt have developed recently, although homosexuality and gender-diversity are not explicitly criminalised in Egypt.

Egyptian authorities do not only target gay men and trans women, but also bisexual men, intersex and gender non-confirming individuals. Simply put, they persecute anyone who looks as if they do not fit social norms. The violations of the rights of LGBTIQ+ persons in Egypt means a deterioration of the rule of law that affects all individuals expressing ideas or behaviours that do not align with the narrow and cisheteronormative conception of what Egyptian society should resemble.

This paper outlines the Egyptian laws that prosecute LGBTIQ+ persons, and it includes examples of a number of legislative and judicial prosecutions against LGBTIQ+ persons, with some insights on the arrest methods and the general societal status quo.

Legal and political situation

Continuing its failure to act positively on the recommendations received in the 2010 and 2019 UN Universal Periodic Review cycles, Egypt replied in March 2020 to several recommendations received during its third cycle. Egypt did not accept recommendations to protect or even recognise the rights of LGBTIQ+ people. The recommendations were as follows:

- 1) Canada: take steps to protect the rights of LGBTI individuals and ensure that they are not subject to discriminatory arrest or prosecution under criminal charges of indecency or debauchery,
- 2) Iceland: end the arrest and prosecution of people for their real or perceived sexual orientation or gender identity and repeal laws criminalising consensual same-sex relations, and

- 3) Netherlands: end the practice of entrapment and subsequent arrest and prosecution based on sexual orientation and gender identity.³

In its response to these recommendations, Egypt said that “it does not recognise the terms mentioned”.⁴

Due to the instability of the political situation in Egypt, a formal state of emergency is applied and renewed from time to time. Citizens are arbitrarily stopped in streets and at police checkpoints. Officers regularly confiscate and inspect their phones and social media accounts. If there is anything which raises suspicion about a person’s sexual orientation, like dating apps and private conversations, police refer them to the Public Morality Police for prosecution under the debauchery law (Law 10/1961). Additional charges may be applied if the authorities can prove that the arrested person is a political activist or belongs to the LGBTIQ+ community. Such police behaviour becomes aggravated whenever there is a protest, memorial, or political occasion, like the 25th of January Revolution.

If anything raises suspicion about a person’s sexual orientation police refer them to Public Morality Police for prosecution under the “debauchery law”

Following the rapid outbreak of the Covid-19 pandemic, the Egyptian authorities continued applying the state of emergency, but on 25 October 2021 Egyptian authorities lifted the state of emergency for the first time since April 2017.⁵ This notable change does not counter other facets of the State’s LGBTIQ+ oppression, however.

The 2020 elections also strengthened the Parliament’s right-wing and deprived the left from being duly represented on the grounds that Egypt played a pivotal

² Bedayaa’s legal support program is one of the sustainable departments in the organisation concerned with providing support to LGBTIQ+ community members in Egypt through specialised legal protection and advocacy. The program began in 2017 by providing legal and emergency support to all members of the queer community regarding issues of gender identity and sexual orientation. The five years we have spent doing this work, supporting hundreds of cases of LGBTIQ+ people in Egypt, has earned us vivid field experience in domestic litigation issues. The database and information resulting from this work is a robust advocacy reference tool used by both regional and international entities.

³ UNHRC, *Report of the Working Group on the Universal Periodic Review: Egypt*, A/HRC/43/16 (2019), para. 31.57, 31.61.

⁴ UNHRC, *Report of the Working Group on the Universal Periodic Review: Egypt: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/43/16/Add.1 (2020).

⁵ “Egypt’s President Sisi ends state of emergency for the first time in years”, *Reuters*, 26 October 2021.

role in regional stability and the fight against terrorism. This in turn resulted in greater domination by the military in terms of economic investment in the private sector, as was clearly evident in the amount of infrastructure investment injected into the market in 2020 and 2021.

There is a dedicated police department (the Public Morality Police) affiliated with the Ministry of the Interior that has been commissioned to arrest whoever does not fit within Egyptian social norms, namely sex workers, gay men, trans women, and anyone thought to be engaged in non-normative sexual activities, even if in private. This unit investigates all cases under Law 10/1961 on Combating Prostitution. The “investigations” are often incredibly short, depending on the methods of the arrests.

In most trials of LGBTIQ+ persons, Law 10/1961 is used, particularly Article 9(c). The main charges used in trials based on this law are “habitual practicing of debauchery”, which refers to male prostitution, “publicising an invitation to induce debauchery”, and “incitement to debauchery”.

Common methods and forms of arrest

Bedayaa’s case files on debauchery reveal three principal methods used by police to arrest the majority of suspects. These are as follows:

- 1) **Entrapment.** Police create fake profiles on online dating applications with the purpose of initiating contact with users. A reading of many of these conversations shows that the police often express a willingness to pay foreign currency to entice men, and then set up an appointment to meet, typically in a public place. When the user reaches the agreed meeting point, they are arrested, and their phones are inspected. The text messages between the parties on the dating apps are then printed and submitted as the only evidence for prosecution.
- 2) **Street arrests.** The police conduct regular night-time security sweeps of the known hangouts of LGBTIQ+ individuals. When a person is stopped, their phone is inspected for personal or sexual photos and text messages. People arrested in these circumstances are prosecuted on charges of practicing debauchery, prostitution and inciting debauchery.
- 3) **Tip-offs.** One less common method used by police is to arrest people from their homes or hotel rooms. When making an arrest from a hotel, they normally move based on reporting they receive from local staff regarding people who look “suspicious”. When making an arrest from a home, they will often have received a report from neighbours.

2020 and 2021 have witnessed additional negative developments in regard to human rights issues in general in Egypt, and in terms of sexual and gender rights in particular, due to the violations seen in places of detention as well as the rise in random arrests in light of the extension of the state of emergency. Based on the number of arrest cases reported by the legal aid department in Bedayaa, there has been a significant spike in the percentage of random arrests off the street. The number of arrested persons from cafes, hotels and houses is also higher than in previous years.

2020 and 2021 have witnessed a rise in random arrests in light of the extension of the state of emergency.

Online entrapment in which gay and trans persons get arrested through the use of dating apps still exists. And arrest techniques have been developed to incorporate new tools by police officers; such as the training of officers who can speak different languages, along with other techniques to manipulate persons and encourage them for meeting.

General overview on the status quo

Early in 2020, the Egyptian Prosecutor General announced that the Cybercrime Law would be intensively employed starting March of that year. A set of vague charges that are used in the Cybercrime Law, such as “violating family values and principles in Egyptian society”, could practically be used to prosecute persons who commit any online non-normative behaviour, such as in an infamous case about a group of “TikTok girls”.

Prosecutors also started to use another new charge in SOGIESC-based prosecutions: “The misuse of communication devices”. This provision is present in the Telecommunication Regulation Law. As a result, defendants in cases relating to their sexual orientations or gender identities are often redirected to economic courts. The Cybercrime Law has significantly higher fines for convicted persons—up to 300,000 Egyptian pounds. In addition to the high fines, LGBTIQ+ individuals who are prosecuted in this new setting can also receive up to three years in prison.

According to reports from the Egyptian Initiative for Personal Rights,⁶ the number of persons annually arrested and referred to trials in such cases increased five-fold with an average of 66 cases per year since 2013 compared with the 14 cases per year in the previous decade. After a rainbow flag was raised at a concert in New Cairo in September 2017, police arrested 75 people.⁷ Most of them were fined by the Cairo and Giza

⁶ EIPR, *The Trap: Punishing sexual difference in Egypt* (2017).

⁷ *Ibid.*

Misdemeanours Courts on charges of habitual debauchery, incitement to debauchery, and public indecency. Many were further sentenced to six months to six years in prison. The number of people detained on such charges increased to 92 in 2019.⁸ Most defendants in these cases were sentenced to between three months and three years in prison. In 2020, arrested persons numbered 25 individuals.⁹

Egyptian authorities continue to use anal examinations as “medical evidence” to prove that the suspects are indeed homosexuals.

In the first three months of 2020, Bedayaa received three debauchery cases of foreigners living in Egypt: a Chilean citizen who had already been deported after receiving a fine, an American-Egyptian dual citizen who spent four months in detention before being acquitted, and a Cypriot trans woman who received a sentence of three years in prison. These cases are unique in their nature, as the Egyptian State issued an executive order in 2016 to deport foreigners who are charged with debauchery, even if they are acquitted.

State violence, including verbal, physical, psychological and sexual assaults, still exist in places of detention. Testimonies of survivors who experienced detention on debauchery charges recounted other types of violations besides stigma and discrimination, such as beatings, sleep deprivation and electric shocks. It is worth noting that the practice of coerced anal examination continues for

many debauchery cases, according to the public prosecutor’s orders. Even though anal examination has no medical or scientific value and has been denounced as a human rights violation, Egyptian authorities (forensic and legal personnel) continue to use it to provide medical “evidence” and prove that the suspects are indeed homosexuals.

Despite the fact that there are no legal articles that criminalise same-sex acts between women, they are also targeted under Law 10/1961, as happened to “Sara Hegazy”, the woman who raised the rainbow flag at the concert in 2017.¹⁰ She faced many charges, and one of them was based on Law 10/1961. Even though lesbian, bisexual and queer women do not face the same legal discrimination other groups face, they face different forms of social and family violence, such as so-called “conversion” or “corrective” “therapies”, forced marriage, marital rape, forced confinement at home, and deprivation of education, work and travel. Adding to this, being a woman in Egypt in general is another battle, as they face social violence, underage marriage, and virginity tests. Egypt is also known to be one of the countries with the highest rates of sexual harassment and female genital mutilations in the world.¹¹ Egypt has significant deficiencies in legislation that protects women from social violence, domestic violence, or violence based on sexual orientation and gender identity. In some cases, we have documented the cooperation of police officers in bringing back lesbian and bisexual women to their parents after their escapes from their homes were reported, even if she is not under his legal guardianship and is an adult. Such attempts to escape usually come after long years of domestic violence and confinement.

⁸ See: Bedayaa, *Legal Aid Project Annual Report* (2019).

⁹ See: Bedayaa, *Legal Aid Project Annual Report* (2020).

¹⁰ “Egypt: Security Forces Abuse, Torture LGBT People”, *Human Rights Watch*, 1 October 2020; “Egyptian LGBT activist dies by suicide in Canada”, *Al Jazeera*, 15 June 2020

¹¹ “UN in Egypt Statement on Nada, Victim of FGM in Assiut”, *UN Women*, 2 February 2020.



Indonesia

By Renate Arisugawa (*Arus Pelangi*)

Fundamentally, all people—women, lesbian, gay, bisexual, transgender and intersex people—should enjoy full human rights without discrimination. Inalienable human rights and the principle of non-discrimination are enshrined in countless international instruments, providing for a wide scope in application. Human rights principles in Indonesia are embedded at the national level in the 1945 Constitution, especially in Section X on human rights in the Law on Human Rights No. 39/1999. However, in a patriarchal heteronormative society such as in Indonesia, women and people who live non-normative lives continue to be discriminated against and their rights restricted.

At the national level consensual same-sex sexual acts are not overtly criminalised, however laws do exist which infringe on the rights of LGBTIQ Indonesians. The Anti-Pornography Law of 2008 became the first national law to contain specific discriminatory language against homosexuality and lesbianism. Several laws, the Health and the Marriage law in particular, contain discriminatory passages to women and do not recognise the needs and rights of LGBTIQ people. There are currently no laws that support the rights of LGBTIQ people and no laws that specifically prohibit the discrimination of women and LGBTIQ people.

Arus Pelangi's assessment revealed that discrimination and gender-based violence, especially against LGBTIQ people, is rampant and impacts many aspects of LGBTIQ people's lives. A biased, patriarchal understanding of culture and religion, strengthened by a discourse heavily influenced by religious conservatives, influences the drafting and codification of discriminatory national laws and regional regulations (bylaws).

Creeping criminalisation

During a period of national furore in the media against LGBTIQ groups in the first months of 2016, "conversion therapy" was widely advocated for the "rehabilitation" of homosexual people despite scientific evidence that such therapy does not work and has been proven to be a harmful practice with long-term consequences. The Minister of Social Affairs, Khofifah Indar Parawansa in fact promoted the Emotional, Spiritual Quotient (ESQ) method so LGBTIQ people could become "normal" again. The push for conversion therapy has continued into the present.

In March, April and August 2016, a national anti-LGBT law was proposed for Indonesia by parliamentarians from conservative parties. If such a law passes, Indonesia will join other countries in the region that criminalise same-sex relations. Since the law was first proposed, at least one survey was conducted which indicated that LGBT people were "the most disliked group in Indonesia". A

petition was also filed by Aliansi Cinta Keluarga (Family Love Alliance) with the Constitutional Court for judicial review of several articles of the Criminal Code, which, if accepted by the court, would make consensual same-sex behaviour and any sexual activities outside of legal marriages punishable.

A petition filed before the Constitutional Court by the "Family Love Alliance" could make consensual same-sex behaviour punishable.

At the time of finalising this report it is not yet clear how the Court will rule, but all Indonesians will be affected as both rights to privacy and non-discrimination will be threatened. The petitioners argued that homosexuality is "contagious" and they want Indonesia to have clearer norms and regulations "stipulating that anyone having casual sex is committing adultery". They asked the court to change the terms "adults" and "minors" in Article 292 of the Criminal Code to "people", which would criminalise adult consensual same-sex relations. The petitioners also want to annul Article 284 on adultery and Article 285 on rape in an attempt to make any sexual relations between unmarried persons a crime. If the Constitutional Court agrees, many of the discriminatory regional regulations discussed in this report would suddenly all be in line with the Criminal Code.

Legal frameworks against LGBTIQ people

An analysis of the LGBTIQ situation in Indonesia produced by Sanggar Swara in 2020 has strongly identified that persecution, violence and discriminatory policies are three key dynamics between the government and the LGBTIQ community in Indonesia. Instead of protecting us as equal Indonesian citizens, the government considers LGBTIQ community an enemy and a disease. This, despite the fact that the Indonesian legal framework has ensured the protection of human rights. Law No.39 of 1999 states that the inalienable rights are absolute and must be protected by the government. Further, Indonesia has ratified the ICCPR in Law No. 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights, meaning it must abide by the human rights frameworks therein. However, there is still a debate in government about whether the rights of the LGBTIQ community are part of protected human rights. This debate is based on Article 28J of the 1945 Constitution, which regulates restrictions on protecting and fulfilling human rights in Indonesia.

Swara's study reveals that LGBTIQ human rights are not prioritised in the National Human Rights Plan (RANHAM) on the grounds that this action is reasonable according to Article 28J of the 1945 Constitution. The chairperson of the National Human Rights Institution (Komnas HAM), Taufan Damanik, has stated that although Article 28J highlights limitations on human rights, the Article also highlights that further restrictions were regulated by generative laws. Thus, acts of violence and discriminatory policies against the LGBTIQ community are actually unconstitutional.

The revision of the same-sex obscenity Article in the draft Criminal Code is still on the legislative agenda. Changes in the diction of the Article have been made several times, causing a lot of debate in the legislature and in society, because this article is intended to criminalise LGBT people. The last amendment was made on 19 September 2019, where the Article on obscenity in the Draft Criminal Code was expanded to mean:

Everyone who commits obscene acts against other people of the same or different gender:

- a. in public, shall be sentenced to a maximum imprisonment of 1 (one) year and 6 (six) months or a maximum fine of Category III.
- b. forcibly with violence or threats of violence shall be punished with a maximum imprisonment of 9 (nine) years.
- c. published as pornographic content shall be punished with a maximum imprisonment of 9 (nine) years.

Another legislative attack comes from the Family Resilience Bill, one of the proposed laws prioritised in the National Legislation Program of 2020. The Family Resilience Bill is still a public concern because the content is considered by some people to enter the private area (family) and includes LGBT identities as "sexual deviance". Article 85-87 of the Family Resilience Bill regulates the obligation of families to conduct "rehabilitation" on family members who have "sexual deviance". The family is also obliged to report family members who have "sexual deviance" to the institution that will be appointed to handle the "problem". In 2019 Arus Pelangi and local activists recorded 11 Family Resilience provincial regulations in 11 provinces across Indonesia. All of them promote "corrective" treatment in the name of family resilience. If the national Bill on Family Resilience passes, we would have a national law institutionalising "conversion therapy" for LGBT people.

In 2018 Arus Pelangi recorded 45 concerning regulations, ranging from the smallest local government (village) level up to provincial regulations. This represents a ninefold increase in such provisions between 2013 and 2018. From the 45 discriminatory local regulations that Arus Pelangi collected, seven local regulations were not directly targeted at LGBTIQ people but intersect on the issue of "decency" that exists in society and have the potential to oppress LGBTIQ persons. 23 local regulations out of the 45 explicitly target "homosexual" men and transgender women. Eight other local regulations related to morality have been implemented to criminalise LGBTIQ people.

Article 85-87 of the Family Resilience Bill obliges families to conduct "rehabilitation" on family members who have "sexual deviance".

Further, in 2018 there were four circulars issued by the local officials calling for the sharpening of discrimination against LGBTIQ people in Indonesia:

- Cianjur (Office Note 38/SEK-KPA/X/2018) followed by the Cianjur Regency Government Circular Letter 421.6/2973/DISDIK/2018 concerning "LGBT Prevention".
- Indramayu, Circular Letter No.443.1/24.a/Kesra Regarding "Socialisation and Prevention of LGBT Behaviour", dated 27 February 2018.
- Bangka Belitung, Circular Letter No. 421.6/2973/DISDIK/2018, dated 17 October 2018, "anticipating the rise of crime in schools such as drugs, Lesbian Gay Bisexual and Transgender (LGBT) and others".
- Karawang, Circular Letter No. 600/6917/Kesre, dated 6 November 2018, "concerning Prevention and Mitigation of the Negative Impact of Lesbian, Gay, Bisexual and Transgender (LGBT) Social Phenomena on Social Life and Behaviour".

Law enforcement and vigilante groups

Arus Pelangi recorded 172 cases of persecution against LGBTIQ groups in Indonesia prior to 2017. Several of these related to actions taken by law enforcement officers and public officials against LGBTIQ people or groups.

Then in 2018 a further 35 acts were documented as **assault**. The perpetrators of this persecution are civilians who carry out **vigilante actions** or *eigenrichting*. Almost all of the recorded cases resulted in the death of the victim, with access to justice for survivors being rare.

As many as 23 incidents were also recorded of **arbitrary arrests** made by law enforcement officers without sufficient preliminary evidence, or made outside of the parameters of the Criminal Procedure Code. These arrests often come in the form of raids on sites frequented by sex workers, and gatherings and events organised by LGBTIQ groups. In some cases, such as the

arrest of gay couples in Aceh in 2020,¹² raids on gay, bisexual and queer (GBQ) men's group activities in Kuningan in 2020),¹³ and the 2017 cases of Atlantis Spa,¹⁴ and T1 Club,¹⁵ there were a few noticeable trends:

- 1) The arrests were made after reports from civilians or from fundamentalist groups about "gay activities that are troubling the society". The civilian or the fundamentalist group would then also often be present during the raid.
- 2) GBQ men were forced to take off their shirts when arrested in such raids, so that they only wore underwear, and then photographed/filmed. The photos/videos would later be published.
- 3) Initially the police used the anti-pornography law as the cause for the arrests, but as this provision cannot legally be used to arrest them most detainees are released. However, the media rarely report on how these cases ended.

As of 2017, there were 17 cases of **raids** on events carried out against LGBT groups by religious fundamentalist groups and the police. Six of these cases related to events or gatherings which had their **permission and administration blocked** because they were considered to be "against decency" and "contrary to public order", while the 11 remaining cases constituted the **dismissal** of LGBTIQ group events and violation of freedom of expression.

One such example is the dismissal of a transgender women's sport and cultural week event in South Sulawesi in 2017.¹⁶ Police dismissed the annual event because 16 Islamic fundamentalist groups threatened that they would hold a public demonstration if the police did not stop the event. A similar incident occurred in Yogyakarta City in 2016, resulting in the closure of a trans women's Islamic boarding school.¹⁷

¹² "Kronologi Kasus Pasangan Gay di Aceh: Digerebek Warga hingga Dicambuk 77 Kali" [Chronology of the Case of Gay Couples in Aceh: Raided by Residents and Whipped 77 Times], *Kumparan News*, 28 January 2021.

¹³ "Pesta Gay di Apartemen Kuningan, Polisi: Ada Yang Sudah Menikah" [Gay Party at Kuningan Apartments, Police: Someone's Married], *Tempo*, 3 September 2020.

¹⁴ "Polisi Olah TKP Penangkapan Pesta Gay di Atlantis" [Police Work on the Crime Scene of Gay Party Arrest at Atlantis], *Suara*, 23 May 2017.

¹⁵ "Penggerebekan kaum gay: sentimen homofobia dan regulasi 'bias' norma" [Gay raids: homophobic sentiment and regulation of 'bias' norms] *BBC News Indonesia*, 9 October 2017.

¹⁶ "Rilis Pers – Pembubaran Porseni Bissu/Waria: Pengingkaran terhadap Keberagaman Budaya dan Seksualitas" [Press Release – Disbandment of Bissu/Waria Porseni: Denial of Cultural Diversity and Sexuality], *LBH Masyarakat*, 20 January 2017.

¹⁷ "Front Jihad Islam Menuntut, Pesantren Waria di Yogyakarta Akhirnya Ditutup" [Islamic Jihad Front Demands, Waria Islamic Boarding School in Yogyakarta Finally Closes], *Deutsche Welle*, 26 February 2016.



Sri Lanka

By *Thiyagaraja Waradas and Pasan Jayasinghe (Community Welfare and Development Fund)*

Sri Lanka's laws criminalise persons with diverse SOGIESC identities in a number of ways. The country's Penal Code as well as a number of other legal instruments inherited from British colonial rule contain provisions which criminalise consensual same-sex sexual conduct, the gender expression of trans persons, and enable for the harassment of persons with diverse SOGIESC identities. The government resists calls to reform these laws, despite selective rhetoric indicating otherwise.

Criminalising legislation

Legal provisions in Sri Lanka which criminalise persons with diverse SOGIESC identities include:

- Article 365 of the [Penal Code](#) which criminalises “unnatural offences” defined as “carnal intercourse against the order of nature with any man, woman or animals”, with a penalty of up to 10 years’ imprisonment and/or a fine.
- Article 365A of the Penal Code which criminalises “acts of gross indecency” between persons in public or private, which are not defined, with a penalty of up to two years’ imprisonment and/or a fine. The word “males” in this provision was amended to “persons” in 1995, extending criminalisation to same-sex sexual activity between women as well.
- Article 399 of the Penal Code criminalises “cheating by personation”, which is defined as pretending to be some other person, with a penalty of up to one year of imprisonment and/or a fine. This provision has often been used by police to solicit sexual and monetary bribes from transgender persons.
- Articles 5, 7 and 9 of the [Vagrants Ordinance](#) criminalise “incorrigible rogues”, defined as persons who engage in sex work or procure persons “for the purpose of illicit or unnatural intercourse” with a penalty of hard labour up to four months and corporal punishment of up to 24 lashes. The provisions also criminalise “gross indecency in public places” with a penalty of up to six months’ imprisonment and/or a fine.

The prospect of legal prosecution under these provisions is often used by police and other public authorities to harass, detain and inflict physical and sexual violence on diverse SOGIESC persons. The soliciting of monetary and sexual bribes from people of diverse SOGIESC, particularly transgender and gender-nonconforming persons, is well documented.¹⁸

The Government's words - sans action

The government of Sri Lanka has repeatedly claimed at various international human rights fora that the country's laws do not discriminate against or target persons with diverse SOGIESC identities. This position has persisted across different political administrations over the past decade.¹⁹

For instance, during the review of its civil and political rights by the United Nations Human Rights Committee in Geneva in October 2014, the government submitted that “Article 12 of the constitution recognises non-discrimination [...] This measure protects persons from stigmatisation and discrimination on the basis of sexual orientation and gender identities”. It continued to maintain this position before the Committee on Elimination of Discrimination Against Women in 2015, the Committee on Economic, Social and Cultural Rights in 2017, and the Human Rights Committee once again in 2019.²⁰

With regard to the criminal provisions in particular, the government stated at the UNHRC in 2014 that “the sections 365 and 365A of the Penal Code do not target any[one] particular but [are] there to protect public morality”, echoing a popular justification of British colonial era criminal provisions. At Sri Lanka's third Universal Periodic Review in 2017, the government stated in the interactive dialogue that it is “committed to reforming the Penal Code to ensure that all offences contained in the Code are in compliance with international human rights standards” and that it is committed to ensuring that “no provision in the law would be applied to persons of the LGBTIQ community in a discriminatory manner”.²¹

¹⁸ See: Human Rights Watch, *All Five Fingers Are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka* (2016); Damith Chandimal, *Analysing the Culture of Transphobia: Situational Assessment on Stigma, Discrimination and Violence faced by Transgender Persons in Sri Lanka*, Colombo (Equal Ground, 2014).

¹⁹ This includes the Mahinda Rajapaksa administration from 2005-2015, the Maithripala Sirisena administration from 2015-2019 and the Gotabhaya Rajapaksa administration from 2019 onwards.

²⁰ Human Rights Committee, *Concluding observations on the fifth periodic report of Sri Lanka*, CCPR/C/LKA/CO/5 (2014) para. 28; Human Rights Committee, *List of issues in relation to the fifth periodic report of Sri Lanka - Addendum: Replies of Sri Lanka to the list of issues*, CCPR/C/LKA/Q/5/Add.1 (2014) para. 43; Committee on Elimination of All Forms of Discrimination against Women, *Eighth periodic report of States parties due in 2015 - State Party's Report, Sri Lanka*, CEDAW/C/LKA/8 (2015) para. 36; Committee on Economic, Social and Cultural Rights, *List of issues in relation to the fifth periodic report of Sri Lanka - Replies of Sri Lanka to the list of issues*, E/C.12/LKA/Q/5/Add.1 (2017) para. 52-55.

²¹ “The battle against homophobia in Sri Lanka”, *Sunday Observer*, 22 September 2018.

These claims made in international rights spaces receive little attention domestically, particularly as they are delivered in English. The idea that the government officially recognises the non-discrimination of persons with diverse SOGIESC identities is therefore one that is not socialised in Sri Lankan society. This also applies to recent statements in English made by government members. For instance, on Zero Discrimination Day, on 1 March 2021, President Gotabhaya Rajapaksa posted to social media in English but not Sinhala or Tamil that “as the president of [Sri Lanka] I am determined to secure everybody’s right to live with dignity regardless of age, gender, sexuality, race, physical appearance and beliefs”.

Contrary to such statements, the Sri Lankan government refuses to enact positive measures for persons with diverse SOGIESC identities. In 2017, the government refused to include decriminalisation as an action point in its National Human Rights Action Plan for 2017-2022. Then-President Maithripala Sirisena not only reportedly vetoed the proposal at a Cabinet meeting, but also publicly defended it, saying that he was protecting the country’s public morality and culture.²² In November 2018, Sirisena publicly used a homophobic slur to refer to his political opponents and to imply that they should not be exercising political power.²³ In August 2021, the Cabinet spokesman stated that LGBT rights are not legally recognised in Sri Lanka and that “as far as the constitution goes it is not permitted [...] right now it is not legalised”.²⁴ These statements all contradict the Sri Lankan government’s position at international human rights forums.

Continued prosecutions of diverse SOGIESC identities

Despite these statements by the government, documented evidence in Sri Lanka demonstrates that criminalisation measures are, in fact, used to prosecute persons with diverse SOGIESC identities.

In the 2016 case of *OIC Maradana v Wimalasiri*, the Supreme Court of Sri Lanka upheld a conviction under section 365A but suspended the sentence, observing that the offenders should be given an opportunity to reform. Despite the positive outcome for the convicted persons, the judgment did not set any precedent for sentence suspensions in future convictions per se. Sri Lankan courts also have no power of judicial review over enacted laws, meaning that the criminal provisions continue to stand unless amended by Parliament.

According to a Police Performance Report from 2018, 33 persons were prosecuted for “homosexuality” in 2016, six in 2017 and nine in 2018.²⁵ In 2020 alone, Sri Lanka

Police recorded 677 cases under the “unnatural offences and grave sexual abuse” category.²⁶ While this category is not disaggregated, it almost certainly includes cases of same-sex sexual conduct. Cases of prosecutions for homosexuality continue to be reported, including two youth being prosecuted for male homosexuality in public by the Fort Magistrate Court in Colombo in September 2020.²⁷

In a recent report, several Judicial Medical Officers were revealed to be using forced anal/vaginal examinations in order to “prove” homosexuality and advance prosecutions under Penal Code sections 365 and 365A at case hearings at the Magistrate’s Court level.²⁸ Since 2017 there have been seven such cases reported, as stated by a lawyer representing defendants accused of homosexuality.

Transgender persons and gender-nonconforming men also continue to be regularly arrested and presented to Magistrate’s Courts by the police under the Vagrants Ordinance. On 8 March 2021, the Chief Magistrate of Colombo Fort warned the police not to consider transgender persons as criminals and frame them as people “who try to disguise themselves as the opposite sex”. While this was a welcome ruling, it also showed the level to which prosecutions against persons with diverse SOGIESC identities by police have become normalised, in that it required such explicit judicial instruction against it. The ruling is also limited in its scope of application to other courts as it is from the lowest level of the judiciary.

Future reforms and the risks of pinkwashing

Against this background, the future of the government’s legal reform agenda as it pertains to persons with diverse SOGIESC identities, which may include reforming provisions in the Penal Code, remains unclear. Certain measures publicly floated by the government also include introducing new criminal provisions targeting cyber-bullying and online hate crimes, which could include diverse SOGIESC identities as protected categories.²⁹ However, Sri Lanka has a history of enacting criminal provisions intended to protect vulnerable communities which in practice adversely impact those very same communities, due to their misappropriation by nationalist and conservative social forces.³⁰

Well-intentioned activists working closely with the government to advance such reforms, particularly through non-transparent processes that do not genuinely consult diverse SOGIESC communities, risk pinkwashing a fundamentally queerphobic government that is not concerned by the violence and discrimination faced by Sri Lankans of diverse SOGIESC.

²² “Sri Lanka- National HR Action Plan 2016-2021: Inclusive nature and integrity of the process questioned”, *Sri Lanka Brief*, 4 February 2017.

²³ “LGBT activists condemn president’s ‘butterflies’ reference”, *Sri Lanka Mirror*, 8 November 2018.

²⁴ “Government asserts LGBT rights not legally recognised”, *Daily Mirror*, 3 August 2021.

²⁵ Sri Lanka Police, *Performance Report* (2018).

²⁶ Sri Lanka Police, *Distribution Of Grave Crime Abstract For The Year 2020 By Police Divisions From 01.01.2020 To 31.12.2020* (2021).

²⁷ “Court to pass judgement on youths over homosexuality”, *Newswire*, 23 September 2020.

²⁸ “Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions”, *Human Rights Watch*, 20 October 2020.

²⁹ “Namal calls for strict rules and regulations against cyber bullying”, *Daily News*, 3 October 2020.

³⁰ “Misuse of ICCPR Act and judicial system to stifle freedom of expression in Sri Lanka”, *Civics Monitor*, 7 May 2019.



Africa

Africa remains the ILGA World region with more criminalising jurisdictions than any other. 32 of 51 UN Member States have legal frameworks explicitly criminalising consensual same-sex sexual acts and diverse gender expressions, according to previous ILGA World Reports.¹ There is also full legal certainty that the death penalty exists as a prescribed punishment for consensual same-sex sexual activity in Mauritania, and in 12 states in the northern-half of Nigeria. Indications are that Somalia (including Somaliland), may likely also be able to enforce the death penalty under existing legal frameworks.²

In assessing the status of these laws and their ongoing impacts, it is important to remain fully cognisant of the histories which brought them (or their predecessor-legislation) to the region,³ and to follow the leads of activists on the ground in navigating local contexts, rather than adopting interpretations or judgements based on the relatively recent norms and standards of the Global North. Further, ILGA World is pleased to note significant progress in the protection of SOGIESC human rights in recent years. Sudan, while still criminalising

consensual same-sex sexual activity, repealed the death penalty as punishment for such acts in June 2020; and from 2019 to 2021, Botswana, Gabon and Angola all decriminalised same-sex activity, with the latter country going so far as adopting a litany of anti-discrimination protections as well.⁴

Nevertheless, an acknowledgement of those positive trends which give our communities hope cannot overshadow the very real human impact that criminalising legislation and State-backed targeting have in these jurisdictions. That impact, after all, is far-reaching, and often violent.

In this report, instances of *de jure* criminal enforcement have been identified from at least 28 of the criminalising countries over the course of the last two decades. Actual figures are likely to be much higher.

Further, cases of apparent *de facto* enforcement have been identified in at least eight countries not typically considered to criminalise SOGIE identities.



Algeria

Criminalising Provisions

Per Article 333 of the [Penal Code](#) (1966) any person who commits “public indecency” can be charged with a prison sentence of between two months and two years, with a fine of 500 to 2,000 Algerian Dinars. Under Article 338 this is expanded to note that any person found guilty of “an act of homosexuality” is liable to receive the same penalty.⁵

Enforcement Overview

ILGA World was able to identify at least eight confirmed examples of criminal enforcement in Algeria, though many of these involve the arrest of large groups of people, such as in 2020 when 44 suspects were detained in a raid of a so-called “gay wedding”, and again in 2021

when 13 were detained after an “indecent” video went viral. Research from multiple sources indicates that the number of actual incidents is likely far higher, with most cases going unreported.

While in the past several sources have indicated that criminalising provisions were only “rarely enforced” in Algeria, a growing trend in recent years serves as a key reminder that local authorities can at any time resort to the enforcement of these provisions. The spasmodic nature of enforcement indicates that a country labelled “safe” for not having implemented its criminalising laws in recent years could at any moment turn on its residents.

At the international level, in 2017 Algeria rejected a specific recommendation to “stop arresting people for same-sex relations” in its third cycle of the Universal

¹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020); ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020).

² *Id.*, 38.

³ See, among others: Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism* (2008).

⁴ “Botswana decriminalises homosexuality in landmark ruling”, *BBC News*, 11 June 2019; “Gabon votes to reverse ban on homosexuality”, *Reuters*, 29 June 2020; “Sudan repeals death penalty for homosexuality”, *Washington Blade*, 16 July 2020; “Angola Decriminalises Same-Sex Sexual Relationships”, *Sahara Reporters*, 10 February 2021.

⁵ ILGA World: Lucas Ramón Mendos Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 114.

In April 2021, the Misdemeanours Chamber of the Ahras Market Court ordered that seven people, including a woman, be placed in temporary pre-trial detention after being involved in a scandal related to a video circulating on social media showing two men engaged in same-sex sexual activity.¹⁹ Other sources stated that 13 people in total were being investigated, including three women and a member of the military.²⁰ The investigation determined that the video had been filmed in 2018 inside a classroom. Defendants were charged with homosexuality and the production of “pictures indecent nature”, with a hearing being scheduled for 13 April 2021. All defendants were placed in temporary detention.²¹



Criminalising Provisions

While the Constitution (2005) prohibited same-sex marriage, there was no law against same-sex sexual activity in Burundi until the adoption of the Penal Code (2009). Article 567 of Section 5 states that “anyone who has sex with a person of the same sex” is liable to a fine of 50,000 to 100,000 francs, or a prison sentence of three months to two years.²²

Under Burundian law transgender and gender-diverse people are indirectly criminalised through a number of Penal Code provisions criminalising “impersonation” and “falsifying identity”. These can be found in Law No. 1/27 of 29 December 2017 concerning the revision of the Penal Code, Articles 366, 367, 368, 378, 379 and 380. Burundi also retains several provisions that are used to disproportionately target trans and gender-diverse individuals whose gender expressions do not align with their legal documents.²³

Enforcement Overview

Owing to its small size and the relative prominence of its neighbours, Burundi has not garnered much international attention in recent years, leading to a dearth in verifiable, accessible sources in the course of researching this report. That should not be taken, however, to mean there is not a significant issue around criminal enforcement in the country, with ILGA World identifying at least 12 cases between 2009 and 2021.

Prior to the adoption of the 2009 Penal Code the country did not criminalise consensual same sex sexual activity, but in the years following this act of criminalisation several cases of inflammatory rhetoric from State actors have been identified.

In November 2009 the then-President declared homosexuality to be a “curse” and attributed his reception of the Assisi Peace Prize to his stance against homosexuality. In July 2011, the Minister of Education indicated that it was justifiable for schools to expel LGBT students, and in 2013 the Dutch Embassy’s pro-LGBT Human Rights Day event was cancelled without explanation.²⁴

The State has in more recent years made clear that decriminalisation is not a priority and that enforcement of the law remains the *status quo*, given that criminalising provisions remained after the adoption in 2017 of Law No. 1/27 concerning the revision of the Penal Code. The same year, as the revisions came into force, authorities reportedly announced a “hunt” for individuals with diverse sexual orientations and gender identities.

Burundi has made clear that decriminalisation is not a priority and that enforcement of the law remains the *status quo*

Local organisations have decried the fact that in many cases police officers will offer the possibility of release upon payment of an unspecified “fine” which is oftentimes unrecorded. Hundreds, or even thousands, of these instances fly under the radar of this and other reports. Additionally, mistreatment and poor detention conditions are reported to be common situations. In 2016 a trans woman explained that police officers ask questions like “are you a man or a woman?” and usually hit and assault detainees “in order to correct them”. Testimonies also indicate that detainees tend to be deprived of the right to the usual interrogation session with a senior police officer to assess the person’s innocence.²⁵

The rights to education and freedom of expression with regard to SOGIESC issues are also heavily restricted. Authorities have repeatedly summoned and arrested

¹⁹ “إيداع 7 أشخاص الحبس في فضيحة أخلاقية” [Seven people are imprisoned in a moral scandal], *Echorouk El Yawmi*, 9 April 2021.

²⁰ “سوق اهراس :13 شخصا متورطا في قضية شذوذ جنسي الحبس المؤقت | آخر ساعة” [Souk Ahras: 13 persons involved in the case of homosexuality are placed in temporary detention | Last hour], *Aker Saa*, 11 April 2021.

²¹ “سوق اهراس :13 شخصا متورطا في قضية شذوذ جنسي الحبس المؤقت | آخر ساعة” [Souk Ahras: 13 persons involved in the case of homosexuality are placed in temporary detention | Last hour], *Aker Saa*, 11 April 2021; “مشاهدة فيديو فضيحة سوق اهراس في الجزائر كامل” [Watch the full video of the Souk Ahras scandal in Algeria], *Palasawa*, 7 April 2021; “هذه تفاصيل قضية الشذوذ الجنسي داخل قاعة تدريس في سوق اهراس” [These are the details of the issue of homosexuality in a classroom in Souk Ahras], *El Bilad*, 8 April 2021; “قضية فيديو الشذوذ الجنسي داخل قاعة تدريس... إيداع 8 أشخاص السجن” [Video case of homosexuality in classroom. 8 people are imprisoned], *Assawt*, 9 April 2021.

²² ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 114.

²³ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 24-25.

²⁴ Mouvement pour les Libertés Individuelles (MOLI), Rainbow Candle Light, Heartland Alliance, Vermont Law School, *The status of lesbian, gay, bisexual and transgender rights in Burundi: A Shadow Report* (2014), 9-10.

²⁵ The East African Sexual Health and Rights Initiative, *A landscape analysis of the human rights of sex workers and LGBT Communities in Burundi* (2016), 42.

activists and forced the suspension of workshops on sexual health HIV/Aids under the pretence that such activities violate local criminal provisions against the “undermining of good morals”.

Examples of Enforcement

In **June 2009**, shortly after consensual same-sex sexual relations were criminalised, a trans man was arrested in Bujumbura on the grounds of “homosexuality” by a judicial police officer. He was freed after posting bail of approximately 200 USD to the judicial police officer in order to avoid spending the night in a jail cell where the other prisoners were verbally and physically assault him.²⁶

In **April 2011** in Bujumbura a police officer allegedly accused two transgender individuals of being gay, demanding that they pay USD 75 to avoid arrest. Local sources indicated that neither of the two reported the incident to authorities out of fear of backlash and detention.²⁷

In **August 2011** a trans woman in Bujumbura allegedly brought a pick-pocket who had stolen her wallet to a police station to have him arrested, though was instead beaten by police and detained for three days. She had her hair cut off, with police claiming her hairstyle had been what identified her as a “homosexual” to them.²⁸

On **5 April 2012** two women arguing in public were accused of being a couple by police and detained. They were held for several days under the pretence of being “investigated”, though they were never charged. Through the efforts of local activists they were eventually released.²⁹

In **May 2012**, a transgender woman who worked at a local market was arrested and locked up in a police post being accused of “being a homosexual and a demon” (sic). After being liberated, and as a consequence of her arrest, she was not allowed to work at the market any more.³⁰

On **25 November 2013** three individuals were arrested in a raid of a party they organised, on suspicion of participating in same-sex sexual activity. Police considered it suspicious to organise a party during the week rather than on a weekend. Two detainees were released after several hours, though a third, the

presumed party organiser, was held for at least two days.³¹

In **2014**, an LGBT activist and educator who was working on a project to fight HIV/Aids received a summons from the Bujumbura judicial police on the grounds of “undermining good morals” under Section 565 of the Penal Code. The activist was summoned following the complaint lodged by the mother of a participant in an awareness-raising session who accused him of “leading her son into debauchery and promoting homosexuality”.³²

A Vietnamese employee of a telecommunications company (also based out of Vietnam) was arrested on **16 September 2014** on charges of “homosexual practices” after allegations were made that he was gay. He was allegedly caught with his Burundian partner who managed to flee, though there is no direct evidence that the two men were engaged in any form of same-sex sexual activity. The accused avoided jail time by paying a fine of 100,000 francs (USD 64 at the time).³³

In **October 2016**, four young people were arrested by police officers in the neighbourhood of Bubanza. Officers told them that they were being arrested “because they are homosexuals”. They were taken to the detention centre of Ntahangwa, where they were held without having appeared before the Judicial Police Officer to draw up the minutes of their arrest. They had their hair cut with bayonets and they were mistreated by their fellow inmates who forced them to do 100 push-ups in order to punish them for being effeminate. While one of them was released because he was sick, the chief officer demanded nearly 50,000 francs (around USD 27) per person from the remaining three in order to be released and avoid prosecution. Families in distress sought the money and the three young people were released.³⁴

In a similar case to that of the activist summoned in **2014** after facilitating an HIV/Aids workshop, in **2016**, a Red Cross peer educator was arrested in Muyinga, also accused of “promoting homosexuality”. He was locked up for three weeks before being released.³⁵

In **October 2017**, several outlets reported that authorities in Burundi had started an official “hunt” for individuals of diverse sexual orientations and gender identities. Reportedly, numerous detained individuals had to pay bribes to secure their freedom or face up to two

²⁶ MOLI, “I love my country, but my country does not love me.” *Human Rights: The Situation of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Burundi (2003-2013)* (2014), 15.

²⁷ *Id.*, 11.

²⁸ *Ibid.*

²⁹ *Id.*, 10.

³⁰ MOLI, “I love my country, but my country does not love me.” *Human Rights: The Situation of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Burundi (2003-2013)* (2014), 15.

³¹ *Id.*, 11.

³² MOLI, Transgender, Intersexe in Action, and Association Rainbow Candle Light, *Situation des personnes LGBT au Burundi : Contribution écrite conjointe à l'Examen Périodique Universel du Burundi* (2017), 7.

³³ “New in Burundi: An arrest for ‘homosexual practices’”, *Erasing 76 Crimes*, 25 September 2014; “\$64 fine settles 1st court case citing Burundi’s anti-gay law”, *Erasing 76 Crimes*, 29 September 2014.

³⁴ MOLI, Transgender, Intersexe in Action, and Association Rainbow Candle Light, *Situation des personnes LGBT au Burundi : Contribution écrite conjointe à l'Examen Périodique Universel du Burundi* (2017), 5.

³⁵ *Id.*, 7.

years in prison.³⁶ Mere days before the “hunt” was announced, two teenage boys were arrested, allegedly for simply dancing together.³⁷ That same month, seven individuals were arrested in the urban area of Kamenge during the day by the police because they were perceived to be gay, and charged on the grounds of homosexuality while they were in detention.³⁸

Cameroon

Criminalising Provisions

Cameroon’s first Penal Code, enacted in 1965, did not criminalise consensual same-sex sexual acts. An Ordinance issued in September of 1972 by President Ahmadou Ahidjo introduced Article 347 bis (now 347-1).

This amendment took place a few months after the advent of the unitary State under the new Constitution, when the National Assembly had not yet been elected. Under Section 347-1 of the [Penal Code](#) (2016), anyone who “has sexual relations with a person of the same sex” may face a penalty of six months to five years in prison and/or a fine.³⁹

Cameroonian laws do not directly criminalise gender expression but, in practice, the criminalisation of consensual same-sex sexual acts and sex work are used to target, extort, harass and arbitrarily search and arrest trans and gender-diverse people.⁴⁰

Enforcement Overview

Offering a comprehensive report of known examples of enforcement prior to 2020 is not possible given the sheer scale of apparent incidents in Cameroon. Between 2005 and 2021, ILGA World identified at least 65 confirmed examples of criminal enforcement through the monitoring of media, and the assistance of local organisations working on the ground. However, this concerning number remains only the tip of the iceberg and falls very short of representing a realistic measure of the extent to which criminalising provisions are relied upon by law enforcement.

A 2010 report by Human Rights Watch, ADHEFO, Alternatives Cameroun, and IGLHRC, explores in detail

the measures often inflicted on queer citizens until that point.⁴¹ Also in 2010, Alternatives Cameroun and other civil society organisations submitted a report to the UN Human Rights Committee stating that individuals were commonly arrested under Article 347a of the Cameroonian Criminal Code without evidence and because of their real or perceived sexual orientation. The report also elaborated on lengthy pretrial detention periods without charges being made before a judge, the multiple violations of the Cameroonian Criminal Procedure Code, forced anal examinations, and lack of access to HIV medication in detention centres.⁴²

In 2013, Amnesty International reported that arrests had been on the rise since 2005. Back then, the Association pour la Défense de Homosexuel-le-s (ADEPHO) had documented at least 51 arrests and prosecutions of people for “homosexuality” and/or “attempted homosexuality”. The report also noted that those arrested under Article 347 bis were frequently subjected to forced anal examinations and other degrading treatments, including solitary confinement. Amnesty International also found that some individuals had been imprisoned “for up to three years without charge or trial”.⁴³

People arrested under Article 347 bis are frequently subjected to forced anal examinations and other degrading treatments

In a rare case of official data being made available by a State, the Government of Cameroon submitted a report to the UN Human Rights Committee in 2016 noting statistics on prosecutions under Article 347 bis for 2010 and 2011. The Government indicated that: “in 2010, only 27 cases of homosexuality led to criminal investigations in all the courts in Cameroon. Out of these 27 cases, seven were dismissed while proceedings were instituted for the other 20 cases”. In 2011 the number of cases increased, with 36 preliminary investigations registered in the various legal departments and 37 individuals indicted. Out of 16 people who went on trial, 14 were convicted and two acquitted. 2012 reportedly saw 23 cases.⁴⁴

Between 2016 and 2018 there were nearly 1,800 known reports of arrests, extortion, and violence against

³⁶ “Burundi: Crackdown on LGBTQ community”, *Mamba Online*, 13 October 2017; “Burundi announces ‘official hunt’ for LGBTI people”, *Erasing 76 Crimes*, 9 November 2017.

³⁷ “Two gay teens arrested for dancing together”, *GSN*, 10 October 2017

³⁸ ILGA World, *Third Cycle: Burundi Universal Periodic Review, December 2017 Advocacy Sheet* (2017), 2.

³⁹ ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (2019), 312.

⁴⁰ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 24-25.

⁴¹ Human Rights Watch, ADHEFO, Alternatives Cameroun, IGLHRC, *Criminalizing Identities Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (2010).

⁴² Alternatives Cameroun, Centre for Human Rights at the University of Pretoria, Global Rights, IGLHRC, *The status of lesbian, gay, bisexual and transgender rights in Cameroon: A shadow report* (2010).

⁴³ Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 23.

⁴⁴ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure. Fifth periodic reports of States parties due in 2013: Cameroon*, CCPR/C/CMR/5, 29 December 2016, para. 48-49.

individuals based on their sexual orientations and gender expressions by authorities.⁴⁵ According to Humanity First's 2015 Annual Report, 14 cases of arbitrary arrest and detention were recorded in Cameroon that year alone, as well as six cases of imprisonment.⁴⁶ One joint report between multiple local organisations indicated at least 32 arbitrary arrests between August 2015 and the end of December 2017, with several arrest cases involving multiple accused. The report also notes more than 20 cases of detention in prisons.⁴⁷ And according to Human Rights Watch "security forces have arbitrarily arrested, beaten, or threatened at least 24 people for allegedly being gay or gender nonconforming" between just February and April 2021.⁴⁸ Police reportedly also practice forced anal examinations on those suspected of having had same-sex sexual conduct.⁴⁹

At the international level, in 2017, the UN Human Rights Committee deplored the pretrial detention of lesbian, gay, bisexual, transgender and intersex persons for extended periods of time, in violation of section 221 of the Code of Criminal Procedure.⁵⁰

Community violence remains another key issue facing SOGIE Cameroonians, with police often ignoring or actively participating in the victimisation of queer individuals. The government did note in its 2016 report to the UN Human Rights Committee that "[a]ny proven act of physical violence brought before judicial authorities is punishable in accordance with the law regardless of its cause", seemingly as an argument for sound restitutory frameworks within the legal system for victims. However, the report continued by saying "where victims suffer such violence because of their sexual orientation they would not confess [sic] because they are conscious of the fact that homosexuality is punishable".⁵¹ In other words, the State is fully aware that criminalising provisions deprive victims of the possibility of reporting crimes committed against them but does not see a major issue in this, to the extent that it simply mentions this circumstance as a matter of fact. Indeed, it would appear that access to justice for people of diverse sexual orientations and gender identities in Cameroon is elusive by design, with law enforcement and vigilante groups given unchecked freedom to harass and violate them.

The State is fully aware that criminalising provisions deprive victims of the possibility of reporting crimes committed against them

Furthermore, it has been reported that since 2005 officials and media outlets have portrayed being gay or lesbian not as a private matter but as "a menace to public safety", which likely adds to the ill-treatment of people of diverse sexual orientations and gender identities and expressions by security forces. In 2006, the then Vice Prime Minister and Minister of Justice, Amadou Ali, stated in a letter to International Gay and Lesbian Human Rights Commission (IGLHRC, now OutRight International) that "Article 347 bis must be enforced because homosexuality has no part in positive African cultural values."⁵² Further, several sources consulted by Amnesty International indicated that after an inflammatory homily in 2005 by the Catholic Archbishop of Yaoundé, Victor Tonyé Bakot, the number of arrests increased. The Archbishop condemned homosexuality, claimed that "gay men were involved in a plot to gain power in the 'buttocks of young men'" and described a "western plot" to destroy Africa through homosexuality, as the dire economic situation was creating the perfect environment for the 'recruitment' of young and poor men. The statement is said to have encouraged judges and the police to arrest LGBT people.⁵³ The Archbishop also alleged that in some schools "classes are taught to children to make them accept and tolerate homosexuality." However, in 2005 alone, at least a dozen secondary school students were expelled from schools on "suspicion" of homosexuality.⁵⁴

The fiery rhetoric of more than a decade and a half ago has not subsided, as can be seen in a 2021 story of a gay migrant who left Cameroon and returned briefly to his home village with his Franco-Swiss husband, which enflamed local media discourse. At least one political

⁴⁵ Acodevo et al, *Torture and Other Cruel, Inhuman and Degrading Treatment of LGBT Individuals in Cameroon* (2017), 17; Alternatives Cameroun et al., *Violences et violations de droits à l'encontre des LGBTI au Cameroun Rapport Annuel 2017* (2018); Id., *L'ignorance. Rapport annuel des Violences et violations faites aux minorités sexuelles et de genre au Cameroun* (2018); Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts* (2019), 49.

⁴⁶ Humanity First, *La Nouveau Visage de la Haine: Rapport annuel 2015 de Humanity First Cameroon sur les Violations des Droits de L'Homme [The New Face of Hate: Humanity First Cameroon Annual Report 2015 on Human Rights Violations]* (2015), 6. (Uploaded to *Erasing 76 Crimes*, 2017).

⁴⁷ Observatoire National et al., *Observatoire National de Droits des Personnes LGBTI et de Leurs Défenseurs: Phase Pilote: Rapport National de Violation de Droit Humaines* [National Human Rights Observatory of LGBTI people and their Defenders: Pilot Phase: National Human Rights Violation Report], February 2017.

⁴⁸ Human Rights Watch, *Cameroon: Wave of Arrests, Abuse Against LGBT People: Repeal Law, Protect LGBT Rights*, 14 April 2021.

⁴⁹ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 19-23.

⁵⁰ Human Rights Committee, *Concluding observations on the fifth periodic report of Cameroon*, CCPR/C/CMR/CO/5, 30 November 2017, para. 13(b).

⁵¹ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure. Fifth periodic reports of States parties due in 2013: Cameroon*, CCPR/C/CMR/5, 29 December 2016, para. 46.

⁵² Human Rights Watch, ADHEFO, Alternatives Cameroun, IGLHRC, *Criminalizing Identities Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (2010), 3.

⁵³ Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 44.

⁵⁴ Cary Alan Johnson, *Off the Map: How HIV/Aids programming is failing same-sex practicing people in Africa* (New York: IGLHRC, 2007), 23.

party, the Cameroonian Democratic Front, urged the government to immediately expel the couple from the country “in order to preserve our cultural and ancestral dignity”.⁵⁵ It appears that no action was taken against the couple, which is why that particular case will not be found in the list of *Examples of Enforcement* below, but it serves as a demonstration that any hint that the government is “soft” on homosexuality is regularly used by opposition parties as a tool to vie for political clout,⁵⁶ which naturally complicates any attempt to work toward decriminalisation or non-enforcement of existing legislation.

One prominent story from 2021 which does appear in the *Examples of Enforcement* section is that of two trans women arrested for “attempted homosexuality”. Cameroon is far from the only jurisdiction to conflate diverse gender expressions and identities with “homosexuality”, nor is it the only one to violently enforce that conflation, but the number of such cases from Cameroon alone and the widespread attention that this particular instance garnered means the issue warrants special mention here. Throughout this report it is evident that regardless of their sexual orientation or sexual activity, the struggles of trans and gender-diverse persons are deeply intertwined with those of the rest of our communities, and vice versa.

Examples of Enforcement

In late **May 2005**, between 11 and 17 people were arrested at a nightclub in the capital city of Yaoundé by the Nlongkak Gendarmerie without a warrant and charged under article 347 bis of the Penal Code. The group were allegedly threatened by the government with anal examinations to search for evidence of consensual same-sex sexual activity, and were held for 13 days without access to a lawyer, and paraded in front of the entire country on a national television station. On **13 June** they were transferred to Kondengui Prison to await trial. According to a report published by the UN Working Group on Arbitrary Detention, the prosecution could provide no evidence of consensual same-sex sexual acts during the **March-April 2006** trial period, and as such the judge acquitted the group. They remained in detention, however, as the Office of the Public Prosecutor refused to issue a release order and instead demanded a re-trial. On **10 May 2006** two of the accused were released, however, as were the remaining detainees on **26 June**, given that their period of incarceration had by then exceeded the term of imprisonment for which they had been initially sentenced. One of the accused reportedly died one week after release from prison due to the severe abuse and medical neglect he suffered in prison

due to a lack of medical treatment over the preceding month—though some reports indicate that he died shortly after release. This was certainly not the first case of criminal enforcement in Cameroon, but it is reported to be a watershed moment which not only seems to have drawn international attention to the country, but which may also have informed the ongoing violations which took place over subsequent months and years. In **2006** the UN Working Group on Arbitrary Detention decried the incident as a violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, calling on Cameroon to amend local legislation to prevent further such incidents. The government, however, declared that the criminalisation of consensual same-sex sexual acts violates neither, and that Article 29 of the Universal Declaration of Human Rights permits the limitation of rights and freedoms as part of “the just requirements of morality, public order and the general welfare in a democratic society”.⁵⁷

Also detained in **2005** was a woman, aged 33, who was charged under Article 346 of the Penal Code for “indecent with a minor,” despite the fact that her partner was 21 at the time. The younger woman’s family accused the older woman of “disturbing” their child and dragged her to the police station where she was held for four days. The younger woman managed to escape. Police said they would not release the older woman until the younger woman was found, which they did. The family of the young woman allegedly tied her up for a week as punishment.⁵⁸

On **7 June 2006**, four young women were accused of being lesbians by the grandmother of one of the group. The grandmother informed the police, and the group was sentenced to three years’ imprisonment on probation.⁵⁹

On **20 January 2007** a university student in Douala, Cameroon’s largest city, was arrested after an unknown accuser told police he was gay. Police held him at the police station for four days, all the while beating him to coerce a confession and allowing his cellmates to assault him. He was then transferred to the local New Bell Prison (still beating him in the vehicle during the transfer process). He spent nine months in prison before his trial. The court sentenced him to two and a half years in prison based only on the anonymous accusation, of which he spent one and a half years behind bars before being released.⁶⁰

In **July 2007**, according to Human Rights Watch, a young man in Douala was arrested at a salon, and beaten by police to coerce a confession that he was gay. They also tried to extort 100,000 CFA francs (USD 200 at the time)

⁵⁵ “Homosexualité au Cameroun : un milliardaire franco-suisse dote un camerounais dans son village”, *Actu Cameroun*, 4 August 2021; “Cameroon: A political party calls for the expulsion of a gay couple”, *Afrique sur 7*, 5 August 2021; “Professor Bahebeck destroys the gay couple Begono-Paulin (video)”, *Cameroon Magazine*, 9 August 2021.

⁵⁶ “Cameroon: quand l’homophobie devient un stratagème de disqualification politique” [Cameroon: when homophobia becomes a political disqualification ploy], *Erasing 76 Crimes*, 15 November 2020.

⁵⁷ OHCHR, *Implementation of General Assembly Resolution 60/251. Opinions adopted by the Working Group on Arbitrary Detention*, A/HRC/4/40/Add.1 (2007), 91-93; Human Rights Watch, ADHEFO, Alternatives Cameroun, IGLHRC, *Criminalizing Identities Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (2010), 10; Alternatives Cameroun, Centre for Human Rights at the University of Pretoria, Global Rights, IGLHRC, *The status of lesbian, gay, bisexual and transgender rights in Cameroon: A shadow report* (2010), 9.

⁵⁸ Human Rights Watch, ADHEFO, Alternatives Cameroun, IGLHRC, *Criminalizing Identities Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (2010), 19.

⁵⁹ *Id.*, 4.

⁶⁰ *Id.*, 23.

as a “cell fee”. After making him sign a document affirming that he was gay, police transferred him to New Bell Prison where he alleged severe torture, verbal abuse and sexual assault from fellow inmates and prison guards. He wrote a formal letter of complaint to prison authorities regarding his treatment, but no response ever came.⁶¹

Between **20 and 21 July 2007**, six men in Douala were detained after a woman complained to police of theft. They were charged under Article 347-1 of the Penal Code and held for at least five days before being referred to the Wouri Crown Court and placed from there into pre-trial detention. It took until **6 March 2008** for a judge to order their provisional release on account of several procedural missteps by police.⁶²

In the early hours of **16 August 2007** two young men were detained by a police night patrol and taken to Nlongkak police station, allegedly for being caught having sex with one another. They appear to have been held throughout the various court dates and adjournments until they were finally sentenced on **13 March 2008** to imprisonment of unknown duration and a fine of 250,000 CFA francs (around USD 500).⁶³

On **30 August 2007** three more men in Douala were also arrested for theft as had happened the previous month, and were also charged for same-sex conduct by the Douala Public Prosecutor’s Department. They were held for nearly five months before being found guilty of “attempted homosexuality” sentenced to six months’ imprisonment and a fine. Given the long period of pre-trial detention they were released after serving two months of their sentence.⁶⁴

Human Rights Watch further noted the case of a 17-year-old boy who was imprisoned with adults at an **undisclosed date** despite being a minor. While imprisoned, other inmates reportedly hit him with stones. Authorities initially refused to house him with minors as they believed “he would turn them gay”, though he was transferred after complaints from a lawyer. Before long, however, he was sent back to be held with adults and no response was given by officials to further protests from attorneys and rights groups.⁶⁵

In early **March 2008** local media reported that two alleged lesbian women were arrested when the management of a Douala hotel alerted police to a “brawl”

in one of the rooms. The families of the two women are said to have begged the prosecutor to drop the charges against them, but no further details are known.⁶⁶

On **16 August 2008**, a 28-year-old man in Yaoundé was arrested without a warrant after his landlord accused him of being gay. He was transferred on **31 August** to Kondengui Prison where he suffered regular assaults and mistreatments from guards and fellow inmates for three months before being released.⁶⁷

On **28 March 2009**, a 22-year-old man was swimming in a lake near Douala airport when a gang came and demanded money from him. When police arrived on the scene the gang accused the young man of being a homosexual and he was arrested while they were let free. The individual was charged under article 347 on the grounds of “flagrant homosexuality” and was kept in a cell for one week, permitted to wear only his underwear. As reported by civil society, over the course of the week, police repeatedly beat him until he escaped the police station on April 5.⁶⁸

On **7 June 2009** a famed Douala gay hangout—a club called Formula 1, which has since closed—was subjected to one in an apparent long-line of regular police raids. Officers from the Douala District 9 Police entered the premises and demanded “fuel money” from the manager lest all his patrons be arrested. He paid them the bribe with the cash available, 5,000 CFA francs (USD 12), and they left, but not before beating up one patron and arresting three others who were released a few hours later after being subjected to anal examinations.⁶⁹

On **8 November 2009** a young man in Douala was locked in his neighbour’s house after the pair had met for drinks, by a gang attempting to extort money from him. When he refused to pay, they took him to the police and accused him of homosexuality, leading to him being held for 13 days and allegedly being beaten and kicked by officers to force a confession. He was placed in pre-trial detention at Douala Central Prison on **20 November**, where he stayed for eight days before pleading not-guilty at the hearing. On **30 November** he was released due to a lack of evidence.⁷⁰

In **March 2010** a woman from Yaoundé was detained and severely beaten while in the custody of police in Douala, for allegedly engaging in consensual same-sex sexual activity with another young woman. She was sexually

⁶¹ *Id.*, 28-30.

⁶² Alternatives Cameroun, Centre for Human Rights at the University of Pretoria, Global Rights, IGLHRC, *The status of lesbian, gay, bisexual and transgender rights in Cameroon: A shadow report* (2010), 9-10.

⁶³ *Id.*, 10.

⁶⁴ *Ibid.*

⁶⁵ Human Rights Watch, ADHEFO, Alternatives Cameroun, IGLHRC, *Criminalizing Identities Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (2010), 31.

⁶⁶ Alternatives Cameroun, Centre for Human Rights at the University of Pretoria, Global Rights, IGLHRC, *The status of lesbian, gay, bisexual and transgender rights in Cameroon: A shadow report* (2010), 12.

⁶⁷ Human Rights Watch, ADHEFO, Alternatives Cameroun, IGLHRC, *Criminalizing Identities Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (2010), 30-31.

⁶⁸ Alternatives Cameroun, Centre for Human Rights at the University of Pretoria, Global Rights, IGLHRC, *The status of lesbian, gay, bisexual and transgender rights in Cameroon: A shadow report* (2010), 7.

⁶⁹ *Id.*, 13.

⁷⁰ Human Rights Watch, ADHEFO, Alternatives Cameroun, IGLHRC, *Criminalizing Identities Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (2010), 21; Alternatives Cameroun, Centre for Human Rights at the University of Pretoria, Global Rights, IGLHRC, *The status of lesbian, gay, bisexual and transgender rights in Cameroon: A shadow report* (2010), 11.

assaulted and then released after giving evidence that she could provide a “guarantor” sum of 450,000 CFA francs (USD 1,022).⁷¹

On **26 March 2010** three men (one of whom was a local activist for Alternatives Cameroon and another of whom was an Australian citizen and friend of the activist) were arrested while chatting in a hotel lobby, as police reportedly received a tip-off alleging the Australian visitor had engaged in sexual activity with the two Cameroonian men. They were released three days later.⁷²

2010 also saw a gay bar owner in Douala assaulted and had his business vandalised by neighbours, who then called the police to have him arrested. He spent five months in New Bell Prison, though his boyfriend who recounted the story to international media had not heard anything directly from him since the date of his arrest. The boyfriend managed to flee the scene and avoid arrest, managing to get to Italy on a cargo ship before finally winning a two-year legal battle for asylum in Europe.⁷³

A human rights defender and student by the name of Jean-Claude Roger Mbede⁷⁴ was arrested in Yaoundé on **2 March 2011** for sending a text to another man saying that he loved him. He was sentenced to three years in prison for “homosexuality” and “attempted homosexuality” on 28 April 2011. Mbede appealed against his conviction and sentence, though that hearing was adjourned several times before he was granted provisional release by the Court of Appeal in Yaoundé on 16 July 2012. On 17 December the court upheld his sentence and he was returned to Kondengui Prison for its remainder. Mbede told Amnesty International that he had suffered beatings, sexual assault and malnutrition whilst in prison, and he had to have a hernia operation upon release. In 2014 he passed away, one month after his family removed him from hospital and prevented him access to ongoing medical treatment for his hernia. They allegedly considered him a “curse” and sought to “remove the homosexuality which is in him”.⁷⁵

On **26 July 2011** police stopped three individuals, two of whom were identified in a report by the Human Dignity Trust as being trans women (though organisations such as Amnesty International have identified them as men wearing typically feminine clothing). They were arrested after being unable to provide identity documents, with police alleging they had been groping each other’s

genitals and fellating one another—an allegation strongly denied by the accused. The trio were tried on **22 November 2011**, and sentenced to five years in prison and a fine of 200,000 CFA francs (USD 400 at the time). The judge made his disdain for the accused clear by stating openly that “a normal man doesn’t wear skirts, doesn’t drink *Bailey’s* whiskey, and doesn’t wear a weave”. While imprisoned they suffered regular beatings, with one of the accused being assaulted for refusing to braid a female guard’s hair. On **7 January 2013** at least two of the individuals were acquitted and released due to a lack of evidence, but threats of violence from community members forced them into hiding. After being assaulted later in **2013** they went to the police to file a complaint, at which point they were re-arrested and held for three days.⁷⁶

In **November 2011** two men at a night club in Yaoundé were suspected of being gay due to their appearance, mannerisms or expressions, and were arrested and sentenced to five years in jail.⁷⁷

On **27 March 2012**, government officials prevented human rights defenders from holding an EU-funded workshop on SOGIE rights in Yaoundé. This came after the workshop was violently disrupted by an anti-LGBTI vigilante group. Security forces arrested the workshop organiser and detained him for several hours but it appears no action was taken against the homophobic vigilantes.⁷⁸

On **1 February 2014** a police officer in Limbe, allegedly seeking the services of a sex worker, beat and arrested a trans woman when he learned she was not a cisgender woman. This was not the first time the victim had been targeted by authorities or local communities. Local organisations worked to secure her release though no further details could be verified of this incident.⁷⁹

In **June 2014** it was reported that two men, one 19 and one 38, were targeted by their community in the town of Bertoua for allegedly being in a same sex relationship. They assaulted the pair until police intervened and arrested the two men on charges of “indecent, public disorder and homosexuality”. The older of the two secured their freedom with a bribe of 300,000 CFA francs (USD 620 at the time), but facing threats of violence and execution from their neighbours, the pair were planning to migrate elsewhere in the last known instance of reporting on their case.⁸⁰

⁷¹ Alternatives Cameroon, Centre for Human Rights at the University of Pretoria, Global Rights, IGLHRC, *The status of lesbian, gay, bisexual and transgender rights in Cameroon: A shadow report* (2010), 7.

⁷² Human Rights Watch, ADHEFO, Alternatives Cameroon, IGLHRC, *Criminalizing Identities Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (2010), 24.

⁷³ “Gay Cameroonian wins asylum in Switzerland”, *The Local*, 6 November 2012.

⁷⁴ The identity of this victim can be released as he died in 2014.

⁷⁵ Amnesty International, *Write for Rights: Act now for Jean-Claude Roger Mbede* (2011); “Cameroon: Justice Delayed for Jean-Claude Roger Mbede”, *OutRight Action International*, 27 September 2012; “Gay man jailed in Cameroon has died, says lawyer”, *The Guardian*, 13 January 2014; “Roger Mbede, victime d’homophobie, vient de mourir au Cameroun” [Roger Mbede, victim of homophobia, has just died in Cameroon], *Stop Homophobie*, 12 January 2014.

⁷⁶ Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts*, (2019), 49-50; Amnesty International, *Cameroon: Acquittal of ‘gay’ men jailed for wearing women’s clothes exposes discrimination*, 8 January 2013.

⁷⁷ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁷⁸ Amnesty International, *Making Love a Crime: Criminalization of Same-Sex Conduct in Sub-Saharan Africa* (2013), 32.

⁷⁹ “Cameroon sex worker jailed for not being a girl”, *Erasing 76 Crimes*, 3 February 2014.

⁸⁰ “Bribe frees 2 from jail, not from Cameroon neighbors”, *Erasing 76 Crimes*, 11 June 2014.

It was reported that on **1 October 2014** police in Yaoundé raided a house after neighbours reported the house was “frequented by effeminate homosexuals”. The group, apparently made up of some gay men and transgender women, were charged with “homosexuality, prostitution and pimping”, and all were allegedly arrested previously on similar offenses. Camfaids, a local organisation, managed to assist the accused by bringing them juice and bread to sustain themselves while being held. Two of those arrested were released the next day after interventions from friends or family, though the majority were held until **7 October**, whereupon the prosecutor agreed to their provisional release pending further findings in the investigation against them.⁸¹

On **17 November 2014** a university student in Yaoundé was entrapped by another man whom he had been texting with, and taken to the local police station. Police refused his family and human rights defenders access to him, and even prevented his lawyer from meeting him for a time. When the lawyer indicated that the accused has a right to legal representation, officers responded that “the [police] captain has power over the law”. The accused was released on **20 November** after the accuser retracted his accusation of homosexuality, though police made clear they intended to continue prosecuting the case, regardless. While in custody police went through the young man’s cell phone contacts, and seem to have used this information to lure and entrap more people, as friends and relatives started to get strange calls at this time from anonymous persons requesting to meet up. One young man, also a university student, was subsequently entrapped and arrested. He and the first accused were chained to the floor together, with police demanding bribes for their release. It is unclear if bribes were paid but after private meetings between the lawyer, prosecutors and local activists, the pair were set free.⁸²

According to Humanity First’s **2015 Annual Report**, 14 cases of arbitrary arrest and detention were recorded in Cameroon that year, as well as six cases of imprisonment. This is in addition to several other documented cases of blackmail, vigilante violence, denial of service, evictions and other forms of discrimination identified in the report. Not all of the cases are outlined in the report in detail, though two notable incidents are mentioned. Two women accused by local men of being lesbians were beaten up, leading one of the women—who was pregnant at the time—to lose her child. The women went to lay a charge with police, at which point they were arrested, beaten again, and held for four months. Another young woman was arrested and held for four days in Yaoundé on account of her having a “weird hairstyle” which led police to believe she must have been a lesbian.⁸³

On **24 June 2015**, two men in Guider City were arrested by police after hotel staff became suspicious of the pair, who would often rent a room together. They were held for four days in police custody, unable to gather the money for any sort of bail or bribe, and their families ignoring their pleas for assistance. Despite support from a pro bono lawyer and Jeunes Solidaires de Garoua, a local organisation, the pair put on trial were sentenced to six years in Guider City prison. Reporting alleges abuse and maltreatment from prison officials, and notes that at least one of the pair looked malnourished when interviewed three years into his sentence.⁸⁴

In **January 2016**, according to local organisation Camfaids, three incidents took place. An individual identified as a “cross-dresser” was assaulted by two men, who accused the victim of homosexuality when police came to intervene. This led the police to arrest the victim and let the assailants go, though Camfaids acted to prevent incarceration. Another case was reported of a man—who has by now been targeted by police on more than one occasion—being made to pay 100,000 CFA francs (USD 168) to police when trying to lay a complaint about blackmail he was facing. The third incident involved a threat made to a young man that police would be called, though Camfaids reportedly intervened before any such action could be taken.⁸⁵

On **4 April 2016** a 25-year-old gay man in Yaoundé was arrested through entrapment. He had been targeted by a member of the Presidential Guard, who claimed his girlfriend had seen texts from the accused and needed him to come over and assure her that he was not a homosexual. He was arrested instead and pressured into confessing that he had made sexual advances on the Presidential Guard member, and into disclosing the identities of staff at the Cameroonian advocacy NGO, Humanity First. Members of Humanity First worked on the accused’s legal case and also reported receiving death threats for their work at this time. The accused was released on bail after nine days in custody, but was evicted by an apparently homophobic landlord on his return home.⁸⁶

On **2 September 2016** three cabaret dancers were arrested the gendarmerie in Nkomesseng, and were beaten all night on suspicion of being gay, and had their cell phones destroyed. Intervention from Camfaids, got them released, but a lack of funds meant no legal recourse could be sought.⁸⁷

On **29 November 2016** police in Yaoundé arrested 12 men for being in possession of condoms and lubricants

⁸¹ “Anti-gay Cameroon resumes arrests; 7 nabbed in raid”, *Erasing 76 Crimes*, 2 October 2014; “Cameroon arrestees freed, but possible probe looms”, *Erasing 76 Crimes*, 10 October 2014.

⁸² “Cameroon: Accuser relents, but police won’t free alleged gay man”, *Erasing 76 Crimes*, 23 November 2014; “Cameroon police entrap gay men to extort bribes”, *Erasing 76 Crimes*, 21 January 2015.

⁸³ Humanity First, *La Nouveau Visage de la Haine: Rapport annuel 2015 de Humanity First Cameroon sur les Violations des Droits de L’Homme* [The New Face of Hate: Humanity First Cameroon Annual Report 2015 on Human Rights Violations], 2015, 6, 18-19. (Uploaded to *Erasing 76 Crimes*, 2017).

⁸⁴ “6 years in prison because Abdelaziz loved a man”, *Erasing 76 Crimes*, 28 November 2018.

⁸⁵ “One arrest, one scam, one threat in Cameroon”, *Erasing 76 Crimes*, 23 February 2016.

⁸⁶ “Cameroon police detain accused gay man for 9 days”, *Erasing 76 Crimes*, 15 April 2016.

⁸⁷ Observatoire National et al., *Observatoire National de Droits des Personnes LGBTI et de Leurs Défenseurs: Phase Pilote: Rapport National de Violation de Droit Humaines* [National Human Rights Observatory of LGBTI people and their Defenders: Pilot Phase: National Human Rights Violation Report], February 2017, 27-28.

while watching a pornographic video at a club. Initially the club's doorman said the group was "well-behaved" but was allegedly pressured into telling police they were homosexuals. Police had reportedly concluded that the group of men must be gay as that is the demographic believed to most often be in possession of condoms, lubricants and other materials aimed at combatting the spread of STIs and HIV/Aids. The men were released two days later after interventions from lawyers at Global Fund. The men were reportedly given the condoms by Humanity First, as part of a local project funded by UNAIDS.⁸⁸

In **January 2017**, authorities named a gay man—allegedly identified as having participated in same-sex sexual activity in 2013 and 2015—and declared him a wanted fugitive.⁸⁹

On **5 February 2017** a man travelled from his home town to the city of Dschang to give tickets for his upcoming birthday party to his friends. While there, he was asked by a man whom he had been talking to via text message to meet up. He did so, but the man had entrapped him and immediately took him to the local police station, where he was forced to sign a confession that he was gay and promise to never speak to the man who entrapped him again. He did this, believing it would result in his being freed, though police continued to hold him, using the names of birthday party guests on his person to seek out and target more people in the city. He was also told he would not be allowed to leave until he paid 60,000 CFA francs (USD 97). Local human rights group, Unity, intervened and the man was eventually released.⁹⁰

On **11 February 2017** a human rights activist working for Avenir Jeunes de l'Ouest was arrested in the town of Bafoussam while attending to the case of another man detained for his alleged sexual orientation six days prior. The Bafoussam police commissioner demanded 60,000 CFA francs (USD 97) for the release of the original detainee, though he was freed after the intervention of local lawyers. The prosecutor of the case felt that the human rights defender had wrongly intervened in the case, leading to the detained man to walk free, and demanded 100,000 CFA francs (USD 161 at the time) as compensation. The human rights defender refused and was promptly locked in his home by the prosecutor. He managed to escape, however, and a few days later the prosecutor phoned him to assure him that no charges would be laid against the original detainee.⁹¹

On **14 March 2017** a 16-year-old transgender girl had been walking home with a young man to whom she had been introduced by her foster sister. The orphaned girl

was not formally adopted by the family, and it appears that nobody knew about her identity. A mob attacked her, ripping her clothes off to reveal her identity, which prompted the young man to take her to a police station and leave her there. As a minor with no adult next of kin, a social worker was reportedly called in, though the girl was kept in police detention until she went to court on **17 March**. She was thereafter transferred to Ebolowa Prison.⁹²

On **22 November 2017** three trans individuals standing near a bakery in Garoua were accused of homosexuality by the local baker, and were subsequently arrested. They were held for three days and their families reportedly refused to assist them. Association Jeunes Solidaire de Garoua (Garoua Youth Solidarity Association) raised funds to secure their release.⁹³

In **December 2017** two women, aged 19 and 20, were arrested for walking together through a park in Douala. The pair maintained they were not a couple, simply both students who had met up to go for a walk, but a group of local men had accused them of being lesbians after their sexual advances were refused by the women. The pair were taken to local gendarmerie headquarters where they were kicked and beaten—sometimes hit with the broad side of a machete blade—and eventually handcuffed to a window frame. They were held like this for three days. The pair later confessed to being lesbians, reportedly in the hopes that a confession, true or not, would bring an end to the ordeal. The women were only released after their families and local human rights groups collected 100,000 CFA francs (USD 182) as payment to the gendarmerie.⁹⁴

On **17 December 2017**, three men in Ebolowa were arrested by an undercover military officer who had entrapped them, though one of the arrested men was released as he was a church seminary. The other two were made to undergo invasive anal examinations at the local military base. They were denied access to a lawyer and allegedly had their money stolen by soldiers there. They were released, but re-arrested by the military the next morning and told they were "facing charges of attempted homosexuality with a soldier", and that they were to be tried in military court for the crime. Local human rights organisation, Unity, arranged a lawyer on their behalf and the two were granted bail.⁹⁵

Sometime in **2017** a local human rights defender had his research on SOGIE issues in Cameroon leaked by a local news outlet, which allegedly resulted in his arrest and ongoing harassment and threats from police, paralegal bodies, and wider society. Targeting of activists

⁸⁸ "12 arrested in Cameroon for possessing condoms", *Erasing 76 Crimes*, 6 December 2016.

⁸⁹ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

⁹⁰ Observatoire National et al., *Observatoire National de Droits des Personnes LGBTI et de Leurs Défenseurs: Phase Pilote: Rapport National de Violation de Droit Humaines* [National Human Rights Observatory of LGBTI people and their Defenders: Pilot Phase: National Human Rights Violation Report], February 2017, 35-36.

⁹¹ "Cameroon prosecutor locks up LGBT activist, demands money", *Erasing 76 Crimes*, 1 March 2017.

⁹² "2 weeks (so far) in Cameroon prison for being trans", *Erasing 76 Crimes*, 31 March 2017.

⁹³ Observatoire National et al., *Observatoire National de Droits des Personnes LGBTI et de Leurs Défenseurs: Phase Pilote: Rapport National de Violation de Droit Humaines* [National Human Rights Observatory of LGBTI people and their Defenders: Pilot Phase: National Human Rights Violation Report], February 2017, 35-36, 40.

⁹⁴ "Cameroon: Two women arrested for walking together", *Erasing 76 Crimes*, 28 December 2017.

⁹⁵ "Anti-gay military action in Cameroon: 2 arrests", *Erasing 76 Crimes*, 23 December 2017.

promoting SOGIESC rights is not uncommon, though some cases, such as the violent murder of a human rights defender in 2013, cannot be expressly tied to police or other State actors.⁹⁶

On **16 January 2018** in Douala, a 20-year-old woman was engaged in consensual same-sex sexual activity with her 22-year-old partner when her parents walked in on them. They dragged her partner to the local police station while their daughter fled the scene. They demanded the woman they had captured be placed in a cell, but declined to lay formal charges and so she was released the next morning after the 20-year-old secured the assistance of a local organisation working to assist lesbian and queer women in Douala.⁹⁷

On **8 March 2018**, a lesbian woman near a gay-friendly bar was approached by a plainclothes police officer. Not knowing why she was being questioned by a stranger, the woman refused to provide her personal details, at which point he beat her and arrested her. She was placed in a police station cell with men, and was allegedly refused any medical care or the opportunity to phone someone. A friend notified the Network of Central African Human Rights Defenders (REDHAC), which organised legal representation for the woman, though on **13 April** the court found her guilty of homosexuality and gave her a three-year suspended sentence on condition that she never be arrested for homosexuality again, lest her next sentence be enforced.⁹⁸

On **20 April 2018**, police raided the offices of Jeune de l'Ouest, a local HIV/Aids and SOGIESC advocacy organisation in the city of Dschang. Five of the organisation's members were arrested on suspicion of engaging in same-sex sexual activity. They were held for six days and set to undergo invasive anal examinations, but were never charged, and were released on bail after the interventions of other human rights defenders and a lawyer hired by UNAIDS.⁹⁹

It was reported on **8 May 2018** that a "man" who was "dressed like a woman" was arrested in Mbalayo for allegedly attempting to seduce a taxi driver. The accused was driven to a local police station by the taxi driver when he realised that he was not flirting with a cisgender woman. The accused was presented to the Public Prosecutor and imprisoned in Mbalayo Prison, though details of whether any sentencing had formally taken place and how long the imprisonment had been scheduled for were not clear.¹⁰⁰

In the early hours of **12 May 2018**, police raided several locations in Yaoundé believed to be hotspots for same-

sex sexual activity, such as a club and a cinema. In total, 25 people were arrested, though two were released soon after being identified as witnesses rather than potential suspects. The remaining 23 were allegedly held and tortured for two days and then released without being charged. The police commander is reported as saying of the incident: "Personally, I do not judge anyone and do not condemn anyone on the basis of their sexual orientation [...] however, Cameroon has laws to enforce".¹⁰¹

On **14 July 2018** a trans woman in Yaoundé was reportedly assaulted by a group of seven men. They stole her handbag, ripped her clothes, beat her and burnt her hands. Police eventually intervened but the assailants were released while the victim was held in custody. Police cut her hair and refused to provide her with medical attention, demanding instead that she stop dressing like a woman. Her friends later paid the bond to have her released.¹⁰²

On **1 August 2018** two men, one of whom was a police officer, entrapped a gay man from Buea and had him arrested. His boyfriend, who was a staff member at a local organisation called Colibri, as well as another member of Colibri, were also arrested—though one of the activists was not accused of same-sex sexual conduct but rather supporting "a separatist movement" in the Anglophone part of Cameroon. The station Commander said he would release them if paid 500,000 CFA francs (USD 900), but when they managed to scrape together some money the Commander could not be reached to accept the bribe. Camnafaw, the Cameroon National Association for Family Welfare, then intervened and secured their release, though the details of any agreements made to do so are not known.¹⁰³

Later in **August 2018**, a lesbian couple in Bertoua roused the suspicions of police when they "hugged passionately" while waiting for a ride home from a party. They were arrested and held in custody for two days, unable to pay the 200,000 CFA franc (USD 334) bribe, before being tried and sentenced to two years in prison with a fine of 138,000 CFA francs each (about USD 238 each), with the potential for having the sentence extended in lieu of paying the fine.¹⁰⁴

On **19 July 2019** a trans sex worker in Bertoua was stopped by police to have her identity documents checked. When her ID did not match her appearance, she was arrested and detained for three days before being tried and sentenced to one year in prison plus a fine of 106,000 CFA francs (USD 177).¹⁰⁵

⁹⁶ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁹⁷ "Lesbian lovers face parents' wrath, police lockup", *Erasing 76 Crimes*, 12 February 2018.

⁹⁸ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁹⁹ "Cameroon: 5 gay-rights arrests; 7 days in jail and counting", *Erasing 76 Crimes*, 26 April 2018; "Cameroon: 5 activists skip anal tests, free on bail", *Erasing 76 Crimes*, 7 May 2018.

¹⁰⁰ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

¹⁰¹ "Cameroon police arrest and torture 25 men for being gay", *Pink News*, 15 May 2018.

¹⁰² This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

¹⁰³ "Gay man woos policeman's brother in Cameroon. Result: 3 arrests", *Erasing 76 Crimes*, 14 August 2018.

¹⁰⁴ "Two years in a Cameroon prison for two women's passionate hug", *Erasing 76 Crimes*, 14 April 2020.

¹⁰⁵ "Trans woman seeks to leave prison and sex work. You can help", *Erasing 76 Crimes*, 14 April 2020.

In **August 2019**, donors and activists joined forces to achieve the early release of a gay man who was serving a three-year sentence for homosexuality.¹⁰⁶

On **17 May 2020** in Bafoussam police arrested 53 individuals who had gathered to celebrate International Day Against Homophobia, Biphobia and Transphobia (IDAHOBIT) at an event organised by Colibri, the local advocacy organisation. The group were accused of “promotion of homosexuality and violations of public health regulations” during the Covid-19 pandemic, but were released after supporters of the group raised 1,000,000 CFA francs (USD 1,694). No other charges were reported as pending against members of the group and the case was closed.¹⁰⁷

After being charged with homosexuality in **June 2020**, three men were fined and a fourth was fined and sentenced to one year in prison. Donors and activists again worked to assist in raising funds to pay the fees.¹⁰⁸

Also in **June 2020**, in Kekem, another four men were arrested. One had been violently assaulted by two strangers he had made plans to meet with, and when he recounted events to his family, they allegedly beat him until he revealed which of his friends were also gay. He and three friends were taken to police where they were tortured until they confessed to being gay. While one of the four was released due to interventions from a lawyer in his family, the other three were charged with indecency and engaging in “homosexual behaviour”.¹⁰⁹

According to reports in **January 2021**, police in Ebolowa, arrested a suspected gay man in **December 2020**. The police reportedly noticed the accused’s red thong sticking out while on a motorbike, and thereafter subjected the accused to an anal exam. Authorities allegedly also searched the suspect’s cell phone to find “compromising” images. The accused was released after two days in custody, allegedly after a bribe was paid.¹¹⁰

On **8 February 2021** in Douala, a well-known transgender social media influencer was arrested after staying overnight at a friend’s home. The arrest appears to have been predicated on the view that the accused trans women were men, and the assumption that the two individuals would have participated in same-sex sexual activity while staying together. The two were charged with “attempted homosexuality, private indecency, [and] lack of a national identity card” at a trial held one day

after arrest, reportedly without access to legal representation. They were thereafter incarcerated to await further judicial proceedings, and eventually obtained the services of a lawyer.¹¹¹ On **11 May** a court sentenced the accused to a fine of 200,000 CFA Francs (USD 380), and five years’ imprisonment—the maximum penalty.¹¹² In response, several human rights defenders campaigned for the release of the two women, with a Cameroonian group, Working For Wellbeing, creating an international petition to put pressure on various government agencies in Cameroon, and Pan Africa ILGA publicly decrying the “[d]iscrimination and hatred towards innocent members of our community”.¹¹³ On **13 July** the pair were granted provisional release by the Court of Appeal of Douala, pending an appeal ruling.¹¹⁴ While free the harsh prison conditions were described to the media, with the pair claiming they had been chained up, and made to pay money to the guards to unchain them.

On **11 February 2021**—Cameroon’s Youth Day—12 teenage boys were arrested and beaten by police when it was alleged that they had been kissing one another.¹¹⁵

And on **24 February 2021**, it was reported that 13 people with connections to an HIV/Aids healthcare organisation were arrested on charges of homosexuality, and while they were released a few days later, several of those arrested later attested to the violent and dehumanising manner in which they were treated. Police allegedly told those in custody that they were “devils, not humans, not normal”, physically assaulted several of them, and made them sign statements without allowing them to read what the statements said or allowing them access to legal representation.¹¹⁶ The raid on the healthcare NGO came after a sexual encounter between two men, one of whom refused to give the other his cell phone back. This prompted the man to lay a charge of theft with local police, who arrested both the accused and the complainant, allegedly for their homosexuality. It was upon discovering that both men had received HIV treatment from a local non-profit that the organisation was also raided, with both staff and clients being taken into custody.¹¹⁷

On **14 April 2021**, Human Rights Watch published a summary of known cases up to that point, noting that “security forces have arbitrarily arrested, beaten, or threatened at least 24 people, including a 17-year-old boy, for allegedly being gay or gender nonconforming,

¹⁰⁶ “Donors, activists free gay man from Cameroon prison”, *Erasing 76 Crimes*, 6 August 2019.

¹⁰⁷ “Cameroon: Charges dropped against 53 arrested in Bafoussam”, *Erasing 76 Crimes*, 2 June 2020.

¹⁰⁸ “Homosexuality in Cameroon: 4 plead guilty and are set free”, *Erasing 76 Crimes*, 19 August 2020.

¹⁰⁹ “Cameroon: Four gay men arrested, beaten in Kekem”, *Erasing 76 Crimes*, 15 June 2020.

¹¹⁰ “Camerun, arrestato per un tanga rosso: “È la prova che è omosessuale” [Cameroon, arrested for a red thong: “It is proof that he is homosexual”], *Il Grande Colibri*, 12 January 2021.

¹¹¹ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

¹¹² This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

¹¹³ “Pan Africa ILGA’s statement on the arrest of Cameroonian Trans Celebrity”, *Pan Africa ILGA*, 12 March 2021.

¹¹⁴ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

¹¹⁵ “Cameroon: Police arrest 12 teens on homosexuality charges”, *Erasing 76 Crimes*, 15 February 2021.

¹¹⁶ Human Rights Watch, *Cameroon: Wave of Arrests, Abuse Against LGBT People: Repeal Law, Protect LGBT Rights*, 14 April 2021.

¹¹⁷ “Arrest of 13 presumed homosexuals, anti-AIDS workers in Cameroon”, *Erasing 76 Crimes*, 4 March 2021; Another entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

since **February 2021**, with several individuals made to undergo invasive anal exams.¹¹⁸

In **May 2021** a campaign called “Project Not Alone” was set up by *Erasing 76 Crimes*, an online news site dedicated to monitoring stories of criminalisation in multiple countries. The project is claimed by organisers to be for the raising of funds to assist eight individuals who were jailed for homosexuality in **2019** and **2020** to pay their fines and secure their release as their prison sentences come to an end, with additional funds needed to provide legal assistance to three others who have been jailed without trial since early **2020**.¹¹⁹ It has been reported that two of those awaiting assistance to pay their release fines were discovered to be gay by their boss who refused to pay them as a result. When they complained to him about this apparent extortion, he reported them to the police.¹²⁰ Two others—a lesbian couple who had been outed to the police after one of the pair refused the sexual advances of a man—were subsequently sentenced in **December 2019** to 18 months’ imprisonment, not including four additional months if they could not pay their 400,600 CFA franc fine (USD 730). They were released on **23 June 2021** thanks to the fundraiser.¹²¹

Broadly speaking, it appears that the State-backed targeting of people of diverse gender expressions and sexual orientations in Cameroon is so widespread that the cases outlined in this report likely do not account for a significant proportion of total attacks. A local website, *Cameroun Web*, reported on **7 June 2021** for example that there had been “mass arrests at gay bar in Cameroon”, but details of the place, date and number of arrested persons were not published.¹²² It is likely that many such cases do not even receive this level of reporting to begin with.

In **July 2021** three young people in Bafoussam were arrested and beaten, with police forcing them to provide the names of gay people in the region. The group had been staying with a human rights defender because they had all been rejected by their families due to their sexual orientation. It seems that on **17 September** police stormed the activist’s home to harass and threaten him. At the police station the investigator informed him that he would need to pay 50,000 CFA francs (USD 89) to secure the release of the three young detainees.¹²³

On **28 August 2021** a group of four trans women in Yaoundé were attacked by a mob because of their gender expression, but were saved by police. However, the police then arrested them, and at the police station the women were stripped, beaten, and threatened with

death. They were held for two days before they managed to secure their release by paying a bribe.



Criminalising Provisions

Since 2017, Article 354 of the [Penal Code](#) (2017) outlines a penalty of up to two years and/or a fine for “sexual relations with a person of the same gender”. Before 2017, Article 272 of the previous Criminal Code criminalised those who committed “acts against nature” with persons under 21 years of age. A bill to criminalise same-sex relations with up to 20 years in prison was debated in Parliament in 2016 but failed to pass. However, the revision of the Criminal Code that entered into force in 2017 incorporated the criminalisation of “same-sex sexual relations”.¹²⁴

Enforcement Overview

Information on SOGIE issues from Chad is considerably hard to gather as there are no ILGA member organisations or other groups known to carry out SOGIESC-related advocacy work locally.¹²⁵ ILGA World has been able to identify at least two examples of enforcement between 2013 and 2021 (one prior to the 2017 Penal Code amendment and one after).

Examples of Enforcement

On **20 September 2013**, two individuals reported to be gay men (though one of the pair was said to be wearing a dress and makeup and may have been a trans woman or transfeminine person) were arrested in Abéché and charged with “indecent exposure”. It is alleged that they were dancing together at a bar in celebration of their wedding. Details are not consistent across all media reports, with some articles stating that all other attendees and witnesses were also arrested. On **8 October** the initial sentence of two years’ imprisonment and a fine of 50,000 CFA francs (around USD 85) was reduced to a two-year suspended sentence and a fine. The bar was reportedly ordered to close down for two years as a result of the incident. According to one local media outlet, the arrests and convictions were based on

¹¹⁸ Human Rights Watch, *Cameroon: Wave of Arrests, Abuse Against LGBT People: Repeal Law, Protect LGBT Rights*, 14 April 2021.

¹¹⁹ “Help us free 11 imprisoned LGBT victims of homophobia – Rights Africa”, *Rights Africa*, 31 May 2021; “Faites un don pour libérer un couple homosexuel” [Donate to free a gay couple], *Erasing 76 Crimes*, 24 July 2021.

¹²⁰ “Please help free 2 gay men, outed and arrested at work”, *Erasing 76 Crimes*, 11 June 2021.

¹²¹ “Imprisoned for whom they love, lesbian couple has been set free”, *Erasing 76 Crimes*, 26 June 2021.

¹²² “Mass arrests at gay bar in Cameroon”, *Camerounweb*, 7 June 2021.

¹²³ Information provided by Humanity First Cameroon.

¹²⁴ Julie Makuala Di Baku and Jean Paul Enama, “An Overview of Some Central African countries” in ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 92.

¹²⁵ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Leis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 170.

Article 271 of the old Penal Code which criminalised acts of indecency (*outrage à la pudeur*).¹²⁶

In July 2020 an individual reported to be “a man dressed as a woman” was arrested, claiming that they had been trapped by a third party and forced to wear traditionally female attire. This case highlights the widespread conflation of sexual orientation and gender identity/expression in many criminalising countries. Talking to local media outlets on the arrest, the spokesperson for the National Gendarmerie, Abakar Abdramane Haggar, stated: “A homosexual is difficult to spot, but we look at their behaviours and their manner of dress. Then, the courts will determine”. Moreover, Deputy Prosecutor, Wambel Assoucia Ngueli, added that “homosexuality is becoming an increasingly rampant phenomenon in our society” as he instructed the investigation units of the Gendarmerie to proceed to hearings without delay.¹²⁷

Comoros

Criminalising Provisions

Article 318(3) of the Comorian Penal Code (1981) enforces one to five years in prison and a fine on persons found guilty of “indecent or unnatural acts with a person of the same sex”.¹²⁸

Enforcement Overview

While it is often regarded as a “safe” country given the relative lack of criminal enforcement, ILGA World is aware of a small cluster of cases, highlighting the issue that rarely-enforced legislation can and will be used against residents arbitrarily.

In 2014, the government stated before the Human Rights Council that the political majority required to amend the law did not exist.¹²⁹

Examples of Enforcement

Though details remain unclear, there were reportedly at least three prosecutions between 2012 and 2013 against individuals alleged to have participated in same-sex sexual activity.¹³⁰ Given that arrests do not necessarily

lead to prosecution in all instances, it is possible that there are more cases than these three which have not yet come to light.

Eritrea

Criminalising Provisions

The Penal Code of 1957 (inherited from Ethiopian rule), contained a “sexual deviations” chapter under which Article 600 established that sexual acts, or any other indecent act, with a person of the same sex was punishable with imprisonment from 10 days to three years.¹³¹

In 2015, the new Penal Code (2015) aggravated the penalties for consensual same-sex sexual acts. Under Article 310(1) (entitled “homosexual acts”). Such acts may result in a prison sentence “of not less than five years and not more than seven years”.¹³²

Enforcement Overview

Due to its authoritarian regime under Isaias Afwerki, history of arbitrarily detaining dissidents and human rights defenders in brutal conditions, and relative isolation, Eritrea has often been called “the North Korea of Africa” by international media.¹³³ This unflattering moniker may not be entirely accurate, as the country has shown signs of slowly opening up, but it does demonstrate the difficulty in accessing verifiable data on criminal enforcement.

Nevertheless, ILGA World has identified three cases between 2002 and the time of publication. Neither are from after the adoption of the 2015 Penal Code.

Examples of Enforcement

It has been alleged that in 2002 five gay men in detention were displayed on a national television broadcast alongside a piece on “the dangers of homosexuality”.¹³⁴

The following year, 2003, six gay men were arrested by Military Police in the capital of Asmara before being

¹²⁶ “Chad: Homosexual marriage in Abéché”, *Le Tchadanthropus*, 25 September 2013; “Tchad: 2 ans de prison ferme pour les homosexuels d’Abeché”, *Tchadinfos*, 4 October 2013; “Chad: the population of Abéché wind up against a gay couple”, *RFI*, 27 October 2013; United States Department of State, *2013 Country Reports on Human Rights Practices - Chad* (2014); Human Rights Campaign & Human Rights First, *Report: The state of human rights for LGBT people in Africa* (2014), 7.

¹²⁷ “Tchad: un homme suspect habillé en femme arrêté”, *Alwihda Info*, 24 July 2020.

¹²⁸ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 115.

¹²⁹ *Report of the Working Group on the Universal Periodic Review: Comoros*, A/HRC/26/11, 7 April 2014, para. 73.

¹³⁰ Human Rights Campaign & Human Rights First, *Report: The state of human rights for LGBT people in Africa* (2014), 7.

¹³¹ ILGA World: Daniel Ottosson, *State-Sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults* (2007), 12.

¹³² ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 116.

¹³³ “What peace will mean for Eritrea – Africa’s ‘North Korea’”, *The Conversation*, 19 July 2018; “Why Eritrea is called Africa’s North Korea”, *The Economist*, 14 August 2018; “Pyongyang unlike Asmara: Eritrea’s distaste for ‘North Korea’ label”, *Africa News*, 10 October 2018; “Dissenters tortured in ‘North Korea of Africa’”, *The Times*, 12 June 2021.

¹³⁴ “Eritrea: Asmara Military Police arrested 6 gay men in October 11/03”, *Global Gayz*, 1 January 2009.

transferred to a location said to house thousands of political prisoners in dire conditions.¹³⁵

In 2013 an Italian teacher working in Eritrea was deported, allegedly for being gay, and is allegedly not the only non-national to be deported on such grounds.¹³⁶



Ethiopia

Criminalising Provisions

The *Penal Code of 1957* contained a “sexual deviations” chapter under which Article 600 established that sexual acts, or any other indecent act, with a person of the same sex was punishable with imprisonment from 10 days to three years.¹³⁷ In the current *Penal Code (2004)* same-sex sexual activity is grounds for imprisonment under Article 629, with Article 630 noting that the sentence should be not less than one year. “Making a profession” of such acts aggravates the penalty to up to 10 years.¹³⁸

Enforcement Overview

Between 2008 and 2019 several instances of Christian churches of various denominations have been documented as calling for harsher penalties for consensual same-sex sexual acts (CSSSA), though in 2014 a government spokesperson indicated this would not happen as “[CSSSA is] already a crime and there is a penalty for it. The government thinks the current laws are enough”.¹³⁹ It seems that this stance against expanding criminalisation, as well as an historical lack of clear cases of criminal enforcement, has given the country which hosts the African Union headquarters, a reputation of being “relatively safe” for people with diverse sexual orientations, gender identities or gender expressions. This can be seen in the attempts by German authorities to deport a trans woman back to Ethiopia in July 2021 on the grounds that she “passes” as a woman and is thus safe, despite her account of brutal abuses in prison.¹⁴⁰

ILGA World has engaged with numerous activists and organisations working in Ethiopia for the creation of this report, all of which deny the “safe country” narrative and have urged caution in publicising details of cases given the extreme risk it puts people at. As such, cases summarised below without a clear citation can be assumed to have come from one of these groups.

ILGA World has engaged with numerous activists and organisations working in Ethiopia for the creation of this report, all of which deny the “safe country” narrative

One group which provided data to ILGA World provided an additional explanatory note on the relative dearth of known enforcement cases, stating that:

No court files can be accessed even by researchers who have legal documents that allow them to get hold of court files. Most of the incidents mentioned here are recorded from friends/allies, members of the community, people who have been to prison for other crimes and [a] few from the individuals who have been victims.

Most people from the LGBTQ+ community do not disclose such incidents [...] for fear of stigmatization and discrimination from their own community since the community sees them as threats that they might expose the rest because they have already been ousted by the police.

Mob justice is common in Ethiopia especially in the capital city, Addis Ababa. There are hundreds more horrific stories over the years of LGBTQ+ people being attacked and beaten by a mob on the streets for presumably looking “gay” “flamboyant” or “tomboy”.

All incidents have never been reported to the police because there is no justice for LGBTQ+ people.

It must also be noted that, with the ongoing conflict between the central government and the Tigray region, conditions on the ground or enforcement of legislation may yet change rapidly for unforeseeable reasons. At the very least the conflict has given authorities impetus to obscure reporting on human rights issues, as seen in the 2021 expulsion of seven UN observers, representatives of the Norwegian Refugee Council, and Médecins Sans Frontiers (MSF).¹⁴¹

Despite this complex situation, ILGA World has identified up to eight examples of criminal enforcement between

¹³⁵ *Ibid.*

¹³⁶ Human Rights Campaign & Human Rights First, *Report: The state of human rights for LGBT people in Africa* (2014), 8-9.

¹³⁷ ILGA World: Daniel Ottosson, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults* (2007), 12.

¹³⁸ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliá Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 116.

¹³⁹ “Ethiopia: Church declares war on homosexuals”, *Queer.de*, 8 September 2019.

¹⁴⁰ “BAMF will arabische trans Frau nach Äthiopien abschieben” [BAMF wants to deport Arab trans women to Ethiopia], *Queer.de*, 31 July 2021; “Jamila Bleibt: Don’t Let Germany Deport a Trans Woman to Ethiopia”, *The Left Berlin*, 19 September 2021.

¹⁴¹ “Millions at Risk as Ethiopia Expels UN Officials”, *Human Rights Watch*, 1 October 2021.

2014 and 2021, plus an additional case from an unknown date, bringing the total to at least nine. As explained above, this extremely low number reflects but a minuscule portion of the total number of cases, most of which go unreported or undocumented.

Examples of Enforcement

Four men in the capital city of Addis Ababa had their home raided by police at an **undisclosed date** when neighbours accused them of being gay. Police did not have a warrant for the raid. Further details of the case have been withheld.

In **2014** a young gay man was reportedly arrested for his sexual orientation in Addis Ababa. Denied a lawyer or any visitors, the victim is alleged to have been raped and beaten by other inmates in prison. To date no trial is known to have taken place and activists are unaware of the young man's whereabouts.

In **October 2016** a gay man in Addis Ababa was arrested and held for three months on accusations of having sex with a minor. According to local activists contacted by ILGA World, gay men are often profiled and targeted on suspicion of being paedophiles, and as no evidence for such behaviour could be provided for this case, a court eventually acquitted the man in question.

In **January 2020** another gay man was arrested on suspicion of paedophilia and held for a month, but ultimately released given there was no evidence for the accusation.

In **January 2020** in Adama two men were arrested for "looking gay" and held for three days. While in detention they were allegedly beaten by the other inmates.

In Addis Ababa in **January 2021** two men were detained by police for six days for "looking gay". After they were released, police outed them to their families, prompting one to commit suicide.

Other activists have indicated to ILGA World that in **February 2021** police "violated" and arrested a queer individual prompting them to go into hiding and seek asylum.

Another individual was similarly targeted and arrested in **May 2021**, and subsequently has also gone into hiding and begun the process of seeking asylum.

In **July 2021** it was reported that a trans woman—originally from Qatar but currently an Ethiopian citizen—was on the cusp of deportation from Germany back to Ethiopia, despite claims of criminal enforcement against her. It is unclear when she was detained, but she has claimed that someone saw her male identity in her passport and took photographs of it to blackmail her, then report her to authorities even after she paid to keep

things quiet. She was incarcerated for around a year in a men's prison after being stripped and photographed, and allegedly subjected to physical and sexual violence from both staff and other inmates. Her lawyer, it is claimed, would regularly be taunted and accused of homosexuality when visiting his client, and seems thus to have cut ties with her while she was imprisoned to avoid a formal accusation of homosexuality and jail time himself. German officials have claimed that because the woman "passes" (in other words, does not look transgender) she does not face danger in her home country, and further leans on a lack of explicit criminalisation of diverse gender identities and expressions as justification for deportation. This of course does not take into account the widespread conflation of trans women with MSM (men who have sex with men) and their resultant targeting by State actors under anti-CSSSA provisions.¹⁴²



Criminalising Provisions

Gambia has criminalised consensual same-sex sexual activity (CSSSA) since the implementation of the colonial **Criminal Code (1934)**, instituting prison sentences of up to 14 years for anyone with "carnal knowledge of any person against the order of nature" under Chapter XV Section 143 (1). The **Criminal Code (Amendment) Act (2005)** Part 4(c) clarified the meaning of "carnal knowledge against the order of nature" to include anal and oral sex, the use of "any object or thing" to "simulate sex", and "committing any other homosexual act with the person". Article 147(2) of the 2005 version of the Criminal Code limits women to five-year sentences for "gross indecency".

Additionally, Section 167 on "rogues and vagabonds" (as amended by the Criminal Code (Amendment) Act (2013) provides that any "male" person "who dresses or is attired in the fashion of a woman in a public place" or "who practices sodomy as a means of livelihood or as a profession" shall be punished with up to five years' imprisonment and/or a fine.

The law was expanded again with the **Criminal Code (Amendment) Act (2014)**. Part 4 of the Act introduces the category of "aggravated homosexuality", laying out factors such as the spread of HIV and being a "serial offender" as grounds for life-imprisonment.¹⁴³

Notably, diverse gender expressions were explicitly criminalised under the Criminal Code (Amendment) Act of 2013, which stipulated a fine or five years in jail to "any male person who dresses or is attired in the fashion of a woman in a public place".¹⁴⁴ Setting aside the erasure

¹⁴² "BAMF will arabische trans Frau nach Äthiopien abschieben" [BAMF wants to deport Arab trans women to Ethiopia], *Queer.de*, 31 July 2021; "Jamila Bleibt: Don't Let Germany Deport a Trans Woman to Ethiopia", *The Left Berlin*, 19 September 2021.

¹⁴³ ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 116.

¹⁴⁴ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 34.

of trans and gender-diverse persons in the law's wording, and considering the legislation instead in the light of its apparent intended purpose, Gambia remains one of a minority of countries to maintain *de jure* criminalisation of diverse gender expressions, as opposed to a *de facto* criminalisation through anti-CSSA laws.

The adoption of the Criminal Code (Amendment) Act (2014) which aggravated existing punishments only served to worsen the dire conditions of Gambians with diverse sexual orientations, gender identities and expressions,¹⁴⁵ with the UN Special Rapporteur on extrajudicial, summary or arbitrary executions indicating in 2015 that "the approval of the amendment was followed by rounds of arrests, prosecutions and attacks, and humiliation and even torture of persons, because of their presumed sexual orientation."¹⁴⁶

Enforcement Overview

Despite being the smallest sovereign State on the African mainland, there is an outsized body of evidence for the brutal targeting of people of diverse SOGIE by local authorities. As such ILGA World has identified at least seven major examples of enforcement between 2012 and 2021—though several of those cases took place in the context of widespread "hunts" by authorities, and so the number of individual cases is undoubtedly higher.

Under the authoritarian presidency of Yahya Jammeh, "dissidents" such as human rights defenders and queer individuals were all regular targets of the paramilitary "Jungler" forces and the National Intelligence Agency - the latter of which reportedly compiled a list of 200 "homosexuals" to be arrested.¹⁴⁷ Though Jammeh went into exile in 2017, no change in the *status quo* seems to have happened for LGBTI+ Gambians. Activists have criticised Jammeh's successor, Adama Barrow, for not making his stance on the issue clear enough, and while several members of the new government have spoken out in favour of decriminalisation and non-discrimination, no steps have been taken to repeal criminalising provisions.¹⁴⁸ Further, in 2020 the government was reported to have issued a formal statement indicating that "the decriminalisation of homosexuality is not on the agenda in The Gambia".¹⁴⁹

It was also reported in the months leading up to the December 2021 national elections that President Barrow's ruling party had entered into a coalition agreement with Jammeh's party, with some expressing concern that he may be granted amnesty and be permitted to return to Gambia.¹⁵⁰

In 2019 as part of Gambia's Universal Periodic Review (UPR), Croatia issued the recommendation that Gambia "[d]ecriminalize same-sex relationships between consenting adults and take measures to protect lesbian, gay, bisexual, transgender and intersex persons from arbitrary arrests and violence."¹⁵¹ The recommendation was rejected.

Examples of Enforcement

On 6 April 2012, 20 individuals were arrested for an "attempt to commit unnatural offences" on the basis that 18 of the respondents—cited in reports as "homosexual men" though possibly trans women, cross-dressers or simply performers—were dressed in women's clothing while dancing for tourists. A report by Human Dignity Trust indicates that it was likely solely due to their manner of dress (their gender expression) that authorities concluded that an "indecent act" was about to take place. The group was held for about a month before being released on bail. In August of that year the prosecution withdrew its charges on the basis that there was not enough evidence for the case.¹⁵² Diverse gender expressions were only explicitly criminalised the following year with the passage of the Criminal Code (Amendment) Act of 2013.¹⁵³

This and other legal amendments adopted in 2014 and outlined in the country summary above brought a wave of arrests and targeting, according to reports by Human Rights Watch and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.¹⁵⁴ Human Rights Watch interviewed five women and six men who had to flee the country in 2014 after repeated arrests and threats in the wake of the legal reform, which they called a "witch hunt".¹⁵⁵ It has been alleged that at the time of this "hunt", the National Intelligence Agency (NIA) kept a list of at least 200 suspected LGBT+ individuals to be arrested.¹⁵⁶

¹⁴⁵ Human Rights Watch, *State of Fear: Arbitrary Arrests, Torture and Killings* (2015), 53.

¹⁴⁶ *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Addendum Mission to the Gambia*, A/HRC/29/37/Add.2, 11 May 2015, para. 79.

¹⁴⁷ "Lesbians flee to Senegal as Gambia cracks down on homosexuality", *Reuters*, 21 November 2014; Human Rights Watch, *State of Fear: Arbitrary Arrests, Torture and Killings* (2015).

¹⁴⁸ European Asylum Support Office, *EASO Country of Origin Information Report: The Gambia Country Focus* (2017), 560-562.

¹⁴⁹ "La dépénalisation de l'homosexualité n'est pas à l'ordre du jour en Gambie" [Decriminalization of homosexuality is not on the agenda in The Gambia], *Emedia.sn*, 24 June 2020; "Banjul dément vouloir décriminaliser l'homosexualité après une vive polémique en Gambie" [Banjul denies wanting to decriminalize homosexuality after heated controversy in Gambia], *Le Monde*, 24 June 2020.

¹⁵⁰ "Gambia Election 2021: Jammeh's victims worried about ruling party alliance", *RFI*, 19 September 2021.

¹⁵¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Gambia*, A/HRC/43/6, 22 para. 128.12.

¹⁵² Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts*, (2019), 21-22; ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 34.

¹⁵³ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 34.

¹⁵⁴ OHCHR, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Addendum Mission to the Gambia*, A/HRC/29/37/Add.2, 11 May 2015, para. 79.

¹⁵⁵ Human Rights Watch, *State of Fear: Arbitrary Arrests, Torture and Killings* (2015), 53.

¹⁵⁶ "Lesbians flee to Senegal as Gambia cracks down on homosexuality", *Reuters*, 21 November 2014.

One lesbian woman who was interviewed was arrested and held at the NIA twice in **2014**, where she was beaten until she confessed the names of others, who were then also targeted by authorities.¹⁵⁷

In **September 2014** four lesbian women were arrested by members of the NIA and held for questioning in Serekunda. They were threatened with medical tests—authorities claiming that a doctor would “put a tube in [their] vaginas” to test if they were lesbians. Two of the women were released but the two who presented in a more masculine, gender non-conforming manner were held until they paid a bribe of more than 10,000 Dalasi (USD 312).¹⁵⁸

It was also reported by multiple sources, including Amnesty International and the former Press Secretary of President Yahya Jammeh (who fled the country the previous year after being arrested for publishing news “with intent to tarnish the image of the president”) that in **November 2014** three young men were apprehended at a night club for allegedly being gay and held for six days in the National Intelligence Agency’s offices. The incident allegedly scared at least five other gay men and a group of lesbians into fleeing the country. Later reports by the same sources, however, indicate that the three men were held until **24 December**, rather than for just six days. They were then reportedly arraigned by the Banjul Magistrate’s Court on one count of “homosexuality”, though the charge was later withdrawn by the court and replaced with multiple charges of “unnatural offenses and conspiracy”. The trio spent several months in Banjul’s Mile 2 Maximum Security Prison before being acquitted on **30 July 2015**.¹⁵⁹ One of the three people arrested had also been detained previously in the **2012** case and fled the country after being acquitted in this second case. Several elements of his reported testimony conflict with those of the above reports, namely the dates and timelines of incarceration. Initial reports also state three people were arrested together in a club, though his testimony claims he was in a taxi heading home from dinner with a friend. The accused alleged severe torture from the National Intelligence Agency forces until having to be transferred to a hospital in **April 2015** due to the severity of the injuries.¹⁶⁰

On **9 November 2015**, a man was allegedly detained by NIA officials and held for eight days, enduring regular beatings while in their custody before being moved to the Mile 2 Maximum Security Prison for nine months while he and another man were being tried for alleged same-sex sexual activity. Both were acquitted due to lack of evidence.¹⁶¹

President Jammeh’s former Press Secretary also reported in **November 2014** that Gambian “secret police” were travelling door to door with a teenage boy so that he could identify homosexuals, which had resulted in two businessmen and three women also being arrested, though no local news outlets reported on such incidents. In total, it was alleged that 16 people were arrested in **November 2014**, after a new law prescribing up to life imprisonment for repeated convictions had been adopted the previous month. The measure was decreed by UNHCR representatives.¹⁶²

A Senegalese national accused of being gay was arrested in **June 2020**. Initially he was reported for stealing a cell phone from the complainant, though later it was alleged that the two had engaged in same-sex sexual activity, which then became the focus of the courts. Due to the postponement of trial dates and limited reporting on the matter, the outcome of this case is unknown at the time of publication.¹⁶³



Ghana

Criminalising Provisions

Section 104(1)(a) of the [Penal Code](#) (1960), as amended in 2003, prohibits “unnatural carnal knowledge” (defined as “sexual intercourse with a person in an unnatural manner”) of another person of sixteen years or over with his consent. It is considered a misdemeanour and carries a maximum penalty of three years’ imprisonment. Additionally, Section 278 criminalises acts of “gross indecency” in public.¹⁶⁴

Enforcement Overview

Regardless of the extent to which criminalising provisions have been actively implemented, authorities in Ghana have frequently relied on political rhetoric about enforcing these criminalising provisions, mainly for political clout, to crack down on local communities and as a means to deter any SOGIESC-related advocacy effort in the country.

For instance, in 2006, the government officially banned “a lesbian and gay conference” that was allegedly going to take place in Accra, and the Ministry of the Interior was instructed to locate and arrest the conference’s local

¹⁵⁷ Human Rights Watch, *State of Fear: Arbitrary Arrests, Torture and Killings* (2015), 53-54.

¹⁵⁸ *Id.*, 55.

¹⁵⁹ “Report: Gambian arrests, detention, search for gays”, *Erasing 76 Crimes*, 13 November 2014; “Gambia must stop wave of homophobic arrests and torture”, *Amnesty International*, 18 November 2014; “Gambia acquits 3 men of ‘aggravated homosexuality’”, *Erasing 76 Crimes*, 1 August 2015; Another entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

¹⁶⁰ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

¹⁶¹ Human Rights Watch, *State of Fear: Arbitrary Arrests, Torture and Killings* (2015), 54.

¹⁶² “Report: Total of Gambia’s anti-gay arrests reaches 8”, *Erasing 76 Crimes*, 15 November 2014; “Report: Gambian arrests of LGBTI now total 16”, *Erasing 76 Crimes*, 30 November 2014; “UNHCHR alarmed at LGBT arrests, detentions in Gambia”, *Erasing 76 Crimes*, 20 November 2014.

¹⁶³ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

¹⁶⁴ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 117.

organisers. Even though the conference was later reported to have been a fabrication, public outrage sparked an intense national debate that brought the issue of homosexuality to the forefront of the national agenda.¹⁶⁵ The government's virulent reaction to this "attempt to organise a local conference" was well received by the local clergy, religious groups and the general public and was regarded as "a step in the right direction".¹⁶⁶

A few years later, in 2011, the Ghanaian Director of Public Prosecutions stressed that persons caught engaging in homosexual activities could be liable for prosecution. Responding to calls for the country to enact laws to ban homosexuality in an interview in Accra, she stated the Criminal Code made the act a criminal offence, hence, persons engaged in homosexuality "fall foul of the law".¹⁶⁷

That same year, in reaction to inflammatory media reports indicating that 8,000 gay men lived in the Western Region and "most of them were infected with HIV/Aids" [sic], Regional Minister Paul Evans Aidoo incited people through the media, including "landlords and tenants", to come forward and report those suspected of being homosexual—who would be promptly "taken to court". Ghana's Bureau of National Investigations was also instructed to track down and arrest anyone suspected of being a homosexual.¹⁶⁸ "All efforts are being made to get rid of these people in the society," stated Aidoo.¹⁶⁹ In the same vein, the Christian Council of Ghana issued a strongly worded message against "the practice of homosexuality" urging Ghanaians "not to vote for any politician who believes in the rights of homosexuals".¹⁷⁰ As noted by the Coalition Against Homophobia in Ghana (CAHG), in these discussions, religious, political, and traditional leaders, as well as media pundits portrayed homosexuality as a threat to national security, as pathological, as un-African, and/or as ungodly. CAHG also decried the fact that reports were being published "virtually every day" on front pages of newspapers, promoting fear and hatred against homosexuality.¹⁷¹

In 2018 the UN Special Rapporteur on extreme poverty wrote in his report on his mission to Ghana that while same-sex sexual activity is criminalised, officials claimed there was no problem "in practice" as the law was rarely enforced. The Special Rapporteur responded that "[w]hile the Government might argue that it is not responsible for acts of discrimination by private persons, the reality is

that the law sets the overall framework and strongly influences attitudes."¹⁷²

"All efforts are being made to get rid of [homosexuals] in the society," stated the Regional Minister

This is reflected in reports which indicate that extrajudicial attacks by those "taking the law into their own hands" are not uncommon in Ghana. On 25 January 2021 it was reported by Modern Ghana, a local media outlet, that several vigilante groups exist to explicitly "hunt" LGBT+ individuals through an informal initiative called "Operation Make Ghana Hell For Homosexuals".¹⁷³ The media itself often contributes to these "hunts" and moral panics, with ILGA World noting multiple local websites regularly fanning the flames of homophobia through inflammatory reporting, or actively using their platforms to identify LGBT+ persons wanted by the police, or publishing articles seemingly aimed at pressuring politicians into taking action.

Director of Amnesty International Ghana, Robert Akoto Amofo, has stated in a 2020 interview that the penal code has rarely been "enforced in the court of law", adding that "[r]ather, it is used as a tool for persecution of the LGBTIQ community by police and individuals across the country to abuse people and take advantage of them".¹⁷⁴ The specific ways in which negative social attitudes and extrajudicial violence in Ghana intertwine with legislation, politics and police activity undoubtedly complicates any clear-cut explanations of the local situation.

With an apparent spike in targeting of LGBT+ groups and persons in Ghana in 2021, it appears that calls for stricter criminalisation policies to be adopted have also increased, both within society and government. On 8 March, in the aftermath of a raid on an LGBTI+ advocacy NGO in Accra, six members of Parliament allegedly "hinted of jointly sponsoring a bi-partisan Private Members Bill [...] to proscribe and criminalise the advocacy and practice of homosexuality in the country."¹⁷⁵ In June 2021 ILGA World was made aware of a formal letter from the Speaker of Parliament stating

¹⁶⁵ Mark S. Luckie, "Ghana: Somewhere over the rainbow", *UC Berkeley Graduate School of Journalism* (2007); Refugee Review Tribunal (Australia), *Research Response Number: GHA33179 - Ghana* (9 April 2008), 2.

¹⁶⁶ CIVICUS: Akosua Darkwa, Nicholas Amponsah and Evans Gyampoh, *Civil Society in a Changing Ghana: An Assessment of the Current State of Civil Society in Ghana* (2006), 53.

¹⁶⁷ "Gays can be prosecuted", *Ghana Web*, 7 June 2011.

¹⁶⁸ "A letter from Ghana: 'Homos' and Hysteria: reporting the gay debate in Africa", *African Arguments*, 7 September 2011; "Paul Evans Aidoo's Ghana gay spy call 'promotes hatred'", *BBC News*, 22 July 2011; "Minister orders arrest of all homosexuals", *Modern Ghana*, 19 July 2011; "Ghana Cracks Down On Gays", *Star Observer*, 21 July 2011; Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 22; Human Rights Advocacy Centre (HRAC), *Submission for the Universal Periodic Review of Ghana* (January 2008), 5.

¹⁶⁹ "Ghana Moves to Arrest Homosexuals", *CSS ETH Zürich*, 27 July 2011.

¹⁷⁰ "Minister orders arrest of all homosexuals", *Modern Ghana*, 19 July 2011.

¹⁷¹ "Press Release on Homosexuality in Ghana", *Coalition Against Homophobia in Ghana (CAHG)*, 3 August 2011 [archived in OutRight Action International's website]

¹⁷² *Report of the Special Rapporteur on extreme poverty and human rights on his mission to Ghana*, A/HRC/38/33/Add.2 (2018), 9-10.

¹⁷³ "Vigilante group hunt for homosexuals in parts of Accra", *Modern Ghana*, 26 January 2021.

¹⁷⁴ Asylos and ARC Foundation, *Ghana: State treatment of LGBTQI+ persons* (2021), 24.

¹⁷⁵ "Ghana: Drop Charges Against LGBT Rights Defenders", *All Africa*, 19 June 2021.

that “urgent actions are being taken to pass a law to eventually nib the activities of these groups in the bud”.

These “urgent actions” would later materialise as the “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill”, submitted for consideration to Ghana’s Parliament. The bill would increase the jail-time for consensual same-sex sexual activity to 10 years as well as ban same-sex marriage; it would also criminalise diverse gender identities and expressions and prohibit medical practitioners from offering gender-affirming medical care; it would offer incentives to families to have their intersex infants “normalised” through risky and unnecessary genital surgeries; and it would prohibit public support, advocacy or organising for SOGIESC human rights in Ghana.¹⁷⁶

A bill to proscribe and criminalise “the advocacy and practice of homosexuality” was introduced in the Ghanaian Parliament in 2021

This bill, if passed, would be one of the most restrictive pieces of anti-LGBTI+ legislation adopted anywhere in recent years, and as such prompted the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, along with multiple other UN Special Procedures signatories, to pen a 25-page letter of concern in August 2021 urging the government to withdraw the proposed legislation.¹⁷⁷

Examples of Enforcement

A report prepared by the Research Directorate, Immigration and Refugee Board of Canada in **2006** identified several examples of enforcement of criminalising provisions, including the case of a pastor whose trial for having engaged in anal sex with an 18-year-old student took place in late 2005, and a lesbian woman who was arrested in Accra for “luring an 18-year-old girl into lesbianism” and was charged with “practicing unnatural sex with the victim”.¹⁷⁸

On **4 September 2006**, the Ghana Police Service disrupted an event in Koforidua—in the Eastern region of Ghana—where gays and lesbians had reportedly gathered. Additionally, two media sources reported that the Ghanaian government banned a gay and lesbian

conference that was scheduled to take place in September 2006 in Ghana.

In **November 2007**, a British and a Ghanaian national were charged with “unnatural carnal knowledge” and possession of “obscene” pictures. Reports indicate that the British national was arrested at Kotoka International Airport when a security check found a CD with pictures of him having sexual intercourse with the 19-year-old Ghanaian. They both pleaded guilty to “unnatural carnal knowledge” before the Accra Circuit Court and were given the option of a six-month jail term or a fine of more or less 575 cedis (around USD 400), which was paid for both by the British National. Furthermore, the Deputy Director of the Criminal Investigations Department of the Ghana Police Service explained to the local media that in order to ensure that the British national would not return to the country, the police sought a deportation order from the Court, which was eventually granted.¹⁷⁹

It was reported to Human Rights Watch that in **2013** the Chief of Tamale, the capital of the Northern region, called for the youths of the city to take action against gay people in the city. This led to at least one known individual being brought before the Chief and a jeering crowd, before being transferred to a local police station. His uncle bailed him out and he immediately relocated to Accra, Ghana’s capital, but even there seems to have opted to remain “underground”.¹⁸⁰

In **December 2014** a lesbian woman and her partner in Kumasi were arrested and held at Suame Police Station for three days after her partner’s mother brought police to her home. They were never formally charged and were released after they paid 200 Cedis (about USD 45).¹⁸¹

In **June 2016** three young women at a football training camp in Kumasi were arrested in front of a crowd of over 100 people after police received a tip-off accusing them of being lesbians. Onlookers followed the police van to the station, where the women were insulted and mocked before being released after a few hours. Though they denied being lesbians and were not charged with any crime, the camp organiser expelled the trio, who were subsequently left destitute as they were disowned by their families for “bringing shame” to their households.¹⁸²

A lesbian woman from Cape Coast reported to Human Rights Watch that in **July 2016** her father disowned her and reported her to police when he discovered her sexual orientation. She was arrested, but her grandmother managed to post bail. She was never formally charged but instructed to report to the police station daily.¹⁸³

¹⁷⁶ “Anti-LGBTQI+ Bill referred to Parliament’s Legal & Constitutional Affairs Committee”, *Ghana Web*, 4 August 2021.

¹⁷⁷ OHCHR, OL GHA 3/2021 (2021).

¹⁷⁸ Immigration and Refugee Board of Canada, *Ghana: Treatment of homosexuals by society and authorities and availability of state protection; names and activities of groups or associations promoting homosexual rights* (2006).

¹⁷⁹ “British Man on Trial for Sodomy in Ghana”, *The Advocate*, 7 November 2007; “British sodomite to be deported”, *Modern Ghana*, 15 November 2011.

¹⁸⁰ Human Rights Watch, “No Choice but to Deny Who I Am”: *Violence and Discrimination against LGBT people in Ghana* (2018), 32.

¹⁸¹ *Id.*, 31.

¹⁸² *Id.*, 30-31.

¹⁸³ *Id.*, 31.

In **August 2016** a man identified as a baker hosted a large birthday party for himself in Tanokrom and baked an elaborate cake for his guests. Believing the cake to be evidence of a gay wedding, a gang disrupted the party, beating guests and stealing their valuables. The host reported the incident to the Takoradi Market Circle Police Station nearby, but once there was arrested instead and pressed to disclose the identities of all guests. He was released after paying a bribe of 300 Cedis (USD 68). Police later arrested 15 men for attending the alleged gay wedding, though all were released without charge.¹⁸⁴

In **December 2016** a young man in Cape Coast faced harassment in the street from a stranger because he was perceived to be gay, leading to a physical altercation. The following morning the stranger brought police to his home, and he was arrested and taken to Bakaano Police Station. Police threatened to charge him for “sleeping with other boys”, but he was released later after a local government official intervened on his behalf.¹⁸⁵

In **March 2017** two young men booked into a hotel room in Accra. Suspicious hotel staff spied on them and posted pictures of them having intercourse to social media. The pair were arrested by the Kaneshie police. Local media attempted to frame the story as one of a paedophilic sexual predator, though the younger of the two men was over the age of 18 at the time of the incident.¹⁸⁶ The same article reporting on this case also notes separately that Accra’s main international airport bore a sign the **previous year** urging “sexual deviants” arriving in Ghana to turn around.

In **February 2018**, two gay students were arrested for allegedly engaging in anal sex at a hostel at the Takoradi Technical University (TTU). The couple was reportedly caught in the act by other students and reported to the police. Upon being arrested by elements of the Takoradi Police force, the students were “referred to a hospital for medical examination and further investigations”.¹⁸⁷

In **September 2020**, local media indicated that 11 lesbian women were arrested in the city of Aflao, in the Volta region, after a video of two of them reportedly engaging in sexual acts became known.¹⁸⁸

On **31 January 2021** a local organisation, LGBT+ Rights Ghana, formally opened its new office and community space in the capital of Accra. The opening was attended by a number of diplomats from the European Union. News of the event seems to have caused widespread debate and even threats of violence against the activists. These tensions culminated in a police raid on the property on **24 February**, after the landlord reported the group to the authorities. The acting Minister for Gender, Children, and Social Protection stated at the time that “the issue of the criminality of LGBT is non-negotiable and our cultural practices also frown on it”.¹⁸⁹

On **16 March 2021** it was reported by the Togo Times that Ghanaian police had arrested a “gay disguised as a woman”, though this article was later taken down and further details on the incident could not be verified at the time of publication of this report.¹⁹⁰

On **30 March 2021** it was reported that 22 people in the city of Obomeng had been arrested after a local Chief reported them for conducting a “lesbian wedding ceremony”. Police found no evidence of the alleged wedding, with participants claiming it had been a birthday party, but authorities stated they would be held anyway to “answer in court for an alleged violation of the COVID-19 rules”. One civil society organisation, the African Equality Centre, stated in response to the incident that the preceding months had seen an “unprecedented abundance of homophobia from religious, political and media representatives”.¹⁹¹

On **20 May 2021**, 21 activists were arrested by members of the Volta Regional Police Command at the Ghana Nurses and Midwifery Hotel in Ho and charged with unlawful assembly, though police representatives noted that they would be further investigating the “agenda by these people to propagate the LGBTQ behaviour”.¹⁹² Ironically, the meeting had been primarily aimed at capacity-building for paralegals on dealing with police and State victimisation, though police claimed that they had acted upon intelligence that the conference was actually to “entice and lure the youth to engage in same-sex sexual activities”, a suspicion the government seems to believe is affirmed by the fact that at least one of the hotel rooms was occupied by two guests of the same sex,

¹⁸⁴ *Id.*, 31-32.

¹⁸⁵ *Id.*, 32.

¹⁸⁶ “Two men outed on social media and arrested for gay sex in Ghana”, *Mamba Online*, 22 March 2017.

¹⁸⁷ “2 Arrested for Sodomy”, *Graphic Online*, 2 February 2018.

¹⁸⁸ *This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.*

¹⁸⁹ “Ghana security forces shut down LGBTQ office: Rights group”, *Aljazeera*, 24 February 2021; “Security Forces in Ghana Target New LGBT Rights Group Centre”, *Okay Africa*, 26 February 2021; “Ghana: Police raid LGBT+ center; activists call for boycott”, *Rights Africa*, 28 February 2021; “Pan Africa ILGA statement on the raid of LGBT+ Rights Ghana offices”, *Pan Africa ILGA*, 4 March 2021; “Policía invade ONG LGBT em Gana a pedido de religiosos” [Police raid LGBT NGO in Ghana at religious request], *Põe na roda*, 4 March 2021.

¹⁹⁰ “Ghana: La police arrête un gay déguisé en femme. Photo” [Ghana Police arrest gay disguised as a woman. Photo], *Togo Times*, 16 March 2021.

¹⁹¹ “Ghana: 22 queere Personen wegen Teilnahme an “lesbischer Hochzeit” festgenommen” [Ghana: 22 queer people arrested for attending “lesbian weddings”], *Queer*, 30 March 2021.

¹⁹² “21 Homosexuals & Lesbians Promoting Their Rights Remanded For Unlawful Assembly In Ho”, *Peace FM Online*, 23 May 2021; “21 Ghanezen opgepakt tijdens LGBT+-evenement” [21 Ghanaians arrested during LGBT + event], *OUT Tv*, 28 May 2021.

and because SOGIESC educational books and pamphlets were found at the venue. On **11 June** the accused were granted bail after 22 days in detention and multiple denials of bail on account that they had come to the conference from across Ghana, and police would struggle to track them all down for further investigation.¹⁹³ On **5 August** the case against the group was finally dropped, with the court ruling that there was not enough evidence to prove they had gathered unlawfully.¹⁹⁴ At least one activist within the arrested party is known to be a close affiliate and ally of Pan Africa ILGA and ILGA World. The incident was decried by multiple UN Special Procedures in a formal letter to Ghanaian officials in **July**, which may have contributed to the widespread international pressure for the “Ho 21” to be released.¹⁹⁵ However, in its statement to the UNHRC, dated **13 August 2021**, the Permanent Mission of Ghana to Geneva asserted that the alleged nefarious intent of the gathering precluded this case from being one of arbitrary detention, and claimed that as a signatory to a number of UN treaties it indeed did respect the rights of LGBT+ persons.¹⁹⁶

On **28 May 2021** a video went viral allegedly showing a popular online “influencer” engaging in consensual same-sex sexual activity, prompting him to go into hiding and deactivate his social media accounts. It is alleged that he is wanted by police.¹⁹⁷

On **14 October 2021** two gay men in the Central Region were arrested after the owner of the restaurant where they worked called the police. The pair got into a knife fight due to a dispute about their allegedly sexual relationship, and without regard for who instigated the violence, authorities took both into custody—seemingly because of their sexual orientation.¹⁹⁸

On **20 October 2021** reports from local news outlets indicated that two men in the city of Tamale were detained when a fight between them, as a result of an apparent romantic break-up, became violent and members of the public were alerted to the commotion. The pair were interrogated, and in the process named two other gay men who were presumably also arrested. The couple were fined 1,200 cedis (USD 195) and a ram each by a local Chief before he handed them over to the police to be formally charged and tried. Under Ghanaian law, local Chiefs have some judicial authority over specific chieftaincy issues, land disputes, and some minor offenses. The Chief justified his decision on the basis that the men had “disrespected his land for practising LGBTQ+”.¹⁹⁹

Guinea

Criminalising Provisions

Per Article 274 of the [Penal Code](#) (2016), any “indecent or unnatural acts committed with an individual of the same sex” is punishable by a prison sentence of six months to three years and/or a fine of 500,000 to 1,000,000 Francs. Additionally, Article 275 criminalises public “outrages of modesty” with up to two years’ imprisonment and a fine.²⁰⁰ The previous Penal Code (1998) contained these provisions under Articles 325 and 326.

Enforcement Overview

ILGA World has identified at least nine examples of criminal enforcement in Guinea between 2013 and the time of publication, though details remain scarce for a significant number of these and other cases. A dearth of information on precise dates, the identities of the accused, periods of incarceration, police procedures and judicial activities, all serve to obscure the picture of the local situation.

In early September 2021 after an armed coup unseated the country’s first democratically elected president (re-elected for a controversial third-term), military leadership announced the dissolution of the Constitution and several government agencies, as well as the temporary closing of borders. At the time of publication of this report it is unclear how or if this will impact SOGIESC human rights or communities in Guinea.²⁰¹

Examples of Enforcement

In **June 2013**, a media outlet reported that a young gay man was set up by a mob in the suburbs of Conakry, the capital of Guinea. He was saved from the attack by a friend who intervened and saved him from being lynched. The young man was then handed over the local authorities, with a government official declaring that he would solve the problem and “eradicate the scourge of homosexuality”, which was “alien to local tradition”.

¹⁹³ “Ho: Alleged LGBTQI activists case adjourned to June 8”, *Modern Ghana*, 5 June 2021; “Court Grants Bail to the 21 LGBTQI People Incarcerated In Ghana”, *Kuchu Times*, 14 June 2021; “A Collective Statement Release on the “Ho 21” - Pan Africa ILGA”, *Pan Africa ILGA*, 16 June 2021; Permanent Mission of Ghana in Geneva, *SC/GE/UN.7* (2021), 1-3.

¹⁹⁴ “Ghana court drops case against 21 LGBT+ activists”, *Devdiscourse*, 6 August 2021.

¹⁹⁵ OHCHR, *AL GHA 2/2021* (2021).

¹⁹⁶ Permanent Mission of Ghana in Geneva, *SC/GE/UN.7* (2021), 5-7.

¹⁹⁷ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

¹⁹⁸ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

¹⁹⁹ US Office of Justice Programs, *Crime and Punishment in the Republic of Ghana: A Country Profile* (2009); “Tamale: 4 suspected gays fined GH¢1,200 each”, *Pulse Ghana*, 20 October 2021.

²⁰⁰ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 117.

²⁰¹ “Elite Guinea army unit says it has toppled president”, *Reuters*, 6 September 2021.

Further details of the fate of the victim remain unknown.²⁰²

Several arrests for alleged “homosexuality” and for “promoting homosexuality” have been reported in 2015 and 2016 in the country, especially in the Conakry area, with Amnesty International stating that at least three people were arrested on suspicions around their sexual orientation in 2015.²⁰³

Two men were arrested on 22 April 2015 in Conakry and sentenced to three months’ imprisonment the following month by the Mafanco Court.²⁰⁴

On 30 October 2015 Conakry’s Gbessia International Airport security police found two men allegedly having sex close to the airport, and while one of the men fled, the other was detained and handed over to the Gendarmerie.²⁰⁵ It appears that the arrested man offered the name of the other upon interrogation, as a local article reported the 6 November arrest of a man who had been named by a citizen arrested at Gbessia Airport. He had, according to this article, long been the target of religious figures in his community for “spreading homosexuality”, and when the Gendarmerie located him, they searched his room and cell phone for compromising materials, “manhandled him, tied him up and tore all his clothes”, before arresting him.²⁰⁶

In 2016 it was reported in a local media outlet that several LGBT activists had been arrested while at the beach, though no other details could be identified at the time of publication.²⁰⁷

In June 2016 a video circulated on social media of the Lambadji District Police in Conakry seeming to arrest what news outlets called a “man wearing a red robe” - possibly a trans woman or differently identifying person of feminine gender expression. The article published on the matter could not confirm the details of the arrest but speculated that the victim was likely detained for “homosexuality”.²⁰⁸ It is one of many recorded cases in several criminalising countries where diverse gender identities and expressions are conflated with sexual orientation, and where trans and gender-diverse individuals are targeted on the assumption of their participation in same-sex sexual activity.

On 7 October 2016, per reporting by a Guinean news site called Afrinews, two people were arrested by police after being assaulted by an angry mob of youths. Their

attackers claimed that their actions were to oppose the t-shirts worn by the victims, which stated in French: “Collective for the Défense of Homosexuals”.²⁰⁹

In November 2018 it was reported in a local news outlet that an individual suspected of “promoting homosexuality” had been arrested in Koloma, though no further details are known.²¹⁰



Criminalising Provisions

The Penal Code (1930), as amended by Criminal Law (Amendment) Act (2003), prescribes under Section 163 a prison sentence of up to 14 years for consensual “carnal knowledge of any person against the order of nature”. Section 165 also prescribes a five-year sentence for men found guilty of “gross indecency”, while Section 382 states that “any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.”²¹¹

Enforcement Overview

Between 2009 and 2021 ILGA World identified at least 13 apparent examples of criminal enforcement or targeting from the State.

Despite these numbers Kenya claimed in 2015 during the second UPR cycle that “on the rights of LGBT, not a single individual could confirm the application of the criminal law on the basis of his/her sexual orientation”.²¹² Though this has proven demonstrably untrue, the true numbers are often obscured by the fact that many in Kenya are not charged under provisions against same-sex sexual activity, but are often instead charged with drunkenness, loitering, solicitation, impersonation or prostitution - or not charged at all and rather blackmailed and extorted by police.²¹³

In 2015, a Human Rights Watch report documented several cases of arrest, often occurring due to complaints from neighbours or on the initiative of law enforcement officials seeking bribes. In most cases, detainees are

²⁰² “Guinée: Un homosexuel arrêté puis violemment bastonné à Kountia”, *All Africa*, 13 July 2013.

²⁰³ Amnesty International, *Rapport 2015/2019: La Situation des Droits de l'homme dans le Monde* (2016), 209.

²⁰⁴ *Ibid.*

²⁰⁵ “Un homosexuel mis aux arrêts à Conakry”, *Vision Guinée*, 30 October 2015.

²⁰⁶ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

²⁰⁷ “Guinée : des jeunes militants pour la cause des homosexuels arrêtés sur une plage à Conakry”, *Afrinews*, 9 October 2016.

²⁰⁸ “Guinée: Un homosexuel tabasé puis menotté par la police”, *Net Afrique*, 28 June 2016.

²⁰⁹ “Guinée : des jeunes militants pour la cause des homosexuels arrêtés sur une plage à Conakry”, *Afrinews*, 9 October 2016.

²¹⁰ “Société: Arrestation d’un présumé promoteur de l’homosexualité à Koloma”, *Mosaïqueguinée*, 24 November 2018.

²¹¹ ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 117; ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 36.

²¹² *Report of the Working Group on the Universal Periodic Review: Kenya, A/HRC/29/10*, 26 March 2015, para. 83.

²¹³ Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 22.

released within a matter of days.²¹⁴ Most victims interviewed by Human Rights Watch said they choose to not report crimes to the police, believing that police will at best turn a blind eye or at worst arrest them instead.²¹⁵ Furthermore, a 2016 study by the Coalition of African Lesbians (CAL) and the Gay and Lesbian Coalition of Kenya (GALCK) interviewed 18 women who provided testimonies of arbitrary arrests, as well as a pattern of overnight detentions in police cells only to be released without charges the following morning. Victims reported they had to pay exorbitant bribes to be released and avoid going to court.²¹⁶

Criminal enforcement largely takes place against the backdrop of virulently homophobic political rhetoric or outright State censorship

The above context of criminal enforcement and targeting largely takes place against the backdrop of virulently homophobic political rhetoric or outright State censorship. In November 2010, Raila Odinga, then Kenya's Prime Minister, called for the mass arrests and jailing of persons found engaging in homosexuality and "lesbianism".²¹⁷ Almost a decade later such political actions had clearly not ended, as in May 2019 the Deputy County Commissioner in Kiambu (a county in the vicinity of Nairobi) announced that authorities were "investigating claims of an increase in homosexuals" and vowed to arrest and prosecute those involved". It is unclear if any arrests or prosecutions followed.²¹⁸

Further, 2021 saw a documentary entitled *I Am Samuel* banned for its depictions of gay relationships in Kenya, while the first Kenyan film to screen at the Cannes Film Festival, *Rafiki*, was also famously banned with the Director threatened with arrest by the Kenya Film Classification Board (KFCB).²¹⁹ Though only one filmmaker to date seems to have actually been arrested after creating LGBT-positive content, back in 2014.²²⁰

Examples of Enforcement

According to the 2007 IGLRHC (now OutRight Action International) annual report, a transgender woman from Burundi was driven into exile in Kenya due to "extreme verbal and physical attacks", but Kenyan authorities arrested, mistreated and publicly humiliated her, before forcibly repatriating her to Burundi. Upon her return, she again faced heavy persecution and was forced to flee to South Africa.²²¹

A trans activist reported in an online op-ed that in 2009 she had laid charges of theft with police, but when the suspect who they arrested informed them that she "wasn't a woman, but a man", they released him and told her that they were going to arrest her on charges of "female impersonation". After a heated exchange in which the activist pointed out that she never claimed to be any gender in particular and that being transgender is distinct from impersonation, a confused duo of police officers left her untouched.²²² Not all were so fortunate.

In July 2010 a trans woman was arrested in Thika District for an unrelated offence, and kept in a women's cell until police realised she was not a cisgender woman at which point she was severely beaten for "causing the confusion" and moved to a men's cell, and thereafter to isolation. Three weeks later she was released by a court on a personal bond.²²³

In 2012 a trans woman in Nyamasaria, Kisumu, was arrested when her employer outed her to police. It appears she was charged with impersonation and held for an unknown period in Kondiaga men's prison before the efforts of local activists secured her release.²²⁴

In November 2014 a male sex worker in Mombasa was arrested by County Government Law Enforcement officials, who operate as a separate entity from the police. They drove around for more than three hours, allegedly taking turns to rape him, before arriving at the police station. In court he was charged with "nuisance and loitering".²²⁵

On 15 October 2014 Kenyan authorities arrested the producer of "Stories of our Lives", a documentary telling

²¹⁴ Human Rights Watch, *The Issue is Violence Attacks on LGBT People on Kenya's Coast* (2015), 17.

²¹⁵ *Id.*, 19.

²¹⁶ Coalition of African Lesbians (CAL) and Gay and Lesbian Coalition of Kenya (GALCK), *Research on The Lived Experiences of Lesbian, Bisexual and Queer Women in Kenya* (2016), 25.

²¹⁷ Kenya Human Rights Commission et al., *The Human Rights Situation, Case Law, and Research on Protections on Grounds of Sexual Orientation, Gender Identity, and Expression in the Republic of Kenya* (2017), 11.

²¹⁸ "Homosexuals in Juja Put on Notice Following Public Uproar", *Mwakilishi*, 15 April 2019.

²¹⁹ "Director of Kenyan lesbian love story 'Rafiki' fears arrest", *Mamba Online*, 15 May 2018; "Kenya Bans 'Blasphemous' Gay Doccie I Am Samuel", *All Africa*, 23 September 2021.

²²⁰ "Powerful Kenyan LGBT film screens in Jozi and CT", *Mamba Online*, 22 October 2015.

²²¹ IGLHRC, *Annual Report 2007* (2008), 7.

²²² This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

²²³ *Ibid.*

²²⁴ "Kenya: Transgender Woman Arrested On Impersonation in Usenge, Siaya, Kenya", *Kuchu Times*, 13 March 2015; ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 37.

²²⁵ Human Rights Watch, *The Issue is Violence Attacks on LGBT People on Kenya's Coast* (2015), 33.

the stories of five queer Kenyans. The arrest came the month after the crew publicly identified themselves at the film's premiere in Canada, having previously remained anonymous for fear of persecution. Authorities claimed the arrest was due to the fact that the filmmakers failed to obtain a license to shoot the film, and the case was later dropped.²²⁶

On **14 February 2015** a trans woman obtained identity documents from the Office of the Registrar of Persons in Eldoret West, and was subsequently charged with fraud and "impersonating a woman" by police, who kept her in isolation and subjected her to "medical tests" to determine her gender. She denied the charges against her and was released on bail of 40,000 Kenyan Shillings (USD 370), pending trial. The trial seems to have continued on and off for some time, with the prosecution referring to her by her "deadname", which the defence argued was a form of psychological torture. In October 2020 it was reported that the Chief Magistrate of Eldoret West instructed the prosecution to refer to the accused by her chosen name moving forward "for the interest of prosecuting this case as fast as possible". The trial was set to resume on 12 January 2021.²²⁷

In **February 2015**, word of photographs and videos featuring child pornography spread across the coastal towns of Diani and Ukunda, sparking uproar and a "hunt" by members of the public for anyone perceived to be gay, regardless of whether or not they were involved in the inciting incident. Police arrested at least two men believed to be gay, searching their homes without a warrant, charging them with "unnatural offenses" and trying to coerce a confession without any evidence of their involvement in the case. Police demanded a bribe of 100,000 Kenyan Shillings (about USD 1,000) and when the men refused to pay they threatened to drop them back on the street for the mob to attack them. The men were eventually made by the Kwale District Court to undergo forced anal exams.²²⁸ One positive development that can be traced to this case was that it led the Kenyan Medical Association to condemn forced anal exams in 2017, and in March 2018 the Kenyan Court of Appeals ruled that such practices were unlawful.²²⁹

In early **March 2015** the trans woman from Nyamasaria incarcerated in 2012 for "impersonation" was detained by police again in Usenge, where she had just started work as a barmaid. A patron became suspicious of her appearance and alerted the authorities, who stripped her and took photos of her. She was charged again for

impersonation, but it is unclear how long she may have been held.²³⁰

On **9 May 2017**, a group of 18 asylum seekers residing at the Kakuma Refugee Camp sought to engage with the office of the United National High Commissioner for Refugees (UNHCR) regarding issues of violence and protection in the camp. Police rounded them up and detained them overnight at Kileleshwa station. The next day five of the group were relocated to Pangan police station while the rest were taken at gunpoint to the Refugee Affairs Secretariat, being beaten during the transfer process. Eventually the 18 were returned to the Kakuma facility, without their belongings, but when they complained again of their dire conditions the following week police re-arrested them. They were held for three days without food or water, and when they refused to sign confessions of an unclear nature and provide their fingerprints, they were beaten. One of the group reportedly was beaten so severely that she fainted. At some point thereafter they were taken to Kakuma Court and sentenced to fines of 12,000 Kenyan Shillings each (USD 115). Unable to pay, 17 of the group were sent to Lodwar Prison for 30 days where staff allegedly threatened to kill them if they didn't have sex with each other in front of them. The group was later returned to Kakuma, with no change in conditions there.²³¹

An unconfirmed report surfaced in **March 2018** in which two young men in western Kenya were reported by their neighbours to the police for their sexual orientation. However, the two were not arrested, allegedly on the condition they report to a mental health counsellor at Kisii University, who believed he could dissuade them from continuing their "lifestyle".²³²

It was reported in a local media outlet in **September 2019** that three men were arrested by police in Kajiado County. Two men had apparently travelled from Mombasa to engage in sex work with the third, but when he refused to pay, they reported him to the police. Police arrested all three and took them to hospital for a "medical examination" (likely anal exams, despite the practice already being ruled unlawful). According to the article the trio were set to be tried in a local court, though no further details could be verified.²³³

In **August 2020**, a further two men suspected of being gay were assaulted by their neighbours before being arrested by police, with sources indicating that the pair would be sent to court at a later date.²³⁴

²²⁶ "Powerful Kenyan LGBT film screens in Jozi and CT", *Mamba Online*, 22 October 2015.

²²⁷ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

²²⁸ National Gay and Lesbian Human Rights Commission (NGLHRC), *Annual Report 2016* (2017), 19; Human Rights Watch, *The Issue is Violence Attacks on LGBT People on Kenya's Coast* (2015), 19-23.

²²⁹ "Kenya Appeal Court Moves to End Forced Examinations of Men Suspected of Being Gay", *National Gay and Lesbian Human Rights Commission*, 22 March 2018.

²³⁰ "Kenya: Transgender Woman Arrested On Impersonation in Usenge, Siaya, Kenya", *Kuchu Times*, 13 March 2015.

²³¹ OHCHR, *AL KEN 9/2018* (2018), 2-3.

²³² "Gay couple arrested in Kenya, then released", *Erasing 76 Crimes*, 15 March 2018.

²³³ "3 Kenyan Men Arrested for Engaging in Gay-Sex", *Mwakilishi*, 30 September 2019.

²³⁴ "Kenya Police Arrest Two Suspected Kenyan Gay Lovers", *Mwakilishi*, 21 August 2020.



Criminalising Provisions

Section 14.74 of the [Penal Code](#) (1978) lists “voluntary sodomy” as a “first degree misdemeanour”. This may result in a prison sentence of up to one year, or a fine.²³⁵

Though Liberia does not expressly prohibit diverse gender expressions, the criminalisation of consensual same-sex sexual acts has been used to subject transgender and gender-diverse people to harassment, extortion, arbitrary search, arrest, and detention.²³⁶

Enforcement Overview

ILGA World has identified at least 12 examples of criminal enforcement between 2010 and 2021 in Liberia.

Though Liberian officials have been open to some level of engagement with international human rights bodies on SOGIESC issues, recent criminal enforcement as well as negative societal attitudes remain not only pressing issues, but ones which may become aggravated through one of several attempts at regressive legal reform.²³⁷

Recent criminal enforcement remain pressing issues and may become aggravated through one of several attempts at regressive legal reform

In 2012, a bill that would have amended the [Domestic Relations Law](#) (1973) to criminalise the celebration of same-sex marriages as a second-degree felony was approved by the Senate but failed to be enacted.²³⁸ More recently, in March 2020, a proposal to aggravate the penalties for “voluntary sodomy” (by making it a second-degree felony) was included in a set of proposed amendments aimed primarily at “involuntary sodomy”.²³⁹

At the time of publication, the result of this proposal could not be confirmed.

The National Movement Against Same Sex Marriage in Liberia (NAMASSEM), comprised of several Christian, Muslim, and traditionalist anti-gay rights campaigners, has urged the government to “wage war against homosexuality and lesbianism, to arrest and prosecute anyone caught in the act of homosexuality and to expose and arrest gays and lesbians operating underground”.²⁴⁰

Examples of Enforcement

In **2010**, four transgender women were arrested at a space where local activists had been doing community outreach work. A local had asked them to dance for him, but when they rebuffed him, he called the police. They were placed in a men’s prison cell among male inmates, with guards allegedly instructing the other inmates to rape the trans women because “they wanted to be females”. One of the group alleges that she contracted HIV/Aids as a result of this incident.²⁴¹

It has been reported that at least one man has been detained without trial from **2010** to **2013** after he was “outed” as gay in the media. Local organisations have indicated that such prolonged detentions are commonplace.²⁴²

A man interviewed by Human Rights Watch in **2012** provided an illustrative case of police complicity in the perpetration of hate crimes in Liberia. He claimed that a neighbourhood gang attacked him and a friend of his, beating them up and breaking everything in their shop. The police were called and eventually arrested the gang members, but when they told the officers that he and his friend were gay, the police immediately released the perpetrators without charge and arrested the victims instead. The two men were released without charge after being kept in a police cell for six hours.²⁴³

On **12 April 2013** police conducted raids in low-income communities in Logan Town, arresting, insulting and beating five suspected gay men and demanding bribes in exchange for their release.²⁴⁴

In early **2016** a man reported a case of assault to police, but was allegedly detained instead as the assailant claimed that the man he attacked was gay.²⁴⁵

²³⁵ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 118.

²³⁶ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 36.

²³⁷ UNDP & OHCHR, *Sexual Orientation, Gender Identity and Rights (SOGIR) in Africa: Liberia Country Report* (2020), 9-10; 25-26.

²³⁸ “Senate Passes ‘No Same Sex Marriage’ Bill”, *Daily Observer*, 21 July 2012.

²³⁹ “Sodomy Should Not Be Bailable”, *New Republic Liberia*, 19 March 2020.

²⁴⁰ Human Rights Watch, *“It’s Nature, Not a Crime”: Discriminatory Laws and LGBT People in Liberia* (2013), 31.

²⁴¹ Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2018), 6; ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 40.

²⁴² Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2017), 3.

²⁴³ Human Rights Watch, *“It’s Nature, Not a Crime”: Discriminatory Laws and LGBT People in Liberia* (2013), 40.

²⁴⁴ Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2017), 4.

²⁴⁵ *Ibid.*

In **September 2016** a gay man laid a complaint with police that he had been receiving death threats, though the case was thrown out, allegedly on the grounds that the victim “was a homosexual man and homosexuality is against the law”. He was thus detained overnight by police instead.²⁴⁶

It was also reported that in **September 2016** a group of trans women were assaulted by members of the Drugs Enforcement Agency (DEA), who stole their possessions and demanded bribes in exchange for their release. DEA officials allegedly said the trans women were the ones who were “spoiling” the country.²⁴⁷

In **October 2016** a man was arrested in his home in the capital city of Monrovia, charged with “voluntary sodomy” and later transferred to Kakata Central Prison where he was held until at least **April 2017**, though further details could not be verified. That **same month** another reportedly queer individual was also allegedly detained in Monrovia Central Prison.²⁴⁸

Also in **October 2016**, a man went to the Kru Town police station to report a stolen cell phone. Later, the suspected thief who had been detained by police alleged that the complainant was gay, leading to his arrest as well. He was transferred to another police station and held for three days before being released on bail under the condition that he report daily to police thereafter.²⁴⁹

Sometime in late **2017** a transgender sex worker was allegedly reported to police by a client who did not realise she was trans. She was sent to prison, reportedly without trial, and while authorities have stated she was later released, inmates at the prison who were interviewed claim she died there and that staff had covered it up. Authorities have refused to provide any details to human rights defenders investigating the matter.²⁵⁰

In **November 2017** a gay man who had been suffering intimate partner violence at the hands of his partner reported the issue to the police in Zone 3. Police did not investigate the violence from the partner, but rather detained the complainant and began investigating him for sodomy. He was freed without having to pay a bribe through the interventions of a lawyer.²⁵¹



Criminalising Provisions

Article 407(4) of the [Penal Code](#) (1953), as amended in 1976, states that consensual “illicit sex” carries a potential punishment of up to five years. Further, Article 408(4) states that whoever “disgraces the honour” of a person with their consent shall be punished along with their partner with an unstated period of detention.²⁵²

Enforcement Overview

Given the relative political instability of Libya’s territory in the decade since the “Arab Spring” revolution which saw the overthrow of the authoritarian regime and subsequent civil war, the status of SOGIESC communities on the ground can shift rapidly depending on the regional authority under which they may find themselves. The situation has also meant the delineation between vigilantism and government-enforcement of the law is often unclear. In this vein, in 2017 the United States Department of State found that militias often policed communities to enforce compliance with militia commanders’ understanding of Islamic behaviour, harassing and threatening with impunity any individuals believed to have LGBTI identities and their families.²⁵³ This includes the execution of people accused of engaging in consensual same-sex sexual acts.

Policing by militias has led to the execution of people accused of engaging in consensual same-sex sexual acts

In 2019, human rights activists informed Human Rights Watch that armed groups had continued to detain people because of their sexual orientation.²⁵⁴ For its part, Amnesty International reported in 2021 that Al-Radaa

²⁴⁶ *Ibid.*

²⁴⁷ *Id.*, 5.

²⁴⁸ Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2017), 3; UNDP & OHCHR, *Sexual Orientation, Gender Identity and Rights (SOGIR) in Africa: Liberia Country Report* (2020), 24-25.

²⁴⁹ Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2017), 3-4.

²⁵⁰ *Id.*, 4.

²⁵¹ *Ibid.*

²⁵² ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 118.

²⁵³ United States Department of State, *Libya 2017 Human Rights Report* (2018), 28.

²⁵⁴ Human Rights Watch, *World Report 2019: Events of 2018* (2019), 362.

Forces—affiliated with the Ministry of Internal Affairs—continued to detain men for their perceived SOGIE, and tortured or otherwise mistreated them.²⁵⁵

In October 2021, a report by the UN Independent Fact-Finding Mission on Libya indicated that sexual violence is used by State agents or members of militias as a subjugation or humiliation tool to silence those perceived to challenge social norms or acceptable gender roles. The report goes on to explain that “a certain idea of sexual and gender ‘normality’ also appears to drive violence directed against people who identify themselves with a different sexual orientation or gender identity.”²⁵⁶

Examples of Enforcement

In 2008 a young man was imprisoned on charges of sodomy by the pre-revolution government (likely under Article 407(4) of the Penal Code). He was subsequently imprisoned for three years.

In December 2010, elements of the police force in the capital city, Tripoli, arrested two people allegedly involved in “indecent acts” inside a cab. The police reportedly stated that one of the detainees was a man “dressed like a girl” and was wearing makeup. The other person alleged that he had been tricked into thinking he was interacting with a (cis) woman. Both of them confessed having engaged in “indecent acts” in the car.²⁵⁷

On 22 November 2012 a group of 12 men having a party in the Ain Zara suburb of Tripoli were captured by members of the Nawasi Brigade’s so-called “Private Deterrent Force”, which posted their images on social media, mocking them (by describing them as “third sex”) and claiming that they would be mutilated and executed.²⁵⁸ A Libyan media outlet indicated that a senior member of the militia denied any possibility of execution but stated that, instead, the detainees would be handed over to the Ministry of Justice.²⁵⁹ The same media outlet later explained that the arrest had taken place because the brigade has spotted “one of the men dressed as a woman” and raided the building.²⁶⁰ While in detention, all detainees had their heads shaved and received marks on their backs and legs. It is unclear if detainees were effectively liberated, because while some sources indicate they were freed a week after being arrested,²⁶¹

a 2015 report states that the liberation was later denied and none of the detainees have been heard from since.²⁶²

After a local group affiliated with the Islamic State in Iraq and the Levant (ISIL/ISIS) overthrew the government of the city of Derna, several cases of disappearances and killings of suspected gay men were documented. Though many could not be verified as being tied to the *de facto* “government” of Derna, July 2014 saw the young man initially imprisoned in 2008 executed by being thrown from a nearby mountain.²⁶³

In December 2014 two men were also detained in Derna and sentenced to death by a Sharia court. Islamic Police allegedly found them together in a car and they were thus held for five months in an unknown location. On 30 April 2015 the pair—as well as a third man also accused of homosexuality whose story’s details are unknown—were brought to the Sahaba Mosque where they were blindfolded and shot in the backs of their heads.²⁶⁴



Criminalising Provisions

Section 153 of the Penal Code states that anyone who has had “carnal knowledge of any person against the order of nature” is guilty of a felony and is liable to be imprisoned for up to 14 years. Additionally, Section 156 criminalises “indecent practices between males”, whether in public or private, imposing a penalty of imprisonment for five years and/or corporal punishment.²⁶⁵

Additionally, with regard to criminalisation of gender expression, Section 180, on “idle and disorderly person[s]” establishes that “every male person who wears the hair of his head in such a fashion as, when he is standing upright, the main line of the bottom of the mass of hair (other than hair growing on his face or on the nape of his neck) lies below an imaginary line drawn horizontally around his head at the level of the mouth, shall be deemed idle and disorderly persons” and shall be liable for the first offence to a fine and to imprisonment

²⁵⁵ Amnesty International, *International Report 2020/2021 - Libya* (2021), 231.

²⁵⁶ *Report of the Independent Fact-Finding Mission on Libya*, A/HRC/48/83, 1 October 2021, para. 61.

²⁵⁷ “In Libya, two men arrested for indecent acts”, *Gay Middle East*, 3 January 2011 (archived by LGBT Asylum News).

²⁵⁸ “Twelve men to be executed by Libyan militia for allegedly being gay”, *Gay Star News*, 25 November 2012; “Extremists threaten mutilation and death for seized ‘homosexuals’”, *Libya Herald*, 26 November 2012.

²⁵⁹ “Nawasi brigade pledges to hand arrested ‘homosexuals’ over to Ministry of Justice”, *Libya Herald*, 27 November 2012.

²⁶⁰ “Transvestite alerted Nawasi brigade to gay birthday party in Ain Zara”, *Libya Herald*, 29 November 2012.

²⁶¹ “Nawasi brigade releases 12 gay men one week after arrest”, *Libya Herald*, 29 November 2012.

²⁶² “Three men executed by IS for homosexuality in Libya”, *Malta Today*, 1 May 2015.

²⁶³ “Islamic State’s War on Gays”, *Human Rights Watch*, 8 June 2015.

²⁶⁴ “Three men accused of homosexuality executed by IS in Derna”, *Libya Herald*, 1 May 2015; “Three men executed by IS for homosexuality in Libya”, *Malta Today*, 1 May 2015; “Islamic State’s War on Gays”, *Human Rights Watch*, 8 June 2015; “Less than human”, *Development and Cooperation*, 22 June 2015.

²⁶⁵ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 118.

of up to three months. A subsequent offence can be punished with imprisonment for six months.²⁶⁶

In December 2010, the Parliament passed a bill amending the Penal Code (effective January 2011) which introduced Section 137A to criminalise “indecent practices between females”, imposing a penalty of imprisonment of five years.²⁶⁷

Enforcement Overview

In 2009 and 2010, Malawi’s police, courts and media demonstrated a fervent zeal for the enforcement of criminalising legislation with the high-profile arrest of a trans woman called Tiwonge Chimbalanga and her husband-to-be, for holding a traditional engagement ceremony—and the subsequent harassment of the human rights organisation called the Centre for the Development of People (CEDEP) for publicly defending the couple. As explained below, this most high profile of many known cases was decried internationally and condemned by the UN Special Rapporteurs on the situation of human rights defenders and on torture and other cruel, inhuman or degrading treatment or punishment.

After the global backlash surrounding this case, the President of Malawi pardoned the couple on “humanitarian grounds” and his successor vowed to decriminalise consensual same-sex sexual activity. No government action to do so has thus far occurred.

However, in November 2012 it was reported that the then Minister of Justice, Ralph Kasambara, had issued a moratorium on criminal enforcement to provide Parliament time to formally repeal the legislation.²⁶⁸ A few days later, media outlets informed that the government had backtracked on its decision after “churches and powerful conservative lobby groups fiercely criticised the move”. Minister Kasambara reportedly indicated that “he never urged for the policy to be suspended and that laws carrying up to 14 years in prison for committing homosexual acts were still being enforced”.²⁶⁹ According to Human Rights Watch, the ensuing lack of clarity and divergent opinions regarding the legality of a moratorium on arrests and prosecutions for consensual homosexual acts further exacerbated the challenges faced by local communities and seemed to have encouraged private individuals to attack LGBT and gender-diverse people with impunity.²⁷⁰

In 2015 the new Minister of Justice, Samuel Tembenu, reportedly reinstated the moratorium when he ordered the release of two men charged with having sex “against the order of nature”,²⁷¹ though several examples of criminal enforcement in violation of said moratorium have been noted from this period.²⁷²

In February 2016, the High Court in Mzuzu allowed an application by several religious leaders to quash Minister Tembenu’s decision on the basis that it was an “abdication of his constitutional duty”, effectively allowing the police to arrest and prosecute people for consensual same-sex sexual acts again.²⁷³ In the years since, a significant surge in known Examples of Enforcement was documented.

The Catholic Church has been a vocal opponent of governmental measures aiming to put an end to enforcement of criminalising laws

The Catholic Church has been a vocal opponent of governmental measures aiming to put an end to enforcement of criminalising laws. In March 2016, in reaction to the enforcement moratorium, the Episcopal Conference of Malawi, the highest body of Catholic Bishops in the country, issued an inflammatory pastoral letter opposing the measure in the following terms:

We agree with those who have faulted the Government for putting a moratorium on laws governing homosexual acts. This means that those guilty of homosexual acts or unions cannot be prosecuted. The Government has bowed down to pressure from donor communities, international bodies and local human rights campaigners. As Pastors, we find this path very unfortunate. It is an act of betrayal on the part of those in power to sell our country to foreign practices and tendencies contrary to the will of God because of money”.²⁷⁴

Catholic Bishops were joined by Muslim Sheikhs in their opposition to any measure condoning homosexuality. In fact, in 2014 the Muslim Association of Malawi (MAM)

²⁶⁶ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 43.

²⁶⁷ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 118.

²⁶⁸ “Suspension of anti-homosexuality laws in Malawi a historic step forward”, *Amnesty International*, 5 November 2012; “Malawi suspends anti-gay laws as MPs debate repeal”, *The Guardian*, 5 November 2012.

²⁶⁹ “Malawi: Churches force U-turn on gay rights”, *The Independent*, 9 November 2012.

²⁷⁰ Human Rights Watch, “Let Posterity Judge”: *Violence and Discrimination against LGBT people in Malawi* (2018), 1-3.

²⁷¹ “Malawi ‘suspends’ anti-homosexual laws”, *BBC News*, 21 December 2015; Human Rights Watch, “Let Posterity Judge”: *Violence and Discrimination against LGBT people in Malawi* (2018), 1-3.

²⁷² “Malawi government defying moratorium on gays—CEDEP, CHRR”, *The Times*, 14 December 2015.

²⁷³ “Malawi court rejects moratorium on gays: Police can arrest homosexuals”, *Nyasa Times*, 10 February 2016; An additional entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

²⁷⁴ “Full text of the Pastoral Letter of Episcopal Conference of Malawi”, *Nyasa Times*, 13 March 2016.

called for those who engage in homosexual acts “to be handed [the] death penalty as a way of making sure that the issue is curbed”.²⁷⁵

In all, ILGA World has compiled at least 17 examples of enforcement between 2009 and 2021 below—though the real number is undoubtedly higher.

Examples of Enforcement

In one of Southern Africa’s most high-profile cases, a transgender woman by the name of Tiwonge Chimbalanga, seen by local media and authorities as a “gay man”, was arrested on **29 December 2009** by Blantyre Police for participating in a traditional engagement ceremony with her would-be husband. Initially housed in Chichiri Prison pending trial, with the prosecution pushing for the pair to be subjected to anal examinations, they were sentenced to 14 years’ hard labour as punishment for “gross public indecency and unnatural offenses” by Judge Nyakwawa Usiwa-Usiwa. The judge demonstrated clearly in his ruling some of the vitriol which can be directed at trans and gender-diverse persons by State actors, saying: “I will give you a scarring sentence so that the public be protected from people like you, so that we are not tempted to emulate this horrendous example”. International outcry and efforts by activists secured their release and pardon, with Chimbalanga eventually being resettled as an asylum seeker abroad.²⁷⁶

On **13 January 2010**, the Special Rapporteur on the situation of human rights defenders sent an Urgent Appeal to the Government of Malawi concerning a situation regarding the Centre for the Development of People (CEDEP), an NGO which advocates for LGBTI+ persons and those living with HIV/Aids. The Special Rapporteur was informed the week prior that police allegedly raided the premises of CEDEP and arrested an HIV/Aids activist working there. Police alleged that he had been arrested for possession of pornographic material, but it seems that these materials were in fact educational flyers on HIV/Aids. It was alleged that the raid on the CEDEP offices was an act of intimidation, as the organisation had been defending the rights of the trans woman and her husband during their high-profile arrest in **2009**. The Special Rapporteur expressed concern at the possibility that the raid on CEDEP and subsequent arrest of an activist could have related to the group’s work in defence of human rights.²⁷⁷

In February 2010, a 21-year-old man was arrested as he was hanging posters proclaiming that “gay rights are human rights” in protest of the imprisonment and prosecution of Tiwonge Chimbalanga and her fiancé. A police spokesperson confirmed the arrest on local media and indicated that the activist has been charged with “conduct likely to cause breach of peace”.²⁷⁸

In **October 2010** a trans man and his girlfriend were arrested in the capital city of Lilongwe. The girlfriend’s mother, who disapproved of the relationship, allegedly arranged for the arrest. The couple were not formally charged but spent the night in a police cell before fleeing Lilongwe for a month for fear of further targeting.²⁷⁹

On **20 March 2012**, three members of CEDEP specialising in HIV/Aids education were arrested for organising a workshop at the University of Malawi’s College of Medicine. They were held for a week without being charged.²⁸⁰

Around midnight on **12 November 2013** a gay man’s home in Blantyre was invaded by armed police after he was reported by a neighbour. He and his family were awoken and police sexually assaulted him by groping his genitals before detaining him at Chilomoni sub-station overnight. He was held for two nights without being charged, and then released. The victim has claimed that one officer would blackmail him and threaten him with arrest for several months thereafter in order to extract bribes from him—which only stopped when the officer happened to be transferred to another station.²⁸¹ This case occurred during the government’s moratorium on criminal enforcement.

In **June 2015** a transmasculine human rights activist in Lilongwe was arrested when police suspected, based on his gender expression, that he was a lesbian. The activist was arrested at a police station while trying to pay bail for a friend who had also been detained, but was released a few hours later, seemingly after police realised that the activist was related to a local politician.²⁸² This case occurred during the government’s moratorium on criminal enforcement.

On **9 December 2015** two men in Lilongwe were arrested for purportedly having sex, when people identifying themselves as “community policing members” became suspicious of two men staying in the same house overnight and stormed the property. They were charged and released on bail after being taken to Kamuzu hospital for “assessment”.²⁸³

²⁷⁵ “Malawi’s Muslim Body Calls for Death Penalty for Homosexuals”, *Malawi Muslims Official Website*, 13 February 2014.

²⁷⁶ “Amnesty urges release of detained gay Malawi couple”, *Reuters*, 6 January 2010; UNHRC, *Report of the Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, A/HRC/16/44/Add.1 (2011), para. 1492; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, A/HRC/16/52/Add.1 (2011), 276 para. 131; Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 26; “Love in exile: one woman’s journey from Malawi to South Africa”, *The Guardian*, 27 November 2014; Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts*, (2019), 21-22; Southern Africa Litigation Centre & Nyasa Rainbow Alliance, *We get traumatised in different ways: Key issues related to sexual orientation, gender identity, and expression identified by a community consultation in Malawi* (2020), 9.

²⁷⁷ UNHRC, *Report of the Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, A/HRC/16/44/Add.1 (2011), paras. 1489-1492.

²⁷⁸ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

²⁷⁹ Human Rights Watch, “Let Posterity Judge”: Violence and Discrimination against LGBT people in Malawi (2018), 17.

²⁸⁰ *Id.*, 18-19.

²⁸¹ *Id.*, 17-18.

²⁸² *Id.*, 17.

On **2 January 2016** it was reported that a newspaper article in the country's *Malawi News* profiled several gay human rights defenders. It is claimed that while in the process of writing the article, the journalist as well as several gay interviewees were arrested by police, with the journalist's notes and equipment being confiscated. They were released after a senior officer intervened, but it is said that at least one person who was interviewed was detained by police again after the article was published, and thereafter went into hiding.²⁸⁴

In **May 2017** two trans men and the cisgender girlfriend of one of them were stopped by police in an alley and harassed for being "lesbians". Police reportedly severely beat them until their soccer coach walked by and managed to intervene. The police only agreed to let them go if they exited the alley by shuffling on their knees with their hands above their heads. One of the trans men was too afraid to press charges against the officers and so the matter was never investigated further.²⁸⁵

In **July 2017** two women were detained in Blantyre as police presumed them to be lesbians based on their looks. They were held for several hours but then released without charge.²⁸⁶

Also in **July 2017**, a trans woman was arrested at the Area 25 Kanengo Police station after being reported by a man for impersonation of a female "prostitute". While in detention, she has her clothes stripped off "to determine her identity". Police officers also took pictures of her and posted them on social media. She was eventually charged with soliciting for immoral purposes, under section 180(e) of the Penal Code.²⁸⁷

In **December 2017** the same transmasculine activist who had been detained for several hours in **2015** was detained again when he tried to open a case relating to a burglary. Police refused to open a case for him and instead threatened to charge him under the country's anti-homosexuality legislation, but he was released when he paid a bribe of 50,000 Malawian Kwacha (USD 69).²⁸⁸

A trans woman was also targeted in **2017**. After she was attacked by a mob, police detained her on suspicion of being gay and allowed her assailants to go free. She was held without charge in Maula Prison for more than a month. Police also coerced the name of another trans

woman out of her, but when the second trans woman could not be found they arrested her father instead. When the second trans woman went to the police station to find her father, they beat her for more than an hour to force a confession that she was gay. They told her to return the next day for her father but when she arrived she was detained for five hours without charge until her mother paid a bribe of 7,000 Malawi Kwachas (USD 7).²⁸⁹

In **2018** a young man in Mzuzu, a northern town, was arrested. He was charged with "gross indecency" despite no evidence of his having participated in any same-sex sexual activity coming to light.²⁹⁰

In **July 2019** police arrested the head of CEDEP and a prominent Anglican priest known for being a vocal advocate for human rights. Local news outlets and government sources do not indicate the arrest was related to SOGIE advocacy, but official accounts do not align either. There appears to have been some form of financial dispute with UNAIDS which had been funding local human rights work, though UNAIDS decried the arrest and stated that the issue had been resolved. Government officials took the agreement of the activists to repay UNAIDS as an admission of wrongdoing. They were, nevertheless, released after three days.²⁹¹ Both were arrested again in **March 2020** in an apparent campaign to crack down on human rights defenders and political dissidents, but were released on bail four days later per a court's ruling.²⁹²

In **November 2020**, a young gay man was dismissed from the Malawi Defence Force after being falsely accused of taking advantage of a drunk man. The case was reported to the police and later referred to the Zomba Magistrate Court. The gay man was arrested, charge under Section 153 of the Penal Code for carnal knowledge against the order of nature and spent two weeks in a police cell until he was later discharged from his duties.²⁹³

A joint **2021** report by local organisation describes the case of a trans man who was arrested by Chisampo police for "impersonating to be a man" after he sought medical assistance at a local hospital. He had first been chased away from the hospital upon producing an ID that did not match his gender expression. One nurse at the hospital appeared to be sympathetic at first, but called security staff after he was unable to pay a bribe.²⁹⁴

²⁸³ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

²⁸⁴ "Gay Malawian appeals for justice; now he's in hiding", *Erasing 76 Crimes*, 2 January 2016.

²⁸⁵ Human Rights Watch, "Let Posterity Judge": Violence and Discrimination against LGBT people in Malawi (2018), 16.

²⁸⁶ *Id.*, 18.

²⁸⁷ Nyasa Rainbow Alliance (NRA) et al., *Malawi Civil Society Report on LGBTI Rights to be submitted for the adoption of the List of Issues Prior to Reporting at the 131st session of the Human Rights Committee* (March 2021), 9; An additional entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

²⁸⁸ Human Rights Watch, "Let Posterity Judge": Violence and Discrimination against LGBT people in Malawi (2018), 19.

²⁸⁹ *Id.*, 16-17.

²⁹⁰ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

²⁹¹ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

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²⁹³ Nyasa Rainbow Alliance (NRA) et al., *Malawi Civil Society Report on LGBTI Rights to be submitted for the adoption of the List of Issues Prior to Reporting at the 131st session of the Human Rights Committee* (March 2021), 9.

²⁹⁴ *Id.*, 15.



Mauritania

Criminalising Provisions

Same-sex sexual activity is illegal under the Sharia-based [Criminal Code](#) (1983), with men being liable to receive the death penalty (under Article 308) and women being subject to a "correctional sentence of three months to two years' imprisonment and a fine" (Article 306).²⁹⁵

While the death penalty remains part of the country's legislation, Mauritanian officials have maintained at the United Nations that a *de facto* moratorium on executions has been in place since 1987.²⁹⁶

Enforcement Overview

ILGA World has identified at least three distinct examples of criminal enforcement between 2008 and 2021—though a fourth potential case outlined in the examples of enforcement section below could not be verified to a degree warranting its inclusion in the tally.

Across the board, researchers attempting to delve into the lived realities of persons with diverse sexual orientations and gender identities and expressions in Mauritania have struggled to make significant inroads. This may or may not be a result of State suppression of reporting and human rights advocacy, but at the very least social stigma and community backlash has been identified as a reason why many queer Mauritians have not come forward. The dearth of information is such that it is not clear whether the provisions against consensual same-sex sexual acts apply only to Muslims (as they do in other predominantly Muslim States such as Malaysia), or to all within the country.²⁹⁷

It is also believed that the decentralised nature of Mauritania's historically nomadic and tribal society, and subsequent likelihood that traditional court rulings and executions do not get formally published, makes identifying most cases near impossible.²⁹⁸

In its concluding observations in the second periodic report on Mauritania, the UN Human Rights Committee said that the government "should repeal article 308 of

the Criminal Code in order to decriminalize sexual relations between consenting adults of the same sex and release anyone currently detained under this article."²⁹⁹ No evident steps have been taken by Mauritanian authorities on this matter, nor in formally repealing the death penalty which remains on the books despite the 1987 moratorium.

Examples of Enforcement

On **2 June 2008** a gay man who owned a shoe-shining store in Mauritania's second-largest city, Nouadhibou, was seen by another shopkeeper kissing his boyfriend goodbye after the pair met up briefly and subsequently reported them to the police. He was arrested and taken to the city's central police station and held until **15 July 2008**. He was then released, being given three days to renounce his sexual orientation under local Sharia tradition or face punishment. The man instead fled the country, with his uncle securing him passage on a ship, and successfully was granted asylum in Belgium in the years following the incident. It is unknown what occurred to the man's boyfriend.³⁰⁰

Sometime in **November 2011**, thirteen or fourteen men suspected of being gay were arrested and sent to the police station of Tavragh Zeina, in Nouakchott, where they were stripped naked and insulted. Some of them were blindfolded and were beaten with electric cables while their hands and feet were tied behind their backs.³⁰¹ They were held at Dar Naïm prison for an unclear number of weeks before it was reported on **12 December 2011** by the local *L'Authentique* news outlet that they were granted conditional release. No further details could be identified regarding this case.³⁰²

In **January 2020**, 10 men were arrested for allegedly conducting a "same-sex marriage ceremony". Police later determined that the gathering was not a wedding and rather a birthday party, but stated that participants had confessed to being "homosexuals" and accused them of "imitating women". On **4 March 2020** the Nouakchott Court of Appeal confirmed that eight of the men had been sentenced to two years in prison but reduced this to six months on condition that the suspended sentence be reinstated should any in the group "reoffend" within five years.³⁰³

On **21 February** and **21 March 2021** it was reported that the identities of eight men and women arrested in connection with an alleged same-sex marriage ceremony

²⁹⁵ ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 119.

²⁹⁶ UNHRC, *Consideration of reports submitted by States parties under article 40 of the Covenant Initial reports of States parties: Mauritania*, CCPR/C/MRT/11 (2019), 5.

²⁹⁷ Immigration and Refugee Board of Canada, *Mauritania: Treatment of sexual minorities by society and the authorities, including laws, state protection and support services (2009-March 2013)*, (2013).

²⁹⁸ "Sexuality and Gender Law Clinic Secures Asylum for Gay Mauritanian Refugee", *Columbia Law School*, 25 October 2011.

²⁹⁹ UNHRC, *Consideration of reports submitted by States parties under article 40 of the Covenant Initial reports of States parties: Mauritania*, CCPR/C/MRT/11 (2019), 3.

³⁰⁰ Conseil du Contentieux des Etrangers (Belgique), *Arrêt No. 27-599, No. 27-599* (2009).

³⁰¹ Amnesty International, *Mauritania: Submission to the UN Committee against Torture* (2013), 8.

³⁰² Amnesty International, *Rapport 2012: La Situation de Droits Humains dans le Monde* (2012), 2018; Immigration and Refugee Board of Canada, *Mauritania: Treatment of sexual minorities by society and the authorities, including laws, state protection and support services (2009-March 2013)*, (2013).

³⁰³ "Ten men have been thrown behind bars to await 'judgement' for a secret gay wedding in African country of Mauritania", *Pink News*, 31 January 2020; "Mauritania: Prison Terms for Men Celebrating Birthday", *Human Rights Watch*, 4 March 2020.

were revealed.³⁰⁴ As these articles seem to have been taken down since publication, it is unknown if the eight persons referred to here are the same eight who had been convicted for the incident above.



Morocco

Criminalising Provisions

"Lewd or unnatural acts", can result in a prison sentence of six months to three years and/or a fine under Article 489 of the [Penal Code](#) (1963). Additionally, Article 483 criminalises acts of public indecency, with imprisonment of one month to two years and a fine.³⁰⁵

Enforcement Overview

Between 2007 and the time of publication, ILGA World compiled at least 20 examples of apparent criminal enforcement. True numbers are undoubtedly higher, as even official statistics issued by Moroccan authorities far exceed this.

According to Human Dignity Trust, more than 5,000 individuals may have been arrested for alleged homosexuality since the country gained independence from Spain in 1956, with "81 trials for homosexuality in 2011"; between four and 10 in 2015; and at least 20 in 2016. However, the same reports indicate the real tally is likely much higher.³⁰⁶

Other sources indicate that in 2015, between February and July alone, at least 25 people had been arrested,³⁰⁷ and in 2018 Morocco's Public Prosecutor published a set of official records which indicated a striking number—170 individuals—had been charged with "homosexuality" in that year in 147 separate cases.³⁰⁸ The report also notes that the previous year saw 197 trials on the same basis.³⁰⁹ A legal expert contracted by the Danish Immigration Service claimed, however, that the official 2018 statistics are likely under-reported and that cases for that year number around 800.³¹⁰

In 2018, Morocco's Public Prosecutor published records indicating that 170 individuals had been charged with "homosexuality" in that year

The vast majority of such cases are simply never reported on in such a way as to be accessible to the public—or to the research team at ILGA World. Human Rights Watch has also reported in 2018 that Moroccan authorities are widely known to intimidate LGBTI activists by contacting their families and asking them questions that may end up 'outing' them, leading to risks of violence from local communities. This may be at least one reason for the disparity between the official numbers and the individual stories known to the public.³¹¹

The UN Human Rights Committee stated in its sixth periodic report on Morocco in 2016 that it "is concerned at the criminalization of homosexuality, the fact that it is punishable by a term of imprisonment of up to 3 years and the arrests that have been made on that basis". Therefore, the Committee urged Morocco to take steps to "free anyone who is in detention solely for having had consensual sexual relations with a member of the same sex".³¹²

In 2017, during Morocco's Universal Periodic Review, Uruguay made the recommendation that the government should "[d]ecriminalize consensual homosexual relations and release those who have been detained for that reason".³¹³ The recommendation was rejected, with Morocco justifying its position as follows:

The Kingdom of Morocco has taken note of the following recommendations which have been partially rejected. [...] Guaranteeing equality among all citizens regardless of their sexual orientation and identity, decriminalization of homosexual relations [...] article 1 of the Constitution highlights the special framework established by the unifying components of the

³⁰⁴ "نواكشوط/هوية 8 مختلطين وامرأة تم توقيفهم في قضية الزواج المثلي (أسماء)" [Nouakchott / Identity of 8 bisexual men and a woman arrested in connection with same-sex marriage (Asmaa)], *Taqadumi*, 21 February 2021; "هويات وتفاصيل الأشخاص المتورطين في حفل زواج المثليين بنواكشوط" [Identities and details of the people involved in the gay marriage ceremony in Nouakchott], *Taqadumi*, 21 March 2021.

³⁰⁵ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Leles, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 120.

³⁰⁶ "Morocco tally: 81 trials for homosexuality in 1 year", *Erasing 76 Crimes*, 6 June 2013; Human Dignity Trust, *Country Profile: Morocco* (2019).

³⁰⁷ "Bad news: Kyrgyzstan, Morocco, Egypt, Nigeria, more", *Erasing 76 Crimes*, 16 July 2015.

³⁰⁸ While most English translations accessed by ILGA World have referred to "homosexuality", other translations have appeared as "unnatural acts", "intercourse with a person of the same sex", and "crimes that offend the family order and general morals" - depending on the source of translation.

³⁰⁹ "Report of the Chief Public Prosecutor on the implementation of the criminal policy and functioning of the Public Prosecution for the year 2018" (2018) 261; "Au Maroc, 3 000 personnes poursuivies pour adultère et 170 pour homosexualité en 2018" [In Morocco, 3,000 people prosecuted for adultery and 170 for homosexuality in 2018], *Le Desk*, 26 June 2019., [Report of the Chief Public Prosecutor on the implementation of the criminal policy and functioning of the Public Prosecution for the year 2018] (2018, archived), 260-261; The Danish Immigration Service (Ministry of Immigration and Integration), *Country of Origin (COI) Report - Morocco: Situation of LGBT persons, version 2.0* (2019), 44; "Au Maroc, 3 000 personnes poursuivies pour adultère et 170 pour homosexualité en 2018" [In Morocco, 3,000 people prosecuted for adultery and 170 for homosexuality in 2018], *Le Desk*, 26 June 2019.

³¹⁰ The Danish Immigration Service (Ministry of Immigration and Integration), *Country of Origin (COI) Report - Morocco: Situation of LGBT persons, v.2.0* (2019), 44.

³¹¹ Human Rights Watch, *Audacity in Adversity. LGBT Activism in the Middle East and North Africa* (2018), 22.

³¹² Human Rights Committee, *Concluding observations on the sixth periodic report of Morocco*, CCPR/C/MAR/CO/6, 1 December 2016, para. 12.

³¹³ *Report of the Working Group on the Universal Periodic Review* Morocco, A/HRC/36/6* (2017), para. 144.70.

Moroccan nation, namely the moderate Muslim religion, multidimensional national unity, the constitutional monarchy and democratic choice.

Accordingly, the Kingdom does not accept these recommendations since they conflict with the above-mentioned unifying components, namely decriminalization of consensual extramarital relations and homosexual relations [...] This position is fully consistent with the Kingdom's position on relevant international treaties, since it expressed its reservations regarding provisions concerning the aforementioned items which it does not support.

Examples of Enforcement

In **2007** a man who was suspected of being in a gay marriage was assaulted and stoned by an angry mob. Having survived the ordeal, he was arrested by police and imprisoned, though further details could not be verified at the time of publication.³¹⁴

In **December 2007** six men were arrested for an alleged "gay wedding" or "gay party" in the town of Ksar el-Kbir, after a video of their private celebrations was shared online. The men were charged under Article 489 for "practicing homosexuality", though one lawyer argued that they were targeted for being gay, as the video evidence did not show any same-sex acts taking place. One man was sentenced to 10 months' imprisonment on the combined charges of "homosexual acts" and "illegal sale of alcohol", while the others each received between four- and six-months' imprisonment.³¹⁵

On **2 May 2013**, two men in the town of Temara were arrested when police found them together in a car. Authorities allege they were having sex in the car and that one had paid the other to do so, though both seem to deny the charge. Nevertheless, on **20 May** a local court sentenced them to four months in prison.³¹⁶

On **9 May 2013** it was reported that three men alleged to be gay were arrested in the town of Souq al-Arbaa and sentenced to three years' imprisonment and a fine of 1,000 dirhams (about USD 110 at the time) each.³¹⁷

According to Human Rights Watch, in **June 2014** an appeals court in Morocco upheld the convictions of four men who had been convicted of "homosexual acts". The men were part of a group of six who had been arrested in **April** in the town of Fquih Ben Salah, and seemingly sentenced to between two and a half to four years'

imprisonment. As further punishment, the four convicted men—and possibly the two who evaded jail-time, were legally banished from Béni Mellal-Khénifra where the alleged incident took place.³¹⁸

One case which did garner a significant international profile was that of a gay man from the United Kingdom who was on a sightseeing tour with his 20-year-old Moroccan partner before being arrested on **18 September 2014** by police. He and his partner were tried on **2 October** and sentenced to four months' imprisonment for "homosexual acts". Petitions and pressure from his family and the British government led to the release of the man that same week, upon which he was sent back to the United Kingdom—though the fate of his Moroccan lover was not clear.³¹⁹

Two men accused of participating in consensual same-sex sexual activity with one another were arrested on **13 December 2014** and swiftly sentenced to three years' imprisonment plus a fine at the al-Hoceima Court of First Instance. Police claimed in the trial that the accused had confessed, though both men deny this. No witnesses were permitted to testify. On **30 December** the al-Hoceima Appeals Court upheld the verdict against the men, but reduced the punishment of one of the men to six months in prison, and reduced the jail time of the other to one year. The man who was given the longer sentence had apparently attempted to bribe police.³²⁰

On **3 June 2015** two men taking photos at the famous Hassan minaret in Rabat were arrested. Some sources claim that they were standing too close together—an act which led authorities to assume that they were gay—though others have claimed that they were arrested for kissing in public. A police report alleged that the men confessed to engaging in same-sex sexual activity, though the defence claimed that this should not be admissible in court as the confession was obtained under duress. Police seem to have beaten the pair, as was concluded by their lawyers from the photographs shared by police to the national media for publication. On **19 June** the men were found guilty of committing "an affront to public decency" and an "unnatural act with a person of the same sex", and were sentenced to four months in jail and a fine of 500 dirhams (around USD 50).³²¹

On **3 February 2016** it was reported by *Morocco World News* that two men were sentenced to 18 months' imprisonment in the town of Tiznit. One of the men had laid a complaint against the other when the two had a falling out and it escalated to threats of violence, but when police determined that they were in a relationship, both were detained. The initial complainant is said to have admitted to having had multiple same-sex

³¹⁴ "Morocco tally: 81 trials for homosexuality in 1 year", *Erasing 76 Crimes*, 6 June 2013.

³¹⁵ "Morocco: Homosexuality Convictions Upheld" *Human Rights Watch* (archived by Refworld), 8 July 2014; The Danish Immigration Service (Ministry of Immigration and Integration), *Country of Origin (COI) Report - Morocco: Situation of LGBT persons, version 2.0* (2019), 18.

³¹⁶ "2 more Moroccans imprisoned for homosexual acts", *Erasing 76 Crimes*, 21 May 2013.

³¹⁷ "3 years in Morocco prison for LGBTs: 2 sentenced, 2 on trial", *Erasing 76 Crimes*, 11 May 2013.

³¹⁸ "Morocco: Homosexuality Convictions Upheld" *Human Rights Watch* (archived by Refworld), 8 July 2014.

³¹⁹ "Morocco releases British tourist jailed for 'homosexual acts'" *The Guardian*, 7 October 2014.

³²⁰ "Morocco report: 2 imprisoned on homosexuality charges", *Erasing 76 Crimes*, 4 March 2015.

³²¹ "On trial for being LGBT in Morocco (2) and Malaysia (9)", *Erasing 76 Crimes*, 21 June 2015; "LGBTI news 2: Iran, Morocco, ISIS, Kenya, Gambia, Uganda", *Erasing 76 Crimes*, 29 June 2015.

relationships in the town, but retracted the statement in court.³²²

On **9 March 2016**, two men believed by locals in the town of Béni Mellal were violently assaulted and stripped down by an angry mob. The attackers were arrested by police, but so too were the victims. The two men spent 26 days in pretrial detention, and when the case went to trial they were fined 500 dirhams (USD 55) and sentenced to four months' imprisonment on probation, in accordance with Article 489 of the Moroccan Penal Code. Two journalists attempting to investigate the attack in the neighbourhood were reportedly also arrested shortly after the incident.³²³

On **27 May 2016** it was reported by *Morocco World News* that an alleged gay couple had been arrested in the town of Guelmim when the local gendarmes found them engaging in "homosexual acts" in a car. It is unclear when precisely the pair were arrested as the public prosecutor ordered a full investigation before any prosecution could take place, and on **26 May** a Court in Guelmim sentenced the two men to six months' imprisonment.³²⁴

In **November 2016** two teenage girls, aged 16 and 17, were photographed kissing by a passer-by in Marrakesh, who sent the pictures to their families. The two girls were reportedly detained by police, charged with homosexuality, and put on trial—though the outcome of that trial is uncertain.³²⁵

Apparently, not long after the above incident, sometime in the summer months of **2016**, two men were also arrested in the coastal city of Agadir.

The details of the Agadir case are not clear, as it is mentioned only in passing by *Morocco World News* in a **February 2017** article about yet another arrest - noting that two men in the city of Tangier had been arrested after a video of the pair engaging in consensual same-sex sexual activity went viral online. The accused were sentenced by the Tangier Primary Court to six months in prison, and a fine of 1,000 dirhams (USD 110) each.³²⁶

On **31 December 2018** police in Marrakesh arrested a "man wearing feminine clothes" after arriving at the

scene of a minor traffic accident. They placed the suspect in handcuffs and removed them from the scene while an angry mob jeered, after seeing that the individual's gender expression did not match their identity documents.³²⁷

On **9 January 2021**, local media reported that two men were arrested after they were allegedly caught "red-handed" having sex in a truck. Arrests were carried out by a patrol of the Royal Gendarmerie in Chtouka Ait Baha, in the suburbs of Agadir. Both men were placed under guardianship measures and brought before the local public prosecution office.³²⁸

It was also reported later that month, on **25 January 2021**, that the Tangiers Public Prosecutor's Office opened an investigation to determine the circumstances of the spread of a "pornographic video" documenting scenes of sexual intercourse between two men. The video was apparently recorded on a cell phone which was later sold, and the new owner seems to have been the one to release the footage to the public. The person who released the footage appears to be under investigation for distributing illicit material, but it is unclear if the men in the video itself faced prosecution.³²⁹

Sources indicate that in late **February 2021**, the General Morals Squad of the Judicial Police in Malbata, Tangiers, arrested five people aged 24 to 31,³³⁰ as a result of active surveillance and intelligence carried out by a research brigade and the prosecutor's office on an apartment where "corruption" and "abnormal sex" was believed to be taking place.³³¹ While judicial prosecution under Article 489 of the Criminal Code was formally initiated against the five of them, four were released awaiting proceedings, though one was placed in preventive detention and charged with "preparing a den for prostitution", apparently because he had spoken openly about his homosexuality and his relationship with another man while being interrogated.³³² Another local source indicated that the owner of the apartment was also wanted for prosecution.³³³

In late **May 2021**, in the town of Shammia, two men were arrested by the Judicial Centre of the Royal Gendarmerie for alleged homosexuality, after the

³²² "Two Moroccan Homosexuals Sentenced to 18 Months in Prison", *Morocco World News*, 3 February 2016.

³²³ "Prison for victim of Morocco attack, not for attackers", *Erasing 76 crimes*, 4 April 2016; The Danish Immigration Service (Ministry of Immigration and Integration), *Country of Origin (COI) Report - Morocco: Situation of LGBT persons, version 2.0* (2019), 27.

³²⁴ "Gay Couple Arrested in Southern Morocco", *Morocco World News*, 31 May 2016; The Danish Immigration Service (Ministry of Immigration and Integration), *Country of Origin (COI) Report - Morocco: Situation of LGBT persons, version 2.0* (2019), 17.

³²⁵ "Moroccan teenage girls face prison over 'lesbian kiss'", *The Independent*, 3 November 2016; "Lesbienne et marocaine, je revendique mon droit à la vie privée" [Lesbian and Moroccan, I claim my right to privacy], *L'Express*, 3 November 2016.

³²⁶ "Two Men Arrested in Tangier for 'Engaging in Homosexual Acts'", *Morocco World News*, 27 February 2017; "Two men jailed in Morocco after friend leaked their 'sex tape'", *Gay Star News*, 28 February 2017.

³²⁷ The Danish Immigration Service (Ministry of Immigration and Integration), *Country of Origin (COI) Report - Morocco: Situation of LGBT persons, v.2.0* (2019), 17.

³²⁸ "الشذوذ الجنسي يجز شخصين إلى الاعتقال ضواحي أكادير" [Homosexuality drags two people into detention on the outskirts of Agadir], *Kech24 (Morocco)*, 9 January 2021.

³²⁹ "استتفاز أمني في طنجة بسبب انتشار شريط فيديو يوثق لممارسة جنسية مثلية بين رجلين" [A security alert in Tangiers due to the spread of a video tape documenting the practice of homosexuality between two men], *Kachaf*, 25 January 2021; "بيع هاتف والإطلاع على محتواه يؤدي لاقتضاح أمر مثليين بطنجة" [Selling a phone and seeing its contents lead to the exposure of gay people in Tangiers], *Kachaf*, 25 January 2021.

³³⁰ Reports are not completely clear as to the gender identity of detainees.

³³¹ "سقوط 5 مثليين بطنجة" [The arrest of 5 gay men in Tangiers], *Assabah*, 27 February 2021.

³³² "بعد المداهمة والضبط، متابعة خمسة مثليين وفقا للمادة 489 من القانون الجنائي بطنجة" [After the raid and seizure, five homosexuals were pursued according to Article 489 of the Tangiers Criminal Code], *Aabbir*, 27 February 2021; "امن طنجة يعتقل 5 مثليين في شقة للدعارة" [Tangiers security arrested 5 homosexuals in a flat for prostitution], *Al Ayam* 24, 22 February 2021.

³³³ "اعتقال 5 مثليات جنسيا في شقة دعارة بطنجة" [5 homosexuals arrested in a prostitution apartment in Tangiers], *Nejma-TV*, 22 February 2021.

authorities received a tip-off that the pair were “making strange movements” in their car.³³⁴

It was reported on **7 November 2021** that two men in the city of Fez were arrested “in a case related to the practice of homosexuality”. One of the men reported the theft of his cell phone to police, but upon being apprehended the suspect told police that the two men had engaged in same-sex acts together, apparently showing them a video of the incident. It is alleged that there was no theft to begin with and that the two men had fallen out over money, though details remain unclear at the time of publication. Both the alleged thief and the initial complainant were taken into custody.³³⁵

Nigeria

Criminalising Provisions

Nigerian criminal law is built on an array of diverse legal frameworks.

The **Criminal Code Act (2004)** contains provisions criminalising consensual same-sex sexual acts (framed as “carnal knowledge of any person against the order of nature”), imposing a penalty of imprisonment for 14 years. Most of the Southern States use the provisions of this Code as their state law, including those aspects that deal with sexuality.³³⁶ In parallel, the Penal Code (Northern States) Federal Provisions Act (1959) (usually referred to as the “Penal Code”) applies as both federal and state law in the states that succeeded the colonial Northern Region.³³⁷ Section 284 of the Penal Code criminalises consensual same-sex sexual acts (“unnatural offences”) with imprisonment for up to 14 years and a fine.³³⁸

Additionally, 12 Northern states (Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara) have adopted Sharia Penal Codes, which to varying degrees and contexts prescribe the death penalty for same-sex sexual activity.

Under the Sharia Penal Codes of various Northern states diverse gender expressions are explicitly criminalised. For instance, in Kano, a person who “being a male gender who acts, behaves or dresses in a manner which imitates the behavioural attitude of women shall

be guilty of an offence”. Furthermore, In Bauchi, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe, and Zamfara, “any female person who dresses or is attired in the fashion of a man in a public place” is a vagabond.³³⁹

In 2017, in parallel to the Sharia Penal Code, the state of Kaduna enacted a **Penal Code (2017)** that punishes “unnatural offences” under Section 259 in the following terms: “Whoever has sexual intercourse against the order of nature with any man, woman or animal such as sodomy, lesbianism, or bestiality shall be punished with imprisonment for a term of not less than 21 years and shall also be liable to fine of not less than 200,000 Naira”.³⁴⁰

At the national level, in December 2013, the **Same-Sex Marriage (Prohibition) Act (2013)** was passed (effective January 2014). Among the many restrictions imposed by this law—including the explicit prohibition to register or operate “gay clubs, societies and organisations—Section 4 and 5 impose a penalty of 10 years of imprisonment to anyone who “directly or indirectly makes public show of same sex amorous relationship”.³⁴¹

Enforcement Overview

While legislation in Nigeria criminalises consensual same-sex sexual activity nationwide, the possibility of execution in 12 states in the northern parts of the country makes for an especially dire circumstance for local SOGIE communities. That said, it appears that death sentences have been handed down but rarely, if ever, carried out effectively.

The processes and outcomes of these courts remain hard to access. Indeed, at a sodomy trial in January 2014 in the state of Bauchi’s Tudun Alkali Upper Sharia Court, an angry mob reportedly stormed the premises demanding that the accused be sentenced to death. The riot, during which the defendants were pelted with stones, had to be broken up with teargas by the police. Since then, according to a local source, “the sodomy trials have been going on in secret in another location and the trial dates are never made public”.³⁴²

Often, the line between extrajudicial tolerated violence and effective, official criminal enforcement is blurred. On 3 November 2014, several online Nigerian news sites reported claims by a vigilante leader in the north of the country, alleging that his group had “arrested” 25 homosexuals over the previous year and turned them over to authorities for prosecution under Sharia law. Because of the nature of news coverage in that area, it is

³³⁴ “إيقاف متهمين بالشذوذ بالشماعية” [Arrest of accused of homosexuality], *Assabah*, 2 June 2021.

³³⁵ “سرقة هاتف مستشار جماعي يفضح تورطه في علاقة شاذة - أخبارنا” [Theft of a group counselor’s phone exposes his involvement in a gay relationship], *Akhbarona*, 8 November 2021.

³³⁶ Ayodele Sogunro in TIERS, *Bad Laws: A compendium on laws discriminating against persons in Nigeria based on SOGIE* (2017), 6.

³³⁷ The former region of Northern Nigeria encompassed the territory now occupied by the states of Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe, and Zamfara.

³³⁸ Ayodele Sogunro in TIERS, *Bad Laws: A compendium on laws discriminating against persons in Nigeria based on SOGIE* (2017), 9.

³³⁹ Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts*, (2019), 113.

³⁴⁰ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 121.

³⁴¹ *Id.*, 120.

³⁴² “Nigeria: Trial of men accused of being gay suspended due to ‘mob justice’ fears”, *Pink News*, 29 January 2014; “Nigeria gay trial suspects bailed”, *The Guardian*, 28 March 2014.

unlikely that his claims will be either verified or disproved.³⁴³ Further complicating matters is the fact that ILGA World is aware of several instances in which the accused will condemn each other as sexual predators in an effort to exonerate themselves, precluding some cases from inclusion in this report.

In 2006, the UN Special Rapporteur on Extrajudicial Executions issued a report indicating that the imposition of the death sentence for a private sexual practice is clearly incompatible with Nigeria's international obligations. The publication of this report was followed by one of the rare occasions in which a UN Member State has vigorously defended the imposition of the death penalty for consensual same-sex sexual acts. Indeed, the Nigerian delegation before the Human Rights Council replied by "expressing disagreement with the Special Rapporteur regarding the death penalty by stoning provided for by Sharia for 'unnatural sexual acts'". The delegation argued that "these are not extrajudicial killings and should not be mentioned in the report" and that

"[T]he notion that executions for homosexuality offenses are excessive punishment is a matter of judgment and not objective. What some may regard as a disproportionate punishment for such serious crimes and such heinous conduct, may be viewed by others as an appropriate and just punishment".³⁴⁴

In January 2014, Amnesty International reported that Nigerian police had arrested 10 people suspected of being gay in four southern states in Nigeria. Human rights defenders also told Amnesty International that police in northern Bauchi state had arrested 38 suspected gay people and drawn up a list of at least 167 more candidates targeted for arrest. It was suggested that these arrests appeared to have been spurred on after the Same-Sex Marriage (Prohibition) Act came into force.³⁴⁵ Police entrapment of gay men appears to be a common tactic, with officers arresting people suspected to be gay, using their phone contacts to arrange meetings and subsequently arrest them as well.³⁴⁶

In its third cycle of the Universal Periodic Review, in 2018, Nigeria received two specific recommendations regarding the enforcement of criminalising laws. One of them, issued by Iceland, urged the government to release all individuals held in detention because of their real or perceived sexual orientation or gender identity.³⁴⁷ The other one, issued by Germany, recommended the repeal

of the SSMPA and urged the government to ensure that nobody is punished because of their sexual orientation and release all individuals held in detention because of homosexuality.³⁴⁸ Both recommendations were rejected by Nigeria without further explanation.³⁴⁹

In reaction to a UN report, Nigeria defended the imposition of the death penalty for consensual same-sex sexual acts at the Human Rights Council

In 2019, the UN Human Rights Committee expressed concern about the multiple criminalising laws in force in Nigeria and about reports indicating that, since the adoption of the Same-Sex Marriage (Prohibition) Act, the number of arrests and the detention of young people based on their actual or perceived sexual orientation and gender identity had increased.³⁵⁰

More recently, a 2020 study by the Greenwich Social Work Review has suggested that since the enactment of the Same-Sex Marriage (Prohibition) Act, violence against LGBTIQ+ Nigerians has risen by 214%, with the police being among the main perpetrators.³⁵¹ Additionally, the Nigeria Security and Civil Defence Corps (NSCDC) in Jigawa claimed that between January and July 2020 it had arrested more than 60 people on a range of charges including sodomy—though it is not known how many of those detained were specifically targeted for consensual same-sex sexual acts.³⁵²

Between 2002 and 2021 ILGA World has identified and compiled around 60 individual examples of criminal enforcement and State-targeting, though as evidenced from the reporting above, the real number is certainly much higher.

Examples of Enforcement

In February 2002 a man from the city of Gusau in Zamfara state was sentenced to one year in prison and 100 lashes for allegedly committing sodomy with another man. Further details are unclear.³⁵³

³⁴³ "New anti-gay bill in Uganda: 25 reported arrests in Nigeria", *Erasing 76 Crimes*, 7 November 2014.

³⁴⁴ *Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Mr. Philip Alston. Addendum: Mission to Nigeria*, E/CN.4/2006/53/Add.4, 7 January 2006, para. 37. Intervention by the Nigerian delegation: Human Rights Council, *Report on its Fourth Session*, A/HRC/2/SR.4, 20 November 2006, para. 33.

³⁴⁵ "Nigeria Islamic court tries gay suspects in Bauchi", *BBC News*, 15 January 2014; "Nigeria: Halt homophobic witch-hunt under oppressive new law", *Amnesty International*, 15 January 2014; "Group: Nigeria arrests gay 'suspects' under new law banning homosexuality", *CNN*, 16 January 2014.

³⁴⁶ PEN American Center, *Silenced voices, threatened lives: The impact of Nigeria's anti-LGBTI law on freedom of expression* (2015).

³⁴⁷ *Report of the Working Group on the Universal Periodic Review: Nigeria*, A/HRC/40/7, para. 148.81.

³⁴⁸ *Id.*, para. 148.80.

³⁴⁹ *Report of the Working Group on the Universal Periodic Review: Nigeria. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/40/7/Add.1, 8 February 2019, 4.

³⁵⁰ Human Rights Committee, *Concluding observations on Nigeria in the absence of its second periodic report*, CCPR/C/NGA/CO/2, 29 August 2019, para. 18.

³⁵¹ Sulaimon Abiodun Olawale Giwa et al., "Police violence targeting LGBTIQ+ people in Nigeria: Advancing solutions for a 21st century challenge," *Greenwich Social Work Review* 1, No 1 (2020), 36-49.

³⁵² "NSCDC secures conviction of 67 suspects for theft, sodomy, trespass, others in Jigawa", *Daily Nigerian*, 16 July 2020.

³⁵³ Immigration and Refugee Board of Canada, *Nigeria: Situation of homosexuals and their treatment under sharia law (June 2002-July 2004)*, NGA42748.E (2004).



In 2005 the UN special rapporteur on extrajudicial, summary, or arbitrary executions met with inmates on death row in Kano state, with one among them being a 50-year-old man sentenced to death by stoning for "sodomy". A neighbour had tipped off the local Hisbah (religious police). The man had no legal defence and failed to lodge an appeal within an allotted window—though the UN special rapporteur intervened to allow him to submit an appeal which went under review. His fate is unclear but as of at least 2008 it appears he had not been executed.³⁵⁴

In December 2005 the Katsina Sharia Court acquitted two men who had apparently been sentenced to death for same-sex sexual activity, though the men had spent about six months in prison by that time. The acquittal came as a result of a lack of witnesses, but the judge still instructed the men "to be of firm character and desist from any form of immorality."³⁵⁵

In June 2007, the agency tasked with implementing Shariah law in Bauchi called on the new governor to approve three sentences of death by stoning and 40 of amputation passed since 2002 which his predecessor had refused to ratify. The death sentences were passed for sexual offences, including one of sodomy.³⁵⁶

In August 2007, 18 individuals aged 18 to 21 were arrested at a hotel in Bauchi on allegations of "homosexual conduct". The group were identified as young men, but as one of the accusations was that they were all wearing women's clothing for a "gay marriage ceremony" it is unclear what their personal gender identities may or may not have been. They were tried in a local Sharia court, but conflicting reports exist about the outcome of this incident. Some media outlets reported that all detainees were eventually released on bail, whereas others reported that 13 of them—all presumed to be Muslim—remained in detention awaiting a further hearing on 13 September of that year.³⁵⁷

On 16 January 2014 a 20-year-old man was found guilty of sodomy by a Bauchi Sharia Court. He was whipped in public and forced to pay a fine. Reportedly, the judge said that the accused was spared from death by stoning as the incident had occurred seven years prior to the trial (when he was a minor) and "because he had shown great remorse".³⁵⁸

It was reported in January 2014 that 11 Muslim men and one Christian were arrested in Bauchi by Islamic Police on allegations of homosexuality. After being forced to sign confessions (which some of the accused later recanted), the accused Muslims would reportedly go on

to be tried in a Sharia Court while the Christian would be tried under a federally recognised secular court. Though the fates of the accused are not all entirely clear, several were granted bail, with a Sharia Court clerk noting that they were precluded from receiving the death penalty as none had been caught in the act of having sex; four were publicly whipped and fined after being beaten into confessing their guilt on 6 March 2014. It has been alleged that the men faced torture while in custody. The Chairman of Bauchi's Sharia Commission denied the claims of torture, but did note that community members had helped to "fish out" the accused and would be on the hunt for more homosexuals in the state.³⁵⁹

Two days before the Same-Sex Marriage Prohibition Act (SSMPA) was passed in January 2014, a young man and his friend were arrested in Ibadan state when the friend's mother lured them to a police station. The pair were stripped, beaten, and made to stand naked for photographs in an area of the station that was open to the public. They were held for three days before being released, and it seems no further police action was taken regarding this case as one of the accused was re-arrested in May 2015 at a birthday party.³⁶⁰

In the capital city of Abuja, in January 2014, shortly after the SSMPA was passed, police raided an HIV services and treatment centre. The police arrested 12 of the 24 people attending a meeting there. They spent three weeks in police custody, where they were beaten almost daily and barely given any food or water. They were arrested without being formally charged with any offence, and finally released after they paid a 100,000 Naira bribe (approximately USD 318). One victim reported that the police would regularly say, "since you are gay, you must pay. How much do you have in your account? Gay men are so rich."³⁶¹

In early 2014 a 25-year-old gay man visited a man whom he met online in Ado Ekiti, southwest Nigeria. When he arrived at the man's house, a man he believed to be a police investigator was also present. Soon after the young man got there the investigator left and returned with two other men, who beat them up and forced them to draw money from a nearby ATM before taking them to the police station. The men who had brought them to the police station gave the accused's phones for the police to search for incriminating evidence. According to one of the accused, the police slapped them and beat them with a "koboko" (a whip made of cowhide or horse tail) all over their bodies while shouting "tell us the truth! Why are you doing this?" After three days in detention, and after paying 15,000 Naira (approximately USD 48)

³⁵⁴ Human Rights Watch, *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism* (2008), 60-61.

³⁵⁵ *Id.*, 61.

³⁵⁶ "18 Nigerian gays face death", *News24*, 9 August 2007.

³⁵⁷ "Changes in the Law in the Sharia States Aimed at Suppressing Social Vices" in Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. III (2007), 54; "18 Nigerian gays face death", *News24*, 9 August 2007; "Nigeria's anti-gay witch-hunt", *The Guardian*, 29 August 2007; "Wave of repression on so-called 'amoral' behaviour", *The New Humanitarian*, 12 September 2007.

³⁵⁸ "Nigeria gay trial suspects bailed", *The Guardian*, 28 March 2014.

³⁵⁹ "Nigeria Islamic court tries gay suspects in Bauchi", *BBC News*, 15 January 2014; "Nigeria's anti-gay laws: Homosexuals rounded up and beaten, rights groups claim", *The Independent*, 15 January 2014; "Nigeria court flogs four men for homosexuality", *France 24*, 7 March 2014; "Nigeria gay trial suspects bailed", *The Guardian*, 28 March 2014.

³⁶⁰ Human Rights Watch, *"Tell Me Where I Can Be Safe": The Impact of Nigeria's Same Sex Marriage (Prohibition) Act* (2016), 34-35.

³⁶¹ *Id.*, 38-39.

each to the Divisional Police Officer in charge of the police station, they were released.³⁶²

It was reported that 14 young men were assaulted by a homophobic mob of about 50 men in the Gishiri neighbourhood, Abuja, in **February 2014**. At least four men were dragged from their homes and beaten with nail-studded clubs and whips. The *New York Times* indicated that several Nigerian activists and a witness said the mob was shouting that they were “cleansing the community”.³⁶³ The victims were forcibly taken to a police station where officers arrested them and allegedly kicked, punched and yelled pejoratives at them. An employee of the International Centre on Advocacy for the Right to Health, stated that he later drove to the police station and met with a senior officer who ordered at least four of the men be released as there was no evidence that they were gay and they had not been caught engaging in any sexual activity.³⁶⁴ After the attack, graffiti reading “[h]omosexuals, pack and leave” was written on the homes of the victims.³⁶⁵

Some time on or before **1 April 2014** two men in Bauchi accused of engaging in consensual same-sex sexual acts and belonging to “a homosexual club” were acquitted due to a lack of evidence. According to a local court clerk, the men were acquitted because nobody had witnessed them committing sodomy. The men were reportedly arrested after a raid by local residents, where one of them was found “wearing shorts”.³⁶⁶

In **June 2014**, an Upper Sharia Court in Bauchi arraigned four suspects who had been arrested the previous month for engaging in consensual same-sex sexual acts. One suspect pleaded “not guilty” to all charges against him, whereas the other three admitted to the accusations but pleaded for mercy from the court. They were due to stand trial at the end of the month though their fates are not known.³⁶⁷

Also in **June 2014**, police in the state of Kaduna arrested 14 members of an HIV/Aids awareness raising NGO who were hosting an educational session for gay men and MSM. The Kaduna State Security outfit, code-named “Operation Yaki”, confiscated their condoms and lubricants as evidence and charged them with “same-sex practices”. The leader of the NGO claims that he was not personally harmed during his 24-hour detention period, but others were flogged, and one 15-year-old boy was severely tortured because “his case was special” in the eyes of the officers. All were released after paying bribes.

On **1 September 2014** a young gay man in Lagos went home from a party with another man he presumed to be gay, only to be beaten by the man and others for it until a

passer-by intervened. The gay man was arrested by police, but bailed out by his father (who disowned him later because of his sexual orientation). The young man claims that he has been arbitrarily stopped by police at least three more times, paying a bribe on two of those occasions to be allowed to walk free.³⁶⁸

On **3 November 2014**, several online Nigerian news sites reported claims by a vigilante leader in the north of the country, alleging that his group had “arrested” 25 homosexuals over the previous year and turned them over to authorities for prosecution under Sharia law. Because of the nature of news coverage in that area, it is unlikely that his claims will be either verified or disproved.³⁶⁹

In **December 2014** three men in Ibadan were arrested on suspicion of being gay for staying together in the same apartment. Two had come to visit the third who lived in the apartment, at which point a neighbour commented that they couldn’t all be in the apartment together as the Same-Sex Marriage Prohibition Act had been passed. Soon after, they were arrested and taken to a police station, stripped, and held for four days without being charged. They were released when they paid a bribe of 20,000 Naira (USD 64).

A gay man in Lagos was stopped by police in the streets of Lagos in **February 2015**. The police went through his phone and found pornographic videos and nude photos of men. He was taken to the police station where he managed to call a friend, a peer educator interviewed later by Human Rights Watch, to bail him out. They printed out everything that the accused had on his phone and asked for a bribe of 200,000 Naira (approximately USD 635) to have him released, but the peer educator negotiated this down to 50,000 Naira (approximately USD 160).³⁷⁰

On **16 April 2015** six gay men in Ibadan returned from church to the home of one of the group, only to find a police van waiting for them. At the police station they were stripped naked, beaten and photographed. They were held for seven days until the father of one of the accused paid 200,000 Naira (USD 635) each to secure their release. One of the detainees alleged that on the last day of their incarceration police put them into an open-top Jeep and drove them around the city to show them off to the community at large.³⁷¹

In **May 2015**, 21 young men attending a birthday party in Ibadan were arrested, but not formally charged. Police stormed the party with machine guns, and tied the detainees together with their own clothes before marching them through the street to a van, cramming all

³⁶² *Id.*, 37.

³⁶³ “Mob Attacks More Than a Dozen Gay Men in Nigeria’s Capital”, *The New York Times*, 15 February 2014.

³⁶⁴ “Anti-gay violence hits Nigerian capital”, *Aljazeera*, 15 February 2014.

³⁶⁵ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

³⁶⁶ “Nigeria Islamic court acquits men of gay sex charge”, *BBC News*, 1 April 2014.

³⁶⁷ “Bauchi Sharia court arraigns four gay suspects”, *Vanguard*, 12 June 2014.

³⁶⁸ Human Rights Watch, “*Tell Me Where I Can Be Safe: The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act* (2016), 30, 40.

³⁶⁹ “New anti-gay bill in Uganda; 25 reported arrests in Nigeria”, *Erasing 76 Crimes*, 7 November 2014.

³⁷⁰ Human Rights Watch, “*Tell Me Where I Can Be Safe: The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act* (2016), 36.

³⁷¹ *Id.*, 35.

of them inside. They told Human Rights Watch that at the police station police beat several of them, including with rifle butts and wooden planks. They were held in police cells for four days wearing only their underwear and eventually released after paying bribes ranging from 10,000 to 25,000 Naira each (about USD 32-64).³⁷²

A 22-year-old gay man from Lagos said police arrested him at home in **August 2015** after a group of men who had previously gang-raped him reported him to the police for being gay. Police reportedly beat him with belts and their guns, and inserted a stick into his anus. He was later able to contact his parents, who paid a 78,000 Naira (approximately USD 250) bribe to get him released.³⁷³

A cleaner at a government office said that police in Ibadan arrested him in **June 2015** on his way home from work. He was taken to Ijokodo Police Station where they proceeded to slap, choke, and punch him, forcing him to unlock his phone so that they could inspect his pictures. They beat him further when they saw pictures of him with his partner. He was detained for three days, and released only after his brother paid police a 45,000 Naira bribe (about USD 142).³⁷⁴

It was reported that police disrupted a “gay wedding” in early **February 2016**. A couple and others involved in the ceremony were arrested at a hotel in the Jiwa Community of Abuja. It is unclear whether they were charged but it was reported that the authorities were taking the victims to court.³⁷⁵

In **June 2016** police arrested a young man while he was walking with a friend around Festac Town in Lagos. Police officers stopped them for interrogation. They then took the young man’s phone, went through its contents, and accused him of homosexuality. He was detained for five days before they asked him to pay the sum of 105,000 Naira (about USD 375) or face homosexuality charges. The young man was unable to pay so he agreed to face the charges. It was reported that the charges were filed but later dropped after the officers collected a smaller amount of money from the young man.³⁷⁶

Police raided a wedding celebration in late **August 2016**, in the north west region of Nigeria. News outlets reported that police had heard rumours of a trans woman attending the wedding which led the authorities to believe that a “gay wedding” was taking place, though the marriage proceedings turned out to be entirely legal. Police also wrongfully arrested two men at the celebration and later dropped the charges.³⁷⁷

In **December 2016** Nigerian police arrested two men accused of same-sex intimacy. Bail was set close to about 200,000 Naira each (about USD 635). The men spent five months in prison before their lawyer told the judge that the video confession from them was obtained under duress. It is reported that the men were beaten by police as well as barely given any food or water. The judge later dropped charges against them.³⁷⁸

Around **February 2017** a gay bar in the town of Badagry was raided and five men were arrested. It is reported that a member of the public lodged a complaint to the police before they arrested the owner, two staff members and another two suspects at the bar. They were released after being questioned but another arrest warrant for the men was issued when they failed to appear in court. Potentially facing 10 years in prison, it is unclear whether the men were found.³⁷⁹

In **April 2017**, 53 students aged 20 to 30 were organising a social gathering in the city of Zaria, Kaduna state, when they were arrested and charged with “conspiracy, illegal assembly, and membership in an anti-social group”. Police officers arrived before the event could start, probably after being called by an employee of the establishment. Upon being brought before the Zaria Court of Justice, they all pleaded “not guilty”, saying that they were organising a birthday party, not a “gay wedding”. They were all released on bail and the judge postponed the trial until **8 May**.³⁸⁰ It is unclear what the outcome of the case was.

On **2 July 2017** a man was arrested at a hotel bar in Asaba on accusations that he was gay. It was reported that another man had booked a hotel room and asked to meet up there. Upon arrival at the hotel, the man was arrested, with the entire meet-up apparently being a case of entrapment. The man who had arranged the meet-up told police that the accused had been sending him unsolicited pictures and that he was gay. The accuser demanded that he pay him 48,000 Naira (about USD 152) as reimbursement for the booked hotel room, or 500,000 Naira (about USD 1,588) if any third party apart from his parents got involved. The parents of the victim pleaded with police to lower the bail amount, which they did and he was later released.³⁸¹

60 men and 12 minors, were arrested on **30 July 2017** at an HIV/Aids awareness-raising event near Lagos. 30 (including the minors) were later released but the 42 that remained faced charges for their alleged homosexuality. Further details are unclear but a local news outlet

³⁷² *Id.*, 35, 37.

³⁷³ *Id.*, 37.

³⁷⁴ *Id.*, 38.

³⁷⁵ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

³⁷⁶ “Nigerian police extort money from man they claim is gay”, *Erasing 26 Crimes*, 25 June 2016.

³⁷⁷ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

³⁷⁸ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

³⁷⁹ “Nigerian man charged with running a gay bar – faces 10 years in jail”, *Mamba Online*, 13 March 2017.

³⁸⁰ “53 arrested in Nigeria for celebrating gay wedding: Police”, *AP News*, 19 April 2017; “53 arrests in Nigeria for alleged same-sex wedding”, *Erasing 76 Crimes*, 20 April 2017; “Nigéria : arrestation de 53 homosexuels accusés d’organiser un ‘mariage gay’” [Nigeria: arrest of 53 homosexuals accused of organizing a ‘gay marriage’], *Tetu*, 25 April 2017.

³⁸¹ “Nigeria: Police nab suspected gay man. Fine: \$111”, *Erasing 76 Crimes*, 10 July 2017; “Nigeria: Police nabs man in Asaba on accounts of homosexuality”, *No Strings NG*, 11 July 2017.

reported that police were seeking 500,000 Naira (USD 1,375) from each detainee as bail.³⁸²

In **August 2017** a 26-year-old man was arrested at a party that police thought was a “gay wedding”. The man was reported to have spent nine months in prison without a trial. He only went to court once, where he was charged with homosexuality. He was unable to afford a lawyer or pay bail. The other people at the party were also arrested, but they were released after each of them paid a bribe of 150,000 Naira (about USD 415). The man claimed that he was not gay and that it was not a “gay wedding”. It is unclear if he was able to find a lawyer or get his charges dropped.³⁸³

In early **September 2017**, 70 minors were arrested by the Islamic religious police in northern Nigeria’s Kano state, following accusations that they were planning to organise a gay party. The fates of the accused are unclear but officials stated that they would be arraigned before the appropriate courts in their various jurisdictions.³⁸⁴

A lesbian woman was arrested outside her home in Lagos in late **September 2017**. It was reported that the woman was caught by her ex-husband in bed with another woman, who fled the scene. The victim went on to explain that she always knew she was lesbian and that she was forced into marriage by her father. She later divorced her husband but he continued to harass her after the divorce was settled. He then reported her to the police and she was detained for four days before she was able to pay her bail of 62,000 Naira (USD 172).³⁸⁵

In **November 2017** police arrested the President of an all-male group at the University of Ado Ekiti. This came after two men there were arrested and charged with homosexuality in **May 2016**. The men told the police, after they had confessed about their relationship with each other that they were part of an exclusive men’s group at the university through which they met men who gave them money in exchange for sex. This evidence sparked an investigation into the group in question, and the President of the group was forced to give further details on other members. This led to members going into hiding, and it is unclear if police were able to find them or what charges the President of the group faced.³⁸⁶

In **January 2018** traditional chiefs reportedly joined police raids seeking to arrest suspected gay men in the area of Egor. Police were aiming to find two alleged

“leaders of a gang of sodomites” who were arrested in **February 2016**, but who jumped bail and thus remained on the wanted list. Officials stated that if the two men were re-arrested it would scare homosexuals and make them change. It is unclear if they were ever found.³⁸⁷

On **26 April 2018** two Nigerian men in Imo State were stripped naked, beaten and paraded on the street after being accused of consensual same-sex sexual acts. Another victim managed to escape, while the angry mob surrounded them. Reports revealed that the two victims were later arrested by police and needed legal support.³⁸⁸

In **June 2018**, 100 young people were arrested at an alleged same-sex wedding in Asaba. The arrestees denied claims that they were either gay or lesbian and that they were in fact attending a birthday celebration. A statement released by the Interfaith Diversity Network of West Africa (IDONWA) revealed that the network paid for the release of some of the arrested persons and that their families were also made to pay substantial sums of money to police for bail.³⁸⁹

A manager of the City Global Hotel in Abia phoned the police with allegations that two men had been seen kissing in the hotel bar, according to a Nigerian news outlet in **mid-August 2018**. He then went to their room—which he said was meant for two people—and allegedly discovered six men getting intimate. The men were arrested, though they denied the claims they had engaged in sexual acts with each other and that they were gay. One man stated that they had wanted to book a room for the six of them for a birthday party, but the hotel had run out of rooms so they made alternative plans. Further details about their case could not be identified at the time of publication.³⁹⁰

In **August 2018**, 57 people were arrested on homosexuality charges in a hotel in Lagos. Witnesses and party-goers stated that they came to the hotel to attend a wedding and a birthday party. Police raided the hotel, arresting only the men present and declaring them homosexuals. Police claimed that the gathering was a “gay initiation ceremony”, though attendees denied this, saying it was just a birthday party. The men were later released on bail.³⁹¹ 47 were set to stand trial in **2019**, though the case was delayed multiple times until the judge at the Federal High Court in Lagos struck the case out in **October 2020** due to a “lack of diligent prosecution”—though the case being struck out as

³⁸² “Nigerian activists: Don’t assume 42 arrested men are gay”, *Erasing 76 Crimes*, 3 August 2017; “42 Nigerians granted bail, face homosexuality charges”, *Erasing 76 Crimes*, 4 August 2017; “Police arrest 42 homosexuals in Lagos hotel”, *Sunday Punch*, 30 July 2017.

³⁸³ “Nigeria: Man facing homosexuality charges languishes in prison”, *Erasing 76 Crimes*, 10 May 2018.

³⁸⁴ “Report: Muslim police arrest 70 Nigerian youths for ‘gay’ party”, *Erasing 76 Crimes*, 2 September 2017.

³⁸⁵ “Nigeria: Ex-husband triggered raid, arrest for lesbian sex”, *Erasing 76 Crimes*, 20 September 2017.

³⁸⁶ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁸⁷ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁸⁸ “Nigeria: 2 men stripped, paraded for alleged sex”, *Erasing 76 Crimes*, 26 April 2018.

³⁸⁹ “Nigeria: 100+ youths face homosexuality charges in court”, *Erasing 76 Crimes*, 2 July 2018; “Nigeria: Police arrest over 100 alleged gay and lesbians”, *No Strings NG*, 11 June 2018.

³⁹⁰ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁹¹ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

opposed to entirely dismissed means the accused can be arraigned again on the same charge in future.³⁹²

In late **December 2018**, 11 women were arrested and accused of planning a “lesbian wedding” in Kano state. Islamic Police were tipped off by a member of the public before immediately apprehending the women. The accused denied the claims, saying they were members of a dance club and were merely planning a party. It is unclear whether the women were granted bail or if they were charged.³⁹³

In **January 2019** in Enugu state, two gay men “caught in the act” were dragged from a house by an angry mob, beaten, and almost burned alive. One of the pair managed to flee and went into hiding—he is wanted by the police. It is not clear what happened to the other, who is the son of a retired soldier. The young man’s military father has urged police to “fish out” the missing man, as “they have been practising the devilish act for some time”.³⁹⁴

On **22 February 2019** two women in the Ajeromi-Ifelodun area of Lagos state were “caught in the act of lesbianism” by police. One fled the scene while another was detained. The detained woman was released on bail, but has reportedly been in and out of the police station ever since, as police refuse to drop the case but also claim they cannot issue charges until both women are present. Police have declared the missing woman to be wanted, and the family of the other appears to have been publicly calling for her capture and asking local media to assist in the matter. The father of the detained woman is reported as saying “[m]y daughter cannot continue to suffer alone while the evil lady who lured her into this abominable act will be somewhere enjoying herself [...] it has become necessary for us to come to the media again as our daughter has been going through this all alone and they are about to be charged to court”.³⁹⁵

In **April 2019** it was reported that a young “cross-dresser” at a nightclub in Abuja was found to not be a cis woman, and so “apprehended” by security officials and forced to strip down in public so that everyone could see. It is not clear if the original source’s reference to “security officials” is indicative of police action taking place, or if it is referring to the club’s security staff. No further legal actions against the victim are known.³⁹⁶

In **November 2019** Nigerian police arrested two women rumoured to be in a relationship in the city of Edo. Media outlets pointed out that police further declared a “war” on lesbians in the city.³⁹⁷

A group of university students were arrested on charges of homosexuality in Kano in **December 2019**. According to reports, 15 people—reported as being men, though some appear to have been trans or gender-diverse based on their gender expressions—were arrested by the Hisbah (religious police) at an alleged “gay party”. Hisbah Board, Deputy Commander-General, Special Duties, Shehu Is’haq, confirmed the arrest and further declared to the media: “We arrested and transferred the errant students to our correctional centre at our headquarters in Sharada. While at our correctional centre, they will be re-oriented and, at the close of the day, they will desist from their waywardness and turn a new leaf”. It is unclear whether the men were later released or further charged.³⁹⁸

In **March 2020**, police arrested a suspected “cross-dresser” in Sokoto state. Police stated that the suspect was allegedly defrauding unsuspecting men into sex. It is unclear whether the suspect was charged or released.³⁹⁹

In **July 2020** it was reported that a young gay man was waiting for a friend at a bar when he suddenly found himself surrounded by police. They hit him hard in the face and loaded him into a van, taking him to an abandoned building where his friend had clearly already been beaten to the point where he outed the young man to police. After beating the young man further, he agreed to be escorted to an ATM to pay a bribe and avoid jail time. Police also stole his phone.⁴⁰⁰

A young graphic designer was stopped by police while on his way home in late **July 2020**. Police questioned the man about his piercings and tattoo and stated that he “looked like a gay”. Police threatened to arrest the man on charges of homosexuality before he transferred 100,000 Naira (USD 260) into the bank accounts of the officers.⁴⁰¹

On **25 July 2020** a young man in Edo state’s Benin City was arraigned by police for allegedly participating in same-sex sexual acts. On **3 August** he was made to sign an affidavit renouncing his homosexuality lest he face

³⁹² “Lagos homosexuality trial suffers more delays”, *Vanguard*, 3 March 2020; “Nigerian judge throws out homosexuality case against 47 men”, *Aljazeera*, 27 October 2020.

³⁹³ “Nigeria: 11 women arrested over ‘lesbian wedding’”, *Mamba Online*, 21 December 2018.

³⁹⁴ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁹⁵ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁹⁶ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁹⁷ “Nigerian Police Declares ‘War’ On Lesbians, Arrest Two in Edo”, *Daily Time TV*, 10 November 2019.

³⁹⁸ “Hisbah storms Kano gay party, nabs 15”, *Punch*, 6 January 2020; Another entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁹⁹ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁴⁰⁰ “I’ve been beaten up, spat on and abducted by the police, all for being gay in Nigeria”, *Metro*, 14 July 2020.

⁴⁰¹ “Nigerian Police Are Extorting People Who ‘Look Gay’”, *Vice*, 20 August 2020.

formal charges. The signed document reads “I hereby with this affidavit confirm the above fact that I am no longer involved in a homosexual act, that I have given my life to Christ, hence this affidavit”.⁴⁰²

On **27 July 2020** a young man was stopped by police while on his way home from a routine HIV test in Lagos. The police questioned him for hours about his sexual orientation and searched his phone for explicit content. They accused him of having drugs but they were revealed to be lube sachets provided by the testing site. The police later released him, allegedly when they realised that the young man did not have enough money to make extorting him worth their while.⁴⁰³

On **2 September 2020** two gay men were arrested by the Hisbah Corps in the northern state of Jigawa after being reported by the community. The pair had agreed to meet up online, allegedly with one paying the other for sex, but when payment could not be made their argument alerted locals. They were taken to a police station to be charged, though no information thereafter could be verified.⁴⁰⁴

It was reported on **5 March 2021** that two men in Ondo state were handed over to the Civil Defence Corps to have allegations of the pair having sex in public investigated—though later media reporting would walk back this claim and say that the men were “making out” in public.⁴⁰⁵ Both men claimed that they were seduced by the other and are not gay.⁴⁰⁶

On **7 March 2021** in Anambra state, police claimed to have arrested an undisclosed number of gay men who were having a party at a local hotel, taking them to the police command’s “anti-cult office” for processing.⁴⁰⁷ In **June 2021**, Nigeria’s National Human Rights Commission claimed that it had intervened when “around 90 young men” were arbitrarily arrested in Anambra and charged with “cultism and being gay”, which can be presumed to be the same case.⁴⁰⁸ In the same report, the Commission noted a case from Yobe state—where the death penalty remains legal—where a family narrowly escaped lynching from their community due to allegations that their son was gay.

In early **May 2021** three young men in Benue state—two of whom are of unknown age while the third was

identified in the press as being 18 years old—were arrested by local community members while allegedly having sex and handed over to police for prosecution. Their pictures were repeatedly published on social media, with local news outlets using these images to expose them publicly.⁴⁰⁹

In **July 2021** five minors were arrested by Islamic Police for allegedly being gay. The details surrounding the case are unclear but the Islamic Police reported that the minors were arrested after the community complained about the suspects performing “homosexual acts” in their hideout in Kumbotso, a local government area in Kano state.⁴¹⁰

On **11 July 2021** the Kano state Hisbah arrested five men accused of engaging in consensual same-sex sexual activity. Authorities confirmed that all men were above the age of consent, but used the incident as an opportunity to publicly call on young people in the state to not engage in such “unwholesome practices” by publicly parading the accused in the streets. The five accused were scheduled to be charged in court. It is unclear whether they were to be sentenced under Kano’s Sharia law framework, which permits the death penalty.⁴¹¹

On **25 August 2021** in Zariagi Community, Kogi state, a vigilante group apprehended a “cross-dresser” who claimed to be a dancer, and handed the suspect over to the military. Military officials said they now had control of the situation and would investigate whether any crime had been committed. The Senior Special Assistant on New Media to Kogi State Governor publicly accused the suspect of being “disguised for criminality”, and added that “we don’t tolerate anything that has the semblance of criminality in any part of Kogi”.⁴¹²

On **12 November 2021** it was reported that two women in Lagos were “caught in the act” together and attacked by an angry mob. One of the women succumbed to her injuries and died before reaching a hospital, according to a local news article. The other woman, accused of being bisexual by community members, was handed over to police, with her relatives alleging that she was “arrested for lesbianism”. The woman managed to escape police custody and at the time of publication her whereabouts were not known.⁴¹³

⁴⁰² “Gay Nigerian forced to sign affidavit renouncing homosexuality”, *Rights Africa*, 22 September 2020.

⁴⁰³ “Nigerian Police Are Extorting People Who ‘Look Gay’”, *Vice*, 20 August 2020.

⁴⁰⁴ “Hisbah arrests 2 in Jigawa over alleged homosexual act,” *Pulse Nigeria*, 2 September 2020; “Homosexuality: Two Men have been arrested over alleged homosexual act,” *Opera News (Nigeria)*, 4 September 2020.

⁴⁰⁵ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁴⁰⁶ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁴⁰⁷ “Gay party raided by police in Anambra”, *Within Nigeria*, 9 March 2021.

⁴⁰⁸ “Family Escapes Lynching Over Son’s ‘Sodomy’ – NHRC – The Whistler Nigeria”, *The Whistler NG*, 11 June 2021.

⁴⁰⁹ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁴¹⁰ “Islamic Police Arrest 5 Nigerian Men Accused Of Homosexuality”, *Opera News*, 13 July 2021.

⁴¹¹ “Hisbah parades five alleged gay men in Kano”, *Wuzup Nigeria*, 12 July 2021; “Nigeria: Kano State Sharia police arrest five men accused of engaging in homosexuality”, *Naija On Point*, 17 July 2021.

⁴¹² This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁴¹³ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.



Senegal

Criminalising Provisions

Article 319 of the Penal Code (1965) prescribes a penalty of imprisonment of one to five years and/or a fine for anyone who commits an “act against nature” with persons of the same gender.⁴¹⁴

Enforcement Overview

Already in 2010, activists warned Human Rights Watch about the high number of arrests that went unreported and remained unknown to the media or to civil society organisations. In effect, testimonies compiled by that organisation show how local LGBT people “have good reason to fear that the police will arrest and abuse them instead of protecting them”.⁴¹⁵

Already in 2010, activists warned about the high number of arrests that went unreported and remained unknown to the media or to CSOs

During its Universal Periodic Review in 2018, the United States of America issued the recommendation that Senegal “[d]ecriminalize consensual same-sex sexual relations between adults” and “end the arbitrary arrest of individuals suspected of consensual same-sex activity”. Canada echoed this by recommending that the country put an end to the arbitrary arrests and detention of LGBT persons.⁴¹⁶ Both recommendations were rejected.

In 2019, the UN Human Rights Committee expressed concern in its fourth periodic report on Senegal regarding allegations of arbitrary arrests, violations of the right to privacy, harassment and violence by law enforcement officials.⁴¹⁷ The Committee thus recommended the State to issue clear instructions to law enforcement officials to stop any violence or arbitrary arrest against persons on

the basis of their real or perceived sexual orientation or gender identity.⁴¹⁸

Further, the UN Committee Against Torture took note that, according to Senegalese delegates, “homosexuality is not explicitly prosecuted”, though it further expressed concern at “consistent reports of several violent arrests motivated by the person’s perceived sexual orientation, followed by prosecution for “unnatural” acts”.⁴¹⁹

Despite this international pressure, the decriminalisation of consensual same-sex sexual activity in Senegal remains a fraught social topic, with ILGA World noting several cases of homophobic mob violence in the country. As a result, it is also a politically charged issue, often used by politicians to gain popularity or undermine the reputations of their opponents. In early March 2016, in the context of discussions around Constitutional reform, the President of Senegal was unequivocal that the law penalising same-sex sexual relations would never be repealed under his tenure.⁴²⁰ Further, in the lead-up to the 2019 Presidential elections, the government acted to build a defence against potential accusations of being “pro-homosexual” by leading a “hunt” for sexual minorities in order to deny the accusations and win re-election.⁴²¹

A local advocacy group, Arc-en-Ciel Senegal, has indicated that the “hunt” had been taking place in the country for some time and increased considerably in scale around 2018.⁴²² In the years since, that “hunt” seems not to have abated, with ILGA World noting reports of at least 36 suspected gay men arrested in 2020 alone.⁴²³ Further, according to *France24’s Les Observateurs*, at least 150 persons presumed to be gay men were assaulted or threatened by the public between 23 May and 11 June 2021, with police often siding with the vigilantes instead of the victims.⁴²⁴

As such the number of individual cases identified by ILGA World in this report, around 25, does not come even close to being a comprehensive view of the statistics.

Examples of Enforcement

In 2004 a young gay man was arrested on suspicion of engaging in same-sex sexual activity with another man, though he never learned what charges were laid against him in his police file, as he was illiterate. He was held for two months at Dieuppeul Police Station where he was regularly severely beaten. In order to get him to confess

⁴¹⁴ ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 121.

⁴¹⁵ Human Rights Watch, *Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal* (2010), 6, 37.

⁴¹⁶ *Report of the Working Group on the Universal Periodic Review: Senegal*, A/HRC/40/5, 24 December 2018, paras. 145.14, 145.16.

⁴¹⁷ Human Rights Committee, *Concluding observations on the fifth periodic report of Senegal*, CCPR/C/SEN/CO/5, 11 December 2019, para. 14.

⁴¹⁸ *Id.*, para. 15(c).

⁴¹⁹ Committee against Torture, *Concluding observations on the fourth periodic report of Senegal*, CAT/C/SEN/CO/4 (2019), 9.

⁴²⁰ “Macky Sall: ‘jamais, sous mon magistère, l’homosexualité ne sera légalisée sur le sol sénégalais’” [Macky Sall: “never, under my authority, homosexuality will be legalized on Senegalese soil”], *Senego*, 1 March 2016.

⁴²¹ “4 anti-gay arrests in Senegal as 2019 election approaches”, *Erasing 76 Crimes*, 24 September 2018.

⁴²² Arc-en-Ciel Facebook Page, 18 September 2018.

⁴²³ “Senegal: Activists seek funds to rescue 10 men arrested by religious police,” *RightsAfrica*, 24 September 2020; “Senegal: Prison for 7 men arrested at supposed ‘gay wedding,’” *RightsAfrica*, 8 November 2020.

⁴²⁴ “Sénégal : psychose pour les homosexuels après une série d’agressions et d’appels à la haine” [Senegal: psychosis for homosexuals after a series of attacks and calls to hatred], *Les Observateurs*, 13 June 2021.

to being gay, police allegedly threatened to rape his mother with a baton, and stuck needles beneath his fingernails.⁴²⁵

On **7 October 2005** the young man was arrested again, along with another man who he had a sexual relationship with, when neighbourhood youths called police on the pair. Five plainclothes officers arrested them, severely beating them in the process, and at Guédiawaye Police Station the young man confessed to being gay in order to prevent further beatings from the investigator. He was taken to pre-trial detention on **8 October**, and on **27 October** was found guilty of same-sex conduct and transferred to Rebeuss Prison for a six-month sentence. In prison he was regularly beaten and sexually assaulted by other inmates, until one day he injured a cellmate in self-defence, which led to him being transferred to Cap Manuel Prison, and a further six months being added to his sentence. For reasons never explained to the young man he was eventually granted a Presidential pardon.⁴²⁶

In **June 2006** a man living with HIV and his friend were arbitrarily arrested by police when they spotted a bank cheque the man dropped and demanded a bribe. Neither the man nor his friend would pay and so they were taken to a local station where they told the inspector that the man's antiretroviral medication was muscle-relaxant used by gay men ahead of anal intercourse, and that they caught him and his friend as they were about to have sex. They were held for two days without food or water and subjected to beatings at the hands of police. Eventually the man managed to bribe an officer to allow him to phone a lawyer, and shortly thereafter they were taken to a pre-trial detention centre where they had to sleep with other inmates who controlled access to the showers just so that they could wash themselves. When it came time for their trial, the arresting officer failed to arrive at least six times, and one day they were simply informed by police that they had been found guilty and sentenced to six months' imprisonment. They appealed and their sentence was reduced to three months, meaning they were released only a few days later as they had already spent the requisite time in pre-trial detention.⁴²⁷

In **August 2006** a 23-year-old Senegalese man was arrested and charged with "crimes against the order of nature" when he reported to the police that he was being blackmailed by a man with whom he'd had a casual sexual encounter. Police themselves are often complicit in extortion schemes, or unsympathetic if the crime is brought to their attention, sometimes choosing to prosecute the victim rather than the extortionist.⁴²⁸

In **February 2008**, several people were arrested after a monthly tabloid magazine published more than 20 photos from a party that had taken place in **2006**. The

magazine claimed the people in the photos were "homosexuals engaged in a gay marriage ceremony" and since many of them could be clearly identified, arrests soon followed. Police reportedly used extreme violence, abuse, and derogatory language against suspects during the arrests, with one account reported by Human Rights Watch including officers yelling: "You want to destroy the country. We are going to kill you, get out of here, we are going to kill you all, motherfucker gay". According to activists that spoke to Human Rights Watch, at least nine men fled the country and others went into hiding within Senegal as a consequence of this crackdown.⁴²⁹ In a letter to Senegalese Minister of Justice, IGLHRC and Pan Africa ILGA demanded the immediate and unconditional release of up to 20 gay men believed to have been arrested.⁴³⁰ Even though those who were arrested were subsequently released, the public outcry, fuelled by religious rallies, sermons, and sensationalist media coverage, led to numerous further threats and attacks over the following months.⁴³¹

On **24 May 2008** a mob stormed a birthday party organised by a gay man in Dakar. The police, unable or unwilling to control the violent mob, arrested the organiser of the event and around eight of his friends, believing that they had organised a "gay wedding". A group of Imams reportedly showed up at the police station and told the commissioner that if the organiser went back to the neighbourhood, he would be killed by a local mob and they would not act to prevent the murder. One gay man who appears to have been arrested at the same party stated that police provided photographs and the names of the accused to local media, which outed the entire group to the public.⁴³²

In **December 2008**, acting on an anonymous tip, police officers arrested nine Senegalese HIV/Aids activists—most of whom did HIV prevention work with MSM—at the home of a prominent activist, later citing condoms and lubricants as "evidence". In **January 2009**, the nine men received the harshest sentence for "acts against nature" (five years in prison) and an additional three for "criminal conspiracy". However, in **April 2009**, the Dakar Court of Appeal overturned the sentence, citing due process violations given that law enforcement officials did not have a search warrant at the time of the arrests, nor did they catch the men "in the act". All nine activists were freed, but they went into hiding because of death threats from religious leaders and the general population. Dakar newspaper *L'Observateur* quoted a local youth leader as saying "the homosexuals will not escape lynching. They will be fish food".⁴³³

The UN Working Group on Arbitrary Detention received information that on **19 June 2009** officers of the National Police arrested four men in the town of Darou

⁴²⁵ Human Rights Watch, *Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal* (2010), 38.

⁴²⁶ *Id.*, 38-39.

⁴²⁷ *Id.*, 39-40.

⁴²⁸ IGLHRC, *Off the Map: How HIV/Aids programming is failing same-sex practicing people in Africa* (2007), 19.

⁴²⁹ Human Rights Watch, *Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal* (2010), 16.

⁴³⁰ "Senegal: arrests of gay men; lgbt groups express outrage and concern", *OutRight Action International*, 4 February 2008.

⁴³¹ Human Rights Watch, *Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal* (2010), 5.

⁴³² *Id.*, 40-41.

⁴³³ "Gays under threat in Senegal", *Agence France-Presse*, 25 April 2009; Human Rights Watch, *Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal* (2010), 5.

Mousty, in the Kébémér department of Louga region, on allegations of committing "unnatural sexual acts".⁴³⁴ Police officers allegedly forced these men to reveal the names of other "homosexuals". Religious authorities led by one Serigne Khoudoss Mbacké, who reportedly spoke on behalf of the Caliph of Darou Mousty, urged authorities to "enforce the law with all its rigour".⁴³⁵ Around **10 August** two of the men were convicted despite the fact that the only evidence was a report issued by a neighbour. One man received a two-year prison sentence and the other a five-year sentence.⁴³⁶

In **February 2013**, the president of Sourire de Femme, an organisation that lobbies for lesbians' rights in Senegal, was arrested and detained in Casamance under article 319 of the Penal Code, which states that those found guilty of committing "an improper or unnatural act with a person of the same sex" face sentences of up to five years in prison and fines of up to USD 3,000.⁴³⁷

On **11 November 2013** five women, part of the Sourire de Femme, were detained by elements of the Dakar Central Police Station in a nightclub in Grand-Yoff, Dakar, where they were celebrating a friend's birthday. Local newspapers reported that the five women were reportedly caught engaging in "unnatural acts" after other patrons alerted the police.⁴³⁸ By November 21, four of the five women were set free because of insufficient evidence by police. The girl who was under age at the time of her arrest was tried separately.⁴³⁹

In **February 2014** a judge in Senegal sentenced a gay couple to six months' jail-time. They were arrested at their home after neighbours had tipped off the police.⁴⁴⁰

On **21 July 2015**, police raided an apartment and arrested seven men in the Guédiawaye suburb of the capital, Dakar. Police reportedly did not have a warrant, but were tipped off by the mother of one of the group. Police reported that two men were found sleeping in a "compromising position" while the other five men were found naked and sleeping in the bathroom. They also claimed that the group were in possession of drugs and that they had "incriminating messages and images" on their cell phones. Only condoms and lubricants could be provided as "evidence" by the prosecution, however, and so the court acquitted the men of any drug charges.

Despite the fact that (in the words of the defence lawyer) "there was neither material evidence nor testimony to corroborate the claims" of consensual same-sex sexual acts, the seven were found guilty on **21 August** and sentenced to six months' imprisonment and an additional 18-month suspended sentence.⁴⁴²

On **24 December 2015**—Christmas Eve—11 people in the town of Kaolack were arrested for hosting a suspected "gay wedding". They had to cover their faces while being taken to court for fear of reprisals, as community members burned tyres to display their anger at the group. They were, however, acquitted due to a lack of evidence.⁴⁴³

In **2018** a man was sentenced to six months in prison after a video of him having sex with another man went viral online. The woman who filmed the pair without their knowledge, and then shared the video, was also sentenced to two years (three months effective) for "distribution of immoral content".⁴⁴⁴

Leading up to the **2019** presidential elections in Senegal, it appeared that the government was building a defence against potential accusations of being "pro-homosexual", leading a hunt for sexual minorities in order to deny the accusations and be re-elected. Two women and two men were detained in Dakar, for "acts against the order of nature". According to reports, videos portraying the couples having sex had begun circulating in their neighbourhood before being detained.⁴⁴⁵

On **20 September 2020** the Safiyatoul Amal religious militia in Touba, which operates through a network of informants, arrested 10 men suspected of being gay. As part of a grand opening ceremony for the militia's new headquarters, the men were publicly displayed alongside several other criminalised people and prohibited objects, such as sex workers, people practicing indigenous religions, radios, lingerie, tobacco and footballs. Six of the men were released after they agreed to confess their homosexuality to their families in front of the authorities, while three more were freed when local human rights defenders gathered funds to pay their fines. The last man was held as activists ran out of funds and it is not known whether he was prosecuted.⁴⁴⁶

⁴³⁴ *Report of the Working Group on Arbitrary Detention Chairperson-Rapporteur: El Hadji Malick Sow Mission to Senegal, A/HRC/13/30/Add.3*, 23 March 2010, para. 72.

⁴³⁵ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁴³⁶ "Sénégal: libérer des hommes arrêtés à Darou Mousty pour l'homosexualité" [Senegal: release men arrested in Darou Mousty for homosexuality], *OutRight Action International*, 20 August 2009.

⁴³⁷ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁴³⁸ "Sénégal : arrestation de cinq femmes homosexuelles" [Senegal: arrest of five homosexual women], *Le Nouvel Afrik*, 12 November 2013.

⁴³⁹ "Senegalese women accused of lesbian acts freed by judge", *Gay Star News*, 21 November 2013.

⁴⁴⁰ "Senegal prison sentence for gay couple; how rare?", *Erasing 76 Crimes*, 3 February 2014.

⁴⁴² "No 'anti-homosexuality' law? Jail for 7 for gay sex", *Erasing 76 Crimes*, 23 August 2015; "Senegal: Quash Conviction of 7 for 'Acts Against Nature'", *Human Rights Watch*, 28 August 2015; "Chasse aux homosexuels au Sénégal: assez!" [Hunting homosexuals in Senegal: enough!], *Huff Post France*, 21 August 2015.

⁴⁴³ "Senegal: 11 suspected homosexuals released for lack of evidence", *Africa News*, 30 December 2015.

⁴⁴⁴ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁴⁴⁵ "4 anti-gay arrests in Senegal as 2019 election approaches", *Erasing 76 Crimes*, 24 September 2018.

⁴⁴⁶ "Senegal: Activists seek funds to rescue 10 men arrested by religious police", *Rights Africa*, 24 September 2020.

On **16 October 2020** a group of 20 to 25 people were arrested in the Keur Gorgui region of Dakar at an alleged “gay wedding”. 13 of them were released, after they had been stripped naked and tortured into confessing their alleged homosexuality, though they refused to confess. Of the seven accused remaining, two were sentenced to six months in prison while the others were sentenced to between four and three months. Four minors also caught at the supposed wedding remained detained, with judgment on their case deferred.⁴⁴⁷

Also around **mid-October 2020**, two young men in Corniche, Dakar, were “caught in the act” by Rebeuss police who were on patrol in the area. One of them managed to flee but the fate of the other is unknown.⁴⁴⁸

According to the Italian news site, *Il Grande Colibri*, a young man in the city of Touba was attacked and almost set on fire by a mob suspecting him of being gay in early **2021**. Police intervened and prevented harm from coming to the man, only for him to be detained at a local barracks and charged with committing “acts against nature”. On **21 January 2021**, the Touba City Court upheld the police accusation—adding breach of Covid-19 pandemic restrictions to the charges—and sentenced the accused to six months in prison. The young man opted not to appeal the ruling, reportedly to avoid his name being publicised by local media, which could result in further backlash and violence against him.⁴⁴⁹

In **May 2021** public outcry followed an English teacher who included in a test for his students an extract from an American gay man’s coming out letter. Following the backlash and claims that he and the school were “promoting homosexuality”, education officials placed the teacher on leave—pending a government investigation.⁴⁵⁰

Further, according to *France24’s Les Observateurs*, at least 150 persons presumed to be gay men were assaulted or threatened by the public between **23 May** and **11 June 2021**. Though most of those individual cases are not known to ILGA World, one individual was said in the report to have attracted a mob for wearing clothing that displayed his legs, but police intervened to prevent violence before arresting him. At the time of publication it was unclear if he was still in detention.⁴⁵¹

And on **25 June 2021**, two dancers performing at a concert for a local singer were sentenced to one year in prison for kissing each other on stage. After a month in detention the pair were released.⁴⁵²

Sierra Leone

Criminalising Provisions

The British colonial [Offences Against the Person Act \(1861\)](#) remains in force in Sierra Leone. Under Section 61 of this legislation, any man found guilty of “buggery” is liable to imprisonment of 10 years to life.⁴⁵³

Enforcement Overview

In total ILGA World has identified up to five individual examples of criminal enforcement. None of these cases appear to have led to prosecutions, or even formal charges, demonstrating the arbitrary manner in which legislation is enforced, which can still be used to target or otherwise degrade the lives and wellbeing of people with diverse sexual orientations or gender identities or expressions.

When a review of the Sierra Leone Constitution was initiated in 2013, President Koroma reportedly spoke of his wishes to create a more “tolerant culture”. However, SOGIESC organisations later claimed that they were excluded from the review process.⁴⁵⁴

**None of these examples
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prosecutions, demonstrating
the arbitrary manner in
which legislation is enforced**

Examples of Enforcement

Sometime in or prior to **2014**, as documented in a shadow report submitted to the UN Human Rights Council, a young boy was reported to police by his uncle for being gay. The boy was arrested and held in unhygienic conditions without food or water for 24 hours. He was never charged or given the chance to provide a statement. When he asked why he was being

⁴⁴⁷ “Senegal: Prison for 7 men arrested at supposed ‘gay wedding’,” *Rights Africa*, 8 November 2020; “13 Senegal arrestees were tortured before being released,” *Erasing 76 Crimes*, 12 November 2020.

⁴⁴⁸ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁴⁴⁹ “Senegal: gay salvato dalla folla, ma condannato a 6 mesi di carcere | Il Grande Colibri” [Senegal: gay rescued from the crowd, but sentenced to 6 months in prison | The Great Hummingbird], *Il Grande Colibri*, 5 February 2021.

⁴⁵⁰ “#Rufisque – L’homosexualité à l’examen d’anglais : Une épreuve pas GAY – Les copies retirées du ...” [Rufisque - Homosexuality on the English exam: A test not GAY - Copies withdrawn from the white bac], *Le Quotidien (Senegal)*, 30 May 2021; “Affaire LGBT : La sanction est tombée pour le professeur qui a proposé le sujet sur l’homosexualité” [LGBT case: The sanction fell for the professor who proposed the subject on homosexuality], *Sene News*, 2 June 2021.

⁴⁵¹ “Sénégal : psychose pour les homosexuels après une série d’agressions et d’appels à la haine” [Senegal: psychosis for homosexuals after a series of attacks and calls to hatred], *Les Observateurs*, 13 June 2021.

⁴⁵² *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁴⁵³ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 121.

⁴⁵⁴ Human Dignity Trust, *Country Profile: Sierra Leone* (2021).

held, one officer told him it was because he was “polluting the community”.⁴⁵⁵

The same **2014** report also indicated that an individual identified as a “man [...] dressed as a woman” was arrested in the capital of Freetown and held for a week without charge.⁴⁵⁶

In **May 2016**, police shut down an “LGBT event” in Aberdeen and arrested 18 participants, holding them in custody overnight.⁴⁵⁷

On **30 March 2017** police in Waterloo arrested four participants attending a workshop on HIV/Aids, accusing them of “promoting gay activities in the community”. They were “humiliated and denounced” by police, but ultimately released the following day.⁴⁵⁸

In **June 2017** “authorities” expelled two girls from their school for kissing in public. It is not clear if this is a case of legal enforcement and what status within government structures, if any, these “authorities” held.⁴⁵⁹

In **2019**, two men were reported to the police by their family members after being caught having sex in their house. The couple was able to escape and managed to leave the country before they were arrested. As of the time of publication, their location is uncertain.⁴⁶⁰

Somalia

Criminalising Provisions

Article 409 of the [Penal Code](#) (1964) stipulates that whoever has intercourse with a person of the same sex is liable to be imprisoned for up to three years. However, the [Provisional Constitution of Somalia](#) (2012) affirmed the primacy of Sharia law and as such the possibility exists for Sharia courts to sentence individuals found guilty of same-sex sexual activity to death.⁴⁶¹

Besides the Somali Penal Code and the enforcement of Sharia Law, other provisions relevant to consensual same-sex sexual acts are in force in different parts of the

territory, especially where the government does not have effective control.⁴⁶²

Enforcement Overview

At the time of writing, various regions within Somalia are not under the effective control of the central government. The breakaway/autonomous jurisdictions of Somaliland and Puntland may apply localised provisions, while the extremist insurgent group, Al-Shabaab, enforces a strict interpretation of Sharia law, severely endangering the livelihoods of people with diverse gender expressions, identities or sexual orientations in areas under its control. Those found guilty of engaging in consensual same-sex sexual acts can be executed and are often imprisoned under inhumane conditions.⁴⁶³

Given the ongoing conflict it remains difficult to provide an accurate and up-to-date account of the local context

Given the local conflict and constant shift in who holds authority in any given region at any given time—as well as the difficulty posed in distinguishing government-led enforcement from extrajudicial violence—it remains difficult to provide an accurate and up-to-date account of the local context. Despite this, ILGA World has identified at least seven examples of apparent criminal enforcement.

Examples of Enforcement

BBC News reported that in **February 2001** two women were sentenced to death in the autonomous region of Puntland for being in a same-sex relationship with one another. Authorities have denied this claim, stating that the women’s case never made it before the courts, though the implication is that they were at the very least detained by police.⁴⁶⁴

A gay activist from Somalia who had previously fled the country was informed, it seems around **2004**, that groups of armed men in Burao, the second-largest city in the

⁴⁵⁵ African Men for Sexual Health and Rights Network et al., *Breaking the Silence on Human Rights Violations in Sierra Leone under the International Covenant on Civil and Political Rights: A Shadow Report on Discrimination and Violence Based on Sexual Orientation and Gender Identity* (2014), 18.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ Human Dignity Trust, *Country Profile: Sierra Leone* (2021).

⁴⁵⁸ *Ibid.*

⁴⁵⁹ *Ibid.*

⁴⁶⁰ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁴⁶¹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 122.

⁴⁶² For further details: ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 75-80.

⁴⁶³ Benjamin Christman, *Report on the Treatment of Gay Persons in Somalia*, *Law Centre NI* (2016), 6; Report: Somalia too risky for LGBT people”, *Erasing 76 Crimes*, 16 February 2016; ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 75.

⁴⁶⁴ “Somali ‘lesbian sentences’ denied”, *BBC News*, 23 February 2001; “Report: Somalia too risky for LGBT people”, *Erasing 76 Crimes*, 16 February 2016.

jurisdiction of Somaliland, were patrolling the streets and rounding up gay men. It is unclear to what degree these groups were sanctioned by local authorities, though they seem to have been acting to enforce the law. They reportedly said “queer men will go to jail and be tried by Islamic law”. It is further alleged that a man not known to be gay was sentenced to 100 lashes as his unmarried status made him a suspect.⁴⁶⁵

In **2013** an 18-year-old man was reportedly tried by an Al-Shabaab judge in southern Somalia and found guilty of “sodomy”. He was buried up to his waist so that he could not flee, and stoned to death by community members as punishment. Details are unclear as the incident was first reported to international media by a local SOGIESC community group which has since become defunct. The group initially shared graphic images of a similar execution which occurred **some years prior** to illustrate the alleged 2013 case, though no details of that first incident could be found.⁴⁶⁶

In **January 2016** it was reported that a women’s-rights activist had been outed as a lesbian and subsequently sentenced to death. She is said to have fled the country hours before her execution was due to take place.⁴⁶⁷

It was reported in **January 2017** that a 15-year-old boy and 20-year-old man were executed in public in the town of Buale for “immoral and reprehensible sexual acts”, though the nature of these acts and the exact connection the older man had to the teenager were not outlined in media reports.⁴⁶⁸

In **November 2018** Radio Andalus—run by Al-Shabaab—issued an unverifiable report that a young man in Hiiraan Province was executed by the insurgent group on charges of homosexuality. The report claimed that men suspected of homosexuality have been punished by rape in addition to the death penalty.⁴⁶⁹



South Sudan

Criminalising Provisions

Article 248 of the [Penal Code](#) (2008) prohibits “carnal intercourse against the order of nature” and prescribes a sentence of imprisonment of up to 10 years and/or a

fine. This legislation predates the country’s 2011 independence (prior to its implementation same-sex sexual acts were criminalised under the laws of Sudan).⁴⁷⁰

There is also criminalisation of diverse gender expressions under Article 379, which states “(1) The term “vagabond” means—[...] (e) any male person who dresses or is attired in the fashion of a woman in a public place. (2) Whoever is convicted as a vagabond shall be sentenced to imprisonment for a term not exceeding three months or with a fine or with both”.⁴⁷¹

Enforcement Overview

A relatively new country which has dealt with significant internal instability since its independence from Sudan in 2011, South Sudan may not have had the time to accrue the number of criminalisation cases of its neighbours, though it is more likely that a lack of reporting and data has had a muting effect on research into this topic. ILGA World has thus been able to identify only two closely related examples of criminal enforcement.

In 2017 the Labour Minister reportedly stated that the government “would order the arrest LGBTI persons and detain them until they procreate”

Prior to independence, South Sudan’s President stated that “[homosexuality] is not in our character [...] it is not there and if anybody wants to import it [...] it will always be condemned by everybody”.⁴⁷²

In September 2017 the Labour, Public Service and Human Resource Development Minister reportedly stated that: “the government would order security forces to arrest LGBTI persons and detain them until they procreate”.⁴⁷³

An Amnesty International researcher said in 2017 that “[n]o one can be openly homosexual in South Sudan. Given the lawlessness, it’s the kind of place where you could easily end up dead because of your actual or perceived sexuality.”⁴⁷⁴

⁴⁶⁵ “Gay Life in Somaliland and Somalia”, *Global Gayz* (accessed 12 October 2021).

⁴⁶⁶ “Gay Teen Allegedly Stoned to Death In Somalia For Sodomy”, *Huffington Post*, 21 March 2013.

⁴⁶⁷ “Young Somali activist sentenced to death for being a lesbian”, *The Independent*, 31 January 2016.

⁴⁶⁸ “15 and 20-year-old youths executed in Somalia for homosexuality”, *Mamba Online*, 11 January 2017.

⁴⁶⁹ EASO, *Somalia Targeted profiles Country of Origin Information Report* (2021), 105.

⁴⁷⁰ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 122.

⁴⁷¹ Human Dignity Trust, *Country Profile: South Sudan* (2021).

⁴⁷² *Ibid.*

⁴⁷³ *Ibid.*

⁴⁷⁴ “South Sudan says it will consider stop using child soldiers as long as it can still kill gay people”, *Gay Star News*, 31 March 2017.

Examples of Enforcement

An activist working at Access for All (AfA) alleged that four of her colleagues and two healthcare outreach workers were arrested in 2017 and held for three months before being released.⁴⁷⁵

The same activist claimed that on 6 December of that year a police raid forced the AfA offices to close, with authorities confiscating everything there from furniture to batteries. The organisation now seems largely defunct, with most staff having fled to neighbouring countries for fear of further targeting and even death at the hands of security forces.⁴⁷⁶



Criminalising Provisions

Sudan was previously one of the countries which maintained the death penalty for consensual same-sex sexual activity. Law No. 12 (2020), published in the Official Gazette, amended several sections of Article 148 to remove execution and flogging as punishments for such actions. However, persons found guilty of “sodomy” for a second time may be liable to be imprisoned for up to seven years and to life imprisonment upon third conviction.

Furthermore, Section 151 punishes acts of “gross indecency” with up to forty lashes and imprisonment for up to one year or a fine. Section 152 punishes acts of a sexual nature that cause discomfort to public sentiment or public modesty with imprisonment of up to six months and/or a fine.⁴⁷⁷

Enforcement Overview

Though Sudan continued to criminalise persons of diverse gender expressions, gender identities and sexual orientations, the government that ousted President Omar al-Bashir in 2019 took the notable step in 2020 of removing flogging and the death penalty as potential punishments for consensual same-sex sexual activity. However, the prison sentences for persons re-convicted of such were expanded and the Procedural Law has also

been amended so that digital evidence can be used to convict people.⁴⁷⁸

It must be noted that in October 2021 the civilian government was overthrown by military forces, leading to widespread protests and violence.⁴⁷⁹ The situation was still largely unfolding at the time of writing, and so it was not clear whether the events in question would have a specific impact on SOGIE issues.

In its shadow report submission in 2021 to Sudan’s Universal Periodic Review, Bedayaa—an organisation operating in the SWANA (South-West Asia and North Africa) region—noted that the legal system in Sudan does not have the safeguards required for persons illegally or arbitrarily detained to access justice, and that judges have the power to assign punishments arbitrarily.⁴⁸⁰ Further, laws on gender policing and same-sex behaviour have often been historically used not only against SOGIE persons, but against political opponents, such as in the case of a woman journalist known to be critical of the government who was arrested and jailed for wearing trousers in 2009.⁴⁸¹

Negative social attitudes against sexual and gender diversity also play a large role in the enforcement of criminalising procedures in Sudan, or other forms of extrajudicial violence.⁴⁸² March 2020 saw mass rioting and looting, as well as one person dead, as a result of public outrage against a presumed “gay wedding”.⁴⁸³ Local media also appears to foment anti-LGBT sentiment, with a prominent 2013 court acquittal of a group of suspects being decried by the public, largely due to inflammatory media reporting.⁴⁸⁴

The Equal Rights Trust was informed by a *pro bono* lawyer working to assist people of diverse gender expressions, gender identities and sexual orientations in Sudan that there were approximately 900 cases in 2011, but as many as 3,500 cases in 2012, and 5,000 in 2013. The lawyer further noted that the information on statistics were limited, as many simply cannot afford or access formal legal representation.⁴⁸⁵ Bedayaa has also noted that in 2011 security forces seem to have had a list of over 700 suspected gay men for potential arrest in Khartoum alone, though it is not known whether this is accurate or if the suspects are still being monitored under the current government.⁴⁸⁶

⁴⁷⁵ “LGBT Activist Flees South Sudan Amid Threats from National Security Operatives”, *The Tower Post*, 23 April 2018.

⁴⁷⁶ *Ibid.*.

⁴⁷⁷ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 123.

⁴⁷⁸ Bedayaa, *Shadow report for the third Universal Periodic Review of the Republic of Sudan* (2021), 6-7.

⁴⁷⁹ “Sudan coup protesters return to barricades on seventh day of unrest”, *The Guardian*, 31 October 2021.

⁴⁸⁰ Bedayaa, *Shadow report for the third Universal Periodic Review of the Republic of Sudan* (2021), 5-7.

⁴⁸¹ *This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.*

⁴⁸² Bedayaa, *Breaking News: LGBT has hit Sudan!!* (2009).

⁴⁸³ “Abu Hamad Statement”, *Bedayaa*, 10 March 2020.

⁴⁸⁴ Equal Rights Trust and Sudanese Organisation for Research and Development, *In Search of Confluence: Addressing Discrimination and Inequality in Sudan* (2014), 151-152.

⁴⁸⁵ *Id.*, 152-153.

⁴⁸⁶ Bedayaa, *LGBT in Sudan Under Islamic Laws* (2011), 4-5.

As a largely tribal and family-oriented country, many cases fall outside of the scope of State enforcement and thus also may go undocumented

Despite this, cases of criminal enforcement only rarely get reported, with only the largest cases seeming to attract public attention. Bedyaa further claims that as a largely tribal and family-oriented country, many cases fall outside of the scope of State enforcement and thus also may go undocumented.⁴⁸⁷

Examples of Enforcement

In **2010**, 19 people (identified in reporting as men) were lashed 30 times and fined for allegedly cross-dressing and “behaving like women” at a private party.⁴⁸⁸ Laws on gender policing and same-sex behaviour are often used against political opponents, such as in the case of a woman journalist who was arrested and jailed for wearing trousers the previous year.⁴⁸⁹

On **13 February 2013** nine individuals, including a famous local musician, were arrested in the capital city of Khartoum during a raid by the National Intelligence & Security Service (NISS). They were lined up and severely beaten upon arrest, as well as during their time in NISS detention. Several local media outlets stoked public outrage, saying they had gathered for a “gay wedding” when in fact it was a party, and demanding their convictions. The NISS claimed that the host of the party was wearing women’s clothing while two others were in their underwear, and put forward as evidence a women’s body scrub and face creams. As such, the group was charged with violation of sections 77 (disturbance of the peace) and 152 (indecent dress) of the Criminal Law Act of 1991. On **5 March** a court added the charge of “practicing prostitution” at the request of the Attorney General’s office. On **20 August** the Court of First Instance dropped the charges against six of the accused, but kept charges of “indecent dress” against the rest as they had been wearing shorts or underwear. By **20 September** charges against the final three were also dropped, but all remain in hiding for fear of public reprisals. It is reported that a significant proportion of the local community did not accept the judgement and that calls for the execution of the accused continued in the months following the case. As of **October 2014**, at least

four have sought asylum in other countries.⁴⁹⁰ In the years since this incident, the NISS has been rebranded the General Intelligence Service (GIS), as the NISS has been linked to multiple human rights violations under President al-Bashir.

In **2016** police in Khartoum arrested a man on suspicion of being gay because he was wearing pink socks. He was held in custody for three days and raped with a stick while being detained, before eventually being released and hospitalised through the interventions of his lawyer.⁴⁹¹

In the lead-up to the **2019** Sudanese revolution, the NISS arrested a bisexual woman as part of a crackdown on protestors, activists and dissidents, though the woman in question is said to have had no history of activism. She was taken to a detention facility in Khartoum where NISS officials searched her phone for compromising material and evidence of “homosexuality”. They threatened to rape her and subject her to invasive and pseudo-scientific “virginity tests”.⁴⁹²

In **July 2020**, the same month as the repeal of lashing and the death penalty as a punishment for same-sex sexual activity, it was reported that two men were sentenced to 40 lashes and a fine of 40,000 Sudanese Pounds (USD 72). If unable to pay the fine, they would be sentenced to two months’ imprisonment instead.⁴⁹³

In its shadow report for Sudan’s UN UPR third cycle in **2021**, Bedayaa reported that a young man and his partner were arrested while strolling in the street near the International University of Africa, Khartoum. Police claimed they were patrolling the area after receiving reports of men having sex with one another. They were detained, had their phones searched for incriminating content, and one of the pair seems to have been sexually harassed. Both were released after one hour without charge.⁴⁹⁴



Tanzania

Criminalising Provisions

Section 154 of Tanzania’s [Penal Code \(1998\)](#) prohibits “carnal knowledge of any person against the order of nature”, with a prescribed penalty of 30 years to life

⁴⁸⁷ *Id.*, 3.

⁴⁸⁸ “Cross-dressing men flogged in Sudan for being ‘womanly’”, *BBC News*, 4 August 2010; “Quietly, Sudan’s underground gay movement grows online”, *The Niles*, 21 September 2011.

⁴⁸⁹ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁴⁹⁰ “Police in Sudan arrest and beat nine gay men”, *Gay Star News*, 23 February 2013; Equal Rights Trust and Sudanese Organisation for Research and Development, *In Search of Confluence: Addressing Discrimination and Inequality in Sudan* (2014), 151-152.

⁴⁹¹ Christopher Alexander and Mai Sato, *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty* (2021), 48.

⁴⁹² Bedayaa, *Shadow report for the third Universal Periodic Review of the Republic of Sudan* (2021), 7-8.

⁴⁹³ “تنفيذ عقوبة جلد لثمانين متلبين ضابطاً أثناء ممارسة الفاحشة في الجزيرة”, *Alrakoba*, 28 July 2020.

⁴⁹⁴ Bedayaa, *Shadow report for the third Universal Periodic Review of the Republic of Sudan* (2021), 9.

imprisonment. Sections 138a and 157 also prescribe five years' imprisonment for "gross indecency".⁴⁹⁵

The *Penal Decree (Amendment) Act* (2004), applicable only in Zanzibar, states under Section 145 that "any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to a term not exceeding five years or to a fine not exceeding 500,000 shillings". Section 145D further prohibits same-sex marriages or cohabitation of same-sex couples.

Enforcement Overview

Negative social attitudes regarding SOGIE issues in Tanzania mean that community violence and discrimination is common, even from law enforcement. Often, individuals will be targeted through unrelated provisions, such as laws against sex work, or will simply be harassed by law enforcement outside of the scope of the law. In a 2013 Human Rights Watch report, a transgender woman and sex worker in Dar es Salaam said she had been arrested for sex work more than 10 times. She was sexually assaulted by the police on at least one of these occasions.⁴⁹⁶

Several other organisations have also documented high levels of police brutality and discrimination, which routinely includes arresting people without charge, physical violence and verbal abuse.⁴⁹⁷ In a 2015 East African Sexual Health and Rights Initiative report, a transgender woman in Dar es Salaam claimed that "because of how we identify and how we express ourselves, [society and police] take our money, solicit bribes both monetary and sexual, strip us naked, beat us, chase after us in public, and remove our wigs. For trans men, they strip them and oftentimes rape them, especially because of the androgynous look they usually have".⁴⁹⁸

In October 2018 the commissioner for Dar es Salaam, Paul Makonda, announced a crackdown on "homosexuals" and urged communities to report them to authorities.⁴⁹⁹ He announced that he had compiled a team of 17 individuals comprising police officers, doctors, members of the Film Board and others who would assess the persons outed to them, through measures such as forced anal examinations. Makonda also suggested a new system of surveillance for police to identify potential homosexuals online and in public, with the possibility of compiling a list of "known persons". So severe were these plans that not only was there pushback from lawyers and activists, but the central government also publicly distanced itself from the plan. It said in a statement that

the government of Tanzania wished to clarify that those were the Regional Commissioner for Dar es Salaam's personal views and not the position of the government.⁵⁰⁰

The commissioner for Dar es Salaam, Paul Makonda, announced a crackdown on "homosexuals" and urged communities to report them to authorities

Nevertheless, the central government has demonstrably contributed to an environment which would enable the likes of Makonda. This is done through the enforcement of provisions criminalising "carnal knowledge against the order of nature", as well as the explicit targeting of activists. In June 2017, then-President John Magafuli was quoted as saying that NGOs brought drugs and homosexual practices "that even cows disapprove of", while the Minister of the Interior said

I would like to remind and warn all organisations and institutions that campaign and pretend to protect homosexual interests [...] we are going to arrest whoever is involved and charge them in courts of law".

At that time the government had gone so far as to shut down several HIV/Aids and sexual health clinics due to their presumed association with MSM, and even ban sexual lubricant from the country.⁵⁰¹ 2017 also saw the Deputy Health Minister, Dr Hamis Kigwangalla, threaten to publish the names of "suspected homosexuals in the country" and the names of those who "advertised homosexual activities online".⁵⁰² And in September 2019 while in Zanzibar, Deputy Home Affairs Minister Hamad Masauni called for the arrest of anyone "promoting" homosexuality.⁵⁰³

As a result of statements such as those made above, those involved in service delivery, reproductive or sexual health, or SOGIESC-related advocacy, have increasingly been targeted by national, regional and local authorities. This has had a deleterious effect on the capacity of local LGBT organisations, especially those working on HIV prevention and awareness raising. The crime of "promotion of homosexuality" does not exist in Tanzania but authorities (and the media) have resorted to this

⁴⁹⁵ ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (2019), 373.

⁴⁹⁶ Human Rights Watch, *"Treat Us Like Human Beings": Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania* (2018).

⁴⁹⁷ Tanzania Key Populations and Sexual Minorities Working Group, *Joint Stakeholder Submission to the UN Universal Periodic Review for 25th session* (2016), 8.

⁴⁹⁸ UHAI EASHR, *Landscape analysis of the human rights of Sex Workers & LGBTI communities in Tanzania 2015–2016* (2015), 19–44.

⁴⁹⁹ "Dar es Salaam regional commissioner launches anti-gay clampdown", *The East African*, 30 October 2018; "Tanzania: Anti-gay crackdown in Dar es Salaam", *BBC*, 31 October 2018; "Tanzania plans anti-gay police state, not without opposition", *Erasing 76 Crimes*, 1 November 2018.

⁵⁰⁰ "Tanzania: men arrested for 'gay marriage' face anal examinations", *The Guardian*, 8 November 2018.

⁵⁰¹ "Tanzania threatens to arrest all gay rights activists", *Erasing 76 Crimes*, 27 June 2017.

⁵⁰² *This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.*

⁵⁰³ Human Rights Watch, *"If We Don't Get Services, We Will Die": Tanzania's Anti-LGBT Crackdown and the Right to Health* (2020), 22.

expression to arrest activists and dismantle organisations operating in the country.⁵⁰⁴

Historically, some activists have considered Tanzania to be among the quieter criminalising countries, but in August 2018 and again in May 2019 a group of 38 human rights advocacy groups wrote an urgent open letter to all member and observer States of the UN Human Rights Council expressing concern at the “warning signs of a mounting human rights crisis”.⁵⁰⁵

Much of the increased crackdown against people of diverse sexual orientations, gender identities and gender expressions, as well as against healthcare and broader human rights and political activism, has been attributed to the government of former President John Magufuli, who took office in 2015 and died in March 2021.⁵⁰⁶ However, despite hopes from civil society organisations that his successor, Samia Suluhu Hassan, would be a more moderate ruler,⁵⁰⁷ there is as yet no evidence that she has taken any formal action to mitigate the ongoing targeting and violence of diverse individuals and communities.

In all, between 2009 and the time of publication, ILGA World identified at least 18 examples of criminal enforcement.

Examples of Enforcement

In 2009, a transgender man in Dar es Salaam was arrested after being reported to the police for being a lesbian and having a “bad attitude” by the manager at the bar where he worked. At the police station he was sexually assaulted by the police. They made him take off his clothes and touched his breasts and genitals. They beat him with a belt and forced him to wear women’s clothing and clean the police station. He was detained for six days before being released.⁵⁰⁸

On 19 May 2009 a newspaper reporter and three police officers went after two men suspected of engaging in consensual same-sex sexual activity. They followed the couple from the street to their private hotel room, invaded the room, and began taking photographs of the men, who were subsequently arrested and taken to the police station. In the following days, those photographs appeared on the cover of *Ijumaa* newspaper featuring the

headline: “Caught Live!” and a related article included derogatory and discriminatory language.⁵⁰⁹

On 19 June 2009 two well-known activists were arrested and arraigned on charges of debauchery. The two detainees were charged alongside seven women arrested on the presumption that they were sex workers. The judge mocked the two accused’s gender expressions, taunting them for their clothing and voices. He denied them bail but they were later released.⁵¹⁰

On 29 September 2009, 39 gay and lesbian activists who were having a meeting in Dar es Salaam were arrested after police received reports of “lawlessness” in the area. They were charged with prostitution and vagrancy, and detained for over two weeks in a local jail because the magistrate denied them bail. The Magistrate allegedly called them an “eye-sore” and that they should be handled “without mercy”.⁵¹¹

In December 2010 the police arrested a gay man in Dar es Salaam and forced him at gunpoint to call five gay friends to meet at a bar. The police arrested all of them, stripped them, beat them, and detained them at the central station, where they were raped repeatedly by other detainees, while the police refused to help. They were released after a parent paid a bribe.⁵¹²

Around 2010, a gay man in Tandika was arrested, beaten and detained for two days for trying to organise a seminar on health issues for MSM.⁵¹³

In June 2013, sources reported a case in which two gay men were arrested and held in police custody because one was “walking like a woman”. They were not released until the next day, after they paid a bribe.⁵¹⁴

In 2015 a transgender man and his girlfriend were arrested in Dar es Salaam on suspicion of violating the provisions against same-sex intimacy. During their arrest, the couple was verbally harassed and assaulted by the police. The couple were detained for two days before being released.⁵¹⁵

A 2017 report from the Southern Africa Litigation Centre (SALC) documents a case where a transgender individual was held and questioned at the Dar es Salaam airport. An Immigration Officer asked “are you a man or a woman?”

⁵⁰⁴ See, among others: Human Rights Watch, “If We Don’t Get Services, We Will Die”: Tanzania’s Anti-LGBT Crackdown and the Right to Health (2020).

⁵⁰⁵ ILGA World et al., *Open letter to States on preventative engagement with, and action on, Tanzania at the Human Rights Council’s 41st session* (2019).

⁵⁰⁶ “Repressive laws in Tanzania stifle the work of NGOs”, *Devex*, 28 October 2019.

⁵⁰⁷ “Hope for change in Tanzania after death of homophobic president”, *Erasing 76 Crimes*, 21 March 2021.

⁵⁰⁸ Human Rights Watch, “Treat Us Like Human Beings”: Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania (2018).

⁵⁰⁹ Center for Human Rights Promotion, IGLHRC, Global Rights, *The Violations of the Rights of Lesbian, Gay, Bisexual, Transgender Persons in The United Republic of Tanzania: A Shadow Report* (2009), 6.

⁵¹⁰ “Tanzania: Arbitrary arrests and detentions of gay and lesbian activists”, *OutRight Action International*, 30 October 2009.

⁵¹¹ *Ibid.*

⁵¹² Canada: Immigration and Refugee Board of Canada, *Tanzania: Treatment of sexual minorities by society and government authorities; recourse and protection available to those who have been subject to ill treatment (2007 - July 2014)* (2014).

⁵¹³ *Ibid.*

⁵¹⁴ *Ibid.*

⁵¹⁵ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

The individual in question then presented their birth certificate. Dissatisfied with this, officials made them strip naked to verify their sex.⁵¹⁶

In **February 2017** the Deputy Minister of Health sought to arrest three men, after a post on social media from one of the men's phones allegedly showing a gay sex act went viral. The minister stated that the men were advocating sodomy through social networks and needed to be prosecuted, though it is not known if they ever were.⁵¹⁷ At least one of the accused was effectively arrested and deprived of his liberty for four days, and subjected to a forced anal examination.⁵¹⁸

On **3 March 2017** two members of Stay Awake Network Activities (SANA), a local NGO based in Dar es Salaam, were arrested for allegedly "promoting homosexuality" in the Southern Highland Zone. The Region's Police Commander said the two suspects "were caught red-handed in a training" at a hotel in Songea. According to the Commander, "the two had brought together a group of men and women who were trained on homosexuality and how they could have [sex] with people from their own gender". Among the elements that were taken as "evidence" was a questionnaire that attendants were required to fill out. The Commander explained that after receiving a tip-off, they "conducted investigations and prepared a trap" that enabled them to conduct the arrests.⁵¹⁹

Around the same time in **March 2017**, between 7 and 11 men were arrested in Zanzibar for having engaged in same-sex sexual acts and were referred to the Office of the Director of Public Prosecutions (DPP) for trial. Zanzibar Regional Commissioner, Ayoub Mohammed, stated that "the work of hunting gay people is ongoing and we will make sure we arrest them to eradicate those acts that are not legally, morally or socially acceptable".⁵²⁰

A few weeks later, acting on the orders of Deputy Health Minister Hamisi Kigwangalla, police in Dar es Salaam arrested a 19-year-old man suspected of "homosexuality" based on social media posts he made. In detention he was reportedly subjected to an anal exam.⁵²¹

On **15 September 2017** authorities in the partially autonomous Zanzibar island region arrested around 20 individuals who had gathered to receive training on

HIV/Aids education and healthcare, under apparent suspicion of homosexuality. All but two of the arrestees were released without charges. According to Pan Africa ILGA the meeting being held was focused on reproductive rights, and several offices belonging to organisations working on SOGIESC issues were also raided around this time, with documents being confiscated by officials.⁵²²

The next month, on **17 October 2017**, 13 lawyers and activists, including South African legal professionals from the Institute for Strategic Litigation in Africa (ISLA), were arrested while meeting in Dar es Salaam. They were accused of promoting or participating in "carnal knowledge against the order of nature", though the group were granted bail without being charged. The meeting had been convened to conduct a workshop with a local organisation on a case to challenge the Ministry of Health's decision to close HIV drop-in-centres and ban the distribution of lubricants in public health institutions.⁵²³ The Dar es Salaam Special Zone Police Commander, Lazaro Mambosasa, stated that they were alerted to the meeting by an anonymous tip-off. Among those placed in police custody was the manager of the hotel. In a press conference, Mambosasa explained: "We are holding the hotel manager for interrogation purposes as to why he allowed the meeting to take place inside his hotel while knowing what his potential customers were going to discuss".⁵²⁴ Three South African lawyers who were participants in the meeting were deported a few days later.⁵²⁵ In **December 2020**, ISLA brought a lawsuit on behalf of the three deported lawyers before the Dar es Salaam High Court. However, in **2021**, the Attorney General and the Minister of Home Affairs failed to appear before the court without a well-founded reason. At the time of publication, the case is still ongoing.⁵²⁶

It was also reported in early **December 2017** that a woman in the town of Geita had been arrested after a video went viral on social media, depicting her kissing another woman and giving her a ring at a bar.⁵²⁷ The woman who received the ring was reportedly arrested at a later stage, as was the man who allegedly filmed the video and another woman seen in the video.⁵²⁸ According to Human Rights Watch, the bar owner and a man accused of circulating the video were also charged, and even though prosecutors dropped all charges in **May 2019**, police forces re-arrested the four accused on the same charges.⁵²⁹

⁵¹⁶ Southern Africa Litigation Center, *Regional Advocacy Meeting on Developing Strategies to Challenge Police Abuse of Marginalised Persons* (2012), 13.

⁵¹⁷ "Tanzanian official seeks 3 arrests in ongoing crackdown", *Erasing 76 Crimes*, 7 February 2017.

⁵¹⁸ Human Rights Watch, *"If We Don't Get Services, We Will Die": Tanzania's Anti-LGBT Crackdown and the Right to Health* (2020), 17.

⁵¹⁹ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

⁵²⁰ "Polisi Zanzibar yanasa wanaoidawa kuwa mashoga" [Zanzibar Police arrest alleged homosexuals], *IPP Media*, 4 March 2017.

⁵²¹ "Teen posted on Instagram and the next thing he knew, a doctor was invading his body", *The East African*, 1 June 2017; Human Rights Watch, *World Report 2018: Events of 2017* (2018), 544-545.

⁵²² "Tanzania: Statement on recent arrests", *Equal Eyes*, 23 September 2017.

⁵²³ "Facing Prosecution for Challenging HIV Policies in Tanzania", *Human Rights Watch*, 20 October 2017; "Tanzania | SA lawyers sue government over homophobic arrests", *Mamba Online*, 27 July 2021.

⁵²⁴ "13 nabbed in Dar over suspected gay linkage", *IPP Media*, 19 October 2017.

⁵²⁵ "Tanzania deports 3 South Africans for promoting homosexuality" *IPP Media*, 29 October 2017.

⁵²⁶ "Tanzania | SA lawyers sue government over homophobic arrests", *Mamba Online*, 27 July 2021.

⁵²⁷ "Police arrest woman in Tanzania over video of same-sex kiss", *Reuters*, 2 December 2017.

⁵²⁸ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

⁵²⁹ Human Rights Watch, *"If We Don't Get Services, We Will Die": Tanzania's Anti-LGBT Crackdown and the Right to Health* (2020), 17.

An especially high-profile episode of government targeting came in **October 2018** when the commissioner for Dar es Salaam, Paul Makonda, announced a crackdown on “homosexuals” and urged communities to out them to authorities.⁵³⁰ This led, in part, to authorities in Zanzibar raiding a party at a party at Pongwe Beach, Zanzibar, on **3 November**, accusing participants of conducting a same-sex wedding on account of the fact that they found the group sitting “two by two”. Around 10 people were arrested while six others fled. The detainees were reportedly subjected to invasive anal examinations. Later the same week the men were released on bail, with a regional police commissioner saying “we have so far found no evidence of unlawful acts so we are releasing all the men,” but adding that they could be re-arrested if evidence of same-sex sexual activity was found. The central government did not intervene, but following widespread international pressure publicly distanced itself from the ongoing crackdown in Zanzibar and Dar es Salaam, saying in a statement that “the government of the United Republic of Tanzania would like to clarify that these are [the Regional Commissioner for Dar es Salaam’s] personal views and not the position of the government”.⁵³¹

According to Human Rights Watch, in **January 2019**, at least 13 men were arrested in a small town on the basis of their perceived sexual orientation and were subjected to forced anal examinations. Even though they were all released on bail, three of them were later rearrested in Dar es Salaam and held for two weeks before being released.⁵³²



Criminalising Provisions

Section 2, Article 88 of the [Penal Code](#) (1980) prescribes imprisonment of one to three years and a fine to anyone who commits an “indecent act or act against nature” with a person of the same sex.

More recently criminalisation of same-sex sexual activity has been moved to Section 3 (Outrages against morals), Article 392 under the [Penal Code Amendment Law](#) (2015).⁵³³

Enforcement Overview

According to the reports on Human Rights Practices by the US Department of State, by 2010, at least eight men were arrested in 2010 and remained in jail on charges of homosexuality.⁵³⁴

In a submission to the UN Human Rights Committee in 2019, the Togolese government indicated that “when criminal investigation officers become aware of actions constituting the offence of an ‘unnatural act’, they are obliged to arrest the perpetrators and begin proceedings and, if they deem it necessary, they may place the offenders in custody for the purposes of the investigation”.⁵³⁵ The government added that as of 2018, “no court has ever convicted anyone for his or her sexual orientation”,⁵³⁶ though of course, this does not preclude criminalising provisions being used by authorities to otherwise target suspected individuals. A lack of interest from police in taking action against hate crimes, or outright re-victimisation of complainants, is reportedly also an issue.⁵³⁷

In July 2020, the Conference of Bishops of Togo issued a statement by the Christian leaders in attendance lauding the government for pushing back against foreign pressure to decriminalise same-sex sexual activity and end discrimination based on SOGIE.⁵³⁸

While verifiable data from Togo remains limited, at least five examples of police targeting have been identified between 2012 and the time of publication, primarily against persons of diverse gender expressions.

Examples of Enforcement

In the **2012** US Department of State report on Togo, it was reported that a Ghanaian man had been arrested. The report alleges that the courts found the man guilty only of “disruption of public order” to avoid the case receiving too much attention.⁵³⁹

A **2016** report by Afrique Arc-en-Ciel mentioned two individuals—possibly drag queens or trans women, but described in the report as “gay men in dresses”—who in **September 2014** were arrested by police in the capital city of Lomé on their way home from a party. The two were held at the police station for five days, and made to parade themselves in their feminine outfits in front of other detainees as a means of shaming them.⁵⁴⁰

⁵³⁰ “Dar es Salaam regional commissioner launches anti-gay clampdown”, *The East African*, 30 October 2018; “Tanzania: Anti-gay crackdown in Dar es Salaam”, BBC, 31 October 2018.

⁵³¹ “Tanzania: 10 men arrested in Zanzibar for ‘being gay’”, *Amnesty International*, 6 November 2018; “Tanzania: men arrested for ‘gay marriage’ face anal examinations”, *The Guardian*, 8 November 2018; “Men suspected of ‘being gay’ in Zanzibar released on bail - police, lawyer”, *Openly*, 8 November 2018.

⁵³² Human Rights Watch, *“If We Don’t Get Services, We Will Die”: Tanzania’s Anti-LGBT Crackdown and the Right to Health* (2020), 21.

⁵³³ ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 123.

⁵³⁴ United States Department of State, *Country Reports on Human Rights Practices for 2011: Togo* (2012), 20.

⁵³⁵ Human Rights Committee, *Fifth periodic report submitted by Togo under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2017*, CCPR/C/TGO/5, 17 January 2019, para. 25.

⁵³⁶ *Ibid.*

⁵³⁷ “Togo: homosexualité et justice ne collent pas” [Togo: homosexuality and justice do not match], *Africa RDV*, 29 January 2018.

⁵³⁸ “Togo : Les Evêques « crucifient » l’homosexualité” [Togo: Bishops “crucify” homosexuality], *Koaci*, 24 July 2020.

⁵³⁹ United States Department of State, *Country Reports on Human Rights Practices for 2011: Togo* (2012), 17.

⁵⁴⁰ Afrique Arc-en-Ciel and the Sexual Rights Initiative, *Contribution conjointe pour l’EPU du Togo sur les droits sexuels et reproductifs* (2016), para. 17.

Also in 2016, according to Amnesty International, police requested proof of identification from “another gay man returning home in female clothing” and escorted the individual home when they could not provide ID. Along the way, apparently thinking the person in his charge was a cisgender woman, an officer tried to grope and sexually harass them. At home, the family explained the situation which led to the individual being violently beaten by police, and threatened with arrest if the family did not pay a bribe.⁵⁴¹

In January 2018, a media outlet by the name of *Africa RDV* reported on the lack of access to justice for people of diverse gender expressions and identities and sexual orientations in Togo and included testimonies of arrests regularly carried out by law enforcement. A local trans woman explained how two of her friends were arrested in Adidogomé, a northwest suburb of Lomé, and held in police custody for three days “for wearing women’s clothes”. On that occasion, 100,000 CFA francs (around USD 200) were requested for their release, though police eventually settled for half of that amount.⁵⁴²

The same trans woman also testified in the 2018 article that another transgender friend of hers was arrested by a police patrol. Instead of detaining her, she was taken to her home and outed to her family by forcibly presenting her in her female outfit.⁵⁴³



Tunisia

Criminalising Provisions

Article 230 of the [Penal Code](#) (2010) prohibits “sodomy” and prescribes the penalty of imprisonment of up to three years. Additionally, under Article 226, anyone found guilty of deliberately and publicly promoting indecency is liable to six months’ imprisonment and a fine.⁵⁴⁴

In practice, trans and gender-diverse people have been indirectly criminalised (de facto criminalisation) under provisions regarding consensual same-sex sexual acts and public indecency provisions.⁵⁴⁵

Enforcement Overview

ILGA World notes 30 individual examples of criminal enforcement, police harassment, and other forms of official State-backed targeting between 2012 and 2021. These represent only a few disaggregated cases, however, with some organisations putting forward much higher numbers.

In 2020, a Tunisian organisation called Damj reportedly provided legal assistance to LGBT people at police stations in 116 cases and responded to 185 requests for legal consultations. “These figures are five times higher than those we recorded in 2019, indicating an alarming increase in the persecution of LGBT people during the Covid-19 pandemic,” said one member of the organisation. Damj has further claimed that since the Tunisian revolution in 2011, they have recorded 1,458 convictions, ranging between one month to three years in prison, based on Article 230 of the Penal Code.⁵⁴⁶ This seems to be corroborated by international reporting in 2019 which indicated that convictions for “sodomy” were on the rise, as was the reliance by authorities on pseudo-scientific anal examinations as a means to supposedly find evidence of anal intercourse.⁵⁴⁷

**Since 2011, a CSO has tracked
1,458 convictions based on
Article 230 of the Penal Code,
ranging between one month to
three years in prison**

The issue of anal examinations came to an apparent head in 2015 when a young man was sentenced to a year in prison after being made to undergo such a procedure. The young man’s treatment led the National Council of Tunisian Physicians to condemn the practice of non-consensual medical examinations.⁵⁴⁸ On 21 September 2017, during the Universal Periodic Review at the United Nations Human Rights Council, Tunisia formally accepted a recommendation to end *forced* anal exams. However, Tunisia’s delegation stated: “Medical examinations will be conducted based on the consent of the person and in the presence of a medical expert.”⁵⁴⁹

⁵⁴¹ Amnesty International, *Togo Shadow Report to the African Commission on Human and Peoples’ Rights* (2018), 18-19.

⁵⁴² “Togo: homosexualité et justice ne collent pas” [Togo: homosexuality and justice do not match], *Africa RDV*, 29 January 2018.

⁵⁴³ *Ibid.*

⁵⁴⁴ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 124.

⁵⁴⁵ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 60.

⁵⁴⁶ “Tunisia: Police Arrest, Use Violence Against LGBTI Activists”, *Human Rights Watch*, 23 February 2021.

⁵⁴⁷ “Tunisia is jailing men for having gay sex and forcing them to undergo anal exams, human rights group claims”, *Independent*, 30 March 2016; “Tunisia: tra abusi e test anali, condanne per sodomia aumentate del 60%” [Tunisia: between abuse and anal tests, sentences for sodomy increased by 60%], *Gay.it*, 10 October 2019.

⁵⁴⁸ “Tunisia’s LGBT activists push forward”, *Al-Monitor*, 12 December 2015; Amnesty International, *Assaulted and Accused: Sexual and Gender-based Violence in Tunisia* (2015), 34-35; 37; “Tunisian court cuts off student’s homosexuality sentence”, *Erasing 76 Crimes*, 17 December 2015.

⁵⁴⁹ “Tunisia: Privacy Threatened by ‘Homosexuality’ Arrests”, *Human Rights Watch Website*, 8 November 2018; “Tunisia’s Assault on Gay Men’s -and Everyone’s- Right to Privacy”, *Human Rights Watch Website*, 3 December 2018.

While the practice of forced examinations seems, then, to have become less common, suspects are still essentially coerced into allowing themselves to be violated in the hopes of exonerating themselves. ILGA World is aware of at least one instance, in 2017, in which a suspect was held in pre-trial detention for 13 months after he refused to submit to an exam,⁵⁵⁰ and of another case in 2020 where a court found two suspects guilty of same-sex sexual activity on the grounds that their refusal to submit for an exam was tantamount to an expression of guilt.⁵⁵¹

The above-mentioned 2015 case which led to the outcry against forced anal examinations also impacted the central government and nationwide discussions around the decriminalisation of same-sex sexual acts in general. In response to the public campaign by local activists calling for the young man's release, the then-Minister of Justice reportedly stated that Tunisia should begin working toward decriminalisation. The Tunisian President denounced the statement as not being in line with government policy, and on 20 October 2015 the Minister was fired for making statements that "lacked seriousness", though it is unclear if his call for decriminalisation was considered to be one such statement.⁵⁵²

Another key issue in Tunisia is the ongoing and consistent targeting of queer human rights defenders and other political activists. This is especially well-documented during times of civil unrest, as occurred in the early months of 2021, where Human Rights Watch reported at least two known activists detained in February, and several other protestors verbally abused and threatened with sexual violence.⁵⁵³ In total, it was reported that more than 2,000 protestors had been arrested by authorities between 15 January and 31 March 2021, with civil society organisations in Tunisia widely condemning the government's heightened use of force against the country's citizens.⁵⁵⁴ A wide range of UN Special Procedures also drafted a letter to condemn the arbitrary arrests of activists, and the specific targeting of people based on their SOGIESC during protests.⁵⁵⁵

Examples of Enforcement

On **20 October 2012** a trans woman in the capital, Tunis, was arrested when a police officer, who had been sexually harassing her, demanded her identity document and found out she was not cisgender. A forced anal examination did not convince examiners that any anal

intercourse had occurred, and so the woman was sentenced to six months' imprisonment for "offending public morals" instead. Her sentence was carried out in a men's prison.⁵⁵⁶

Also in **2012**, a self-described "travesti" was arrested for sitting in a car with a man while dressed as a woman, and sentenced to six months in prison—though this was later amended to two months.⁵⁵⁷

A 25-year-old gay man claimed that he and a friend were arrested during the holy month of Ramadan in **2014** (sometime between **29 June** and **28 July**) while gathered at a known gay meeting point in Tunis. Police found pictures of the man's friend on his cell phone in which he was naked and wearing makeup. Both were arrested and assaulted, with the friend being detained for a month before paying a bribe to secure his release.⁵⁵⁸

On **6 September 2015** the judicial police in Hammam-Sousse summoned a young man for questioning as part of an investigation into the murder of another man. The young man admitted that he had previously had sex with the victim of the murder, which led to the police assaulting and detaining him. They threatened to rape him and to charge him with murder. No evidence was ever found that the accused was involved in the killing. He was made to undergo forced anal examinations before being sentenced to one year in prison. The public campaign by local activists calling for his release led the then-Minister of Justice to publicly state that Tunisia should begin working toward decriminalisation. The President denounced the statement as not being in line with government policy, and on **20 October 2015** the Minister was fired for making statements that "lacked seriousness", though it is unclear if his call for decriminalisation was considered to be one such statement. The young man's treatment also led the National Council of Tunisian Physicians to condemn the practice of non-consensual medical examinations. After an appeal, a court reduced the young man's sentence to two months (served) plus a fine of 300 dinars (about USD 150).⁵⁵⁹

On **4 December 2015** six university students in Kairouan were arrested in their dormitory under suspicion of being gay. Police assaulted and abused them while in detention and they were made to undergo forced anal examinations. They were sentenced to three years' imprisonment and fines of 400 dinars each (USD 195), as well as being banished from Kairouan for five years. However, the sentence was reduced to one month

⁵⁵⁰ "Tunisia: Privacy Threatened by 'Homosexuality' Arrests", *Human Rights Watch Website*, 8 November 2018.

⁵⁵¹ "Tunisia: Two-Year Sentence for Homosexuality", *Human Rights Watch*, 6 June 2020; "Tunisia: Homosexuality Convictions Upheld", *Human Rights Watch*, 5 August 2020.

⁵⁵² "Tunisia's LGBT activists push forward", *Al-Monitor*, 12 December 2015; Amnesty International, *Assaulted and Accused: Sexual and Gender-based Violence in Tunisia* (2015), 34-35; 37; "Tunisian court cuts off student's homosexuality sentence", *Erasing 76 Crimes*, 17 December 2015.

⁵⁵³ "Tunisia: Police Arrest, Use Violence Against LGBTI Activists", *Human Rights Watch*, 23 February 2021.

⁵⁵⁴ "La sociedad civil tunecina denuncia el aumento de los arrestos y el abuso policial" [Tunisian civil society denounces the increase in arrests and police abuse], *Infobae*, 5 April 2021.

⁵⁵⁵ *AL TUN 4/2021* (2021), 1-3.

⁵⁵⁶ Amnesty International, *Assaulted and Accused: Sexual and Gender-based Violence in Tunisia* (2015), 38.

⁵⁵⁷ *Ibid.*

⁵⁵⁸ *Id.*, 36-37.

⁵⁵⁹ "Tunisia's LGBT activists push forward", *Al-Monitor*, 12 December 2015; Amnesty International, *Assaulted and Accused: Sexual and Gender-based Violence in Tunisia* (2015), 34-35; 37; "Tunisian court cuts off student's homosexuality sentence", *Erasing 76 Crimes*, 17 December 2015.

(served) after an appeal, and their ban from the Kairouan area was lifted. The group allege sexual abuse and violence from guards and other inmates during their incarceration.⁵⁶⁰

On **17 August 2016** a human rights defender at Shams, a local advocacy organisation, was taken off of a bus in Mahdia by police. They sexually abused him with a stick and threatened to undress him in public. They refused him access to his lawyer, and instead of detaining or charging him, they drove him far out into an isolated part of the countryside, abandoning him there. On **18 August** the activist and his lawyer went to a police station in Sousse to file a complaint but were told it was outside the jurisdiction of local officers. Officers in Mahdia, however, refused as well, saying they had bigger cases to deal with. It is alleged that the activist in question has been harassed or detained by police on numerous occasions due to his prominence as a human rights defender, though many of the details of these individual cases are not known.⁵⁶¹

On **29 August 2016** another human rights defender working at Shams was allegedly beaten up by a homophobic stranger, with a nearby police officer looking on and doing nothing. It is claimed that this activist, too, regularly faced arbitrary detention and harassment by authorities.⁵⁶²

In **November 2016** a 19-year-old trans woman was reportedly detained by police during a Halloween party for dressing as a woman. She was charged with “public indecency” when she explained that she considered herself a woman, and allegedly faced verbal abuse and torture at the police station. She was released pending her trial in **January 2017**, where she was charged with “harm to good morals and ostentatious demonstration of behaviour contrary to modesty” and sentenced to four months in prison.⁵⁶³

In **December 2016** it was also reported that a university student and his friend were arrested on the streets of Sousse on suspicion on homosexuality. Police allegedly assaulted the pair and told them they were “bringing the curse on the country”. They were forced to undergo anal examinations, which did not provide the evidence sought by authorities, though the pair were sentenced in **January 2017** to eight months’ imprisonment.⁵⁶⁴

And on **8 December 2016**, two men in Sousse were arrested for allegedly engaging in anal sex in public. Both denied this, and even the pseudo-scientific anal examinations performed on them came back “negative”,

but they were sentenced to eight months’ imprisonment anyway based on the weight of the testimony from police. The judge stated that “the results of the anal tests cannot exonerate the accused of the crime, especially given that the [tests] were performed sometime after the facts.”⁵⁶⁵

In **January 2017** two people in Sousse were arrested when neighbours informed police that they suspected the two were gay. Police claimed to have found evidence on their phones that they were “sodomites”, and found women’s clothing in their home. They were sentenced to two months’ imprisonment, with the investigative judge stating that they had harmed public morals “because they dressed up like women, used lipstick, and talked in a languid way.”⁵⁶⁶

On **3 March 2017** a local filmmaker went out for drinks in Tunis and was approached by a stranger. The two went to an apartment, but the stranger allegedly then tried to steal money. The commotion attracted police who arrested the filmmaker and confiscated his phone so that he could not contact his family or a lawyer. They sought to get him to sign a confession that he had participated in same-sex sexual activity but he refused. He also refused to participate in an anal examination, and so was held for several weeks in Bouchoucha Detention Centre. In the hopes of being vindicated by the results of an anal exam, he later agreed to go back to the hospital. Despite being cleared by the exam, however, the judge still indicted him for “sodomy”, claiming that the time which had elapsed between the incident and the test meant it could not be used to rule out a history of same-sex sexual activity. He thus remained in pre-trial detention for 13 months before being acquitted by a court in **May 2018**.⁵⁶⁷

In **August 2017** a teenager was arrested by police, dragged from his home and had his belongings searched, on suspicion of being gay. He was subjected to forced anal examinations and released after two days without being charged. He was arrested again in **May 2018** at the request of his family and sent to a juvenile detention centre for two months, where he was subjected to so-called “conversion therapy” practices. In **September 2018** his family laid another complaint about him, leading to a further eight days’ detention in a police cell.⁵⁶⁸

In **November 2017** a gay man in Terbouba was raped by another man who he had met online. He filed a rape case with police, but when they found out that he had initially planned to meet the attacker, they told him “you were the one who initiated this, you are an accomplice to the

⁵⁶⁰ “After anti-gay trial, tortures in Tunisian prison”, *Erasing 76 Crimes*, 10 January 2016; “6 Tunisians’ prison time reduced to time already served”, *Erasing 76 Crimes*, 4 March 2016; “LGBT rights in Tunisia: The fight will be televised”, *Heinrich Böll Stiftung*, 17 June 2016; “Six Tunisian students freed from ‘sodomy’ prison sentence after appeal”, *Amnesty International*, 5 June 2018.

⁵⁶¹ OHCHR, TUN 3/2016 (2016), 1-2.

⁵⁶² OHCHR, TUN 3/2016 (2016), 2-3.

⁵⁶³ “The 19-year-old Tunisian has been sentenced to four months for wearing women’s clothing”, *SBS News*, January 26, 2017; Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts*, (2019), 43.

⁵⁶⁴ “Tunisie: deux jeunes hommes poursuivis pour homosexualité à Sousse”, *L’Express*, 13 December 2016; “”, *Erasing 76 Crimes*, 10 March 2017. ² young Tunisians sentenced to 8 months for gay sex”, *Erasing 76 Crimes*, 10 March 2017.

⁵⁶⁵ “Tunisia: Privacy Threatened by ‘Homosexuality’ Arrests”, *Human Rights Watch Website*, 8 November 2018.

⁵⁶⁶ *Ibid.*

⁵⁶⁷ *Ibid.*

⁵⁶⁸ “Tunisia’s Assault on Gay Men’s -and Everyone’s- Right to Privacy”, *Human Rights Watch Website*, 3 December 2018.

crime, there is no rape here—you deserve this”. They instructed him to undergo an anal examination, but on the advice of the local organisation, Shams, he refused. The judge at the First Instance Court in Manouba charged him with sodomy (and charged his attacker with sodomy and rape), and granted him pre-trial release. However, the pending trial led to him being fired from his job and the scandal of the incident resulted in violence and harassment from his own family. Sometime between **December 2017** and **May 2018** he fled to seek asylum abroad, with the court case continuing despite his absence.⁵⁶⁹

On **5 April 2018** a gay man was arrested in the town of Monastir. He was travelling with a female friend of his, and when police requested that she go with them to the police station to do identity checks, the man’s boyfriend, who was waiting for them, texted to ask why they were late. The man took a photo of the police station to show his boyfriend why he was delayed, but a police officer confiscated his phone as a result, saying he had endangered State security. Police found photos of the man naked on his phone, as well as explicit conversations with his boyfriend, and so they arrested him, assaulted him, and forced him to sign a confession he did not read. He was allowed to walk free but was required to appear in court on **6 June**, where he retracted his forced confession, to which the judge asked “but if you are not a sodomite, why do you dress like this? Why do you look like one of them?” He was sentenced to four months’ imprisonment with probation.⁵⁷⁰

On **8 June 2018** a man in Monastir was lured by a presumed police officer on a dating app to an apartment where several individuals trapped and raped him. He was later allowed to leave and sought medical attention, but doctors refused to assist without a police order. At the police station, officers said that they needed to determine if the victim was “used to practicing sodomy”, and took him to a hospital where the doctor performed an anal examination. He requested to go to the bathroom and once in the hallway fled the hospital. A few days later, on **13 June**, he fled to seek asylum abroad.⁵⁷¹

On **12 June 2018** police in Sidi Bouziane arrested two men when one filed a complaint that the other was refusing to leave his house. Police allegedly insulted and assaulted them, forcing them to sign a confession that they regularly engaged in same-sex sexual conduct. A judge who ordered them to remain in pre-trial detention asked “aren’t you afraid of God’s judgement?” One of the accused reported that he spent a week in pre-trial

detention where he suffered assaults, rape, and other violations at the hands of other inmates. When they appeared before the First Instance Court of Sidi Bouzid, the judge sentenced them to three months’ imprisonment, telling them “you are harming society”. An appeals court upheld the sentence.⁵⁷²

In early **2019**, media outlets reported that a 23-year-old Tunisian man who had been raped was subjected to a judicial forced anal examination upon reporting the crime. He was eventually sentenced to six months in prison on charges of “homosexual conduct”.⁵⁷³

On **3 June 2020** police arrested two men in el-Kef when one laid an unrelated complaint against the other, and authorities looking into the case realised they were gay. The prosecutor of the Kef First Instance Tribunal charged the men with sodomy, and on **6 June** they were sentenced to two years’ imprisonment. On **28 July** an appeals court upheld their conviction, but reduced the sentence to one year in prison.⁵⁷⁴

In **July 2020** a judge handed down a prison sentence to two men suspected of being gay for their refusal to submit to an anal examination, ruling that their refusal constituted “sufficient evidence” that the “crime” of same-sex sexual activity had been committed.⁵⁷⁵

On **5 August 2020** a trans man—the founder of local advocacy group OutCast—and other trans activists were stopped near the French Embassy and asked to show their IDs. When police officers realised the mismatch between the activist’s gender expressions and their identity documents, they began to verbally abuse and beat the group. More police officers arrived, only to further inflict violence, and called upon bystanders to assist in harming the group, shouting “kill them, they are sodomites”. The trans man was refused service at two hospitals and told to go to a local women’s hospital, where he was also initially rejected for looking like a man before being given minimal medical assistance.⁵⁷⁶

On **22 December 2020** police broke into the home of a local activist and allegedly searched for compromising material. The same day, another activist from the local SOGI advocacy organisation called Damj, was picked up by police and violently interrogated for three hours to force him to disclose information on the activities undertaken by Damj. Damj alleges that such targeting is common, with their offices in Sfax being burgled in **2019** and police constantly monitoring the place. The head of

⁵⁶⁹ “Tunisia: Privacy Threatened by ‘Homosexuality’ Arrests”, *Human Rights Watch Website*, 8 November 2018.

⁵⁷⁰ *Ibid.*

⁵⁷¹ *Ibid.*

⁵⁷² *Ibid.*

⁵⁷³ “Sfax: Agressé et violé, un homo se fait arreter pour... homosexualité!” [Sfax: Assaulted and raped, a homosexual is arrested for... homosexuality!], *Kapitalis*, 30 January 2019; “Tunisia rape victim jailed for homosexuality”, *Middle East Monitor*, 12 February 2019; “Tunisian victim jailed for sodomy raises alarm on systemic homophobia” *The New Arab*, 7 March 2019.

⁵⁷⁴ “Tunisia: Two-Year Sentence for Homosexuality”, *Human Rights Watch*, 6 June 2020; “Tunisia: Homosexuality Convictions Upheld”, *Human Rights Watch*, 5 August 2020.

⁵⁷⁵ “رفضاً الخضوع للفحص الشرجي: الحكم بسجن مئتين جنسيا لمدة سنتين في الكاف... وجمعية «شمس» تعلق» [They refused to undergo anal examinations: Homosexuals were sentenced to two years in prison in El Kef... and the Shams Association commented], *Turess*, 12 July 2020; “Túnez continúa torturando y encarcelando a los gays”, *TN*, 14 August 2020.

⁵⁷⁶ “Kill Them, They Are Sodomites: Police Violence Against LGBT People in Tunisia”, *Human Rights Watch*, 10 December 2020.

Damj noted in **February 2021** that his home had been ransacked four times since **2018**.⁵⁷⁷

On **18 January 2021** a member of Damj was arrested for raising their middle finger to the police during a peaceful protest, and charged with “insulting a police officer” and “committing an immoral act in public”. After three days in Bouchoucha Detention Center the activist was released pending trial.⁵⁷⁸

On **23 January 2021** an activist was detained by police after leaving a meeting, verbally abused and photographed before being released. During a later protest he was outed online with the photo police had taken and his personal details were made public, which led him to flee the country for fear of further targeting from security forces. He had previously spent three months in prison in **2018** on charges of “sodomy”.⁵⁷⁹

On **8 February 2021** a 23-year-old queer activist was detained during the ongoing anti-government protests and taken to an undisclosed location, with no access to a lawyer. He was repeatedly beaten by an official who said “we’ll keep you here for 10 years, and your torture will be our duty”. After 10 days in an overcrowded cell in Mornag Prison he was given a five-month suspended sentence by the First Instance Tribunal in Tunis.⁵⁸⁰

On **9 February 2021** a transgender man was picked up by police after attending a press conference and severely beaten. When they also saw his ID and the difference between his legal identity and his gender expression, they further abused and ridiculed him, then took him to a local police station where other officers present were encouraged to kick and beat him too. He managed to get up and flee the scene.⁵⁸¹

Another activist was arrested on **27 February 2021** when she went to a police station in Tunis to lay a complaint about the threats and harassment she had faced from members of the security forces. She was arrested for “insulting a public official”, “abuse of morals”, and “apparent drunkenness” and sentenced to six months in prison under Article 125 of the Penal Code. She was released by an Appeals Court and her sentence was reduced to a 200 dinar (USD 72) fine, after the advocacy of Damj, and widespread international outcry. Several UN Special Procedures also wrote to Tunisian officials to decry this and other arrests.⁵⁸²

In early **March 2021** an activist working for Damj was targeted by an unknown person, who phoned his landlord to say that if he was not evicted immediately, then both the landlord and the activist would face prosecution. It is not clear if this was a case of targeting from a State actor, or one of many cases of extrajudicial targeting and harassment this activist is said to have faced.⁵⁸³

On **5 June 2021** it was reported that National Security Police in Nasr District raided, with the backing of the Public Prosecutor, an apartment believed to be used for “secret prostitution and sodomy”. Four individuals were allegedly “caught in the act” and arrested.⁵⁸⁴

On **21 October 2021** the head of Damj was severely beaten by two men identifying themselves as police. While being assaulted, the attackers told him “this happens to those who insult the police and make a complaint”, and stole his valuables. He was not arrested or charged, and thus this incident is not included in the tally of cases in the Enforcement Overview above, though he required more than two weeks of close monitoring from doctors as a result of his injuries.⁵⁸⁵



Criminalising Provisions

Section 145 of the [Penal Code](#) (1930/50), as amended in 2000, prescribes life imprisonment for anyone who “has carnal knowledge of any person against the order of nature”. It has remained on the books in all subsequent versions of the [Penal Code](#).⁵⁸⁶

Other sections of the Penal Code are reportedly also used to target people of diverse sexual orientations and gender identities and, especially, those of diverse gender expressions, such as Section 139 (Prohibition of prostitution), Section 148 (Indecent practices), Section 167 (Rogues and vagabonds), and Section 381 (Personation in general).⁵⁸⁷

⁵⁷⁷ “Tunisia: Police Arrest, Use Violence Against LGBTI Activists”, *Human Rights Watch*, 23 February 2021.

⁵⁷⁸ *Ibid.*

⁵⁷⁹ *Ibid.*

⁵⁸⁰ *Ibid.*

⁵⁸¹ *Ibid.*

⁵⁸² “Tunisia: sei mesi di carcere all’attivista Lgbtq Amdouni” [Tunisia: LGBTQ activist Amdouni six months in prison], *Agenzia ANSA*, 6 March 2021; “After international protest, Tunisian court releases LGBT rights activist”, *Erasing 76 Crimes*, 19 March 2021; “Tunisia: LGBTI activist and artist sentenced for allegedly ‘insulting police’”, *Free Muse*, 26 March 2021; OHCHR, *AL TUN 4/2021* (2021), 1-3.

⁵⁸³ OHCHR, *AL TUN 4/2021* (2021), 4.

⁵⁸⁴ “وجدوا في حالة تلبس / تفاصيل مراهمة شقة لممارسة اللواط” [Found in flagrante delicto / details of an apartment raid for practicing sodomy], *El Hassade*, 8 June 2021.

⁵⁸⁵ “Attivista LGBTQ+ tunisino brutalmente picchiato da agenti di polizia: ‘Hanno minacciato di uccidermi’” [Tunisian LGBTQ+ activist brutally beaten by police officers: “They threatened to kill me”], *Gay.it*, 6 November 2021.

⁵⁸⁶ ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 124.

⁵⁸⁷ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 61-62.

Enforcement Overview

34 examples of enforcement or State-backed targeting between 2005 and 2021 were identified by ILGA World.

This number in all likelihood does not account for the true scale of enforcement in Uganda, as the situation on the ground goes well beyond the black letter of the law. Arbitrary arrests, high levels of community violence, lack of access to economic opportunities or healthcare, and widespread discrimination all compound an already fraught situation for queer residents.⁵⁸⁸

Local media outlets regularly incite the already too-common homophobic violence in society, or otherwise seem to willingly co-operate with the government and law enforcement in outing, targeting or gathering evidence on individuals with diverse sexual orientations, gender identities and gender expressions.⁵⁸⁹ In September 2006, the Ugandan tabloid, *Red Pepper*, published lists of nearly 50 men and women they claimed to be homosexuals and invited readers to “send in names of these deviants so that we publish and shame them, rid our motherland of this deadly vice”. The outings sent a number of those named into hiding and generated a rash of arbitrary arrests of gay men around the country.⁵⁹⁰

Human rights defenders working on any number of issues, particularly those around the rights of SOGIESC issues, are also regularly intimidated, investigated and detained, or otherwise have their events and operations disrupted by security forces.⁵⁹¹

A 2019 report by the Human Rights Awareness and Promotion Forum (HRAPF) identified Ugandan police as the single biggest violator of human rights for key populations in the country.⁵⁹² ILGA World has noted several instances of police operating outside of the law, such as torturing activists ahead of trial,⁵⁹³ or otherwise holding them without trial seemingly indefinitely.⁵⁹⁴ Under Ugandan law a suspect must be charged by a court within 48 hours of arrest, but all too often this does not occur. Police and courts also regularly engage in the debunked and invasive practice of “anal examination” to

search for presumed evidence of same-sex sexual activity.⁵⁹⁵

On occasions where charges are given, provisions outside of Section 145 of the Penal Code are often used. ILGA World notes cases of trans women being charged with impersonation,⁵⁹⁶ activists being charged with trespass or terrorism,⁵⁹⁷ and large groups of queer persons being accused in recent years of violating health and safety protocols during the Covid-19 pandemic.⁵⁹⁸ It is not known whether this trend represents a concerted effort by authorities to obscure statistics and limit international backlash, but even a cursory reading of many of these individual cases make clear that they represent a form of indirect criminal enforcement.

On occasions where charges are given, provisions outside of Section 145 of the Penal Code are often used to target people based on their SOGIE

Within the strict legislative framework, which already prescribes life imprisonment for consensual same-sex sexual activity, several attempts have been made to expand the law even further. In 2009 the Anti-Homosexuality Bill was introduced to Parliament, which prescribed the death sentence. The final version of the law in 2013 revised the punishment down to life imprisonment, and after being passed, it was annulled by the Constitutional Court seven months later on “procedural grounds”.⁵⁹⁹ Notwithstanding, Amnesty International reported a significant spike in violence during the period of the bill’s discussion and passage.⁶⁰⁰

In 2019, Minister of Ethics and Integrity, Simon Lokodo, reportedly declared that there were plans to reintroduce the bill that would impose the death penalty for “aggravated homosexuality”, as several MPs expressed

⁵⁸⁸ University of Sunderland, Report Out, *Out in Uganda: The Lived Experiences of SOGIESC Ugandans* (2020), 10.

⁵⁸⁹ *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. Addendum: Summary of communications sent and replies received from governments and other actors*, A/HRC/14/20/Add.1 (2010), paras. 330-334; OHCHR, AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) UGA 5/2012 (2012).

⁵⁹⁰ IGLHRC (OutRight Action International), *Off the Map: How HIV/Aids programming is failing same-sex practicing people in Africa* (2007), 23.

⁵⁹¹ *Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. Addendum: Summary of cases transmitted to Governments and replies received*, A/HRC/10/12/Add.1 (2009), para. 2611-2614; OHCHR, AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) UGA 5/2012 (2012); “Press Release: Entebbe police raids pride: arrest activists”, *Freedom and Roam Uganda*, 4 August 2012; “Uganda:16 LGBT activists released then condemn forced anal exams”, *Erasing 76 Crimes*, 26 October 2019.

⁵⁹² Human Rights Awareness and Promotion Forum, *Consolidated Human Rights Violations against Key Populations in Uganda* (2019).

⁵⁹³ “End of the judicial proceedings against Mr. Pepe Julian Onziema, Ms. Valentine Kalende and Mr. Usaam Mukwaya”, *OMCT World Organisation Against Torture*, 18 August 2008.

⁵⁹⁴ *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. Addendum: Summary of communications sent and replies received from governments and other actors*, A/HRC/14/20/Add.1 (2010), paras. 328-330.

⁵⁹⁵ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 52-54.

⁵⁹⁶ Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts*, (2019), 36.

⁵⁹⁷ “Uganda: LGBT Arrested at International HIV/AIDS Meeting”, *IGLHRC*, 5 June 2008; OHCHR, UA UGA 5/2020 (2020).

⁵⁹⁸ “Uganda using coronavirus laws to target marginalised LGBT groups”, *Sky News*, 10 May 2020; “The Ugandan Government Has Unlawfully Detained 19 People under the Guise of its COVID-19 Response”, *Robert F. Kennedy Human Rights*, 15 May 2020; “Update and violations report: Arrest, detention and release of 44 LGBTIQ+ persons in Uganda on 31 May 2021 - 8 June 2021”, *Sexual Minorities Uganda (SMUG)*, 10 June 2021.

⁵⁹⁹ “Uganda court annuls anti-homosexuality law”, *BBC News*, 1 August 2014.

⁶⁰⁰ Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 31.

that there was a need for such a law.⁶⁰¹ The plans to reinstate the bill were denied by the government,⁶⁰² but in May 2021 Uganda's Parliament passed the Sexual Offences Bill of 2019. Despite the country already criminalising consensual-same sex sexual activity, the new law would place consensual same-sex sexual acts in the same category as sexual assault and rape, potentially resulting in those convicted of homosexuality being placed on sex offender lists, or receiving much more stringent punishments than before.⁶⁰³ It was reported shortly after the bill's passage, though, that President Yoweri Museveni had refused to sign it into law on the grounds that there is no need for further criminalising legislation given that same-sex sexual activity is already illegal.⁶⁰⁴

Historically, Ugandan authorities have worked to cultivate an image of independence from Western agenda-setting, which includes an apparent aversion to international SOGIESC advocacy. According to South African journalist Mark Gevisser, a leaked memo from the US State Department revealed that President Museveni had made assurances in 2009 that the Anti-Homosexuality Bill would be shelved, but signed it in the wake of local media's increased framing of him as an American "puppet".⁶⁰⁵

Further, in 2009 when the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an urgent appeal to Ugandan officials, expressing concern at several instances of arbitrary detention of human rights defenders, the Special Rapporteur also indicated the deeply troubling lack of response to similar communications made on 5 August 2005, 30 November 2007, 12 August 2008 and 22 September 2008.⁶⁰⁶

Examples of Enforcement

On **6 July 2005** local government officers raided the home of the chairperson of Sexual Minorities Uganda (SMUG). Police were reported to have seized papers and arrested another lesbian activist, holding them overnight. This came after the government-owned *New Vision* newspaper urged authorities to crack down on homosexuality.⁶⁰⁷

On **4 June 2008** three HIV/Aids activists were arrested for protesting with placards and leaflets outside a conference of HIV/Aids healthcare officials, as the

preceding month saw the Director-General of the Uganda AIDS Commission declare that healthcare funds would not be directed to MSM communities. He stated that "gays are one of the drivers of HIV in Uganda, but because of meagre resources we cannot direct our programmes at them at this time". On **6 June 2008** the three activists were released on a bail of 500,000 Ugandan shillings (USD 310), but were charged with "criminal trespass", under Section 302 of the Ugandan Penal Code. One of the group was re-arrested the next day and charged with "forgery", though this would later be dropped. The case was initially set to be tried on **20 June** at the Buganda Road Court, but the prosecution's witnesses did not appear on the day. One claimed back-ache prevented attendance while the other could simply not be contacted. Over the next month the case continued sporadically, with prosecution often requesting more time for police to gather evidence. Shortly prior to the final court date, **25 July 2008**, police allegedly abducted one of the activists, taking him to an undisclosed location and severely torturing him to extract information about his activism and sex life, before releasing him onto the streets the next day. On **15 August 2008** the Director of Public Prosecutions dropped the charges of trespass against the activists, leading the judge to acquit them. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression welcomed their acquittal, but the following year would express concern that their communications to Ugandan authorities around this case and others went entirely unanswered.⁶⁰⁸

On **10 September 2008** two human rights defenders were arrested at the home of one of the activists in the village of Nabweru, outside the capital city of Kampala. Police confiscated "gay literature" from the home and transferred them to Nalukologolo police station. On **11 September** they were transferred to Nabweru police station, where they were subjected to extensive interrogation about their community and their work. In all, they were detained for seven days and released without being charged or brought before a court. Upon their release on **18 September**, they were ordered to present themselves at the police station again on **24 September 2008**. In **March 2009** the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an urgent appeal to Ugandan officials, expressing concern both at this case and at Uganda's lack of response to similar communications made on **5 August 2005, 30 November 2007, 12 August 2008** and **22 September 2008**.⁶⁰⁹

⁶⁰¹ "Uganda plans bill imposing death penalty for gay sex", *Reuters*, 10 October 2019; "Ugandan MPs press for death penalty for homosexual acts", *The Guardian*, 15 October 2019.

⁶⁰² "Uganda denies plans to impose death penalty for gay sex amid global concern", *Reuters*, 14 October 2019.

⁶⁰³ "Parliament of Uganda passes new anti-gay bill", *Rights Africa*, 7 May 2021; "Convicted homosexuals to be included in Uganda sex offender registry", *Erasing 76 Crimes*, 8 May 2021.

⁶⁰⁴ "Uganda | President Museveni rejects new anti-LGBTQ law", *Mamba Online*, 18 August 2021.

⁶⁰⁵ M. Gevisser, *The Pink Line: Journeys Across the World's Queer Frontiers* (Jonathan Ball Publishers, 2020), 79-80.

⁶⁰⁶ *Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/10/12/Add.1* (2009), paras. 2611-2614.

⁶⁰⁷ Human Rights Watch, *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism* (2008), 58-59.

⁶⁰⁸ "Uganda: LGBT Arrested at International HIV/AIDS Meeting", *IGLHRC (OutRight Action International)*, 5 June 2008; "End of the judicial proceedings against Mr. Pepe Julian Onziema, Ms. Valentine Kalende and Mr. Usaam Mukwaya", *OMCT World Organisation Against Torture*, 18 August 2008; UNHRC, *A/HRC/10/12/Add.1* (2009), para. 2612, 2615.

⁶⁰⁹ *Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/10/12/Add.1* (2009), paras. 2611-2614.



In **2009** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment were made aware of nine persons held in eight cases under Article 145 of the Penal Code. In the earliest example, a presumed gay man was arrested in **October 2008** in Bushenyi and charged with “carnal knowledge against the order of nature”, though further details on the case could not be ascertained.⁶¹⁰

A suspected gay man was detained at an **undisclosed date** at Kawuuga Prison, Mukono Municipality, then moved to Luzira Prison, Kibuye. Initially charged with “carnal knowledge against the order of nature”, he was later charged with “defilement” and “aggravated defilement”. The man applied for bail, though the hearing to grant bail was delayed by two months. His ultimate fate is not known, though he seems to have still been incarcerated as of **May 2010**. His is one of several unrelated cases, per the UN Special Rapporteurs, in which queer suspects were held for more than 90 days without trial in **2009** alone. Ugandan law prohibits this regular practice, with suspects needing to appear before a court within 48 hours of arrest.⁶¹¹ The rest of the reported cases are outlined below.

A suspect was held in **2009** at Butuntumula Prison, Luwero Village. Initially charged with “carnal knowledge against the order of nature”, he was later charged with “defilement” and “aggravated defilement”.⁶¹² Further details are not known.

Per the UN Special Rapporteurs’ report, another **2009** case in which many of the details are not known is of a suspect apparently held for more than 90 days under charges relating to Article 145.⁶¹³

A man arrested in **March 2009** and held in Kigo Prison, Entebbe, seems to have remained incarcerated until at least **May 2010**. He was initially charged with “carnal knowledge against the order of nature” and later with “aggravated defilement”.⁶¹⁴

On **8 April 2009** in Namakwekwe Village in the East of the country, two men were arrested and charged with “carnal knowledge against the order of nature”. The UN Special Rapporteurs have indicated that the two men were arrested without any evidence or warrant after community members went to police with their

allegations. While in detention the pair were kept in crowded cells and regularly beaten, made to undergo humiliating medical examinations, and had their photographs sent to local press, which worked to publicly denounce and shame them. Neither could afford bail, and so both were held in pretrial detention until one of the pair was released on **20 May** pending trial. The second man attained bail on **16 June**, but immediately thereafter was rushed to a local hospital with severe injuries to his head and internal organs. He went into a coma and died on **13 September 2009**, but details about the exact cause of death were never formally established.⁶¹⁵

Another suspect was arrested in **May 2009** in Nakawuka Village, Wakiso District, and charged with “aggravated defilement”. Further details are not known.⁶¹⁶

According to the Special Rapporteurs, another suspected gay man was detained from some time in **June 2009** to **13 July 2009** in Luzira Prison, Kibuye, charged with “aggravated defilement”.⁶¹⁷ It seems during that time he never saw a judge.

In **February 2012** a workshop organised by Freedom and Roam Uganda (FARUG) in Entebbe was raided by police. The raid was ordered by the Minister for Ethics and Integrity, who attended the raid personally, and who proclaimed the workshop to be illegal and threatened to use police force against any attendees who did not leave immediately. The raid occurred the day after the re-tableting of the Anti-Homosexuality Bill.⁶¹⁸

In **June 2012**, police raided and closed down a workshop on human rights monitoring in East Africa, hosted by the East and Horn of Africa Human Rights Defenders Project (EHAHRDP). Officers, which some reports describe as having been in “riot gear”, surrounded the building and sealed the exits, causing workshop attendees to attempt to hide out in their hotel rooms. When organisers refused to call attendees for processing the police checked the hotel register and went room to room to round them up. Attendees were held for over three hours in the hotel, while six persons (three of which were EHAHRDP members) were detained for an hour in a police bus. It has been reported that half an hour prior to the raid several journalists arrived at the hotel and requested to attend the workshop—with one journalist claiming that the Minister of Ethics and Integrity had told them about the event and suggested they attend in order to report on the arrest of several LGBT activists. It seems that activists thus refused the journalists entry, which was later used by police as justification for considering the workshop suspicious. EHAHRDP staff were instructed to go to the police station the next day to present their

⁶¹⁰ General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Addendum: Summary of communications sent and replies received from governments and other actors*, A/HRC/14/20/Add.1, 19 May 2010, paras. 328-330.

⁶¹¹ *Ibid.*

⁶¹² *Id.*, para. 330.

⁶¹³ *Ibid.*

⁶¹⁴ *Ibid.*

⁶¹⁵ *Id.*, para. 330-334.

⁶¹⁶ *Id.*, para. 330.

⁶¹⁷ *Ibid.*

⁶¹⁸ Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 31.

formal NGO registration documents, lest they face further police action.⁶¹⁹

On **4 August 2012**, the police shut down a Pride march in Entebbe and arrested many of the participants, including staff members of FARUG as well as international participants and media representatives. Police alleged that a “gay marriage” was taking place, and that two gay men were seen kissing.⁶²⁰

It was reported in *The Guardian* on **7 September 2012** that the British producer of a satirical play about queer life in Uganda had been arrested for disobeying an instruction from the Ugandan Media Council to not stage the performance within the country. The Minister for Ethics and Integrity reportedly stated that the play was not granted clearance as it was “justifying the promotion of homosexuality in Uganda, and Uganda does not accommodate homosexual causes. We will put pressure on anyone saying that this abomination is acceptable”. In **January 2013** a Magistrate dismissed the case, but immigration authorities then detained him the following month for being “undesirable” and deported him to the United Kingdom—away from his Ugandan wife and children—before legal proceedings appealing his deportation could begin.⁶²¹

In **October 2013** two men were arrested and charged with alleged homosexual conduct. The victims, one Ugandan and the other British, were subjected to forced penile and anal examinations and HIV testing. Police verbally and physically assaulted them for months, until the British national was deported in **January 2014** before his case came to trial. The case against the Ugandan national was withdrawn in **March 2015**.⁶²²

The Director of Spectrum Uganda Initiatives who also served as board-chair for SMUG, was arrested in **November 2013** for alleged same-sex sexual activity. Police reportedly took him to be tested for HIV because another man claimed that he had been infected by the Director. It is unclear what charges, precisely, were used against the accused. He had previously opened his home to homeless LGBTI+ people, and two such guests were taken in for questioning.⁶²³

In **November 2013** police allegedly threatened a young man with an anal examination to force him to confess to same-sex sexual activity. After the young man’s lawyer intervened the police dropped the idea of a forced

“medical” examination, though it is unclear whether any case against him continued.⁶²⁴

A trans woman was arrested for “impersonating a woman” in **2014**. She stated that once she was arrested, she was strip-searched, groped and subjected to repeated physical assaults during the four days she spent at the police station. The victim, who was HIV-positive, also alleged that she was refused access to her medication during her detention. She was later released on bail after two weeks but it is unclear whether the charges were dropped or whether the prosecution continued.⁶²⁵

In **January 2014** police arrested a trans woman and cis woman after their neighbours attempted to lynch them on suspicion of homosexuality. On police orders, a medical officer at Mayfair Clinic in Kampala subjected both of them to anal exams. They reported that police physically assaulted them before they were later released.⁶²⁶

On **13 March 2014** police in Kampala arrested a human rights defender who had fled to Uganda from the Democratic Republic of the Congo, after DRC authorities severely tortured him and a colleague, and an assassination attempt was made against him. Neighbours had allegedly told police he was gay, and so Ugandan police came to his house and dragged him onto the street in his underwear, not giving him a chance to get dressed before going to the police station. They also took his passport, cell phones, laptop, CDs and all of his money from his home, and threatened him at gunpoint to provide his laptop password, which he refused. When a local computer expert opened the laptop for the police and they realised he was an SOGI activist, they beat him and charged him with sodomy. A transgender friend of his alerted local activists who raised money for a bribe, and he fled to Europe shortly thereafter.⁶²⁷

A restaurant manager was subjected to an anal examination when police from Kabalagala police station detained him on homosexuality charges in **April 2014**. The medical report then claimed that the detainee was “positive” for homosexual conduct. The charges were later dropped.⁶²⁸

In Pader, northern Uganda, five men were arrested on suspicion of same-sex sexual conduct, of which at least two were subjected to forced anal examinations in **June**

⁶¹⁹ OHCHR, AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) UGA 5/2012 (2012); Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 31.

⁶²⁰ “Press Release: Entebbe police raids pride: arrest activists”, *Freedom and Roam Uganda*, 4 August 2012; Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 32.

⁶²¹ “British producer arrested in Uganda over play exploring gay issues”, *The Guardian*, 7 September 2012; Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 31.

⁶²² Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 50-51.

⁶²³ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁶²⁴ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 51.

⁶²⁵ Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts*, (2019), 36.

⁶²⁶ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 52.

⁶²⁷ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁶²⁸ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 52.

2014. It was reported that from the examination the tests came back “normal” for the two men. The charges were later dropped.⁶²⁹

On **15 January 2015** police arrested nine young men in western Uganda. The men had attended an HIV and STI health screening at a medical outreach clinic. It was reported that an angry mob pursued them until they were arrested by police, who held them in custody for five days and subjected them to anal examinations. They were later released, but were left with nowhere to go as they had been exposed as being gay in their home towns.⁶³⁰

In **May 2015** police in Kampala arrested a trans woman and her partner, a cisgender man. Both were subjected to anal examinations and recall various objects being used in the invasive process. The couple were later released, and their charges were withdrawn.⁶³¹

On **20 January 2016** a well-known businesswoman was arrested after the father of the woman that she was sleeping with tipped off the police. It was reported that the father, a Muslim cleric, had been told by neighbours that his daughter was sleeping with another woman. They were both apprehended but only the businesswoman was arrested. She was released on bail and instructed to report back to the police station the following month.⁶³²

On the night of **3 August 2016** police raided a Pride beauty pageant in Kampala. The event took place at a licensed bar, where police imposed a lockdown as events unfolded during the night. Over 20 people were arrested at the scene. It is reported that trans participants were beaten, caned and sexually assaulted by police. All those arrested and detained were released a few hours later.⁶³³

On **7 November 2018** an outspoken SOGIESC and women’s rights activist was arrested for offending the Ugandan President, Yoweri Museveni, after she wrote a poem on social media stating that she wished he had never been born. The **year before**, she had been arrested for calling out the President on his anti-LGBT laws, and was released on bail after two weeks in detention. It is unclear what the results of her latest trial were.⁶³⁴

On **21 October 2019** police arrested 16 activists at a community-based organisation working on economic empowerment for SOGIE youth. The activists had called the police when an angry mob had surrounded the house

they were using as an office and shelter, shouting homophobic insults and threatening to break in. But after dispersing the mob, police interrogated the 16 people inside about their gender expression, used homophobic insults, and arrested them all. The following day police searched the house, confiscated condoms, lubricant, and antiretroviral medicines, and charged the occupants with “carnal knowledge against the order of nature.” It was reported that a police doctor at Nsambya Police Barracks performed forced anal examinations on the 16 detainees. Police released the activists on bail the next day and the charges were eventually dropped.⁶³⁵

On **10 November 2019** police raided an LGBT-friendly bar in Kampala and arrested 125 people. At first, the victims were told that they were being detained under Uganda’s Anti-Tobacco Law for illegal use of shisha, but an officer informed one of the detainees that the bar had been targeted to arrest homosexuals. Another detainee, an activist, said police made homophobic comments during the raid and at the police station. It is believed that at least 58 people were able to post bail or pay bribes in order to be released promptly, but up to 67 remained unable to pay and were thus charged with “common nuisance” and remanded in Luzira Prison to await trial.⁶³⁶

On **29 March 2020**, 23 people were arrested at the Children of the Sun shelter in Wakiso District for allegedly gathering in public and violating the lockdown imposed amid the COVID-19 pandemic. The Mayor of Nsangi Municipality, assisted by members of the Local Defence Unit and the Uganda Peoples Defence Forces (UPDF), initiated the raid as “homosexuality cannot be tolerated”, and allegedly assaulted at least two people at the shelter himself. The shelter’s nurse and three visitors were released without charge, but 19—the shelter’s Director, three visitors and 15 residents—were held. It is reported that detainees were beaten, bound in ropes like a chain-gang and marched barefoot through the streets to the nearest police station, with police and members of the public jeering at and mocking them. While incarcerated they were allegedly tortured, caned, denied food and medical assistance, and were given no access to legal representation. The detainees were reportedly first charged with engaging in “carnal knowledge” in violation of Section 145 of the Ugandan Penal Code, which criminalises consensual same-sex sexual activity. Those in custody were reportedly denied access to their lawyers for weeks, with police claiming it was to ensure health and safety during the COVID-19 pandemic. On **18**

⁶²⁹ *Id.*, 53.

⁶³⁰ “Rural Uganda: 9 gay youth still on the run; anyone care?”, *Erasing 76 Crimes*, 1 March 2015.

⁶³¹ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 54.

⁶³² *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁶³³ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁶³⁴ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁶³⁵ “Uganda: 16 LGBT activists released then condemn forced anal exams”, *Erasing 76 Crimes*, 26 October 2019; “Uganda: Stop Police Harassment of LGBT People”, *Human Rights Watch*, 17 November 2019; “La Policía de Uganda realiza 16 exámenes anales tras redadas contra homosexuales” [Uganda Police conduct 16 anal exams after gay raids], *Eldiario.es*, 18 November 2019.

⁶³⁶ “Uganda: Bail set for 14 more people arrested in Nov. 10 raid”, *Erasing 76 Crimes*, 19 November 2019; “67 Ugandans arrested in gay-friendly bar charged with ‘nuisance’”, *Sierra Leone Times*, 13 November 2019; “#Ram125: 67 Remanded To Luzira Prison”, *Kuchu Times*, 13 November 2019; “Uganda: Stop Police Harassment of LGBT People”, *Human Rights Watch*, November 17, 2019.

May a court order was handed down for them to be released.⁶³⁷

On **22 December 2020** a human rights defender, well-known for his work on SOGIESC advocacy and human rights, was arrested at a Kampala restaurant by plainclothes police officers. It is not clear, however, whether this can be considered a case of anti-SOGIE criminalisation as the activist in question has been vocal on a number of social and political issues, and was claimed by police to have been arrested, along with several others, on charges of fraud for his involvement in the work of several non-SOGIESC NGOs critical of the State, which had been labelled “terrorist groups”.⁶³⁸

On **31 May 2021** police arrested 44 individuals at the Happy Family Youth Uganda Limited Shelter in Wakiso District—ostensibly for violating Covid-19 restrictions, though reports indicate that authorities believed a gay wedding to be taking place there. In a statement by SMUG, some of those detained were released shortly after being arrested, but 39 were granted bail at various points between **31 May** and **8 June**. SMUG has claimed that, despite being formally arrested for breaking COVID-19 prevention protocols, police subjected those they suspected of being gay to anal examinations, torture, physical violence and a number of other human rights violations.⁶³⁹ According to the Human Rights Awareness and Protection Forum (HRAPF), the judge was sympathetic to the plight of the accused due to previous sensitisation measures the group had taken with him.⁶⁴⁰ On **24 September** all charges against the accused were dropped after the HRAPF defence lawyer representing the group argued that the prosecution had plenty of time to make its case since proceedings began in **June** but had failed to do so.⁶⁴¹



Zambia

Criminalising Provisions

Per Amendment Number 26 of 1933, Article 155 of the [Penal Code](#) states that any person who “has carnal knowledge of any person against the order of nature” has committed a felony and is liable to receive a sentence of up to 14 years in prison. Additionally, Article 178(g)

criminalises any act of “soliciting for immoral purposes in a public place”, and was used as a legal basis to prosecute an HIV activist in 2013, for expressing his opinion on the rights of sexual minorities and sex workers on TV.⁶⁴²

Additionally, Article 157 prohibits “indecent practices between persons of the same sex”, while Article 378 may be used to target gender-diverse individuals as it prohibits “personation”.⁶⁴³

Enforcement Overview

ILGA World notes at least 10 examples of criminal enforcement between 2013 and 2021. These cases affirm a recent continuation of a pattern noted back in 2000 by ILGA Africa (now Pan Africa ILGA) in which many cases are dropped after arrests due to a lack of evidence, and in which the accused - especially trans and gender-diverse people—are publicly humiliated by authorities or the media.⁶⁴⁴

High-level government officials have long maintained a public stance in favour of criminal enforcement. In 1998 the then-Vice President, Christon Tempo, told Parliament that:

If anybody promotes gay rights [...] the law will take its course. We need to protect public morality. Human rights do not operate in a vacuum.

As a consequence of this statement, the country’s police force became emboldened in extorting and arresting people and a vigilante group called “Zambia Against People with Abnormal Sexual Acts” was created. Advocacy groups attempting to formally register in the country as NGOs have suffered greatly due to this rhetoric, with the former Home Affairs Minister ordering police to arrest anyone attempting to register a SOGIESC organisation, and some prominent activists being forced to flee the country after antagonistic local media outed them to the public.⁶⁴⁵

More recent years have not seen a softening of this rhetoric, with President Edgar Lungu who led the country between 2015 and 2021 calling homosexuality “unbiblical” and remaining largely unwavering in his support for criminalisation. This came to a head when the former US Ambassador to Zambia, Daniel Foote, decried the sentencing of two gay men to 15 years in prison and

⁶³⁷ OHCHR, *UA UGA 2/2020* (2020); “Uganda using coronavirus laws to target marginalised LGBT groups”, *Sky News*, 10 May 2020; “The Ugandan Government Has Unlawfully Detained 19 People under the Guise of its COVID-19 Response”, *Robert F. Kennedy Human Rights*, 15 May 2020; HRAPF, Robert F. Kennedy Human Rights, and SMUG, *Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7*, 15 May 2020; “Court orders release of jailed LGBT+ Ugandans after coronavirus charges dropped”, *Reuters*, 18 May 2020; “Ugandan officials and judge are no-shows in court over queer youth torture case”, *The Bay Area Reporter*, 2 September 2021.

⁶³⁸ OHCHR, *UA UGA 5/2020* (2020).

⁶³⁹ “Update and violations report: Arrest, detention and release of 44 LGBTIQ+ persons in Uganda on 31 May 2021 - 8 June 2021”, *Sexual Minorities Uganda* (SMUG), 10 June 2021.

⁶⁴⁰ “Uganda court OKs bail for 42 arrestees”, *Erasing 76 Crimes*, 5 June 2021.

⁶⁴¹ “Uganda: Charges dismissed against 42 arrested at LGBTQ shelter”, *Erasing 76 Crimes*, 25 September 2021.

⁶⁴² ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 125.

⁶⁴³ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 65.

⁶⁴⁴ ILGA Africa (now PAI), *ILGA Africa 2000 Report: Homosexuality in Africa* (2000), archived at afrol.com.

⁶⁴⁵ Global Rights Partners for Justice and IGLHRC, *OHCHR Shadow Report: The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in ZAMBIA* (2007), 4-5; Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 22.

subsequently aired the idea of cutting off aid to Zambia in 2019. The diplomatic row resulted in the US withdrawing Foote after Lungu declared him *persona non grata* in Zambia.⁶⁴⁶

President Edgar Lungu, who led the country between 2015 and 2021, called homosexuality “unbiblical” and continued to support criminalisation

Conservative evangelical elements in Zambian society reportedly expressed concern that Lungu's successor, Hakainde Hichilema, would bring “gay rights” to Zambia, but in 2019 during his election campaign Hichilema said “[w]e are God fearing and there is no single chance of us supporting unbiblical things”.⁶⁴⁷ The evangelical Christian contingent of Zambian society remains a powerful driving force in national politics, with former-Vice President Guy Scott saying of a 2013 case that the State didn't want to give an accused activist “a particularly hard ride”, but had to be seen to take some kind of action to prevent backlash from the churches.⁶⁴⁸

Examples of Enforcement

On 7 April 2013 an HIV and human rights activist was arrested for stating in a local television interview that legal restrictions based on SOGIE and against sex workers should be repealed to better allow safe access to HIV/Aids-related care. He was held until 11 April and charged with “soliciting for immoral purposes in a public place”, but in February 2014 was acquitted. The State tried to appeal the acquittal, but multiple delays and an apparent lack of preparedness from the State legal team led to the Lusaka High Court dismissing the case in May 2015, reaffirming the accused's acquittal. During the initial proceedings against the activist, the UN Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression; on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and on the situation of human rights defenders, expressed concern at the events and urged the Zambian government to ensure the freedoms of human rights defenders. While the judiciary's acquittal is to be lauded, this case is a stark reminder that criminalising provisions can be used to not only target people of diverse sexual orientations, gender identities and gender expressions, but also silence their allies and advocates.⁶⁴⁹

In April 2013 two men were arrested and charged with engaging in homosexual acts, being held for several days before being granted bail. They were re-arrested four days later after a neighbour filed a police report. The details surrounding the case remain unclear, though in June 2014 a verdict was due to be delivered but the magistrate handling the case failed to turn up. Later, the two men were acquitted, with the judge stating that officers had failed to prove their case through anal examination.⁶⁵⁰

In May 2013 police in the Kapiri Mposhi district in central Zambia arrested a couple, a cisgender man and trans woman, in response to reports from neighbours that the two were in a same-sex relationship. As part of the police investigation both individuals were subjected to anal examinations without their consent at the Kapiri Mposhi District Hospital. At the trial, prosecutors presented little evidence other than the medical reports of the anal examinations. The defence counsel, though, called another doctor as witness to challenge the reliability of anal examinations. On 3 July 2014, after more than a year in detention, a judge acquitted the couple for lack of evidence. According to media reports, the judge found that even though the medical report claimed to find “evidence” of their sexual engagement, this was “not enough to prove the involvement of the two accused persons in a sexual act,” ruling that “other conditions such as constipation and compromised immunity [...] can cause the physical examination findings on the two suspects”.⁶⁵¹

On 6 March 2014 a couple was arrested and pleaded not guilty to charges of crimes “against the order of nature”. Local media reported that they had been living together for three years as a couple at that time. While in detention both were not granted access to legal representation, and were subjected to “forensic tests”. The trial began later that month, with a judgement date set for 10 April 2015, where both men were acquitted after the magistrate found numerous inconsistencies in the facts around the case, news outlets reported. This comes after the men were subjected to anal examinations in order to prove their alleged homosexuality.⁶⁵²

In 2015 a trans woman was arrested, prosecuted, and sentenced to 15 years imprisonment for her relationship with a cisgender man who claimed she had deceived him into thinking he was having sex with a cisgender woman.

⁶⁴⁶ “US ambassador ‘shocked’ by Zambian president's anti-gay comments”, *Sky News*, 2 December 2019; “US recalls ambassador to Zambia after gay rights row” *BBC News*, 24 December 2019.

⁶⁴⁷ “Anti-gay Zambians fear their new president will endorse gay rights”, *Rights Africa*, 20 September 2021.

⁶⁴⁸ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁶⁴⁹ OHCHR, AL G/SO 214 (67-17) Health (2002-7) G/SO 214 (107-9) ZMB 1/2013 (2013); Two additional entries have been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁶⁵⁰ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁶⁵¹ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 56-58.

⁶⁵² OHCHR, ZMB 1/2015 (2015), 1-2; Another entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

She was prosecuted under Section 155 of the Zambian Penal Code which prohibits “carnal knowledge of any person against the order of nature”. The conviction generated a spate of transphobic media coverage, misgendering the victim by describing her as a “fake woman” and “a male hairdresser who had been posing as a woman”.⁶⁵³

In **January 2018**, police in Zambia launched a nationwide “hunt” for a couple suspected of being lesbians, based solely on online photos of them posing together. It is unclear if the women were ever caught.⁶⁵⁴

One of the most prominent recent cases to come out of the country was that of a 15-year prison sentence being handed down to a couple who in **2018** were found guilty of “acts against the order of nature”. Two men had been reported to police by staff at a hotel where they were staying in Kapiri Mposhi, and forced anal examinations had reportedly been used to find “evidence” against them. The Lusaka High Court reaffirmed the punishment in a **2019** appeal, to international outcry. Backlash against the case culminated in a heated diplomatic dispute between the then-US ambassador to Zambia and the Zambian government. The harsh sentence against the men was also formally decried by the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the right to privacy; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Of the lengthy prison sentence, local groups such as Zambia’s Young African Leaders Initiative (YALI) expressed that the couple had been given “leniency” by the sentencing judge, “who administered the minimum sentence of 15 years when he could have opted for the maximum life imprisonment”. On **25 May 2020**, as part of Zambia’s Africa Day celebrations, the two men received a pardon from the President alongside around 3,000 other inmates who had been convicted of various crimes.⁶⁵⁵ It is important to note that this pardon did not constitute a reversal of the court’s verdict.

Two men were arrested in late **August 2019** after police responded to calls from the public accusing them of being gay. It remains unclear if the pair were charged and sentenced. This comes **one week after** another couple were arrested and accused of being gay. The men in that

earlier case were subjected to anal examinations and later released on bail.⁶⁵⁶

On **3 February 2021** a Zambian media outlet published the images of two women accused of having participated in same-sex sexual activity in a video making the rounds on social media. It was stated that the women were student nurses being sought by police. No further information on police proceedings or the safety of the accused women could be found at the time of publication.⁶⁵⁷



Zimbabwe

Criminalising Provisions

Article 73(1) of the Criminal Law (Codification and Reform) Act (Act No. 23) (2004) criminalises anal intercourse between males as well as “any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act”. These conducts are punished with imprisonment for up to a year and/or a fine.⁶⁵⁸

Enforcement Overview

Between 2010 and 2021 ILGA World has noted five examples of criminal enforcement and State-backed targeting of SOGIESC individuals and human rights defenders, a seemingly low number given the history of officials in Zimbabwe displaying notably antagonistic rhetoric and behaviour.

It has been reported that the adoption of the Criminal Law (Codification and Reform) Act (Act No. 23) (2004) led to widespread arrests throughout the country, with former-President Robert Mugabe calling for the “immediate arrest of anyone ‘caught practicing homosexuality’”.⁶⁵⁹ The former President was reported on several other occasions as making inflammatory statements during his rule, such as in 2013 when he called for the castration of homosexuals, and in 2015 when he decried international pressure to decriminalise in a United Nations General Assembly speech, shouting to delegates: “We are not gays!”⁶⁶⁰

⁶⁵³ Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts*, (2019), 50-51; Two additional entries have been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁶⁵⁴ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁶⁵⁵ “Pan Africa ILGA condemns the prosecution and sentencing of a gay couple arrested in Zambia”, *ILGA World (Website)*, 29 November 2019; “Gays jailed 15 years”, *Zambia Daily Mail Limited*, 28 November 2019; “Two Kapiri Mposhi men found guilty of Homosexual conduct”, *The Lusaka Times*, 4 August 2018; “Zambia | Two men get 15 years in jail for homosexuality”, *Mamba Online*, 30 November 2019; “US Ambassador and YALI disagree on homosexuality laws”, *The Lusaka Times*, 2 December 2019; OHCHR, AL ZMB 1/2020 (2020); “Zambian president pardons gay couple jailed for 15 years”, *Herald Live*, 26 May 2020.

⁶⁵⁶ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁶⁵⁷ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁶⁵⁸ ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 125.

⁶⁵⁹ “Gay in Zimbabwe: Arrests, Limited Access to Health Care”, *Global Press Journal*, 10 September 2012; Legal Aid Board (Ireland), *Information on whether homosexuals are openly at risk of police brutality and arbitrary arrest? What is the attitude of the Zimbabwean Government/ Agencies of the State (Police etc) towards those who are homosexual?* (2012).

⁶⁶⁰ “Zimbabwe: President Mugabe advocates castrating gays!”, *La Richesse*, 30 July 2013; “Why Robert Mugabe just shouted “We are not gays” in his UN speech”, *Vox*, 28 September 2015.

Zimbabwe has historically not been diligent in engaging with UN Special Procedures, with the UN Special Rapporteur on the situation of human rights defenders reporting that between 2004 and 2011, the mandate's office had sent 47 communications regarding the targeting of SOGIESC and other human rights activists—of which 37 went unanswered.⁶⁶¹

Some in local activist circles appear to have been hopeful that Emmerson Mnangagwa, who took over as President in 2017, would mean change for their communities, but while the hostile rhetoric from the Office of the President seems to have declined, the legal and social realities for people of diverse sexual orientations and gender identities and expressions in Zimbabwe remain largely unchanged.⁶⁶²

Even if the hostile rhetoric from the Presidency seems to have declined, the legal and social realities remain largely unchanged

Intimidation and violence against LGBT individuals and human rights defenders appears to be more common than formal prosecution, as can be inferred in the disaggregated cases outlined below, but the threat of criminal enforcement and social backlash ensures a climate of fear in the country, regardless. For example, in 2018 a teacher at a prestigious private school came out to the student body to pre-empt a newspaper publicly outing him. Death threats, as well as the threat of criminal charges being laid against him from a contingent of the school's parents, forced the teacher to flee Zimbabwe even before any criminal enforcement from the State could take place.⁶⁶³

Examples of Enforcement

On **24 May 2010**, two members of Gays And Lesbians of Zimbabwe (GALZ) were arrested in a raid on their offices in Harare. Police later returned to investigate the contents of the offices, but could not gain access and so brought the detainees with them on an apparent third trip. Police claimed the raid was to seize drugs and pornographic material, but later charged them with "undermining the authority of the President" as a poster hanging in the office was critical of then-President

Mugabe's homophobia. Those arrested were given legal support from the Zimbabwe Lawyers for Human Rights (ZHLR), though police initially refused to grant lawyers access to the detainees. They were released on bail but were required to report to the local police station at least twice a week, and have alleged that they were beaten with bottles by officers while in detention. It is also alleged that other staff at GALZ were pressured by police to appear as witnesses against their arrested colleagues. In **2011** the UN Special Rapporteur on the situation of human rights defenders decried this and other cases of detention of activists.⁶⁶⁴

In **August 2012**, the Harare office of GALZ was raided again on two separate occasions. On the first occasion, on **11 August**, police officers assaulted several activists and arrested and detained 44 people. Even though they were released without charge, some of the detainees were subject to further questioning by the police at their own homes and workplaces the following week. A few days later, on **20 August**, the police again searched the office for six hours and confiscated computers, documents and other advocacy materials and on **23 August**, GALZ was charged with running an unregistered organisation in contravention of the Private Voluntary Organisation Act, forcing its closure—despite GALZ apparently being authorised to operate in Zimbabwe.⁶⁶⁵

Rikki Nathanson, a trans woman and activist, was arrested in **2014** and charged with "criminal nuisance" for using a women's public bathroom. She was detained for several days and forced to undergo invasive "gender verification" by both police and staff at local hospitals, but was released after a magistrate refused to prosecute the case. In **2019** the Bulawayo High Court ordered that damages be paid to Nathanson.⁶⁶⁶

In **April 2018** it was reported that two men in Bulawayo were arrested while urinating at the back of a bar. Police alleged that the two were groping and kissing one another, with one man placing his penis between the buttocks of the other, though both men have denied this and say they were only making conversation while relieving themselves. The men were arrested, with at least one being held for two days and beaten before being charged with sodomy in court. He was released on bail but no further details of the court case, or the fate of the other man, could be verified at time of publication.⁶⁶⁷

It was reported in **March 2021** that a woman was assaulted by police when they could not find her husband. They were searching for the husband on the basis of allegations that he was gay.⁶⁶⁸

⁶⁶¹ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum: Summary of cases transmitted to Governments and replies received", A/HRC/16/44/Add.1 (2011), para. 2549.

⁶⁶² "Mugabe is gone, but is his successor Emmerson Mnangagwa less homophobic?", Mamba Online, 24 November 2017.

⁶⁶³ "Zimbabwe gay teacher quits after death threats", SABC News, 28 September 2018; "A flight from homophobia", The Harvard Gazette, 27 January 2020.

⁶⁶⁴ "Zimbabwe: LGBT organisation's staff face new political charges", LGBT Asylum News, 25 May 2010; UNHRC, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum: Summary of cases transmitted to Governments and replies received", A/HRC/16/44/Add.1 (2011), para. 2517-2525, 2549; OHCHR, AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) ZWE 8/2012 (2012), 1-2.

⁶⁶⁵ UNHRC, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum: Summary of cases transmitted to Governments and replies received", A/HRC/16/44/Add.1 (2011), para. 2517; OHCHR, AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) ZWE 8/2012 (2012), 1-2; Amnesty International, Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa (2013), 31.

⁶⁶⁶ "High court decision affirms human rights of transgender people in Zimbabwe", Mail & Guardian, 26 November 2019.

⁶⁶⁷ "2 Zimbabweans pee at a bar. Result: Arrest for gay sex", Erasing 76 Crimes, 20 April 2018.

⁶⁶⁸ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

Africa (*de facto*)

As explained above, this section groups States from which substantial and consistent reports indicate that persons have been arrested or prosecuted because of their gender expression or their alleged engagement in consensual same-sex intercourse despite there being no law *explicitly* criminalising such acts or expressions. Jurisdictions with no legislation explicitly criminalising consensual same-sex sexual acts or diverse gender expressions are included in the report where a clear pattern of targeting by State actors has been identified. So long as a number of instances have been documented, a State can be included as being a *de facto* criminalising jurisdiction.



Central African Republic

Enforcement Overview

Even though the Penal Code (2010) of the CAR does not outlaw consensual same-sex sexual acts between adults in private, article 85 criminalises “acts against nature committed in public”, defining them as “attacks on public morals” and imposing harsher penalties compared to other attacks on “morals”.¹ This provision is likely used as well to target trans and gender-diverse individuals.

Between 2014 and the time of publication, ILGA World has noted at least two examples of apparent *de facto* criminal enforcement.

Examples of Enforcement

In **2014**, three individuals were arrested by military personnel on suspicion that they were engaging in same-sex sexual activity in their home. The military entered without any form of warrant and held them in detention for three days without food or water, beating them repeatedly.²

In **October 2017** a gay man was arrested by police on allegations that he had been selling semen to traditional spiritual healers, and was held for three days by police before they released him due to a lack of evidence.³



Côte d'Ivoire

Enforcement Overview

While consensual same-sex sexual activity is not explicitly criminalised, other provisions such as Article 360 of the Penal Code (on acts against “public modesty”) have been used to target LGBT people.⁴ In 2014, UN Special Procedures requested specific information from the Ivorian government in light of the lack of protection offered to LGBT people and human rights defenders.⁵ Sources indicate that law enforcement agencies are often reluctant to investigate or protect cases of violence against LGBT people and victims often do not even bother to file a complaint.⁶ No complaint for homophobic or transphobic assault has yet been concluded. Law enforcement officers are reported to remain indifferent even in cases of extreme violence.⁷ In all, ILGA World identified four examples of *de facto* criminal enforcement between 2011 and 2021, but reporting by local activists on the ground indicates targeting is more widespread than the individual cases that could be disaggregated below.

Examples of Enforcement

In **April 2011** military personnel of the Republic Forces of Côte d'Ivoire (FRCI) and Abidjan law enforcement raided a gay bar in the city and arrested all those who were effeminate or gender-nonconforming. It is not clear how many were effectively detained in total, but the owner of the bar was reportedly required to pay 25,000 CFA francs (around USD 55) per detainee to secure their release.⁸

¹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 90.

² Alternatives Centrafrique, *Rapport sur la situation des minorités sexuelles et de genre en Centrafrique* (2018), 6.

³ *Ibid.*

⁴ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 91.

⁵ OHCHR, UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (33-27) CIV 1/2014 (2014).

⁶ OSAR - Organisation suisse d'aide aux réfugiés, *Côte d'Ivoire : situation des personnes LGBTQI et protection de l'État* (2021), 8.

⁷ Office français de protection des réfugiés et apatrides (OFPRA), *Rapport de mission en République de Côte d'Ivoire* (2013), 159.

⁸ *Ibid.*

In 2012 an HIV/Aids activist was arrested in the town of Dabou on the accusation that he was “initiating young men [into homosexuality]”. He was stripped and his genitals were beaten with batons. He was refused access to his HIV medication, with police claiming that the medicine was “drugs”, and when they later realised he was living with HIV they punched him.⁹

Some time prior to 2013 a case was documented by Arc en Ciel Plus in which a community member was arrested on accusations of “paedophilia” despite the fact that the men he slept with were over 21 years of age. Arc en Ciel Plus paid 200,000 francs (USD 440) for his release, and so no legal proceedings took place. The organisation notes that it is common practice for police to arrest trans or gender-nonconforming persons as well, accusing them of being sex workers and beating them.¹⁰

In November 2016, two young men were sentenced to 18 months in prison by the court of first instance in Sassandra, in the south-west of Côte d'Ivoire, for engaging in consensual same-sex sexual acts in private. The two men—aged 31 and 19—were caught having sex by the youngest’s uncle, who immediately reported them to the Gendarmerie forces. They were both quickly arrested and referred to the Sassandra Prosecutor’s Office. At the hearing, the couple admitted being in a loving relationship and stated that “they didn’t see how their act constitutes a crime”. Media outlets quoted the prosecutor stating that “the law qualifies this immodest act as unnatural” and indicating that sexual relations between two people of the same sex must be “punished”. Therefore, based on Article 360 of the Penal Code, the court sentenced the two defendants to 18 months in prison each.¹¹



D. R. Congo

Enforcement Overview

Even though there are no provisions outlawing consensual same-sex sexual acts between adults in the Democratic Republic of the Congo, Article 176 of the Penal Code (1940)—which criminalises activities against “public decency”—has been used as the legal basis to criminalise LGBT persons.¹²

The UN Human Rights Committee expressed concern about this and recommended in 2017 that the DRC

ensures that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity, and further recommended the State enact anti-discrimination legislation that expressly includes sexual orientation and gender identity.¹³

The UN Human Rights Committee recommended that the DRC ensures that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity

Any attempts to follow through on such recommendations, however, would need to take place against a backdrop in which it is politically beneficial for elected representatives to attack SOGIESC human rights. Numerous attempts have been made over the last decade to explicitly criminalise consensual same-sex sexual activity, such as in 2010 when a member of Parliament, Ejiba Yamapia, attempted to gather support for a bill on “Sexual Practices Against Nature” which sanctioned same-sex sexual acts as “unnatural” and “immoral”. In 2013, another member of Parliament, Steve Mbikayi, proposed a similar bill that sought to criminalise same-sex sexual activity as well as ban Pride events, advocacy meetings, or any other form of “promotion of homosexuality”. Mbikayi’s bill prescribed a jail sentence of between three to five years for gay people, and three to twelve years for transgender people. The bill was rejected, though Mbikayi presented similar legislation in 2015 and 2016.¹⁴

In all, between 2012 and the time of publication ILGA World has identified at least 11 examples of *de facto* criminal enforcement and targeting, though several of these instances come from reports indicating that they are simply individual examples of known patterns.

Examples of Enforcement

In 2012 a woman was arrested and had her home searched by members of the National Intelligence Agency after a Congolese woman who had already moved to Europe tipped them off. The woman’s underwear was used as evidence that she regularly entertained other women in her home and was therefore

⁹ AMSHeR, Alternative Côte d'Ivoire, Arc en Ciel Plus, Lesbian Life Association Côte d'Ivoire, Queer African Youth Networking Center, et al., *UN Shadow Report: les violations des droits de l'homme sur la base de l'orientation sexuelle et identité de genre en la république de Côte d'Ivoire* (2012), 11.

¹⁰ *Ibid.*

¹¹ “Justice : première condamnation pour pratique homosexuelle en Côte d'Ivoire”, *Abidjan Net*, 14 November 2016; “Pour la première fois, la Côte d'Ivoire condamne deux hommes pour homosexualité”, *Aufeminine*, 18 November 2016; “Côte d'Ivoire : des homosexuels condamnés à 18 mois de prison”, *Afrique sur 7*, 16 November 2016; “Ivory Coast officials refuse to explain why two gay men were jailed”, *The Guardian*, 26 January 2017.

¹² ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: Global Legislation Overview Update* (2019), 91; Penal Code of the DRC, article 176: “A person who engages in activities against public decency will be liable to a term of imprisonment of eight days to three years and/or fined twenty-five to one thousand zaires”.

¹³ Human Rights Committee, *Concluding observations on the fourth periodic report of the Democratic Republic of the Congo*, CCPR/C/COD/CO/4, 30 November 2017, para. 13-14.

¹⁴ MOPREDS, Jeunialissime, Oasis Club Kinshasa, Rainbow Sunrise Mapambazuko, MOLI and Synergia, *Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC)* (2017), 14-15.

a lesbian. She was allowed to walk free after National Intelligence officials extorted USD 5,000 from her.¹⁵

In **December 2012** police surrounded the offices of an organisation based in the eastern city of Bukavu, Rainbow Sunrise Mapambazuko, in an apparent attempt to arrest the group's leader. They did not succeed, though Rainbow Sunrise Mapambazuko activists would continue to be targeted.¹⁶ Other organisations also face targeting, with The Executive Director of MOPREDS reportedly being threatened and harassed by the police and National Intelligence Agency.¹⁷

On **4 May 2013** the head of Rainbow Sunrise Mapambazuko was arrested in Bukavu on charges of promoting homosexuality. He was denied food or water and tortured during his four days in detention. He claimed he was raped with sticks at least three times and beaten by inmates as well. On **8 May** he was released after his colleagues raised USD 400 to pay authorities, but one colleague who had come to the station to call for his release had himself also been arrested at this point, and was released on **10 May**. Both men spent several days in hospital recovering, but unknown assailants allegedly tried and failed to assassinate the organisation leader as soon as he returned home. He fled to neighbouring Uganda but was soon arrested there as well on a charge of "sodomy", and fled to Europe after being released on bail.¹⁸

In **2014** two women were arrested, officially due to issues with licencing at the bar owned by one of them, though local media quickly outed them as lesbians. Activists in the area claimed that the pair were targeted as part of a campaign for the proposed criminalisation of same-sex sexual activity put forward by a local politician.¹⁹

Also in **2014**, a gay couple were found kissing in the locker room at a public swimming pool in the capital city of Kinshasa. The manager handed them over to police who extorted a bribe of USD 100 from them in exchange for not exposing them to the public.²⁰

In **June 2015** in the eastern city of Goma, a gay man was killed by police while in jail. Specific details of the circumstances of his detention or what led to his murder are unknown.²¹

In **2016** at the funeral of a young gay man in Kinshasa, police rounded up a group of mourners on the basis that they were "promoting homosexual practices in public".²²

Also in **2016** in Kinshasa, the manager of a bar was arrested after a work-related dispute with an employee - though it is claimed that police took action against the man on account of his perceived sexual orientation. He was made to pay a bribe of unknown value to secure his release.²³

Sometime "not so long" before the publication of an **October 2017** UN shadow report by a coalition of local organisations, a gay man in Goma alleged having been stopped by police who demanded his money and his cell phone. They discussed what they should do with the man, suggesting the possibility of simply killing him, before finally letting him go.²⁴

Eight trans individuals were also arrested in Goma and surrounding regions at an **unknown date**. The apparently arbitrary detention lasted six months.²⁵



Enforcement Overview

ILGA World has identified at least 50 individual examples of *de facto* criminal enforcement in Egypt between 2001 and 2021. This number does not account for the high number of people targeted in some raids or crackdowns, nor does it account for the many borderline cases which could not be verified for inclusion in this report, as the provisions used to target SOGIE persons are also regularly employed against sex workers, "adulterers", rapists, political dissidents and others.

There is no law that explicitly criminalises consensual same-sex sexual activity in Egypt. However, [Law No. 10/1961 on the Combating of Prostitution](#) is selectively used to target individuals of diverse sexual orientations and gender identities. The main charges brought against suspects include "habitual practice of debauchery" (Article 9-c), "publicising an invitation to induce

¹⁵ *Id.*, 9.

¹⁶ "Congo: LGBT activists arrested, beaten, released (update)", *Erasing 76 Crimes*, 22 May 2013.

¹⁷ MOPREDS, Jeunialissime, Oasis Club Kinshasa, Rainbow Sunrise Mapambazuko, MOLI and Synergia, *Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC)* (2017), 4.

¹⁸ "Congo: LGBT activists arrested, beaten, released (update)", *Erasing 76 Crimes*, 22 May 2013; "Police watched as prisoners raped gay activist with sticks in Congo", *Gay Star News*, 29 July 2013; "Abuse of Congo's LGBT Community puts US Supreme Court ruling in perspective", *The Ground Truth Project*, 2 July 2015.

¹⁹ MOPREDS, Jeunialissime, Oasis Club Kinshasa, Rainbow Sunrise Mapambazuko, MOLI and Synergia, *Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC)* (2017), 9-10.

²⁰ *Id.*, 10.

²¹ "Abuse of Congo's LGBT Community puts US Supreme Court ruling in perspective", *The Ground Truth Project*, 2 July 2015.

²² MOPREDS, Jeunialissime, Oasis Club Kinshasa, Rainbow Sunrise Mapambazuko, MOLI and Synergia, *Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC)* (2017), 10.

²³ *Ibid.*

²⁴ *Id.*, 8.

²⁵ *Id.*, 9.

debauchery” (Article 14), and “incitement to debauchery” (Article 1). While these articles provide for a maximum of three years imprisonment, Bedayaa, a local NGO, noted that some cases could receive up to six years.²⁶

A draft law to increase the minimum prison sentence for these offences to seven years has advanced to the Parliament’s Legislative and Constitutional Committee.²⁷ Further, the Egyptian *Dar Al Iftaa* (Islamic advisory body to the government) issued a series of *fatwas* (legal opinions) in 2020, including one condemning homosexuality and outlining the need for medical intervention (i.e., “conversion therapies”).²⁸

Police and other authorities have demonstrated a common tactic of using online entrapment, raiding of known “gay hangouts”, and illegally seizing and searching cell phones for incriminating content, in order to justify the arbitrary detention of suspects. Once the accused are in custody, physical and psychological violence, and sexual assault are also reportedly common, and legal procedures remain opaque to make access to justice difficult. It is thus often impossible to parse where the delineation between criminalisation and simple prejudice on the part of individual State actors lies, given the nebulous ways in which laws can and have been interpreted to include SOGIE identities and activities. At the very least a clear State-backed policy of targeting of persons based on their SOGIE through provisions against public indecency, sex work, adultery, rape and others is at play, though social attitudes, a vocal religious sector, the need for political scapegoating during times of instability and a hostile media landscape all interact in myriad ways.²⁹

According to an anonymous Egyptian organisation which engaged with ILGA World in 2019, much of the targeting of SOGIE persons by the State can be seen as a response to societal outcry and backlash, leading to periods of relative quiet and tolerance (such as before the 2001 “Queen Boat” incident) giving way suddenly to severe repression. The anonymous organisation noted the recent example of a 2017 crackdown after a concert was held by a Lebanese rock band and media publicised images of those waving rainbow flags at the event, explaining that:

The media adopted a rhetoric that incited violence against LGBTQI individuals, with [...] TV presenters calling on the State to act. A few days after this media campaign, the moral police started to round up individuals either

from dating applications [...] through online entrapment, or from certain public areas allegedly known for being a hot-spots for gay men. Furthermore, the National Security Police hunted down two individuals who reportedly raised the flags during the concert. Another individual was later arrested in early October 2017 for posting supportive content of LGBTQI communities on his social media accounts”.³⁰

The organisation notes that at least 80 arrests took place after the concert.³¹

A CSO stated that “much of the targeting by the State can be seen as a response to societal outcry and backlash, leading to periods of relative quiet and tolerance (pre-2001) giving way suddenly to severe repression”

This is corroborated by a 2017 UN Special Procedures Urgent Appeal, which noted that, from 22 September to 25 October of that year,

arrests and detention of 70 individuals have been reported, including arrests and detention of activists defending the human rights of LGBTI persons. In some of these cases, the Egyptian security forces have used the method of online dating application entrapment in order to proceed with the arrests.³²

Prior to that case, a 2017 report by the Egyptian Initiative for Personal Rights (EIPR) found that in the period from October 2013 to March 2017, at least 232 individuals were arrested in Egypt based on their actual or perceived sexual orientation and gender identity.³³

Egypt received numerous pertinent recommendations from the UN Universal Periodic Review process in November 2019. Iceland recommended that the government “[e]nd the arrest and prosecution of people for their real or perceived sexual orientation or gender identity and repeal laws criminalising consensual same-sex relations”. The Netherlands also issued a

²⁶ “Repression in Egypt: 92 LGBTQI+ arrests last year”, *Rights Africa*, 8 March 2020.

²⁷ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliá Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 522.

²⁸ “المزيد على دنيا الوطن ثلاث فتاوى متتالية للإفتاء المصري عن الانتحار والشذوذ والغفران آثارت الجدل” [More on Dunya Al-Watan Three consecutive fatwas of the Egyptian fatwa on suicide, homosexuality, and forgiveness sparked controversy], *Alwatan Voice*, 22 June 2020.

²⁹ EIPR, *The Trap: Punishing sexual difference in Egypt* (2017); OHCHR, *UA EGY 17/2017* (2017); “The Policies of Suppressing Sexual Rights in Egypt”, *The Legal Agenda*, 2 February 2018; “Rights of LGBTQ People in Egypt: Between State, Society, and de facto Criminalisation”, in: ILGA World, *State-Sponsored Homophobia 13th edition* (2019), 520-522; “Clean the Streets of Faggots” Digital Targeting of LGBT People by Middle East/North Africa Governments”, *Human Rights Watch*, 4 August 2021.

³⁰ “Rights of LGBTQ People in Egypt: Between State, Society, and de facto Criminalisation” in: ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (2019), 520-522.

³¹ *Ibid.*

³² OHCHR, *UA EGY 17/2017* (2017), 1-3.

³³ EIPR, *The Trap: Punishing sexual difference in Egypt* (2017), 6.

recommendation to “[e]nd the practice of entrapment and subsequent arrest and prosecution based on sexual orientation and gender identity”.³⁴ The Egyptian delegation rejected these recommendations as being formulated on the basis of “inaccurate” information.³⁵

Egypt rejected UPR recommendations to end arrests and entrapment of people based on their SOGI alleging that they were based on “inaccurate” information

Germany’s recommendation to “[t]ake steps to protect the rights of lesbian, gay, bisexual, transgender and intersex individuals and ensure that they are not subject to discriminatory arrest or prosecution under criminal charges of indecency or debauchery” was partially accepted.

Examples of Enforcement

On **11 May 2001** the Queen Boat, a river-boat which also served as a gay nightclub, was raided by undercover officers from the Cairo Vice Squad and State Security Agency, in what has widely been considered the infamous beginning of a nationwide anti-LGBT crackdown which has now outlasted the government which implemented it by more than a decade. Between 52 and 55 men were arrested and subjected to beatings and anal examinations, in addition to being named and degraded in the media. Initially they were refused access to their lawyers and families. On **14 November 21** of the accused were found guilty of “habitual debauchery” while another was found guilty of “insulting religion”, and the presumed party organiser was found guilty of both charges. The rest were cleared, until **May 2002** when a retrial was ordered for all suspects, including those previously found not-guilty. In **March 2003** the trial finally ended, with 21 being sentenced to three years’ imprisonment and 29 being acquitted.³⁶

On **20 November 2007**, four men were arrested in Agouza as part of an alleged crackdown on HIV-positive suspects. Only one of the group had an arrest warrant against his name. In police custody the men were beaten and subjected to non-consensual HIV/Aids testing. They were charged with “homosexual conduct” and sentenced on **13 January 2008** to one year in prison for “habitual practice of debauchery” by the Agouza Court of

Misdemeanours. The Agouza Appellate Court of Misdemeanours rejected the four men’s appeals on **2 February** and three of them were thus incarcerated in al-Qota Prison. It is claimed that the fourth was sent to hospital for reasons unknown, where he was allegedly chained to his bed for 23 hours each day until being transferred to an unknown prison. The Egyptian government did not refute the claim when communication was sent by the UN Working Group on Arbitrary Detention, though the allegation that the accused were targeted for their HIV-status was not confirmed.³⁷

12 men were arrested and detained allegedly for living with HIV in early **February 2008**. The men were chained to a bed in a Cairo hospital and forced to have an HIV test without their consent. Initially only eight men were arrested but police managed to extract the names of four more from them. Four men of the group were sentenced to one year in prison after testing positive for HIV, but it is unclear if the remaining eight were also sentenced.³⁸

On **2 January 2009**, 10 men were arrested in Giza without a warrant because they were all staying together in a single residence, and thus charged with “habitual debauchery”. They were held for two days at the offices of the Morality Police before being taken to the Agouza prosecution office and police station, and only then was their arrest formally registered. They were allegedly beaten, made to undergo HIV/Aids tests and anal exams, and initially denied the right to inform anyone of their whereabouts. Initially they were to be held in pre-trial detention for four days, but the Agouza prosecution office and various judges cumulatively extended this by at least a further 90 days. On **28 May 2009** the group were released pending further investigation. In a response to communications sent by the UN Working Group on Arbitrary Detention, Egyptian authorities have denied that there was no warrant for the group’s arrest, denied that they were beaten, asserted that they were arrested for “prostitution” and not because of their HIV status or sexual orientations, and justified the lengthy detention as one of the group was allegedly a minor at the time.³⁹

In **October 2013** prosecutors ordered 14 individuals in Cairo suspected of engaging in same-sex sexual activity to be detained and subjected to anal examinations. It is unclear whether the men were later released or sentenced.⁴⁰

In **April 2014** four individuals, identified by Human Rights Watch as men, were convicted of “debauchery” and sentenced to eight years in prison after holding parties where authorities found makeup and women’s clothing,

³⁴ Report of the Working Group on the Universal Periodic Review: Egypt, A/HRC/43/16 (2019), para. 31.57, 31.61.

³⁵ Report of the Working Group on the Universal Periodic Review: Egypt: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/43/16/Add.1 (2020).

³⁶ “Egypt: Egyptian Justice on Trial - The Case of the Cairo 52”, IGLHRC (OutRight Action International), 15 October 2001; Human Rights Council, *Civil and political rights, including the question of torture and detention: Opinions adopted by the Working Group on Arbitrary Detention*, E/CN.4/2003/8/Add.1 (2003), 68-70; “Cairo, Once ‘the Scene,’ Cracks Down on Gays”, *The New York Times*, 3 April 2003; “III. Scandal and Stigma: The Queen Boat Trials”, *Human Rights Watch*, 2004.

³⁷ Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention**, A/HRC/13/30/Add.1 (2010), 109-111.

³⁸ “Egypt: Quartet arrested and chained to beds for having HIV”, *Amnesty International UK*, 15 February 2008.

³⁹ Report of the Working Group on Arbitrary Detention - Addendum: Opinions adopted by the Working Group on Arbitrary Detention*, A/HRC/16/47/Add.1, Opinion No. 25/2009 (2011), 16-20.

⁴⁰ “Egypt: 7 Held for Alleged Homosexual Conduct”, *Human Rights Watch*, 9 September 2014.

and which allegedly involved consensual same-sex sexual activity.⁴¹

Two men were arrested after witnessing a gang rape in Cairo in late **August 2014**. The men were to give evidence about the case but officers detained them for several days and accused them of homosexual conduct after finding incriminating pictures while unlawfully searching their phones. The men were forced to undergo anal examinations. It is unclear if the two men were later charged under Egypt's "debauchery" laws.⁴²

On **6 September 2014** seven men were arrested and sentenced to three years in prison for allegedly taking part in a "gay wedding". The arrest came after a video circulated online, revealing two men allegedly exchanging rings on a boat on the Nile River. The men were charged with "inciting debauchery" and "offending public morality". All eight men denied the charges but were taken for anal examinations by authorities before their sentencing. The sentence was met with uproar from the families of the defendants and activists around the world.⁴³

In early December 2014, a high-profile raid on a sauna in El Cairo took place. This case illustrates the nefarious role that the media can play in the criminalisation and further stigmatisation of sexual and gender diversity by closely collaborating and instigating security forces to enforce criminalising provisions. A bathhouse was raided by police on **7 December 2014**, resulting in the arrest of 26 men. Local TV Presenter Mona Iraqi, working for a pro-government channel, claimed on her social media that her team had led the police to the bathhouse "on the suspicion that its customers were a potential source of Aids".⁴⁴ A camera crew accompanied the police on the raid and subsequently posted images of detainees on social media and television. The presenter proudly posted pictures of herself filming the line of crouched naked men being humiliated and taken into custody while stating that her TV show was revealing "the biggest den of group perversion [*shuzooz gama'ay*] in the heart of Cairo". The men were physically and verbally tortured during their time in custody, and subjected to forced anal examinations. At several court dates in **December 2014** and **January 2015**, the families of the accused were denied entry, but journalists were permitted to document proceedings. According to the Egyptian Permanent Mission to the UN in Geneva, all of the accused were acquitted on **14 January 2015**, and their acquittal was upheld on **26 January** after the State's appeal failed. Egyptian delegates further denied allegations of torture.⁴⁵ After being released, one of the men set

himself alight, saying that since his arrest his family controlled his movements and that he had "no freedom". He was confined in one of Cairo's largest public hospitals since his fiery suicide attempt, and he complained of neglect and mistreatment there.⁴⁶ One of the defence lawyers ended up filing a defamation lawsuit against presented Mona Iraqi, which resulted in a remarkable victory for the victims when in **December 2015** a Cairo court sentenced her to six months in jail and a fine for defaming and spreading lies about the men in the bathhouse.⁴⁷ However, this victory was short-lived as Iraqi and her team appealed the decision and was subsequently acquitted by a Court of Appeals in **January 2016**.⁴⁸

In **April 2015** an Egyptian court ruled to uphold a decision to deport a Libyan student because of allegations that he was gay. The Libyan national was first arrested in **2008** and faced trial at a misdemeanour court. He was subsequently deported and barred from future re-entry, unable to complete his education. According to Egyptian media reports, the judge held that the Interior Ministry's deportation order was lawful as it was acting to "prevent the spreading of social ills".⁴⁹ The young man's fate once returned to Libya could not be ascertained.

In late **June 2015**, a Syrian gay man was sentenced to a year in jail and then deported. This comes after the man allegedly sought sex on a gay dating app. One man he spoke to turned out to be an undercover officer from Egypt's Morality Police. When they met up, the gay man was immediately arrested. The man was then forced to undergo an anal examination. He was charged with "inciting debauchery" and "solicitation to commit immoral acts in public", reports state. The defendant's lawyer denied allegations that his client engaged in same-sex sexual activity, but he was sentenced and deported, regardless.⁵⁰ His fate once returned to Syria could not be ascertained.

On **21 September 2015**, 11 gay men accused of prostitution were arrested in a police raid ahead of Eid celebrations as part of a "morality campaign".⁵¹

In **2017** a man was arrested in Cairo after police demanded to see his ID. Police then found out that he had previously been detained and charged for "debauchery" and "prostitution" in **2014** and **2015**. Police then took away his phone and searched it before beating him up. They took him to a nearby police station and forced him to sign a report. The following day the detainee was subjected to an anal examination, where he

⁴¹ *Ibid.*

⁴² "Egypt: Security Forces Abuse, Torture LGBT People", *Human Rights Watch*, 1 October 2020.

⁴³ *This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.*

⁴⁴ "Egyptian TV crew criticised over police raid on Cairo bath house", *The Guardian*, 9 December 2014.

⁴⁵ OHCHR, EY UGA 1/2015 (2015) 2-4; Permanent Mission of the Arab Republic of Egypt, *HRC/NONE/2015/25 GE.15-03859* (2015).

⁴⁶ "One of Mona Iraqi's victims tries to burn himself to death", *A Paper Bird*, 16 February 2015.

⁴⁷ "6 months jail sentence for TV host Mona Iraqi for 'defaming' men in Cairo bathhouse case", *Ahram Online*, 25 November 2015.

⁴⁸ "Controversial host Mona Iraqi acquitted of defamation in bathhouse case", *Egypt Independent*, 19 January 2016.

⁴⁹ "Net tightens on gays in Egypt as foreigners approved for deportation", *Daily News Egypt*, 15 April 2015; "Egypt court backs deportation of 'gay' Libyan man", *The Guardian*, 15 April 2015.

⁵⁰ "Man in Egypt tortured, jailed for one year for going on gay hookup app", *Gay Star News*, 24 June 2015; "Bad news: Kyrgyzstan, Morocco, Egypt, Nigeria, more", *Erasing 76 Crimes*, 16 July 2015.

⁵¹ "20 LGBTI-related arrests in Egypt, Indonesia", *Erasing 76 Crimes*, 29 September 2015.

is said to have lied about having HIV so that the officers would not touch him. He was detained for three months and police allegedly beat him every day, sexually assaulted him, and constantly insulted him. He was later sentenced to six years in prison, but the appeals court reduced it to six months, after which he was released subject to six months' probation.⁵²

In **2017** a young student en route to university in Alexandria was stopped by police. Police found pictures of the student dressed as a woman while searching through the student's cell phone. On accusations of "imitating women" the student was taken to a local station to be beaten and forced into confessing to having sex with a man. Police also verbally abused the student, referring to the detainee with feminine pronouns derogatorily. Later, the student was sentenced to one year in prison for "inciting debauchery".⁵³

In **January 2017** a gay man in Cairo was arbitrarily arrested on the street and accused of "habitual debauchery". The following month he was sentenced in absentia to one year in prison with bail set at 5,000 Egyptian Pounds (about USD 280 at the time), but was declared innocent at a trial in **November 2020**.⁵⁴

11 people were arrested for "promoting sexual deviancy" and "debauchery" on social media in late **September 2017** after attending the concert of a popular Lebanese alternative rock band whose lead singer is openly gay. On **2 October** as arrests continued, a woman by the name of Sarah Hegazi was arrested for sitting on a friend's shoulders waving a rainbow flag at the concert in what would go on to become an infamous photo representing anti-LGBT repression by the Egyptian State. At least six of the accused had the case against them dropped, but Hegazi was jailed for three months, during which time she was reportedly tortured with electric shocks and subjected to solitary confinement before being released on bail. Of the 11 initial detainees, all faced anal examinations and at least one was sentenced to a year in prison. Fearing re-arrest, Hegazi fled to Canada and on **14 June 2020** she took her own life, saying in her suicide note: "to the world, you've been greatly cruel, but I forgive". It is claimed by an anonymous group in Egypt which spoke to ILGA World that at least 80 were arrested following the backlash around this concert.⁵⁵

Also in **September 2017**, a 17-year-old trans woman was arrested in a Cairo restaurant after police officers had entrapped her through social media. The victim was reportedly beaten and verbally abused for three days while being detained in a cage under a stairway at the prosecutor's office before later being transferred to a cell

with men. The woman was detained for two months and 15 days without a trial until a court sentenced her to another month in prison for "inciting debauchery". Her charges remained on her criminal record for three years after she was released.⁵⁶

In **November 2017** a gay man in Cairo was entrapped by police and sentenced to three years' imprisonment, three additional years of police surveillance, and a 300 Pound (about USD 17) fine for "habitual debauchery" and "incitement to debauchery". The sentence was appealed, leading to the man being found innocent of "habitual debauchery", but he still faced two weeks in jail on the charge of "incitement to debauchery".⁵⁷

In **January 2018** a man was arrested and charged with "habitual debauchery" and "incitement to debauchery". He was sentenced *in absentia* to a year's imprisonment with bail set at 5,000 Pounds (USD 280). According to local advocacy organisation, Bedayaa, the man had previously also been sentenced in **2014** and **2016**.⁵⁸

In **March 2018** three men were arrested in a nightclub in Cairo and charged with "incitement to debauchery" and "prostitution". Two were sentenced in absentia to one year in prison plus a fine of 100 Pounds (a little over USD 5), and bail was set at 5,000 Pounds. The third accused was acquitted.⁵⁹

In **April 2018**, two men were arrested when they were approached by police while waiting at a bank in Cairo. The police found that one of the men had been arrested and sentenced to three years' imprisonment back in **2007** on charges of "debauchery" after telling a prosecutor he was living with HIV. He received no HIV treatment until the last six months of his sentence, at which point he received expired medication. He left prison in crutches after being beaten and raped by other inmates. During his arrest in **2018**, he and another man were beaten by police and when he showed them his disability card, officers forced him to insert the card up his anus. The pair was forced to sign a statement saying that they had "sex with each other and were arguing in public over money related to their engagement in sex work". Prosecutors refused to listen to their testimony and subjected them to forced anal examinations. The two men were detained for 26 days, pending trial. The judge later sentenced the men to six years in prison and six additional years of probation. An appeals court reduced the sentences to six months in prison and six additional months of probation.⁶⁰

In **May 2018** a queer activist was arrested while she was protesting rising prices in the country. She was subjected

⁵² "Egypt: Security Forces Abuse, Torture LGBT People", *Human Rights Watch*, 1 October 2020.

⁵³ *Ibid.*

⁵⁴ Information supplied by Bedayaa.

⁵⁵ "Egypt 'hunting down' gay people, conducting anal exams, says Amnesty International", *The Sunday Morning Herald*, 30 September 2017; OHCHR, UA EGY 17/2017 (2017), 1-3; "Egypt: Security Forces Abuse, Torture LGBT People", *Human Rights Watch*, 1 October 2020; "Egyptian LGBT activist dies by suicide in Canada", *Al Jazeera*, 15 June 2020; "'Clean the Streets of Faggots'" Digital Targeting of LGBT People by Middle East/North Africa Governments", *Human Rights Watch*, 4 August 2021.

⁵⁶ "Egypt: Security Forces Abuse, Torture LGBT People", *Human Rights Watch*, 1 October 2020.

⁵⁷ Information supplied by Bedayaa.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ "Egypt: Security Forces Abuse, Torture LGBT People", *Human Rights Watch*, 1 October 2020.

to three “virginity tests” and charged with “joining a terrorist group aimed at interfering with the constitution”. After two months, a court ordered the woman be released subject to two years’ probation, during which she had to report to state security offices three days a week. At the offices during her court mandated check-ins, she was allegedly repeatedly beaten, sexually assaulted, humiliated, and harassed.⁶¹

In **July 2018** a man in Giza was arrested on charges of debauchery and sentenced to six months’ imprisonment.⁶²

In **August 2018** a man was arrested in the streets of Cairo when two officers surrounded him and checked his phone for gay dating apps. The police then found a screenshot of what was deemed an “inappropriate sexual conversation”. When the man tried to explain, an officer grabbed him in a chokehold while the other officer beat him. He was later taken to a police station where he was forced to sign a statement confessing to “immorality and incitement to debauchery” and “attempting to satisfy forbidden sexual desires with men in exchange for money”. When he refused to sign, an officer beat him and threw him into a cell. On **23 September 2018** a court sentenced the man to six months in prison and six months’ probation for “debauchery”. He appealed the judgement and the court then dismissed charges against him, but the charges remained on his criminal record until **April 2019**, which prevented him from travelling or securing employment.⁶³

A television presenter was arrested and sentenced to one year in prison and a fine of over 3,000 Egyptian Pounds (USD 170) in **August 2018** after he interviewed a gay man. The presenter was charged with contempt of religion and incitement to debauchery. The presenter had publicly expressed his stance against homosexuality before he asked a man to come on air and discuss his lifestyle, though this did not protect him from being arrested and sentenced. It is unclear if the man invited on air was also arrested, as his face was blurred to conceal his identity.⁶⁴

In **October 2018** a cafe owner and two customers in Cairo were detained by police on suspicion of “managing a place of prostitution” and “debauchery”. The cafe owner was acquitted but the two customers were sentenced to one year in prison and a fine of 100 Pounds (a little over USD 5), plus 1,000 Pounds (USD 56) bail and police surveillance after release.⁶⁵

In **November 2018** a gay man from Aswan was entrapped by police in Cairo and charged with debauchery. Though he denied the charges he was

sentenced to one year imprisonment plus a fine of 100 Pounds (about USD 5).⁶⁶

In early **2019** a man was arrested after meeting a friend in Ramses. Police officers approached him and demanded to see his ID. The man reported that police told him they were “cleaning the streets of faggots”. Police allegedly beat and tortured him in detention for three days without specifying what the charges were. A month later, the man was arbitrarily arrested again on the street, searched, and detained overnight. In **December 2019** a judge acquitted him of charges of “debauchery” which were brought against him the second time he was arrested.⁶⁷

On **28 February 2019** a trans man was arrested in a café in Cairo and detained in an undisclosed location for four days before being charged with “joining a terrorist group and misusing social media to commit a crime punishable by law”. While he was detained in a women’s prison in Abdeen, Cairo, he said he was subjected to physical examinations and prohibited from continuing his hormone treatment and gender-affirming surgery. He was released after eight months in prison.⁶⁸

On **6 March 2019** a political activist and trans woman was arrested, six days after participating in a protest in Cairo. She was one of 70 protestors who were targeted. Police arrested her at her home and dragged her by her clothes into the street, where they beat her before taking her to the police station. The police proceeded to detain her for 15 days pending an investigation into accusations of “misusing social media”, though it was also reported that the National Security Agency arrested her on suspicion of being “part of a terrorist group”. During her 15 days in detention she was subjected to a forced anal examination. The young woman was then incarcerated for 135 days in a men’s prison, despite the fact that she had already undergone gender-affirming surgery. Prison officials did not allow her access to medical care or vital hormone treatment. Several UN Special Procedures formally decried the situation and urged the government to adopt measures to prevent the recurrence of such cases, though it is unclear if official steps in that regard were taken. On **16 July 2019** the accused was released, however.⁶⁹

In **September 2019** a 27-year-old man was arrested after meeting another man in Giza online who turned out to be an undercover police officer. Accused of selling alcohol and “practicing debauchery”, police beat and tortured the young man at the Dokki Police Station until he was left unconscious. After a week he was transferred to Giza Central Prison where he had to bribe guards to get them to stop torturing him. On **30 September** he appeared in

⁶¹ *Ibid.*

⁶² Information supplied by Bedayaa.

⁶³ “Egypt: Security Forces Abuse, Torture LGBT People”, *Human Rights Watch*, 1 October 2020.

⁶⁴ “1 year in Egyptian prison. The crime? Interviewing a gay man”, *Erasing 76 Crimes*, 13 February 2019.

⁶⁵ Information supplied by Bedayaa.

⁶⁶ *Ibid.*

⁶⁷ “Egypt: Security Forces Abuse, Torture LGBT People”, *Human Rights Watch*, 1 October 2020.

⁶⁸ OHCHR, UA EGY 14/2019 (2019), 2; “Egypt: Security Forces Abuse, Torture LGBT People”, *Human Rights Watch*, 1 October 2020.

⁶⁹ OHCHR, UA EGY 4/2019 (2019); “Egypt releases trans teen activist after four months”, *Gay Star News*, 16 July 2019; “Egypt: Security Forces Abuse, Torture LGBT People”, *Human Rights Watch*, 1 October 2020.

the Dokki Misdemeanour Court and was acquitted— which the prosecution appealed, but he was again found not-guilty. Nevertheless, the long-term impact of the incident cannot be overstated, as the young man's family reportedly no longer speaks to him and his brother has threatened to kill him for what happened.⁷⁰

In **2019**, a young trans woman was arbitrarily detained in a male prison for four months, and sexually harassed and abused while there. In **May 2020** a court dismissed the appeal by the young woman's lawyer, who requested that the Interior Ministry provide a separate detention facility for transgender detainees.⁷¹

In **September 2020**, there were reports of investigations being carried out on two women who announced that they had married each other. News of the marriage spread on social media and a lawyer who founded the conservative "Keep It Clean" campaign indicated to local media that he would file a complaint with police. It seems, however, that investigations revealed that the announcement was fake and that the two women were left alone thereafter, though tremendous public outcry against them remained.⁷²

In **November 2020** three human rights defenders for the Egyptian Initiative for Personal Rights (EIPR) were arrested and investigated for terrorism while being held in Cairo's Torah prison. The EIPR advocates on issues of SOGIESC, women's rights, criminal justice, environmental law and health. The three activists were arrested shortly after meeting with diplomats from several European countries to showcase their work.⁷³

In **August** or **September 2020**, a young man accompanied a female friend to a police station in Cairo. She had been arrested in **2014** as part of an investigation into a party at Cairo's Fairmont hotel. It was reported that another woman was drugged and raped by several men in the hotel room that night and the young man's friend was being sought to give input as a witness. He voluntarily accompanied her to the police station and had no connection to the **2014** incident as he was only 14 at the time. However, once there, police arbitrarily detained him as well as another man who was at the party. Both were searched and their phones taken away. Police found private photos and detained both for allegedly engaging in homosexual conduct. They remained in jail for more than two months, as judges renewed their detention orders three times, being transferred on **14 October** to al-Nahda Prison where guards shaved their

heads, subjected them to anal examinations and housed them with the suspected party rapists. It is unclear whether the men were later released.⁷⁴

In **November 2020** a group of five gay and trans individuals in Cairo were arrested and charged with "habitual debauchery" for being vocal on social media. One of the accused was under 18 and sentenced to one year in prison in **May 2021**, while three others received nine years, and the fifth was given 12 years' imprisonment.⁷⁵

In **December 2020** a man was entrapped by police in Cairo and sentenced to three years' imprisonment for "debauchery". In **January 2021** an appeal saw his sentence reduced to one year.⁷⁶

On **4 December 2020** an Egyptian publication shared the story of a young man who had been detained and investigated by the General Administration for the Protection of Morals in the Social Security Sector in Alexandria. He had made social media posts stating that he would participate in same-sex sexual activity in exchange for money. The Montazah Public Prosecution Office in Alexandria ordered his detention for four days during the investigation, but it is not clear what occurred thereafter.⁷⁷

A man in Cairo was entrapped by police in **January 2021** and sentenced the following month to six years' imprisonment on charges of "habitual debauchery" and "incitement to debauchery". An appeal failed and he was made to pay the trial costs.⁷⁸

In **February 2021**, in Alexandria, a man was charged by officials from the Protection of Morals in the Social Security Sector with "promoting the practice of immoral acts on the Internet and the practice of debauchery", with seven other men allegedly implicated in the accused's confession.⁷⁹ It is not clear if this is the same case as the one reported in **December 2020**.

In **May 2021** a man in Cairo was detained for smoking hashish but later also charged with debauchery. He was acquitted, but at the time of publication the prosecution had appealed that decision.⁸⁰

Two other men were also arbitrarily arrested in **May 2021** in Cairo, but they were acquitted of their debauchery charges the following month.⁸¹

⁷⁰ "Egypt: Security Forces Abuse, Torture LGBT People", *Human Rights Watch*, 1 October 2020.

⁷¹ *Ibid.*

⁷² *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁷³ "Verhaftungen in Ägypten nach Treffen mit Schweizer Diplomaten" [Arrests in Egypt after meeting with Swiss diplomats], *SRF*, 22 November 2020.

⁷⁴ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁷⁵ Information supplied by Bedayaa.

⁷⁶ *Ibid.*

⁷⁷ "حيس شاب بتهمه عرض نفسه لممارسة الشذوذ على فيس بوك" [A young man was imprisoned on charges of exposing himself to perversion on Facebook], *Al Masry Al Youm*, 05 December 2020. "القبض على شاب لممارسته الشذوذ الجنسي بالإسكندرية | أهل مصر". [A young man was arrested for practicing homosexuality in Alexandria], *Ahlmasr News*, 24 January 2021

⁷⁸ Information supplied by Bedayaa.

⁷⁹ "مصر: متهم بالشذوذ يورط 7 رجال أعمال في شبكته" [Egypt: Accused of homosexuality implicates 7 businessmen in his network], *Al Madenah News*, 15 February 2021

⁸⁰ Information supplied by Bedayaa.

⁸¹ *Ibid.*

From **8 May 2021** onward it was reported in several international news outlets that two Israeli trans men had been denied entry into Egypt where they had come to spend a holiday, on account of their passports not matching their appearance and gender expression.⁸² Border officials detained them temporarily and mocked them, but it is not clear whether this was the result of any State policy on identity documentation and legal gender recognition (either directly or indirectly), or rather a case of personal prejudice by the officials involved.

And as of **21 May 2021**, a trans woman from Cyprus was being held under house arrest in Cyprus for allegedly “promoting and inciting immorality on the Internet” and “insult and scandal of the Egyptian people”. Arrested and detained in Egypt in **January 2020**, the accused is said to have been raped and assaulted repeatedly by prison officials and the male inmates with whom she was housed, leading her to require corrective surgery back in Cyprus. In early **2021** she was deported from Egypt back to her home country, but per a bilateral agreement between both States, the sentence meted out against her by Egyptian courts must be completed, despite no such criminalising law having legal effect in Cyprus.⁸³

In **July 2021** a man in Cairo was entrapped by police online and charged with “habitual debauchery”, though he was later found innocent and released.⁸⁴

A group of four gay and trans individuals were arrested in **July 2021** and charged with debauchery, but at the time of publication no further details have been made available on this case.⁸⁵

criminalise consensual same-sex sexual activity. This was decried by local activists as well as the Community of Portuguese Speaking Countries (CPLP).⁸⁶

Examples of Enforcement

In **2014** it was reported that despite no law expressly prohibiting same-sex sexual activity, four young people accused of being gay were arrested and “forced to explain” their behaviour on a local television network.⁸⁷

In **August 2021** an article in the Brazilian *Jornal A Tarde* noted a case of an “anonymous member of the [LGBTQI+] community” whose mother got the police to arrest them for “being a homosexual”. The individual and their partner were allegedly held by police for two weeks, and were only released after they paid the authorities 40,000 CFA francs (USD 72).⁸⁸



Enforcement Overview

Despite Gabon formally decriminalising consensual same-sex sexual activity in June 2020, after a period of just over one year of criminalisation, ILGA World has noted three reported incidents demonstrating that authorities have used criminal provisions to target individuals on the basis of their real or perceived sexual orientation both before and after the presence of explicit criminalising provisions.

In early 2014, the prosecutor of the Republic of Gabon, Sidonie Flore Ouwé, provided a legalistic explanation regarding the arrest and subsequent liberation of six people who were detained the previous year for holding an alleged same-sex union. She stated that

“[In this case] there was no ‘customary marriage’ and, therefore, there had been no infraction against good mores (*outrage aux bonnes mœurs*). If there had been a customary marriage, as our customs require, we might have the right to sue. [...]”

It is up to the government or Parliament to make a definite pronouncement on homosexuality. And maybe make it an offense, so we can get on with it! [...] On the other hand,

Equatorial Guinea

Enforcement Overview

Equatorial Guinea has no formal provisions criminalising diverse sexual orientations or gender identities and expressions, though ILGA World has been made aware of at least two examples of *de facto* targeting by State actors.

Further, it was reported in 2019 and 2020 that lawmakers were in the process of preparing a draft “bill on prostitution and LGBTI rights” which would

⁸² “Israeli transgender couple said refused entry to Egypt at border crossing”, *Times of Israel*, 08 May 2021; “Trans men mocked and denied entry to Egypt by border guards because they ‘do not look female’”, *Pink News*, 09 May 2021.

⁸³ “Η Τίνα Λιασή ζητά να αποφυλακιστεί: «Έχω ιατρικά θέματα λόγω των βιασμών μου» – Διαβάστε την ...” [Tina Liasi asks to be released: “I have medical issues due to my rapes”], *Politis*, 04 April 2021; “Με βραχιολάκι σπίτι της η τρανς κατάδικος” [The trans convict is at home with a bracelet], *Philenews*, 25 May 2021.

⁸⁴ Information supplied by *Bedayaa*.

⁸⁵ *Ibid.*

⁸⁶ “Guinea Ecuatorial Prepara un Anteproyecto de Ley para Penalizar la Homosexualidad” [Equatorial Guinea Prepares a Draft Law to Criminalize Homosexuality], *Diario Rombe*, 24 September 2019; “ONG denuncia amenazas aos direitos LGBTI na Guiné Equatorial” [NGO Denounces Threats to LGBTI Rights in Equatorial Guinea], *DW*, 28 July 2020.

⁸⁷ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

⁸⁸ “Organizações denunciam violência contra mulheres na Guiné Equatorial” [Organizations denounce violence against women in Equatorial Guinea], *Jornal A Tarde*, 16 August 2021.

if the marriage had taken place, these people would have broken the law, in particular insulting morality".⁸⁹

Given that Gabon formally criminalised homosexuality in 2019, it might be argued that this case and the public prosecutor's statements contributed, at least in part, to the adoption of the law.

Negative social attitudes remain common in Gabon. On 18 July 2021, a representative of one of Gabon's opposition parties presented the results of a petition signed by 300,000 people opposing the earlier decriminalisation of same-sex sexual activity. If the number of respondents is to be believed as accurate, it means at least 13% of the country's population participated in the poll in opposition to decriminalisation. The petition seems to carry no legal weight, but does make Gabon a country of continued high concern, despite recent positive legislative reforms.⁹⁰

Examples of Enforcement

In late **December 2013**, six people were allegedly arrested and interrogated by local authorities after having participated in a "customary same-sex union" in the capital city, Libreville. One of the participants reportedly claimed on social media that there was no wedding ceremony and that it was simply a party, but that a local journalist had deliberately sensationalised events in order to boost his own career. It was reported by *Radio France International* that the six detainees were freed "after a night in pre-trial detention". The prosecutor of the Republic of Gabon issued an explanation for their release in **2014**, essentially arguing that as there was no wedding, social mores had not been breached and so no prosecution could take place, and that the government would need to criminalise homosexuality for the party's guests to be charged. It is possible that this statement and the case contributed to the pressure to criminalise in **2019**.⁹¹

On **24 October 2014** two men, one Senegalese and the other a citizen of Gabon, were arrested by the judicial police after being caught and held by passersby at the Léon Mba beach, Libreville. The crowd alleged that the two men were engaged in sexual acts and ordered the couple not to move until the police arrived.⁹² The outcome of this arrest could not be determined at the time of publication.

An article claimed on **10 November 2020**, mere months after the formal decriminalisation of consensual same-sex

sexual activity in Gabon, that two women were arrested for participating in a customary marriage ceremony. Gabon has no law banning or permitting same-sex marriages, but after a furore in the media the two women were summoned to make account of their actions to the office of the Prosecutor for the province of Ogooué-Ivindo. The older of the two women claimed that she had wanted to act as an official father to her partner's children, as their father had passed away.⁹³



Enforcement Overview

Mali has no formal provisions criminalising diverse sexual orientations or gender identities and expressions, though ILGA World has identified at least one example of apparent State-backed targeting of persons on the basis of their sexual orientations.

Outside of the law, widespread negative social attitudes have resulted in violence, discrimination and incitement against SOGIE Malians. Threats and assaults from mobs, as well as the formation of so-called "decency leagues" publicly protesting against the false belief that certain local doctors "inject homosexuality" into children, have been noted.⁹⁴

In 2012 and 2013, an insurgent separatist group took over parts of the North of the country. Several factions allied to the separatists notably subscribed to a strict local interpretation of Sharia law, and publicly affiliated themselves with al-Qaeda, meaning that while no incidents of de facto criminal enforcement by these groups were identified, it is not beyond reason to assume the likelihood of such events. In the years since, forces allied to the central government have largely pushed back the separatist efforts, though certain extremist militant and tribal authorities continue to hold sway in parts of Mali, making tracking the situation difficult.⁹⁵

In August 2020 the central government was removed by military coup, with another coup replacing the transitional government a mere nine months later, in May 2021. It is not clear how, if at all, these developments may impact the status of persons of diverse SOGIE living in Mali.⁹⁶

⁸⁹ "Gabon: la question homosexuelle en débat" [Gabon: the homosexual question under debate], *RFI*, 12 January 2014.

⁹⁰ "Gabon: 300 000 personnes contre la dépénalisation de l'homosexualité" [Gabon: 300,000 people against the decriminalization of homosexuality], *Gabon Media Time*, 27 July 2021.

⁹¹ "Gabon: la question homosexuelle en débat" [Gabon: the homosexual question under debate], *RFI*, 12 January 2014; "Gay marriage at PK 8: the details of an anonymous via the net", *alibreville.com*, 14 January 2014; Office Français de Protection des Réfugiés et Apatrides, *Gabon: Les minorités sexuelles et de genre* (2018), 14.

⁹² "Gabon: Two homosexuals caught having sex on the beach", *Koaci.com*, 2014 (archived).

⁹³ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

⁹⁴ "French couple welcome LGBT activist from Mali", *UNHCR*, 11 June 2018; "Hunted for my sexuality: How social media is fuelling homophobic attacks in Mali", *The Telegraph*, 22 August 2019; "In Mali, fears that doctors 'inject homosexuality'", *Erasing 76 Crimes*, 30 September 2021.

⁹⁵ Human Rights Watch, *Mali Conflict and Aftermath Compendium of Human Rights Watch Reporting 2012-2017* (2017), 2-17.

⁹⁶ "What next for Mali after second coup within a year?", *Aljazeera*, 29 May 2021.

Examples of Enforcement

A local media outlet claimed on **13 November 2021** that six lesbian women were arrested in Mali's capital, Bamako, reportedly for "attacks on good morals". This came as a result of a formal complaint laid with police by the mother of one of the women on **29 October**. The mother claimed that her daughter had been "recruited" by an international LGBT organisation – though no evidence could be verified as to whether the young woman was affiliated with a rights group or if this is simply an example of misinformation and anxiety around SOGIE advocacy as a presumed "foreign" influence. The young woman had moved away and gained employment in another part of the city so as to escape her mother two months previously, but was apprehended by a police search party through the use of telecommunications data. Upon interrogation, the young woman revealed the names and locations of five other women, who were also arrested.⁹⁷



Enforcement Overview

Despite there being no criminalising provisions against consensual same-sex sexual activity, reports on Rwanda often indicate discrimination and prejudice from police forces against persons and activists of diverse SOGIE. As such ILGA World notes seven individual examples of *de facto* targeting between 2007 and the present, though the true number is likely higher.

In 2021 as part of Rwanda's Universal Periodic Review, France issued the recommendation that authorities "[g]uarantee the protection of lesbian, gay, bisexual, transgender and intersex people against violence, harassment and arbitrary arrests", while Germany recommended that they "Ensure that members of marginalized groups—including persons with disabilities, children living in the streets and also lesbian, gay, bisexual, transgender and intersex individuals—do not become subject to arbitrary detention or ill-treatment by the security forces".⁹⁸ The Rwandan delegation rejected both recommendations.

Examples of Enforcement

Sometime in **2007**, a human rights activist was arbitrarily arrested in Gikondo by two plainclothes police officers. They accused him of homosexuality and of attending international conferences to spread negative news about Rwanda. He was never formally charged, was denied access to a lawyer and not permitted to contact anyone. He was only released when other local activists became aware of his location and approached the police to inquire. Upon his release it was found that he had been severely beaten. He fled to Uganda shortly thereafter.⁹⁹

Also in **2007**, a group of activists from the Horizon Community Association were detained after a local Archbishop declared homosexuality to be "moral genocide". A group of women travelling to attend a conference by the Coalition of African Lesbians (CAL) were also detained.¹⁰⁰

Another activist from Gikondo was similarly arrested some time in or prior to **2007**. Detained without being charged or given access to a lawyer, he was released after a few days. His name and pictures were disseminated to local media, resulting in threats and stigma even after his release.¹⁰¹

In or around **2007** a Congolese man in Kigali was gang-raped, but was arrested by police for "homosexuality" when he went to report the incident. He was released a week later, but the rape was never investigated.¹⁰²

On **25 December 2018** a trans woman was reportedly detained by police and accused of vagrancy and the illegal sale of drugs, despite her offering them her work permit showing that she was employed nearby. She was taken to Gikondo Transfer Center, a rehabilitation facility for those exhibiting "deviant acts or behaviours." She was stripped down and assaulted by personnel and other inmates, with some inmates allegedly raping her on three separate occasions. Intermittently she was placed in an unhygienic solitary confinement cell as part of the Center's efforts to masculinise her.¹⁰³

Another trans woman was also reportedly held at the Gikondo Transfer Center in **2018**, where she endured daily beatings for six months. She has claimed that she was told by staff there: "We are going to keep you here until you change, you will remain here until we see that you are no longer a girl as you are saying."¹⁰⁴

⁹⁷ "Pratiques perverses, atteintes aux bonnes mœurs ... la police interpelle six lesbiennes maliennes membres d'un réseau international d'homosexuelles" [Perverse practices, attacks on good morals... the police arrest six Malian lesbians who are members of an international network of homosexuals], *Bamada.net*, 13 November 2021.

⁹⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review: Rwanda*, A/HRC/47/14 (2021), paras. 136.18, 136.24.

⁹⁹ "Rwanda: Situation Update - The Treatment of LGBT Individuals in Rwandan Law and Society", IGLHRC (now *OutRight Action International*), 20 November 2007.

¹⁰⁰ Amnesty International, *Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa* (2013), 22.

¹⁰¹ "Rwanda: Situation Update - The Treatment of LGBT Individuals in Rwandan Law and Society", IGLHRC (now *OutRight Action International*), 20 November 2007.

¹⁰² *Ibid.*

¹⁰³ "Rwanda's Transgender Community Face Violent Detentions For Being Trans," *Vice*, 20 November 2020.

¹⁰⁴ *Ibid.*

Americas

Nine out of 35 UN Member States in the Americas¹ have legal frameworks explicitly criminalising consensual same-sex sexual acts, according to previous ILGA World Reports,² though known cases of enforcement remain rare. This may be due to a lack of enforcement from State actors, but small national populations and a lack of international reporting may also contribute. More research is needed on the matter.

Within the rest of Latin America two notable cases of police targeting women were identified in Cuba during the COVID-19 pandemic in 2021,³ though the specificities of these incidents preclude them from inclusion. Further, a trans woman in Argentina faced

arrest for criminal charges against her from a long-repealed prohibition on cross-dressing, which she was told she would need to have expunged by court order despite the State no longer criminalising her gender expression.⁴

Further, within North America, a slew of subnational-level legislative attacks against legal gender recognition, freedom of assembly and freedom of association for trans and gender-diverse persons, make the United States a jurisdiction of continued concern,⁵ though as yet no known incidents meet the criteria for the country's inclusion in this report.



Antigua and Barbuda

Criminalising Provisions

The *Sexual Offences Act* (1995) criminalises “buggery” under Article 12. According to the provision, “buggery means sexual intercourse *per anum* by a male person with a male person or by a male person with a female person”. Further, “a person who commits buggery is guilty of an offence and is liable on conviction to imprisonment for 15 years.

The same Act also punishes “serious indecency”, which is understood as an act other than sexual intercourse involving the use of the genital organ for the purpose of

arousing or gratifying sexual desire. A person convicted for this crime is liable to imprisonment for five years.⁶

Enforcement Overview

Between 2014 and 2021 ILGA World was able to identify two examples of apparent criminal enforcement in Antigua and Barbuda, though it must be noted that details around both are limited. Extrajudicial violence against persons of diverse SOGIE as a result of negative social attitudes, and a lack of response from police in dealing with such hate crimes cases,⁷ seem to form the bulk of incidents, and thus are not included in this report.

¹ Typically, “Latin America and the Caribbean”, and “North America and the Caribbean”, would form two distinct regions under separate ILGA mandates, however, past reports like *State-Sponsored Homophobia* have placed all criminalising States in Latin America, prior to a decision made at the ILGA World Conference in 2019 to permit members of English and Dutch speaking jurisdictions to migrate their membership to North America, where no *de jure* criminalising States existed. Eight of the nine criminalising States are located in the Caribbean, six of which are of the group which recently migrated ILGA membership. Guyana also migrated its membership to North America, though it is located on the mainland of South America. St. Kitts and Nevis and St. Vincent and the Grenadines currently have no ILGA World member organisations active and so their position within ILGA structures is moot, though for the sake of simplicity the Americas have been coalesced into a single chapter here.

² ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 113.

³ “Multan a cubana trans y la amenazan con desacato por vestirse como mujer” [Cuban trans woman fined and threatened with contempt for dressing as a woman], *Periódico Cubano*, 23 March 2021; “Policía pide disculpas y promete retirar la multa a trans cubana por vestir de mujer en una cola” [Police apologize and promise to withdraw the fine to Cuban trans for dressing as a woman in a queue], *Ciber Cuba*, 24 March 2021; “Marthadela Tamayo denuncia detención de activista LGBTI por “acaparamiento”” [Marthadela Tamayo denounces detention of LGBTI activist for “hoarding”], *Periódico Cubano*, 28 March 2021.

⁴ “Demoraron a una mujer trans por una contravención de 1988 ya derogada: denuncian que fue ...” [They delayed a trans woman for a contravention of 1988 already repealed: they denounce that it was institutional violence], *La Voz del Interior*, 16 April 2021.

⁵ “Mapping the anti-trans laws sweeping America: ‘A war on 100 fronts’”, *The Guardian*, 14 June 2021; American Civil Liberties Union, *Legislation affecting LGBT rights across the country* (accessed 2021).

⁶ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 126.

⁷ Human Rights Watch, “*I Have to Leave to Be Me*”: *Discriminatory Laws against LGBT People in the Eastern Caribbean* (2018).

In the aftermath of decriminalisation of consensual same-sex sexual acts in Belize, in August 2016, the Cabinet of Antigua and Barbuda proclaimed that “the buggery law will remain unchanged” in the country.⁸ By 2019 the Eastern Caribbean Alliance for Diversity and Equality (ECADE) had launched legal challenges against criminalising provisions in five countries, including Antigua and Barbuda. However, Antigua's Attorney-General said in response that while he would “entertain discussions”, the issue was “not a matter of priority”.⁹

Examples of Enforcement

It has been alleged by an activist working for a human rights group called MESH that in 2014 two people were “caught in public” and held for several days before being released. Further details are not known.¹⁰

On 12 September 2015 a well-known trans person was detained by police for allegedly following another car. The police did not charge the individual, but did severely beat them, causing them to lose sight in one eye.¹¹



Dominica

Criminalising Provisions

Under Section 16, the *Sexual Offences Act* (1998) punishes the crime of “buggery” with imprisonment of up to 10 years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment.

Under Section 14, the crime of “gross indecency”—understood as “an act other than sexual intercourse by a person involving the use of genital organs for the purpose of arousing or gratifying sexual desire”—is punished with imprisonment for five years.¹²

Enforcement Overview

Though criminalising legislation is not consistently enforced in Dominica, ILGA World was able to identify at least three incidents between 2001 and 2021. However, limited reporting means that the two items documented from 2001 may well represent a greater number of individual cases. Indeed, in the early 2000s it appears

that there were at least 35 cases of “buggery” against both men and women. Police authorities and the Prime Minister at the time have stated that no convictions, against gay men at least, had been issued in any of those 35 reported cases, however.¹³ By July 2014 the Prime Minister of Dominica had also dismissed claims that the police had threatened to arrest people engaging in private, consensual same-sex sexual activity.¹⁴

In 2010 the Dominican delegation stated during its first UN Universal Periodic Review cycle that the issue of criminalisation of consensual same-sex acts “was a challenging area” and the delegation recognised “that it is discriminatory”,¹⁵ though in the years since that statement the criminalising legislation has remained intact, and at least one case of enforcement seems to have occurred.

Examples of Enforcement

In 2001, 15 women were arrested for allegedly engaging in same-sex sexual activity and thus sentenced to five years’ imprisonment for “gross indecency”. It is not clear if this constitutes a single case or several separate incidents.¹⁶

Also in 2001, 10 men were sentenced to five years’ imprisonment for engaging in same-sex activity. It is also not clear if this constitutes a single case or several separate incidents.¹⁷

In 2012, two American citizens aboard a cruise ship were arrested and charged with “buggery” after someone claimed to have witnessed the men having sex on the ship from a dock. The two men pleaded guilty and were fined nearly USD 900. The ship continued on its journey to Saint Barthelemy (France) without the men, who remained at police headquarters in Dominica.¹⁸



Grenada

Criminalising Provisions

The *Criminal Code* (1958) establishes “unnatural crime” under Article 431, stating that “if any two persons are guilty of unnatural connection[...] every such person shall be liable to imprisonment for [10] years”. Further,

⁸ “Antigua Gov’t denies turning a blind eye to LGBTI community”, *Jamaica Observer*, 3 September 2016.

⁹ “The region which legislates who you can love”, *BBC News*, 1 January 2020.

¹⁰ Human Dignity Trust, *Country Profile: Antigua and Barbuda* (2021).

¹¹ *Ibid.*

¹² ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Leles, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 127.

¹³ “Police shoot down gay website allegations”, *Dominica News Online*, 28 March 2013; “Dominica Prime Minister: ‘We will never accept same-sex marriage’”, *Pink News*, 10 July 2014.

¹⁴ “Dominica PM says no to same-sex marriage”, *Jamaica Observer*, 9 July 2014.

¹⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominica, A/HRC/13/12*, (2010) para. 33.

¹⁶ “Dominica Prime Minister: ‘We will never accept same-sex marriage’”, *Pink News*, 10 July 2014.

¹⁷ *Ibid.*

¹⁸ “Dominica Anti-Sodomy Law Lands Gay Cruise Ship Passengers in Custody”, *NBC News*, 22 March 2012.

Article 430 provisions that “whoever publicly and wilfully commits any grossly indecent act is guilty of a misdemeanour”.¹⁹

Enforcement Overview

Though the law does not seem to be consistently enforced, ILGA World was able to identify at least one example of apparent criminal enforcement between 2011 and 2021 in Grenada.

In 2015 at the 156th Period of Session of the Inter-American Commission of Human Rights, it was reported that local activists claimed Grenada to be one of the only jurisdictions in the Americas which still prosecutes people for same-sex acts. The Commission recommended that Grenada decriminalise, and that the State implement a moratorium on the implementation of the law until such time as it could be repealed, but noted with regret that delegates from Grenada did not attend the hearing.²⁰

In 2016, a man was reportedly arrested for “unnatural carnal knowledge”.²¹ The news source reporting the incident frames this as a case of rape, and ILGA World was unable to verify any further details, as Grenada’s legislation does not differentiate between consensual and non-consensual same-sex sexual activity (this case is not tallied nor included among the examples below). The article reporting the incident makes clear and inaccurate links between acts of sexual violence and same-sex sexual activity in general, which highlights the difficulty in verifying and documenting consensual sexual acts.

In 2019 the Eastern Caribbean Alliance for Diversity and Equality (ECADE), along with GrenCHAP, initiated a constitutional challenge to the criminalising law in Grenada, as well as four other Caribbean States.²²

Examples of Enforcement

In 2015, a UN Universal Periodic Review report documented that at least two people had been formally charged for consensual same-sex sexual acts. Per the report, GrenCHAP and Groundation Grenada allege that one man was convicted in 2011 and went on to serve a six-year prison sentence. The other individual was charged sometime between 2010 and 2015, though charges were eventually withdrawn.²³



Criminalising Provisions

Section 353 of the *Criminal Law (Offences) Act (1893)* punishes the crime of “buggery” committed either with a human being or with any other living creature, with imprisonment for life. Under Section 352, an attempt to commit buggery carries a penalty of imprisonment for 10 years. Additionally, Section 351 punishes acts of “gross indecency” between male persons, in public or private, with imprisonment for two years.²⁴

In August 2021, President Irfaan Ali, gave assent to the Summary Jurisdiction (Offences) (Amendment) Act, repealing a provision which banned cross-dressing. This came two years after the Caribbean Court of Justice ruled in favour of a group of local trans women who argued that the law was “unconstitutionally vague and contravened their right to freedom of expression”.²⁵

Enforcement Overview

In 2017, the government of Guyana announced a plan to hold a referendum on whether “homosexuality” should remain criminalised. However, this was opposed by SOGIE advocacy groups on the basis that it would only fuel homophobia within society and the public discourse.²⁶

There have been numerous cases documented of the law against cross-dressing being enforced,²⁷ though given that the ban has been lifted they have not been included in this report. However, close monitoring of whether authorities abide by the repeal and respect the rights of those with diverse gender expressions and identities going forward is necessary.

While few cases of criminal enforcement relate to statutes still on the books, then, ILGA World notes at least one example of police targeting on the basis of sexual orientation at the time of publication.

¹⁹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 127.

²⁰ IACHR, *Report on the 156th Period of Sessions of the IACHR* (2015).

²¹ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

²² “The region which legislates who you can love”, BBC News, 1 January 2020; Human Dignity Trust, *Eastern Caribbean: Constitutional challenges to multiple laws criminalising same-sex activity* (accessed 2021).

²³ GrenCHAP et. al., *Report on Grenada 21st Round of the Universal Periodic Review - Jan/Feb 2015* (2014), para. 14.

²⁴ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 127.

²⁵ “Ali assents to bill to decriminalise cross dressing”, *Stabroek News*, 15 August 2021.

²⁶ “Referendum to decide legality of homosexuality”, *Guyana Chronicle*, 20 April 2017; “Rights Groups believe referendum on anti-gay laws will only fuel more homophobia”, *News Source Guyana*, 24 May 2016.

²⁷ Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts*, (2019), 18.

Examples of Enforcement

It was reported that a gay man—apparently in 2014—was forced to strip naked and stand on a counter for hours by police when he went to the station to lodge a formal complaint against another person.²⁸



Jamaica

Criminalising Provisions

Section 76 of the *Offences Against the Person Act* (1864) establishes that those convicted of “the abominable crime of buggery [...] shall be liable to be imprisoned and kept to hard labour for a term not exceeding [10] years”. An attempt to commit such “abominable crime” is punished under Section 77 with imprisonment of up to seven years, with or without hard labour. Article 79 criminalises “gross indecency” between male persons in public or private, and establishes a penalty of imprisonment of up to two years, with or without hard labour.

In 2009, Jamaica introduced a new *Sexual Offences Act* (2009) which establishes the rules for the “Sex Offender Register and Sex Offender Registry” at Sections 29 to 35 (operative as of October 2011). Under this law, anyone convicted of a “specified offence” must be registered as a “sex offender” and comply with specific obligations. Articles 76, 77 and 79 of the *Offences Against the Person Act* (1864) fall under the category of “specified offences” per Article 2 of the law’s First Schedule.²⁹

Enforcement Overview

Between 1999 and the time of publication, ILGA World notes at least nine known cases of criminal enforcement or targeting by police as a result of criminalising legislation, though violence from police that falls outside the scope of this report is believed to also be widespread.

The use of criminalising laws by police to extort money from or otherwise threaten those suspected of being gay or lesbian is well-documented, which highlights the risks to safety and dignity that such provisions expose SOGIE persons to, even if arrests or prosecutions are rare.

Criminalising laws are also reportedly used by landlords to justify discrimination, by local media to publish hostile content, and by community members and religious

leaders to justify violence against SOGIE persons. Reports on extrajudicial or community violence against trans women, gay men, and other visibly queer persons, are widespread.³⁰

Though the law does not directly reference transgender people, transgender women and “homosexuals” are often conflated. Thus, gender-diverse Jamaicans, especially trans women and gender diverse men who are publicly visible, are most likely to suffer violence and discrimination, as a result of their gender expressions.³¹

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Police are widely considered to be unreliable in dealing with such violence, either turning a blind eye to or actively exacerbating violence.³² In 2013 Human Rights Watch interviewed a foot patrol police officer in Montego Bay who said he felt that SOGIE people were criminals who deserved the violence they experienced. Another officer from Montego Bay told Human Rights Watch that “gay men need to just stop being gay [...] They are just greedy”.³³

Prominent political figures also regularly espouse homophobic views, such as in 2009 when then-Prime Minister, Bruce Golding, publicly stated that:

We are not going to yield to the pressure, whether that pressure comes from individual organisations, individuals, whether that pressure comes from foreign governments or groups of countries, to liberalise the laws as it relates to buggery.

However, several notable political leaders, such as a nominee for Prime Minister in 2011, the Mayor of Kingston in 2015, and Prime Minister Andrew Holness in 2018, have spoken out against the violence and discrimination faced by SOGIE persons.³⁴

Perhaps as a result of statements such as these, some limited sensitisation among the police, and a dearth in verifiable cases of criminal enforcement, Jamaica is often

²⁸ Human Dignity Trust, *Country Profile: Guyana* (2021).

²⁹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 128.

³⁰ Human Rights Watch, *Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic* (2004); Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT people in Jamaica* (2014), 10; Human Dignity Trust, *Country Profile: Jamaica* (accessed 2021).

³¹ Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT people in Jamaica* (2014), 10.

³² Human Rights Watch, *Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic* (2004); Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT people in Jamaica* (2014), 33.

³³ Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT people in Jamaica* (2014), 33.

³⁴ Human Dignity Trust, *Country Profile: Jamaica* (accessed 2021).

not considered an “unsafe” country of origin for asylum seekers. But the unwillingness of State actors to decriminalise and address the ongoing violence, remains a pressing concern. In February 2021 the Inter-American Commission on Human Rights released its 2019 judgement in which it found that the government of Jamaica had “violated the rights of a gay man and a lesbian” who fled the country after facing mob and police violence.³⁵ A few months thereafter, however, in October 2021, a man who had lived in the United States for 16 years lost his appeal against deportation as he could not prove he would face “State-sanctioned persecution” in Jamaica over his sexual orientation. One judge in the appeals process also claimed that “police officers have protected gay people from violence”, as justification for the decision.³⁶

Examples of Enforcement

A young gay man was arrested in **1999** after a third party accused him of having sex with another man. Police beat him with a stick and chanted repeatedly that gay people should be killed. When he was released into the custody of his mother, they loudly informed those in the vicinity of the charges against him. This act of “outing” resulted in repeated targeting and violence from members of the public.³⁷

In **December 2002** police arrested two women when they went to a common couples’ “hook-up” spot for New Year’s Eve celebrations. Other couples were present, but police only detained the “dirty lesbians” and threatened to charge them with “indecent and lewd exposure” if they didn’t pay a bribe. When the women refused, the police took them to the Portmore Police Station. At the station, the superintendent told the women that they were not going to be charged, but that their names would be recorded in a register.³⁸

In **2004** Human Rights Watch interviewed a young man who, because of his behaviour and manner of speech, was taken into custody on suspicion of being gay. They threatened to charge him with “gross indecency”, but when he pointed out that he was not engaged in sexual acts, merely talking to his friends in public, they angrily threatened to lock him up so that other detainees could rape him, and later charged him with “obstructing police on duty and resisting arrest”.³⁹

Also in **2004**, three friends were arrested by police for sitting together in a car. They were taken to a local police station and threatened with charges of “buggery”, but

eventually released. Many men in Jamaica have been reportedly harassed or mocked by police for being in the same car as other men, though this does not always result in arrest or the threat thereof.⁴⁰

In **2010**, police threatened to arrest two lesbian women in Greater Portmore when they were found together in a parked car. They paid a bribe of 5,000 Jamaican dollars (USD 45) to be allowed to walk free.⁴¹

In **October 2011** police in the capital, Kingston, arrested two men who were found allegedly having sex in car parked in a secluded spot. Police videotaped the arrest and demanded a bribe to let them go, but as the pair were unable or unwilling to pay they were made to drive their car to the police station and charged with “gross indecency and buggery”. While in detention, other inmates reportedly verbally abused and beat them, with police doing nothing to intervene. J-FLAG, a local organisation, managed to secure access to a lawyer for the men, but they were only released on bail after two weeks, with a trial date set for three months thereafter. On the advice of the lawyer, the pair accepted a plea deal for “gross indecency” instead of going to court, and opted thus to pay a fine of 250,000 Jamaican dollars (USD 2,225) rather than spend six months in jail.⁴²

In **September 2012** police approached two men who were sitting together in a parked car on suspicion that they were gay. They demanded a bribe of over 50,000 Jamaican dollars (USD 445) to permit the men to walk free without being arrested.⁴³

In **January 2013** police detained a gay man after he was violently assaulted by a homophobic mob in St. Anne. Police beat him in the vehicle en route to the station, and held him in handcuffs overnight. He was released the following morning and simply told to go to church.⁴⁴

In **April 2013** a gay Jamaican citizen who had returned from his home in Canada was travelling through the country with a local friend when the pair were approached by police. The friend had gone to a nearby bush to urinate out of sight of the public but police accused the two of having sex in the bushes, with one officer saying “it’s my word against yours”. Officers threatened to detain the pair and confiscate the Canadian resident’s passport, so the men opted instead to pay a bribe of 20,000 Jamaican dollars (USD 180) to walk free.⁴⁵

³⁵ “International court finds Jamaica violated rights of gays”, ABC News, 17 February 2021.

³⁶ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁷ Human Rights Watch, *Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic* (2004).

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

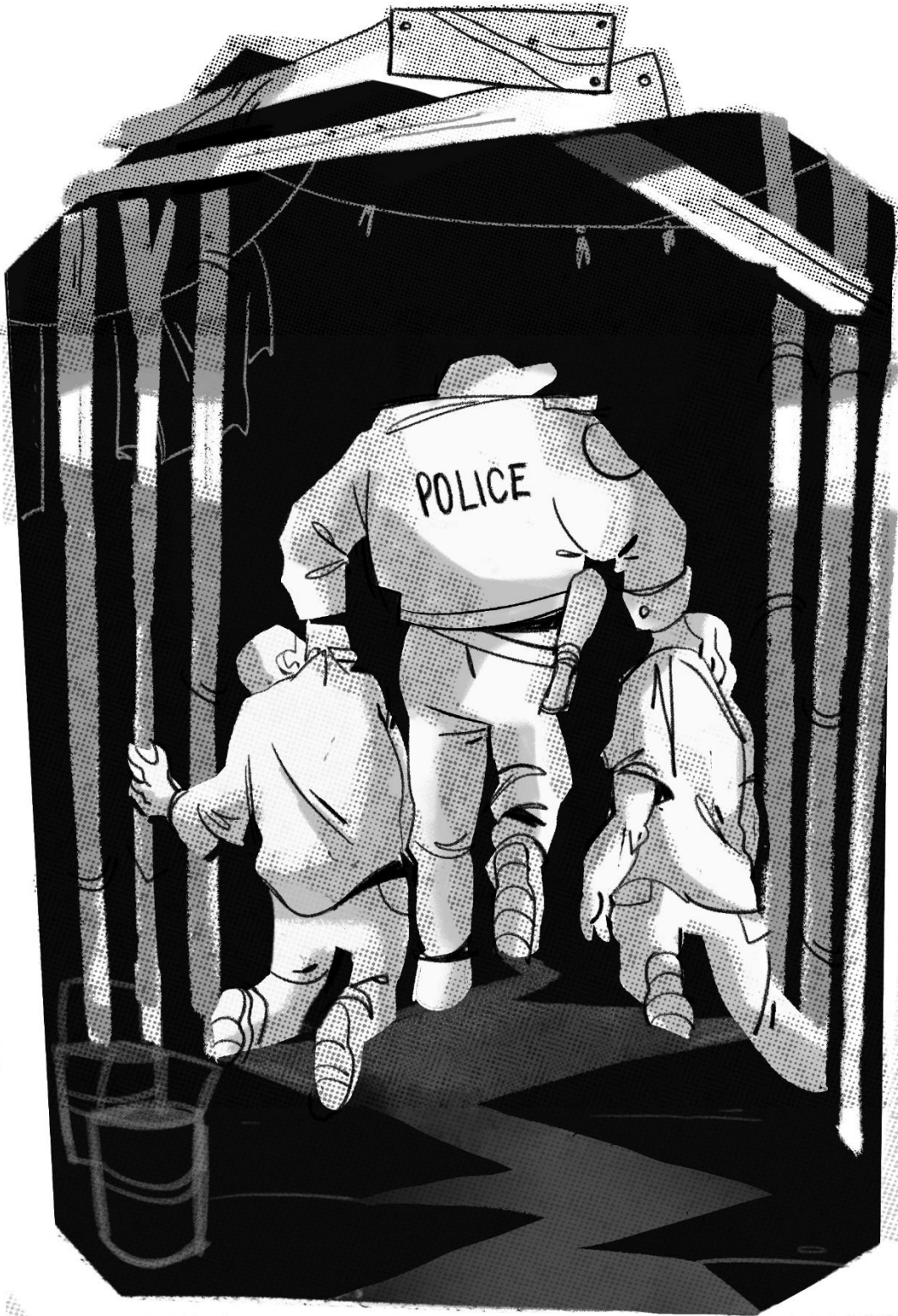
⁴¹ Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT people in Jamaica* (2014), 37.

⁴² *Id.*, 38.

⁴³ *Id.*, 36.

⁴⁴ *Id.*, 34.

⁴⁵ *Id.*, 36-37.



Asia

21 out of 42 UN Member States in Asia have legal frameworks explicitly criminalising consensual same-sex sexual acts and diverse gender expressions, according to previous ILGA World Reports.¹ Additionally, one State (Indonesia) has such provisions in several of its subnational jurisdictions.²

There is full legal certainty that the death penalty exists as a prescribed punishment for consensual same-sex sexual activity in Brunei, Iran, Saudi Arabia and Yemen. Indications are that Pakistan, Qatar and the United Arab Emirates may also be able to enforce the death penalty under existing legal frameworks.³

ILGA World is pleased to note significant progress in the protection of SOGIESC human rights across Asia in recent years, with both India and Bhutan decriminalising consensual same-sex sexual activity in 2018 and 2021 respectively.⁴ On India's part, the decriminalisation of

same-sex acts came in the form of the repeal of Section 377 of the country's Penal Code. It is notable that other Asian countries such as Bangladesh, Myanmar, Pakistan and Singapore still retain a Section 377 in their own statutes—a holdover from British colonial rule.

An acknowledgement of those positive trends which give our communities hope and the historical external origins of some remaining legislation, however, cannot overshadow the very real and ongoing human impact that criminalising legislation and State-backed targeting have in these jurisdictions. In this report, instances of *de jure* criminal enforcement have been identified from 20 of the criminalising countries (including Indonesia) over the course of the last two decades. Further, cases of apparent *de facto* enforcement have been identified in seven countries not typically considered to be criminalising jurisdictions.

Afghanistan

Criminalising Provisions

At the time of writing, the extent to which the legal frameworks of the Islamic Republic of Afghanistan were still in force remained unclear.

Sources have indicated that the new Taliban regime will enforce Sharia law, but thus far no specific information has yet been released as to how this will translate into enforceable legislation, if at all. In August 2021, senior commander Waheedullah Hashimi broadly explained how the government would be run and indicated that a council of Islamic scholars would determine the new legal system. The new government, according to Hashimi, "will be guided by Islamic law, not the principles of democracy".⁵

Prior to the Taliban takeover, consensual same-sex sexual acts were explicitly criminalised in 2018. The

Penal Code previously in force did not do so with explicit terms, but Article 427 imposed a "long imprisonment" term for the offence of "pederasty".⁶

Enforcement Overview

Between 1998 and 2021, ILGA World has noted seven examples of apparent enforcement or targeting.

Most of the cases identified by ILGA World were enforced by the Taliban during the extremist group's *de jure* governance in the 1990s, while the group had only partial control of the Afghan territory, and after the *de facto* return of the Taliban government in 2021. The relative calm of the situation under the central US-backed government may give a false sense that it was a safer and more accepting period, but the UK Home Office reported in 2020 that the "lack of appetite to

¹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Leles, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 113.

² *Id.*, 129.

³ *Id.*, 38.

⁴ "India's Supreme Court Decriminalizes Homosexuality in a Historic Ruling for the LGBTQ Community", Time, 6 September 2018; "King's assent leads Himalayan nation of Bhutan to become latest country to decriminalise same-sex activity", *Human Dignity Trust*, 18 March 2021.

⁵ "Explainer: The Taliban and Islamic law in Afghanistan", *Al Jazeera*, 23 August 2021.

⁶ "Pederasty" refers to intercourse between males regardless of age. The fact that paedophilia or sexual relations with persons under the age of consent fell under subsection 2(a) of article 427 further confirmed this. Termining sexual acts between adult men "pederasty" has previously not been uncommon. This occurred, for example, in the translations of the Criminal Codes of Albania (1977) and Latvia (1933), and in the old Russian legal tradition a "pederast" usually referred to a male who had anal intercourse with another male, regardless of age. See: ILGA World: Daniel Ottosson, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults* (2010), 23.

prosecute did not indicate an increased openness to homosexuality". Indeed, social stigma and violence remained, even in regions outside of Taliban control.⁷

A Taliban Senior Commander explained that a council of Islamic scholars guided by Islamic law would determine the new legal system in Afghanistan

As reflected below, there is evidence showing that teenagers have been arrested and charged with *liwat* (sodomy) by the central government. In 2017, a report found that at least 16 boys in the Kabul Juvenile Detention Centre were imprisoned for "moral crimes", mostly (though not exclusively) for "sodomy". The report further states that children can end up in adult prisons and that, among the 16 cases documented, five boys were given more than 24 months in prison.⁸

With the historical instability of the unified State government in Afghanistan, the social and legal situations of sexual and gender diverse communities have often been quick to shift and difficult to ascertain with certainty. However, the death penalty under Sharia law has remained a legal possibility throughout much of Afghanistan's recent history, and statements from the Taliban indicate an intention to resume this practice nationwide. Shortly before the group retook Kabul a Taliban judge confirmed to the German newspaper *Bild* that gay men would be killed under their regime, either by stoning or wall toppling.⁹

ILGA Asia and 138 supporting organisations showed concern about reports of the Taliban already implementing their strict version of Sharia law by August 2021 and expressed fear that LGBTIQ people will be further criminalised and persecuted.¹⁰

Examples of Enforcement

In **February 1998** three men in Kandahar were sentenced to death by the Taliban: two for "sodomy" and one for "anal rape". They had a large wall pushed onto them by a tank. Only one of the men managed to survive and was sent to prison, where he served six months before fleeing to Pakistan.¹¹ This case is not listed in the tally of examples of enforcement above as some sources

indicate that all three men were engaging in activities with minors, but it is outlined here as a known example of an execution for same-sex acts under the rule of the Taliban. It also serves to highlight the difficulty in identifying consensual same-sex sexual activity under legal frameworks that conflate such acts with rape.

It was reported on **24 March 1998** that two young men, each over the age of 18, were executed by the Taliban in the province of Herat. News of the execution came from the Taliban-controlled *Voice of Sharia* radio station, which reported that the men were executed for sodomy, after having confessed, by having a wall bulldozed onto them.¹²

It was reported in **September 2004** that an American acting as an advisor to the newly elected government's Finance Ministry was arrested by Afghan officials for engaging in same-sex sexual activity in exchange for money with a local 18-year-old. Further details regarding legal action are not known.¹³

According to the Afghanistan Independent Human Rights Committee (AIHRC) in **2006**, police arrested many teenagers and children after catching them having sex with adults. These minors were not considered by law enforcement to be victims of rape or trafficking, and were rather incarcerated as adults for same-sex sexual activity. One source alleges that Afghan authorities, supported by the US-led military coalition, were still jailing teenagers convicted of homosexuality in a Kandahar prison, despite the end of the Taliban government. No further details could be verified at the time of publication.¹⁴

In **2015**, the extrajudicial sentencing of three gay men to death by "wall toppling" imposed by a parallel justice court was reported by the UN Assistance Mission in Afghanistan. Having survived the process, a 17-year-old accused of sodomy was allowed to live.¹⁵

On **15 August 2021**, as the Taliban gained control over the capital, Kabul, in the wake of the withdrawal of US troops from the country, a young gay man was beaten and beheaded outside his home. The boyfriend of the victim stated that "the Taliban said this is what we do to LGBT+, to set an example", and claimed there was a dedicated branch of the Taliban going "street by street" to find individuals of non-normative sexual orientations, gender identities or gender expressions. This comes after a Taliban judge, Gul Rahim, stated to media that gay men would be killed under their regime.¹⁶

⁷ "Afghanistan LGBT community living under threat of death", BBC, 7 October 2016; UK Home Office, *Country Policy and Information Note, Afghanistan: Sexual orientation and gender identity or expression* (2020), para 4.2.2; "LGBTQ Afghans fearing for their lives", *Attitude*, 26 August 2021.

⁸ Samuel Hall, *Hope Behind Bars - The Boys of the Kabul JRC* (2017), 22-23.

⁹ "LGBTQ Afghans fearing for their lives", *Attitude*, 26 August 2021.

¹⁰ "Joint Statement on Afghanistan: Protect Women, Children, LGBTIQ & Other Vulnerable Persons", *ILGA Asia*, 18 August 2021.

¹¹ United States Department of Justice, *Afghanistan: Sexual Minorities, REF 270209* (2009), 7.

¹² "Afghanistan Kills 2 for Sodomy", *News Planet*, 24 March 1998. Archived in: GLAPN.org; United States Department of Justice, *Afghanistan: Sexual Minorities, REF 270209* (2009), 8.

¹³ "American Arrested in Afghanistan on Suspicion of Homosexuality, Soliciting, Officials Say", *Pak Tribune*, 1 September 2004. Archived in: GLAPN.org.

¹⁴ United States Department of Justice, *Afghanistan: Sexual Minorities, REF 270209* (2009), 8-9.

¹⁵ United Nations Assistance Mission in Afghanistan, *Afghanistan Annual Report 2015: Protection of Civilians in Armed Conflict* (2015), 51.

¹⁶ "LGBTQ Afghans fearing for their lives", *Attitude*, 26 August 2021.

A gay man interviewed in **August 2021** claimed: “one of my relatives was killed by the Taliban last week because he was gay”. Further details are not known.¹⁷

Another young gay man stated in **2021** that he was trying to evade the Taliban by hiding in a building with his family near Kabul. They had initially fled his home province after two young gay men were shot after an informant told the Taliban that they were in a relationship.¹⁸

Despite this lack of information, ILGA World has identified six examples of enforcement between 2013 and 2021.

This case underscores the threats faced by refugees fleeing countries considered “safe” due to a lack of available information on enforcement

Bangladesh

Criminalising Provisions

Section 377 of the [Penal Code \(Act XLV of 1860\)](#) criminalises “unnatural offences”. This is defined as “carnal intercourse against the order of nature with any man, woman or animal” and penetration is “sufficient to constitute the carnal intercourse”. This crime carries the potential punishment of imprisonment for life.¹⁹

Enforcement Overview

Besides Section 377 of the Penal Code other legislation has reportedly been used to harass, arrest and charge suspects since at least 2014.²⁰ Social stigma and vigilante violence also remains a significant issue, according to activists from Bangladesh interviewed by ILGA World.

In 2019, the UN Committee Against Torture expressed concern about reports of violence against lesbian, gay, bisexual and transgender individuals by law enforcement officials, which is facilitated by the criminalisation of consensual same-sex sexual relations as “unnatural behaviour”.²¹

In July 2021, a gay asylum seeker was sentenced to 12 months in prison for “illegally” trying to stay in the UK due to the threat of life imprisonment if he was deported back to Bangladesh.²² His case, paired with the examples of enforcement outlined below, underscores the potential threat faced by refugees fleeing countries that are generally considered “safe” due to a lack of publicly available information on enforcement.

Examples of Enforcement

Two girls were arrested on **23 July 2013** in the capital city of Dhaka for eloping and marrying each other in a symbolic Hindu ceremony. The younger girl’s father reported her missing to police, and though she was a minor she was also held, and both were threatened with life imprisonment for their same-sex relationship. It is not known from reporting whether any sexual activity took place.²³

In **April 2016** during the Bengali New Year celebrations, four individuals participating in an unauthorised Pride event at Dhaka University were arrested. This came as an apparent response to threats of violence against the Pride event from religious extremists, and police officials said that those who were detained would be released later the same day.²⁴

On **19 May 2016** the Rapid Action Battalion (RAB), a special forces branch of the Bangladeshi police, arrested 26 gay people from the Atibazar Shady Community Center in Keraniganj, near Dhaka. Later, a case was registered against them under the Narcotics Act and they were also remanded in police custody.²⁵

In **May 2017**, the RAB was mobilised to raid a gathering in Dhaka. Between 20 and 30 men were arrested, had lubricant and condoms confiscated, and were outed in the media as gay. They were accused of holding a “homosexual party”. All were eventually released and granted bail after one week, though a narcotics case was opened against them due to marijuana and other drugs being found at the scene.²⁶

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 129.

²⁰ “Sexual minorities being harassed”, *The Daily Star*, 12 December 2014; Kaleidoscope Trust, *Speaking Out 2015: The Rights of LGBTI People Across the Commonwealth* (2015), 48.

²¹ Committee against Torture, *Concluding observations on the initial report of Bangladesh*, CAT/C/BGD/CO/1 (2019), para. 23.

²² ILGA World has redacted this entry for the safety of the individual in question, should he be deported at a later date. For more information, please contact ILGA World.

²³ This entry has been redacted for the safety of those in question. For more information, please contact ILGA World.

²⁴ “Four revellers held after Bangladesh bans ‘rainbow rally’”, *Daily Mail*, 14 April 2016.

²⁵ Information supplied by Noboprobhaat.

²⁶ Inclusive Bangladesh; “Bangladesh ‘Gay Party’ Raid Flouts Privacy Rights”, *Human Rights Watch*, 25 May 2017; “Bangladesh: 28 men suspected of being gay freed”, *Amnesty International*, 11 August 2017; ILGA Asia, *An Unsafe Haven: Challenges of Bangladeshi LGBTIQ people inside and outside the community* (2021), 10.

On **15 September 2020** an individual identified in local media as a “well-known woman” who has been identified by local activists as a transgender man was arrested for homosexual activity. Some media outlets have claimed the accused had a habit of “forcing girls into homosexuality”, and it is unclear to what degree this is the interpretation of detractor media, or if some form of coercion or blackmail was involved.²⁷

In late **October 2020** the RAB arrested two young lesbian women in Patuakhalai in a raid. The pair met online and fled their homes to live together in peace, but the family of one of the pair alerted police to an “abduction” and both were taken in for investigation.²⁸



Criminalising Provisions

The Sultanate of Brunei runs a dual or hybrid legal system, with common law and Syariah (Sharia) law running in parallel to each other.²⁹

Under Article 82 of the [Syariah Penal Code Order \(2013\)](#) (SPCO), the death penalty can be imposed for acts of *liwat* (sodomy). Section 92(3) criminalises *musahaqah* (lesbian acts), which can result in a fine, imprisonment for up to 10 years, whipping, or a combination thereof.³⁰

Section 377 of the secular [Penal Code](#) (Cap. 22 of 1951) criminalises “unnatural offences”, defined as “carnal intercourse against the order of nature with any man, woman, or animal”. In 2017, the [Penal Code \(Amendment\) Order \(2017\)](#) increased the punishment for a conviction under Section 377 of the secular Penal Code to imprisonment for a term not exceeding 30 years and whipping. Previously, the punishment was imprisonment for up to 10 years and a fine. A Bruneian news outlet reported that the amendments were drafted “to further protect children, young and vulnerable persons from sexual exploitation and to act as a deterrent to those willing to commit such offences”.³¹

With regard to criminalisation of gender expression, Section 198 of the [Syariah Penal Code Order \(2013\)](#) establishes that “any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable excuse” shall be liable on conviction to a fine and/or imprisonment of up to three months. Additionally, the same section stipulates

that any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place “for immoral purposes” is guilty of an offence and shall be liable on conviction to a fine not exceeding 4,000 Brunei Dollars, imprisonment for a term not exceeding one year or both”.

Enforcement Overview

The Syariah Penal Code Order (SPCO) had been adopted in multiple stages since 2013. The announcement that the SPCO would be fully implemented from April 2019 onwards drew negative reactions from the UN High Commissioner for Human Rights, UNAIDS, and the UN Population Fund (UNFPA). Several UN Special Procedures issued a joint-communication on 1 April 2019 urging Brunei to “revoke the Syariah Penal Code Order and to repeal it completely”. The Bruneian Minister of Foreign Affairs replied to this communication by affirming Brunei’s commitment to protecting human rights, and stating that the “Syariah criminal law system focuses more on prevention than punishment”.³²

In a 2019 media interview, a gay human rights defender who fled to Canada after being charged for publishing a social media post critical of the government noted that at the time no prosecutions for same-sex sexual activity had taken place under the new Syariah law, saying: “I’d hate to be the first gay man to be tried under the [new] system”.³³

Even if there is a *de facto* moratorium on the death penalty, the retention of such provision leaves room for the Sultan or one of his successors to lift the moratorium at virtually any moment

According to the Sultan of Brunei, the country has a “*de facto* moratorium on the execution of death penalty for cases under the common law”, which will “also be applied to cases under the SPCO which provides a wider scope for remission.” According to the government, no executions have been carried out since 1996, and ILGA World was unable to identify any evidence to the contrary. However, the retention of such a criminalising provision invariably contributes to heightened fear from and stigma against persons of diverse SOGIE, and leaves

²⁷ Information supplied by Inclusive Bangladesh.

²⁸ Information supplied by Noboprohaat; Inclusive Bangladesh.

²⁹ Human Rights Resource Centre, *Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN* (Indonesia: Human Rights Resource Centre 2015), 57; Ministry of Foreign Affairs (Brunei Darussalam), *Note 33/2019: Reply to Communication from Special Rapporteurs*, 7 April 2019, para. 3.

³⁰ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 130.

³¹ “Rape laws tightened in Brunei”, *Borneo Bulletin*, 29 July 2017.

³² OHCHR, OL BRN 1/2019 (2019); “Bachelet urges Brunei to stop entry into force of “draconian” new penal code”, *UNHCR Website*, 1 April 2019; “UN agencies urge Brunei to repeal new ‘extreme and unjustified’ penal code”, *UN News*, 4 April 2019; Ministry of Foreign Affairs (Brunei Darussalam), *Note 33/2019: Reply to Communication from Special Rapporteurs*, 7 April 2019, 1–2.

³³ “This Is What It’s Like to Be Gay in Brunei, Where Homosexuality Is Now Punishable by Being Stoned to Death”, *Time*, 5 April 2019.

room for the Sultan or one of his successors to lift the moratorium at virtually any moment.³⁴

ILGA World has identified at least two examples of enforcement in Brunei, both relating to the criminalisation of gender expression through provisions against “cross-dressing”. As in all other country entries, this number is likely only a small fraction of incidents. Formal reporting on the matter from the country remains limited. For example, a transgender teenager seeking asylum in Canada claimed that she “heard about two people fined and jailed for cross-dressing” in 2014, though no further details could be verified regarding the date of the incident, the identities of those arrested, the details of their punishment or the presiding authorities.³⁵ This dearth of information should not be taken to represent a lack of enforcement, but rather as a demonstration of the urgent need to conduct further research.

Examples of Enforcement

In 2015, a Bruneian civil servant was fined under the Syariah Penal Code for cross-dressing in a public place, with the prosecutor warning during proceedings that “if this is not dealt with, it can lead to the spread of social disorder such as homosexuality, free sexual relations, [and] drug abuse”.³⁵

It was reported on 16 August 2016 in a Bruneian news outlet that Religious Enforcement officials and members of the Brunei Royal Police Force “arrested a local man for wearing women’s clothes and improper conduct in a public area”.³⁶ No further details are known.

approximately eight years in prison for the crime of *liwat* (sodomy) and *musahaqah* (lesbian acts). The regulation applies to both locals and foreigners living in the province.³⁸

South Sumatra’s Provincial Ordinance on the Eradication of Immoral Behaviour classifies and penalises homosexual acts and anal sex performed by men as “immoral behaviour”.³⁹

Enforcement Overview

Though most jurisdictions within Indonesia do not explicitly criminalise persons on the basis of their real or perceived sexual orientations or gender identities, ILGA World noted 22 examples of both *de facto* and *de jure* criminal enforcement throughout the country between 2007 and 2021.

Indonesia’s size and inherent diversity has meant that several jurisdictions with varying levels of autonomy have been able to pass localised legislation relating to SOGIESC issues. Notably, the provinces of Aceh and South Sumatra have adopted their own anti-queer legislation, though such provisions exist in some form or another in many other provinces and cities. Local activists in Indonesia have informed ILGA World of the concerning trend of “creeping criminalisation” in a country increasingly leaning toward the conservative. Indeed, in 2020 in the city of Palembang, several queer couples were arrested but later released, because according to a local official, “Palembang does not yet have an LGBT Regional Regulation”.⁴⁰ It is perhaps telling from the official’s statement that it is taken as a given that such ordinances will be adopted in future.



Indonesia

Criminalising Provisions

Consensual same-sex sexual acts between consenting adults are not criminalised nationwide under the Penal Code. However, several provinces, cities, and districts prohibit same-sex intimacy through local ordinances. Currently, the provinces of Aceh and South Sumatra have criminalising provisions, along with the cities of Padang Panjang, Pariaman and Tasikmalaya, and the District of Banjar.³⁷

Articles 63 and 64 of Aceh’s Regulation No. 6 (2014) stipulate a punishment of 100 lashes and/or up to

Local activists have informed ILGA World of the concerning trend of “creeping criminalisation” in a country increasingly leaning toward the conservative

Criminalising provisions are not only used against people on the basis of same-sex sexual activity. Trans and gender-diverse people in Indonesia are also targeted on the basis of their gender expression and identity; notably under Islamic dress requirements in jurisdictions with Sharia provisions. In 2010 the head of the Wilayatul

³⁴ “Titah Of His Majesty Sultan Haji Hassanal Bolkiah Mu’izzaddin Waddaulah Ibni Al-Marhum Sultan Haji Omar ‘Ali Saifuddin Sa’adul Khairi Waddien, The Sultan and Yang Di-Pertuan Of Brunei Darussalam”, *Prime Minister’s Office Brunei Darussalam*, 5 May 2019; “”, *Human Rights Watch*, 22 May 2019. Brunei: New Report on Abusive Penal Code”, *Human Rights Watch*, 22 May 2019.

³⁵ *This entry has been redacted for the safety of those in question. For more information, please contact ILGA World.*

³⁶ “Crossdresser Detained in ‘Sepadu Cegah Jenayah’”, *BruDirect*, 16 August 2016.

³⁷ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 131-132.

³⁸ *Ibid.*

³⁹ *Id.*, 132.

⁴⁰ “There is no Regional Regulation yet, Gay Transgender Couples Netted in Raids Released”, *Inten News*, 6 February 2020.

Hisbah (the Islamic religious police force in Aceh province) said publicly of transgender women: "we consider them men, and they should dress accordingly".⁴¹

At the national level, the Ministry of Law and Human Rights stated in October 2021 that it was "still discussing at least 14 controversial issues or articles" in a proposed new Criminal Code Bill, this despite the Bill (which significantly curtails freedom of expression and association) being the cause for widespread anti-government protests and riots led by community groups and students across Indonesia in 2019. The criminalisation of adultery, cohabitation for unmarried couples, and same-sex acts, remain among the 14 issues still being considered for inclusion in the revised Bill.⁴²

In light of such attitudes by society, politicians and law enforcement, when individuals are targeted based on their SOGIE they reportedly face disproportionate levels of arbitrary detention, sexual abuse, violence in custody and other forms of discrimination.⁴³ For example, on 18 October 2006 a communication was sent to OutRight Action International (formerly IGLHRC) alleging that a gay activist was detained after participating in protests against a new hazardous waste dump being built by the government. While in detention prison staff and other inmates would regularly sexually abuse him, and mock him for his sexual orientation. Officials also refused to offer medical assistance for his tuberculosis or the injuries he received as a result of the ongoing homophobic attacks. After seven months in prison, he was released and began receiving medical treatment, but reportedly died three weeks later.⁴⁴ Given that this seems to be a case of personal prejudice rather than detention as a direct result of the activist's sexual orientation, it is not outlined in the Examples of Enforcement section below. However, multiple incidents recorded below further demonstrate the impact of prejudice on already-criminalised persons.

Notably, negative social attitudes also lead to persons of diverse sexual orientations, gender expressions and identities, being coerced by authorities, relatives, or social pressure more broadly, to engage in harmful and debunked "conversion therapies". In that vein, the Ministry of Social Affairs' Directorate of Social Rehabilitation for Social Problems and Victims of Human Trafficking reportedly operates a programme offering "rehabilitation" to persons classified as having "social dysfunction". Trans women are regularly categorised as such, allowing civil service police to arrest them in raids and send them to "psychosocial, mental, and spiritual guidance".⁴⁵

Examples of Enforcement

Sometime before **9 August 2007** an activist in Jakarta was arrested en route home after spending the day doing community health outreach. Police accused the activist of prostitution because of her gender identity as a 'waria' (a local term roughly analogous to "trans woman"), and detained her for five hours despite her pointing out that being trans was not illegal, and regardless of having documents with her to prove that she was an NGO worker. Her phone was confiscated, her headscarf ripped off, and she was denied food or water until she paid a bribe of 20,000 rupiah (USD 2), at which point she was released into the custody of the Civil Service, who knew her work and let her go.⁴⁶

On **21 September 2015** it was reported that West Aceh Sharia police arrested nine trans persons at a beauty salon after locals complained of a group of people possibly breaking local Sharia ordinances. Police checked their documents and found they were not in violation, but told them that if they wanted to keep dressing as women they should leave the jurisdiction and rather stay in their hometowns.⁴⁷

On **28 September 2015** the Wilayatul Hisbah (local Sharia religious police) arrested two young women for hugging in public in Banda Aceh, the capital of Aceh province. A police official told reporters that they "suspected the women were lesbians". Police held the pair, willing only to release them into the custody of their families rather than simply freeing them.⁴⁸

On **30 April 2017**, police in the city of Surabaya raided two hotel rooms after receiving a tip that they were being used by a group of gay men for sex. 14 men were arrested and police confiscated a number of condoms, pornographic videos, and cell phones, while detainees were forced to undergo HIV/Aids tests. Eight of the men were charged with violating the country's prohibition on pornography, with the two organisers of the gathering specifically facing up to 15 years' imprisonment for their role. No details of the fate of the group were verified, however.⁴⁹

On **21 May 2017** police in the capital city of Jakarta raided a "sex club", and arrested 141 men. Though most were released, 10 were charged with violating the country's anti-pornography legislation and were sentenced to three years' imprisonment.⁵⁰ Amnesty International called this incident an example of the "increasingly hostile" environment in the country for

⁴¹ Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts* (2019), 55.

⁴² "Thousands protest against new criminal code in Indonesia", *The Guardian*, 24 September 2019; "Bahas 14 Isu Kontroversial, Kemenkumham Sempurnakan RUU KUHP" [Discussing 14 Controversial Issues, Kemenkumham Completes the Criminal Code Bill], *CNN Indonesia*, 1 October 2021.

⁴³ IGLHRC (Outright Action International), *Human Rights Abuses Against Sexual Minorities in Indonesia* (2007).

⁴⁴ *Id.*, 4.

⁴⁵ Asia Pacific Transgender Network, *"There was no bencong in our ancestors, bencong is the devil": Conversion Therapy Practices in Indonesia* (2020), 5-8.

⁴⁶ *Id.*, 2.

⁴⁷ "20 LGBTI-related arrests in Egypt, Indonesia", *Erasing 76 Crimes*, 29 September 2015.

⁴⁸ "Indonesia: 'Suspected Lesbians' Detained", *Human Rights Watch*, 2 October 2015.

⁴⁹ "Indonesia: 'Gay Porn' Arrests Threaten Privacy", *Human Rights Watch*, 5 May 2017.

⁵⁰ "Jakarta police arrest 141 in raid on Indonesia gay club", *The Guardian*, 22 May 2017; "Indonesia sentences gay men raided in sex club to up to 3 years in jail", *Gay Star News*, 15 December 2017.

persons with diverse sexual orientations, gender identities and gender expressions, and urged the Indonesian government to amend its anti-pornography legislation to prevent the wrongful targeting of queer persons.⁵¹

On **17 May 2017** it was reported that two men were caught in bed together in a private domicile by a vigilante group in Aceh province, and subsequently sentenced to 85 lashes each in a public caning ceremony in the capital. Around 2,000 spectators came to see the public punishment, jeering and shouting that the men need to be hit harder. At least one of the men had his punishment ended at 83 strokes rather than 85, when authorities deemed him to be at his physical limit.⁵²

On **8 June 2017** police in an unknown region of Indonesia arrested five “suspected lesbians” and ordered their parents to supervise them as part of the conditions for their release. Police further shared a video of the raid and gave the names of the five women to reporters.⁵³

On **2 September 2017** police raided the homes of 12 “suspected lesbians” in West Java province’s Tugu Jaya village. This was apparently in response to complaints from local Islamic youth groups and religious leaders that the women’s cohabitation was “against the teachings of Islam”. The details of the women were recorded and they were given three days to vacate the jurisdiction. Authorities justified the forced eviction on the basis that “their presence had created public disturbance in the area”. In a 2013 report on Indonesia, the UN Special Rapporteur on the right to housing noted a pattern of forced evictions of LGBT people in the country.⁵⁴

According to Amnesty International, a sauna in Jakarta was raided on the evening of **6 October 2017** under suspicion that a “gay sex party” was taking place. 51 people, made up of both Indonesian nationals and foreigners, were detained. Most were released the following day though five employees, as well as the owner who was not initially caught in the raid, were charged with “providing pornography and prostitution services”. Amnesty International called on the government of Indonesia to amend the legislation to prevent the ongoing targeting of persons of diverse sexual orientations under provisions against pornography.⁵⁵

On **27 January 2018**, North Aceh police and the Wilayatul Hisbah raided five hair salons, resulting in the arrest of 12 trans women, referred to as ‘*waria*’ in some reports. All of those detained were also members of the local SOGIESC advocacy group, *Putroe Sejati Aceh*. They were stripped, had their hair shaved, and forced to undergo gruelling military-style training to make them “manlier”, under threat of further punishment. Police also published images of the humiliating arrest and their families were not allowed to visit them. By **30 January** all had been released without charge.⁵⁶

In **March 2018** a vigilante group in Aceh raided a hair salon, handing over two men and two trans women to the local hisbah religious police. They were accused of same-sex sexual activity and were to be held in police custody until they could stand trial in a Sharia court, though no details on whether such a trial took place were reported.⁵⁷

On **13 July 2018** two men accused of engaging in same-sex sexual activity received 87 lashes each in a public caning ceremony in the city of Banda Aceh, in front of a large, jeering crowd. This, despite prior instruction from the Governor of Aceh that such punishments be meted out privately within the local prison. Along with the two men, 13 people, including five women, were caned for various infractions such as adultery and drunkenness after being approved by medical practitioners as being healthy enough to withstand the punishment.⁵⁸

In **September 2020**, nine men were arrested in Jakarta following a raid on a private party and charged under Article 296 of the Penal Code (committing or facilitating obscene acts with another person) and anti-pornography laws.⁵⁹

In **October 2020**, the Semarang Military Court sentenced a soldier to one year’s imprisonment and dismissal from military duty for having same-sex intercourse.⁶⁰ In the **same month**, a police officer was demoted and made to undergo “special training” for allegedly having participated in same-sex sexual activity, as the officer’s “sexual preference was deemed as a despicable act”.⁶¹

A **2020** report by the Asia Pacific Transgender Network (APTN) identified at least one trans woman who was arrested in a raid on her village by civil service police.

⁵¹ “Indonesia: Government exploiting pornography law to target LGBTI community”, *Amnesty International*, 22 May 2017.

⁵² “Indonesia’s Aceh: Two gay men sentenced to 85 lashes”, *BBC News*, 17 May 2017; “Indonesia: public caning of two men for gay sex was ‘sickening spectacle’”, *Amnesty International*, 23 May 2017; “Gay man caned in Indonesia as crowd chants ‘hit him harder’”, *Vice*, 23 May 2017.

⁵³ “Indonesia: Stop Raids on Homes of ‘Suspected Lesbians’”, *Human Rights Watch*, 5 September 2017.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ OHCHR, UA IDN 1/2018 (2018); Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts* (2019), 55.

⁵⁷ “Four detained in Indonesia’s Aceh for alleged gay sex, face 100 lashes”, *Reuters*, 3 April 2018; Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts* (2019), 55.

⁵⁸ “Gay men, adulterers publicly flogged in Aceh, Indonesia”, *CNN*, 15 July 2018.

⁵⁹ “Indonesia: gay partygoers face 15 years in prison”, *Outnews Global*, 4 September 2020; “Police lambasted for targeting LGBT community in raid in Jakarta”, *The Jakarta Post*, 5 September 2020.

⁶⁰ “Indonesian military imprisons, dismisses soldier for having same-sex intercourse”, *Asia One*, 16 October 2020; “TNI Threatens Action by Soldiers Who are LGBT Practitioners”, *Republic*, 18 November 2020.

⁶¹ “Indonesian Police Officer Convicted Over LGBT Issue Faces Demotion”, *Tempo.co*, 21 October 2020.

Though details are unclear, it appears she was eventually released, but had to attend a lecture at the police station in which a speaker told her and other gender-diverse detainees that “there was no *bencong* in this world, there are no *waria*.⁶² There was no *bencong* in our ancestors, *bencong* is the devil, these are all, like that”.⁶³

In early 2021 it was reported that two gay men had been arrested in Aceh province on suspicion of being a couple, and of having engaged in consensual sexual acts with one another. The pair were subjected to flogging as punishment. Media indicated that each of the two received around 80 lashes.⁶⁴

In April 2021 it was reported that two men, alleged to have been “making out” in a car in the city of Palangka Raya, were arrested. A police patrol appears to have only arrested the two men after a search of their belongings verified that the accused were gay. This, according to local reports, came in the form of erotic messages on their cell phones, and evidence of both being part of a local SOGIESC community group.⁶⁵ An officer who took part in the arrest described the relationship between the two men as “illicit”, though prior to this incident ILGA World had no record of this part of Indonesia (Central Kalimantan province) formally criminalising consensual same-sex sexual activity.

It appears that in May 2021 nine gay men were sentenced to four and five years’ imprisonment. The previous year they had been arrested for allegedly breaching the country’s Covid-19 pandemic prohibitions on gatherings, but were later accused of holding a “gay sex party” and charged by the court with breaking “anti-pornography” laws.⁶⁶

In Banda Aceh the Civil Service Unit and Wilayatul Hisbah raided a massage parlour on suspicion that it was being used for illegal sexual activity, according to a report from local media on 6 June 2021. The place was apparently known by authorities to employ trans women, but the raid was authorised only after they were tipped off that a man had entered the premises (with the implication then that he was there for sex with persons perceived by the State to also be male). A “same-sex couple” (likely the cis man and a trans woman) were found in their underwear and detained.⁶⁷

On 1 August 2021 a soldier was tried before a military court in Balikpapan (East Kalimantan province) and sentenced to seven months in prison for participating in consensual same-sex sexual acts. This is prohibited in the Indonesian armed forces, and when intelligence services uncovered the soldier’s activity, he was detained and tried for disobeying direct orders.⁶⁸

The previous month in Aceh Province, a Naval officer allegedly engaged in same-sex sexual activity was discharged from the Navy and sentenced to five months in prison for “deliberate disobedience”,⁶⁹ and a soldier from East Java province was sentenced to six months, with the Surabaya Military High Court upholding the sentence at his appeal trial in October 2021.⁷⁰



Criminalising Provisions

Under the [Iran Islamic Penal Code](#) (2013), the death penalty can be imposed for the acts of *liwat* (sodomy), *tafkhez* (rubbing penis between thighs or buttocks), and *musahiqeh* (lesbian sex). Article 237 also criminalises “homosexual acts of a male person”, which includes “kissing or touching as a result of lust”. This is punishable by 31 to 74 lashes.⁷¹

Even though “cross-dressing” is not specifically prohibited by the Penal Code, Article 638 of the Fifth Book of Ta’zirat, states that “whoever commits a religiously prohibited act in the public will be sentenced to a prison term of ten days to two months, or flogging not to exceed 74 lashes, in addition to the penalty prescribed for the prohibited act itself”. According to the Iran Human Rights Documentation Center, even if the specific act is not punishable by law, if the act “injures public chastity”, a person committing such an act will be sentenced to a prison term of ten days to two months or flogging of up to 74 lashes.⁷²

⁶² *Bencong and waria are both local terms, often used derogatorily, to refer to trans women or persons of feminine gender expression.*

⁶³ Asia Pacific Transgender Network, “*There was no bencong in our ancestors, bencong is the devil*”: *Conversion Therapy Practices in Indonesia* (2020), 8.

⁶⁴ “*Indonesian gay couple whipped for Sharia-banned sex*”, *New Indian Express*, 30 January 2021.

⁶⁵ “*2 gay men caught by police making out in a car in the dark of Palangka Raya stadium*”, *Voi (Indonesia)*, 14 April 2021.

⁶⁶ “*Prisión para 9 hombres por organizar una fiesta gay en un hotel en Indonesia*” [Prison for 9 men for organizing a gay party at a hotel in Indonesia], *World News Platform*, 13 May 2021.

⁶⁷ “*Hanya Pakai Celana Dalam, Pasangan Sesama Jenis di Aceh Digerebek Satpol PP saat ...*” [Wearing only panties, same-sex couples in Aceh were raided by Satpol PP when they were alone in their room], *Tribun News*, 6 June 2021.

⁶⁸ “*Anggota TNI di Kaltara Dipecat dan Dipenjara karena Terbukti Hubungan Sejenis*” [TNI Members in Kaltara Fired and Imprisoned for Proving Same-sex Relationships], *Detik News*, 1 August 2021; “*7 maanden cel voor Indonesische soldaat omdat hij seks had met andere man*” [7 months in prison for Indonesian soldier for having sex with another man], *VRT*, 2 August 2021.

⁶⁹ “*Terlibat Hubungan Seks Sesama Jenis, Oknum TNI di Aceh Dibui 5 Bulan*” [Involved in same-sex sex, TNI personnel in Aceh jailed for 5 months], *DetikNews*, 7 July 2021.

⁷⁰ “*Indonesian soldier gets 6 months in prison over gay sex*”, *Coconuts (Indonesia)*, 6 October 2021.

⁷¹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 131.

⁷² Iran Human Rights Documentation Center, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 21.

Further, it is possible for activists to be convicted of “collusion against national security by normalising same-sex relations”.⁷³

Enforcement Overview

ILGA World has identified at least 50 examples of criminal enforcement between 1997 and 2021, though this number is undoubtedly higher.

The cases outlined in this report represent only a few of the latest examples in a trend going back at least to the start of the Iranian Revolution. The Iranian Human Rights Documentation Centre has indicated that between 1979 and 1981 nearly 750 people were executed, of whom 20 were killed for engaging in same-sex sexual activity.⁷⁴ More recently, a Monash University report indicated that between 1979 and 2020 at least 241 executions for same-sex sexual conduct took place, with at least 79 suspects killed between 2004 and 2020. The report notes, however, that a majority of the executions that occurred since 2004 involved allegations of sexual assault and rape.⁷⁵

Iran’s Penal Code does not recognise rape as a separate crime from consensual same-sex activity. Instead, the acts of heterosexual and homosexual rape are discussed as forms of adultery and sodomy respectively. In fact, rape is sometimes treated as a defence for the crimes of adultery and sodomy.⁷⁶ Naturally, this makes it difficult to differentiate cases of criminal enforcement on the basis of sexual orientation from cases of rape. This is further compounded by allegations put forward by some activists that the State expressly interprets consensual cases as rape in order to limit sympathy for those executed and mitigate backlash on the global stage.⁷⁷

Given then the sensitive issues at play when discussing both capital punishment and rape, ILGA World has opted to not include most reported incidents that involve accusations of sexual violence. This is part of the methodology for all countries in this report, but special mention is made here again given Iran’s specific socio-political circumstances. As a result of this, it cannot be said with *absolute certainty* that some cases of legitimate criminal enforcement have not been mistakenly excluded, nor can it be assured that none of the executions ordered by courts in this report are in fact for cases of non-consensual acts.

In 2019 Iran’s Foreign Minister, Mohammad Javad Zarif, reportedly defended Iran’s execution of suspected homosexuals as a “moral” issue, saying “these are moral principles concerning the behaviour of people in general. And that means that the law is respected and the law is obeyed”.⁷⁸ Indeed, the convergence of religious doctrine and the law into such “moral principles” is plain to see in the ways Iranian society refers to law enforcement. According to the Iran Human Rights Documentation Center, “morality police” is a general term used to describe government-backed forces that confront or arrest people for engaging in same-sex sexual activity, “dressing improperly”, “mixing with the opposite sex”, or any other behaviour deemed immoral or “un-Islamic”. These forces include the regular police, the Iranian Revolutionary Guard and the Basij (a volunteer militia force), among others.⁷⁹

“Morality police” is a term used to describe government-backed forces that arrest people for behaviours deemed immoral or “un-Islamic”

A 2020 report published by 6Rang found that the national police and the Basij regularly arrest, detain, and violently abuse individuals based on their SOGIESC. These actions are not necessarily based on sexual behaviour, but often on mere presumptions based on a victim’s appearance and demeanour. This includes lesbian and transgender women who disregard the mandatory wearing of the hijab or other gendered dress-codes.⁸⁰ The same report includes accounts of victims showing that family members often are the ones who reported them to the authorities for their gender expression in the first place.⁸¹

Discussions around issues of legal gender recognition for trans and gender-diverse persons, and SOGIE criminal enforcement, invariably make mention of the apparent contradiction of Iran’s staunch anti-LGBT actions and the fact that transgender Iranians can access gender-affirming medical interventions and legal gender recognition through the State. However, the situation is significantly more complex than this. As reported by

⁷³ While public courts deal with civil and criminal cases, revolutionary courts try “certain categories of offenses, including crimes against national security, narcotics smuggling, and acts that undermine the Islamic Republic”. See, Omar Sial and Farah Khan, *Update: The Legal System and Research of the Islamic Republic of Iran*, Hauser Global Law School Program (2019).

⁷⁴ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 109.

⁷⁵ Mai Sato and Christopher Alexander, *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty* (Monash University, 2021), 17-18.

⁷⁶ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 132-133.

⁷⁷ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 21; “Iran’s New Gay Executions”, *The Daily Beast*, 12 August 2014; “Iran: Hanging of teenager shows authorities’ brazen disregard for international law”, *Amnesty International*, 2 August 2016; “Iran publicly hangs man on homosexuality charges”, *The Jerusalem Post*, 26 January 2019; “Iran executes ‘high number’ of gays, says German intelligence”, *The Jerusalem Post*, 9 June 2020; Mai Sato and Christopher Alexander, *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty* (Monash University, 2021), 42-44.

⁷⁸ “Iran’s Top Diplomat Defends Killing Homosexuals”, *IranWire*, 12 June 2019.

⁷⁹ Iran Human Rights Documentation Center, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 25.

⁸⁰ 6Rang (Iranian Lesbian and Transgender Network), *Hidden Wounds: A research report on violence against LGBTI in Iran* (2020), 12.

⁸¹ *Id.*, 11.

Outright Action International, trans individuals wishing to express their gender identity face serious challenges. In 2014, the chair of the board of directors of the Iranian Society to Support Individuals with Gender Identity Disorder (ISIGID) confirmed that law enforcement agents often arrest trans and gender-diverse people for wearing clothes “of the opposite sex” and keep them in custody until their “disorder” is legally and medically established.⁸² The only way to potentially reduce the risk of being vulnerable to arbitrary arrest is to undergo gender confirmation surgery, a procedure only available to those found to be eligible by the Legal Medicine Organisation (LMO) and a family court.⁸³ This burdensome process is based on a 1986 *fatwa* issued by Ayatollah Khomeini, though it has been suggested by persons who advocated to the Ayatollah for legal gender recognition that his decree was based on a misunderstanding of gender identity and that he initially intended only for intersex persons to apply for legal gender recognition.⁸⁴ Anyone who is not deemed eligible for these medical procedures, who cannot afford even the subsidised fees, who are non-binary or gender non-conforming, or who simply choose not to undergo surgery, remain at serious risk of State-violence.

Additionally, Iran permits exemptions from the country’s military conscription for transgender individuals on the basis that they are believed to be mentally ill, and as such it is reported that gay men will either choose or be pressured by doctors into identifying themselves as trans to avoid the widespread homophobic violence of the military and possible execution for same-sex acts.⁸⁵ At least one case documented by 6Rang and Justice For Iran (JFI) notes a gay man whose doctor diagnosed him with “gender identity disorder” for his military exemption, whereupon he received formal instructions from a court to begin preparations for hormone replacement therapy and surgery. At this point he fled Iran for fear that coming out as gay would result in criminal charges.⁸⁶

Persons with diverse sexual orientations and gender identities are often held arbitrarily for extended periods, or sentenced on minimal or circumstantial evidence. It is also reportedly difficult for the accused to receive willing legal representation from lawyers who may not want to associate with their cases, while those that do are sometimes barred from their own clients’ trials. Judicial procedures remain opaque, with judges seemingly able to forego the traditional need for a confession or four male

witnesses in a case of same-sex activity, and rely on their own “discretionary knowledge” to mete out the death penalty instead.⁸⁷

Those who are imprisoned are reportedly subjected to torture or otherwise dire conditions, with most gay and trans detainees in the capital, Tehran, allegedly held in Ward 240 of Evin Prison. In Ward 240, which some prisoners have nicknamed “Tomb 240”, people are said to be held in isolation with only limited access to fresh air, light, food or phone-calls to family. This in addition to regular beatings and other forms of physical abuse. In 2020 most of the prisoners at Evin were apparently downgraded to even less hospital conditions in Ward 240’s basement.⁸⁸ Outside of prison, social stigma from both authorities and wider society—including families—means that individuals of diverse sexual orientations, gender identities and gender expressions in Iran continue to face high levels of violence beyond the State’s criminal enforcement measures.⁸⁹

Examples of Enforcement

In 1997 a trans woman from Tabriz was arrested, allegedly solely on the account of her appearance. She was taken to a local police station where she was raped and released the next day without charge.⁹⁰

On 16 September 2002 two men, the author and publisher of a book alleging that several renowned historical figures from Iran were gay, were ordered to present themselves to court. This was after they were made by authorities to buy back every single copy that had been distributed at personal cost. It is not known what punishment, if any, was meted out by the court.⁹¹

In September 2003 police in Shiraz arrested a group of men at a private party and held them in detention for several days. One of the detainees alleged that they were tortured into confessing their illegal deeds. The judiciary charged five of the defendants with “participation in a corrupt gathering” and fined them.⁹²

In June 2004 in Shiraz, undercover police entrapped several young gay men online, with one of the victims claiming that he was held in detention and tortured for a week. He was sentenced to 175 lashes—of which 100 were to be issued immediately—and police repeatedly

⁸² OutRight Action International, *Being Transgender in Iran* (2016), 25.

⁸³ *Ibid.*

⁸⁴ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 12-13; OutRight Action International, *Being Transgender in Iran* (2016), 6-10.

⁸⁵ *Id.*, 36-37; *Id.*, 28-30.

⁸⁶ 6Rang and Justice for Iran, *Diagnosing Identities, Wounding Bodies: Medical Abuses and Other Human Rights Violations Against Lesbian, Gay and Transgender People in Iran* (2014), 113-116.

⁸⁷ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Addendum: Communications to and from Governments*, A/HRC/14/24/Add.1 (2010), para. 450; Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 21-22; Mai Sato and Christopher Alexander, *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty* (Monash University, 2021), 40.

⁸⁸ “Voices From the Basement: Gay and Trans Detainees on Life in Evin Prison”, *IranWire*, 9 June 2021.

⁸⁹ 6Rang, *Hidden Wounds: A Research Report on Violence Against LGBTI in Iran*, September 2020; “Iran: shocking persecution of LGBTQ+ people continues”, *Outnews Global*, 18 September 2020.

⁹⁰ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 27-28.

⁹¹ UNHCR, *Chronology of Events in Iran, September 2002* (2003), 6.

⁹² “Iran: Two More Executions for Homosexual Conduct”, *Human Rights Watch*, 21 November 2005.

threatened him with execution in the months that followed until he fled the country in late 2005.⁹³

In 2005 two teenage boys were executed, to international outcry. This incident is not included in the tally above as they were officially charged with raping a younger teenage boy, though some rights groups claimed that the two boys had only engaged in consensual activity and that the State's accusation of rape was merely meant to villainise them.⁹⁴

In March 2005, *Etemaad*, an Iranian newspaper, reported that the Tehran Criminal Court had sentenced two men to death following the discovery of a video showing them having sex. According to the paper, one of the men had shot the video as a precaution, should he need to blackmail the other into continued financial support, though both were to be executed.⁹⁵

November 2005 saw two men publicly executed in the northern town of Gorgan for the crime of *liwat*, though further details are not known.⁹⁶

In June 2006 a 16-year-old boy in Ardabil was charged with engaging in homosexual activity—the crime of *liwat*. The Criminal Court of Ardabil found him guilty and sentenced him to death in 2008. In November 2009, the Supreme Court quashed the sentence and sent the case back to a different section of the Criminal Court of Ardabil, though his fate thereafter is unclear.⁹⁷

The Iranian Queer Organisation (IRQO) reported in a submission to the United Nations Universal Periodic Review for Iran that a mass arrest of suspected gay men at a private party took place in Isfahan in 2006—with another similar raid in the city occurring in 2007 as well. According to 6Rang and Justice For Iran (JFI) this latter raid came during a nationwide crackdown on modes of dress and conduct deemed to be “un-Islamic,” and saw 87 people arrested for “cross-dressing”. They were held and physically abused for more than six days while subjected to invasive interrogations. 24 detainees were eventually tried for “facilitating immorality and sexual misconduct” as well as possessing and drinking alcohol. All were found guilty and three were sentenced to 80 lashes for drinking alcohol, but the majority were fined instead, with the judge considering their “affliction with a gender disorder” as a mitigating factor warranting a reduced sentence.⁹⁸

One of the detainees from the party in Isfahan also claimed that he was arrested at his own birthday party earlier in 2007. His trial is said to have lasted less than one hour and he was sentenced to two months' imprisonment at Dastgerd Prison, plus 74 lashes.⁹⁹

On 31 May 2007 the First District of the Criminal Court of Ardabil found the two men guilty of *liwat* and sentenced them to death. Reportedly, the conviction was based on “the knowledge of the judge”, despite the fact that Iranian law is said to require at least four male witnesses in order for the death penalty to be applicable.¹⁰⁰

In mid-2007 an unknown number of men were arrested at a private party in Shiraz when their apartment was raided by several plainclothes Basij officers. The Basij are a volunteer militia group permitted to operate by the State. They were beaten with batons, blindfolded, then pushed down the stairs toward a police vehicle. They were held for three days, handcuffed and blindfolded without food or water, before their families were informed of their whereabouts and allowed to post bail. At least one of the detainees' family members had to offer the deed to their house as bail, plus a further fine of 20,000,000 tomans (USD 21,000) when he fled Iran rather than showing up in court.¹⁰¹

In late 2007 a young man in Tehran was interrogated by a plainclothes Basij officer as to why he was out so late that evening and why his outfit was “inappropriate”. The officer arrested the young man under the pretence of taking him to the police station, but took him to an unknown house's basement instead where he was stripped, beaten and subjected to punitive rape before being released.¹⁰²

Another young man arrested in 2007, this time for allegedly “engaging in sex acts with another man in public”, was held in Isfahan's Dastgerd Prison where he was reportedly raped regularly throughout his incarceration.¹⁰³

Two more young men, aged 19 and 18, were found guilty of same-sex sexual activity in early 2008, though details of their fates are not known. According to the Special Rapporteur on extrajudicial, summary or arbitrary

⁹³ *Ibid.*

⁹⁴ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran's LGBT Community* (2013), 21.

⁹⁵ “Iran: Two More Executions for Homosexual Conduct”, *Human Rights Watch*, 21 November 2005; Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran's LGBT Community* (2013), 22.

⁹⁶ “Iran: Two More Executions for Homosexual Conduct”, *Human Rights Watch*, 21 November 2005.

⁹⁷ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Addendum: Communications to and from Governments*, A/HRC/14/24/Add.1 (2010), para. 450.

⁹⁸ IRQO and IGLHRC, *Submission to the United Nations Universal Periodic Review: Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity* (2014), 6; 6Rang and Justice for Iran, *Diagnosing Identities, Wounding Bodies: Medical Abuses and Other Human Rights Violations Against Lesbian, Gay and Transgender People in Iran* (2014), 72-75.

⁹⁹ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran's LGBT Community* (2013), 24-25.

¹⁰⁰ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Addendum: Communications to and from Governments*, A/HRC/14/24/Add.1 (2010), para. 450.

¹⁰¹ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran's LGBT Community* (2013), 39.

¹⁰² *Id.*, 25-26.

¹⁰³ *Id.*, 26-27.

executions, Iranian officials did not respond to official communications regarding this and other cases.¹⁰⁴

On **14 January 2008** a young human rights defender in Tehran was arrested at a meeting along with several university students, apparently for his work in writing about and translating foreign texts regarding issues of gender identity and expression. He was reportedly placed in solitary confinement in Evin Prison without charge or trial. He was only permitted one short phone-call to his relatives, seemingly with guards present to intimidate him. Further details are not known, though the following month several UN Special Procedures issued an urgent appeal to the Iranian government for his immediate release.¹⁰⁵

In **2009**, according to Human Rights Watch, three teenagers from Ardabil were arrested in three separate cases, and each sentenced to death. Under Iranian law four male witnesses are required for a court to declare the death penalty, but two of these cases reportedly relied on the judge's "discretionary knowledge" instead.¹⁰⁶

IRQO reported in its UN Universal Periodic Review submission that another mass arrest of suspected gay men at a private party took place in Karaj in **2009**.¹⁰⁷

In **2009** a trans woman who reported regular harassment from the police got angry at officers during one such incident and insulted them. As a result they arrested her, but when they got to the police station they took her to the basement of a neighbouring mosque instead. They raped her and burnt her with cigarettes. They allegedly filmed the incident and further used it as blackmail against her.¹⁰⁸

In **December 2009** a trans man and his girlfriend were stopped by Basij forces while walking the streets of Mazandran. They were asked for ID, and the trans man, hoping to avoid trouble for the mismatch between his gender expression and legal identity, told them he was a girl who dressed in masculine clothing to avoid harassment when out in public in the evenings. He was forced into a police vehicle, and en route to a detention centre they sexually harassed him. He was held overnight with two women who had been detained for not wearing their hijabs properly, and was released the next day after

signing a letter of repentance. Authorities told him he was lucky that they did not press charges.¹⁰⁹

IRQO reported another mass arrest from **2010** in Shiraz. Details for this and the other cases remain limited.¹¹⁰

In **2010** it was reported by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions that the Criminal Court of Shiraz found a man guilty of same-sex activity and sentenced him to death. The judgment was upheld on appeal by the Supreme Court. According to the Special Rapporteur, Iranian officials did not respond to communications regarding this case or others.¹¹¹

In **2010** police raided the home of two lesbian women when they were celebrating their union with friends. They released everyone except the two women and coerced them into confessing under the pretence that they would be released. While in detention, a security camera allegedly caught the two women kissing and so they were sentenced to 100 lashes independent of their initial reason for arrest. One of the women passed out after about 50 lashes, and does not seem to have been hit further thereafter. In all, she spent nine months in prison and was taken to court on **7 July 2011**. At the court her relatives appeared and attempted to beat her. The judge ruled for her to be released in light of the lengthy period of pre-trial detention, whereafter she immediately fled Iran with a friend's passport without so much as changing her clothes. She would only later learn that same-sex activity between women is not always punishable by death, and believes her own lawyer used the threat of execution as a means to extract more money from the desperate women. It is not known what happened to the other woman.¹¹²

In **January 2011** a Revolutionary Court in Tehran sentenced a journalist to four years in prison, plus 60 lashes and a fine, for interviewing and writing about LGBT community members in the country.¹¹³

In **March 2011** a gay man was arrested in Tehran as police assumed he was part of an anti-government protest happening nearby. They held him for four days, at which point they gained access to his laptop and there found evidence of his sexual orientation. He was beaten for this, but ultimately released on bail of 40,000,000 tomans (approximately USD 38,500). He was instructed

¹⁰⁴ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Addendum: Communications to and from Governments*, A/HRC/14/24/Add.1 (2010), para. 450.

¹⁰⁵ UN Human Rights Council, *Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. Addendum: Summary of cases transmitted to Governments and replies received*, A/HRC/10/12/Add.1 (2009), para. 1298-1300.

¹⁰⁶ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran's LGBT Community* (2013), 21-22.

¹⁰⁷ IRQO and IGLHRC, *Submission to the United Nations Universal Periodic Review: Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity* (2014), 6.

¹⁰⁸ 6Rang and Justice for Iran, *Diagnosing Identities, Wounding Bodies: Medical Abuses and Other Human Rights Violations Against Lesbian, Gay and Transgender People in Iran* (2014), 70.

¹⁰⁹ *Id.*, 67-68.

¹¹⁰ IRQO and IGLHRC, *Submission to the United Nations Universal Periodic Review: Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity* (2014), 6.

¹¹¹ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Addendum: Communications to and from Governments*, A/HRC/14/24/Add.1 (2010), para. 450.

¹¹² Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran's LGBT Community* (2013), 23-24; OutRight Action International, *Human Rights Report: Being Lesbian in Iran* (2016), 15-16.

¹¹³ IRQO and IGLHRC, *Submission to the United Nations Universal Periodic Review: Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity* (2014), 7.

in **July** to go to Branch 71 of the Criminal Court in Tehran. The man claimed that the Criminal Court would only be dealing with cases of “sexual indecency” and not political protest. As such, he and his boyfriend fled to Turkey.¹¹⁴

In **September 2011** it was reported that a teenager—identified in local media as a boy of “girlish tone”—was arrested for wearing women’s clothing and charged with impersonation. The teenager was sent to the Qom Disciplinary Command Counselling Center for “psychological assessment”.¹¹⁵

In **2012** a trans woman reported that police in Tehran had arrested and beaten her on multiple occasions, always releasing her without charge.¹¹⁶

The Iranian Queer Organisation (IRQO) reported in a submission to the United Nations Universal Periodic Review for Iran that another mass arrest of suspected gay men at a private party took place in Kermaz in **2013**.¹¹⁷

In early **2013** a 23-year-old lesbian woman was summoned to appear before the General Court in the Sa’adat Abad district in Tehran, after her girlfriend’s family learned of their relationship and filed a complaint. Her uncle, who previously served in the Iranian military, was able to have the charges dropped though his connections, but he too did not approve of her sexual orientation and demanded she marry a man, cutting her face in the ensuing argument. She fled to Turkey soon after, though her relatives continued to reach out via phone-calls to threaten her life.¹¹⁸

Also according to IRQO, JFI and 6Rang, on **8 October 2013** in the city of Kermanshah, members of the Revolutionary Guard raided a private birthday party attended by 80 people. According to a statement issued by Kermanshah province’s Basij forces, their goal was to disband an alleged “[homosexual] and Satan-worshipping network”. Detainees and staff at the venue were reportedly beaten, pepper-sprayed and shocked with electric batons. 17 detainees were then photographed and had their personal belongings confiscated before being blindfolded and taken to a secret location. They were beaten and authorities held a mock-execution, seemingly for the sole purpose of scaring their prisoners. After a few days in detention most detainees were released on bail and told they would face charges in the coming weeks, but their court dates were cancelled.

When released they were apparently dumped by police near a local oil field far from the city. The organiser of the party was allegedly held for a longer period and died in custody. One of the victims alludes that authorities may have hanged him in his cell, but suggests also that he may also have succumbed to injuries suffered during the group’s torture.¹¹⁹

On **4 February 2014** the head of the Cyber Police in Ilam province announced the arrest of an internet user on charges of “promoting immorality and homosexuality on social networks”. The news reports indicated that the suspect was identified through online surveillance. It is not known what punishment awaited the accused, but an official told local media that “police will deal with such cases severely”.¹²⁰

In **December 2014** a lesbian woman from the city of Rasht told OutRight Action International of a time when she was abducted by intelligence officials on account of her vocal SOGIESC advocacy and made to undergo a “reorientation course”. She was held for three days with 40 other people and tortured, made to undergo “virginity testing” and intimidated by religious officials, before her father managed to get her released.¹²¹

On **3 August 2016** a trans man in Golestan was gang-raped, and when he went to the police to report the crime, they instead mocked him and charged him with buggery. He was transferred to the general crime prison in Gonbad-e-Kawoos.¹²²

6Rang reported that on **13 April 2017** around 30 men were arrested at a gathering in Isfahan in a raid by Basij forces. A court charged them with “sodomy and consuming psychedelic drugs and alcohol”, and they were subsequently transferred to Dastgerd Prison.¹²³

On **3 September 2018** a gender equality activist was detained for 26 days at Tehran’s Evin prison. She had previously been gathering information on mass executions of prisoners that took place in the 1980s. According to reports received by 6Rang, her court session was held on **18 February** in Tehran’s Revolutionary Court, where her lawyer was denied access to her file and barred from defending her. The woman’s charges included “gathering and colluding against national security by normalising same-sex relations”. It was reportedly the first time a human rights defender has faced such an accusation in Iran. She was released on bail but in **December 2019** it was reported

¹¹⁴ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 37-38.

¹¹⁵This entry has been redacted for the safety of those in question. For more information, please contact ILGA World.

¹¹⁶ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 37.

¹¹⁷ IRQO and IGLHRC, *Submission to the United Nations Universal Periodic Review: Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity* (2014), 6.

¹¹⁸ Iran Human Rights Documentation Centre, *Denied Identity: Human Rights Abuses Against Iran’s LGBT Community* (2013), 33.

¹¹⁹ “Iran arrests ‘network of homosexuals and satanists’ at birthday party”, *The Guardian*, 10 October 2013; IRQO and IGLHRC, *Submission to the United Nations Universal Periodic Review: Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity* (2014), 5-6; 6Rang and Justice for Iran, *Diagnosing Identities, Wounding Bodies: Medical Abuses and Other Human Rights Violations Against Lesbian, Gay and Transgender People in Iran* (2014), 71-72; “Eight Years On, the Trauma Continues for LGBT+ Iranians Detained at Birthday Party by IRGC”, *IranWire*, 2 September 2021.

¹²⁰ “Arrest of a homosexual on the Internet”, *Iranian Students News Agency*, 14 February 2014; IRQO and IGLHRC, *Submission to the United Nations Universal Periodic Review: Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity* (2014), 6-7.

¹²¹ OutRight Action International, *Human Rights Report: Being Lesbian in Iran* (2016), 16-17.

¹²²This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

¹²³ “Men Arrested at a Party in Isfahan Charged with ‘Sodomy’”, *6Rang*, 16 April 2017.

that she and a trade union activist from an unrelated case were each sentenced to five years' imprisonment.¹²⁴

On **17 September 2017**, Iranian Revolutionary Guard and Basij forces raided a private birthday party in Shiraz and arrested 23 people, some of whom were transgender. They were beaten and taken to Ministry of Intelligence offices where they were charged with "attending a *haram* (religiously prohibited) party".¹²⁵

On **25 September 2018** security forces arrested a human rights defender from the city of Shiraz. They apprehended her at an airport in Tehran as she was attempting to board a flight to Turkey. Further details are not known.¹²⁶

On **29 December 2018** two men were arrested in the city of Jahrom after a private video of their symbolic wedding was published on social media. They were charged with committing a capital offense, though the results of their trial are not known.¹²⁷

In **October 2019** a British-Iranian anthropologist studying child marriage and female genital mutilation in the country was arrested, with reports in **November 2020** indicating that he had been sentenced by Iran's Revolutionary Court to nine years' imprisonment and a fine of USD 700,000 for "promoting homosexuality", as well as "visiting Israel [...], cooperation and communication with foreign and hostile media, infiltration aimed at changing the law, and sending false reports about the country to the UN's Special Rapporteur on Human Rights in Iran".¹²⁸

In a **2020** report by 6Rang, one person interviewed said "[m]y family gave me over to the police because I am intersex". No further details are known regarding this incident, but the intervention of the State to persecute an intersex individual is notable.¹²⁹ The same **2020** report by 6Rang notes six additional individual testimonies of violent arrest, though dates, locations and details of the victims' detentions are not known.¹³⁰

In **August 2020** a self-described non-binary gay man by the name of Alireza Fazeli Monfared, from Khuzestan province, was arbitrarily arrested by police and detained for several days in connection to social media posts made by Monfared in which they were seen dancing and expressing themselves in a way likely not in line with a masculine gender expression. Upon release they were attacked by a male relative for bringing "shame" to the

family. In **2021** Monfared was granted an exemption from military conscription because of their sexual orientation and gender expression. Iran's military regulations stipulate that individuals with "perversions that are contrary to social and military values" can receive a temporary or permanent deferral, and this is often used by queer individuals to escape the widely reported homophobic violence of the armed forces, even if it means formally submitting to the State's definition of their identities as "mental illness". However, it appears the exemption letter was seen by relatives, as on **4 May 2021** Alireza Fazeli Monfared's throat was slit in an apparent honour-killing. No suspects were arrested by Iranian authorities.¹³¹

On **20 October 2020** it was reported that three young social media "influencers"—two of whom seem to be transgender—were arrested in Tehran and taken to Evin Prison for making posts online explicitly discussing their sexual orientations and for publishing satirical content critical of the government. Further details of their cases were not identified at the time of publication.¹³²

It was reported on **13 November 2021** that two men who had engaged in same-sex sexual activity were sentenced to death for "adultery". The wife of one of the men requested clemency from the court, but her father allegedly demanded the execution of his son-in-law for his behaviour. The court ruled in the father's favour, though the date set for the men to be hanged, and whether any actions for an appeal might be open to them, were not clear at the time of publication.¹³³



Criminalising Provisions

Article 193 of Penal Code (Law No. 16) (1960) criminalises consensual intercourse between men of full age (from the age of 21), which carries a possible imprisonment of up to seven years.¹³⁴

And per Article 198 (as amended in 2007) "whoever makes a lewd signal or act in a public place or such that one may see it or hear it from public place, or appears like the opposite sex in any way, shall be punished for a

¹²⁴ 6Rang, *Submission to the UN Universal Periodic Review, 34th Session of the UPR Working Group Islamic Republic of Iran* (2019), para. 20; "Two Iran Activists Convicted To Five-Year Prison Terms Each", *Radio Farda*, 13 December 2019.

¹²⁵ 6Rang, *Submission to the UN Universal Periodic Review, 34th Session of the UPR Working Group Islamic Republic of Iran* (2019), para. 24.

¹²⁶ *Id.*, para. 21. See also: "مریم آزاد، فعال حقوق زنان بازداشت شد" [Maryam Azad, women's rights activist arrested], *Radio Zamaneh*, 26 September 2018.

¹²⁷ *Id.*, para. 25.

¹²⁸ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

¹²⁹ 6Rang, *Hidden Wounds: A Research Report on Violence Against LGBTI in Iran* (2020), 11.

¹³⁰ *Id.*, 11.

¹³¹ "Iran: Murder of 20-year-old gay man highlights urgent need to protect LGBTI rights", *Amnesty International*, 17 May 2021.

¹³² *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

¹³³ "Ιράν: Γκέι ζευγάρι καταδικάστηκε σε θάνατο μετά από απαίτηση της οικογένειας" [Iran: Gay couple sentenced to death at family request], *Antivirus Magazine*, 13 November 2021.

¹³⁴ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 133.

period not exceeding one year and a fine not exceeding 1,000 Dinar or one either of these punishments".¹³⁵

Enforcement Overview

ILGA World has identified at least 56 examples of criminal enforcement between 2007 and 2021 in Kuwait. A significant majority of these cases appear to be the targeting of trans women and other persons of feminine gender expression under Article 198 of the Penal Code which outlaws "imitating the opposite sex".

Undoubtedly there are many cases of criminal enforcement beyond this tally which remain uncaptured in this report. Some mass arrests or coordinated crackdowns by police have been recorded in such a way that the number of distinct cases of enforcement could not be disaggregated, while some victims interviewed by Human Rights Watch and other groups have reportedly been arrested so often that tracking the exact number of cases for individual persons was also not always possible. In 2012 Human Rights Watch interviewed around 40 trans women from Kuwait, 39 of whom had previously been arrested, often multiple times.¹³⁶ The United States Bureau of Democracy, Human Rights and Labor notes that in 2009 alone there were "more than a dozen" reports of people being arrested for their gender expressions.¹³⁷

The vast majority of arrests do not result in a formal trial, either for various procedural reasons or because police simply opted to informally extort or abuse their detainees instead

The vast majority of arrests do not result in a formal trial, either for various procedural reasons or because police simply opted to informally extort or abuse their detainees instead.¹³⁸ A relative dearth of convictions does not, however, equate to a toothless law given the authority with which it imbues law enforcement to arbitrarily detain, and even torture, trans and gender-diverse individuals. Kuwaiti law, according to Human Rights Watch, does not properly define torture and as such torture of prisoners remains all too common.¹³⁹

In 2013 Kuwait put a motion to the Gulf Cooperation Council (GCC) countries of Saudi Arabia, Qatar, Bahrain, Oman, the UAE (and Kuwait itself), for the adoption of new measures to prevent LGBT migrants, workers and travellers in general from entering member States by subjecting them to medical examinations. After international backlash, the Foreign Ministry Undersecretary walked back the plan by noting that it was merely a proposal. In response to the backlash, particularly a statement issued by Amnesty International, one Kuwaiti MP defended the proposal by saying the "decision to bar homosexuals from entering Kuwait is a sovereign decision. Amnesty International should take care of lofty and noble goals for which it was established, leave aside homosexuality and deviations and stop defending delinquents".¹⁴⁰

Attempts by Kuwaiti officials to aggravate the existing criminalisation of SOGIE did not end there, however, and a member of Parliament proposed in 2021 that any form of advocacy—up to and including publicly displaying a rainbow flag—as well as engaging in homosexuality (defined in the proposal as being inclusive of "imitating women") be punishable by up to three years' imprisonment and/or a fine. He is reported as saying that "perversion is not a matter of personal freedom".¹⁴¹

Kuwait has also demonstrated a pattern of opposition or apparent indifference to calls from United Nations human rights bodies to respect and uphold SOGIE rights. In 2011 the UN Human Rights Committee formally expressed concern at "reports of harassment, arbitrary arrest and detention, abuse, torture, sexual assault and harassment of individuals on the basis of their sexual orientation or gender identity". The group urged Kuwait to repeal the criminalising provisions and "send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity".¹⁴² Given the 2013 and 2021 legislative proposals outlined above, it is clear that Kuwait did not heed this call.

In 2019 ahead of Kuwait's fourth Universal Periodic Review at the UN, the Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requested comment from Kuwaiti officials "on reports that, in 2017, Kuwait deported 76 men on suspicion of being gay and that transgender people can be arrested under a 2007 Penal Code provision that prohibits 'imitating the opposite sex in any way'. It further requested information on whether the State had "taken any steps to decriminalise consensual sexual relations between same-sex adults".¹⁴³

¹³⁵ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report: Recognition before the law* (2020), 83.

¹³⁶ Human Rights Watch, "They Hunt Us Down for Fun": *Discrimination and Police Violence Against Transgender Women in Kuwait* (2012), 2.

¹³⁷ Bureau of Democracy, Human Rights and Labor, *2009 Country Reports on Human Rights Practices: Kuwait* (2010).

¹³⁸ Human Rights Watch, "They Hunt Us Down for Fun": *Discrimination and Police Violence Against Transgender Women in Kuwait* (2012), 1-3.

¹³⁹ *Id.*, 3, 22-23, 32.

¹⁴⁰ "Kuwait must reject proposed homophobic 'medical tests' on migrant workers", *Amnesty International*, 11 October 2013; "Ban on homosexuals working in Gulf countries 'just a proposal': Kuwaiti official", *Big News Network*, 22 October 2013; Human Dignity Trust, *Country Profile: Kuwait* (2021).

¹⁴¹ "برلماني كويتي: الحبس 3 سنوات لمن يروج للشذوذ الجنسي - أحداث اليوم الإخباري" [Kuwaiti parliament: 3 years prison for promoting homosexuality], *Ahdath* 24, 2 September 2021.

¹⁴² Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant Concluding observations of the Human Rights Committee: Kuwait*, CCPR/C/KWT/CO/2 (2011), para. 30.

¹⁴³ Committee against Torture, *List of issues prior to submission of the fourth periodic report of Kuwait*, CAT/C/KWT/QPR/4 (2019), para. 40.

In 2020, the Government of Kuwait submitted a report which responded to the Committee against Torture, indicating that “Islamic Sharia is a major source of legislation” and that it “prohibits homosexuality and imitation of persons of the opposite sex”. Article 49 stipulates that “observance of public order and respect for public morals are obligations incumbent on all inhabitants of Kuwait”. Thus, according to Kuwaiti officials, recommendations by UN bodies and member states for decriminalisation are “incompatible with these requirements and violates the nature, customs, values and traditions of Arab societies in the Middle East. The State of Kuwait reaffirms its commitment to the enforcement of its national legislation, which is accepted and approved by Kuwaiti society as a whole and reflects a moral, religious and social reality that cannot be ignored”.¹⁴⁴

Kuwait reaffirmed its commitment to the enforcement of its legislation, which “reflects a moral, religious and social reality that cannot be ignored”

Furthermore, efforts to reinforce the criminalising legal framework were made in October 2021 when five Members of Parliament made a proposal to amend Law No. 16 of 1960 to impose a penalty of three years’ imprisonment and a fine to anyone who: (a) raises a flag, logo or any reference symbolising “the category of homosexuals”; (b) promotes, by any means, ideas and beliefs related to “homosexuals”; (c) calls for the formation of a group that adopts the “ideas and beliefs of homosexuals” and (d) wears clothes with slogans on them or symbols or signs symbolising homosexuals.¹⁴⁵ The proposal came at roughly the same time that Bahraini MPs submitted a similar piece of legislation in the wake of outcry across multiple Middle-Eastern States at the raising of the rainbow Pride flag at the US Embassy in Manama.¹⁴⁶ These provisions, if passed, would contribute to an even more restrictive environment, and may lead to more arrests if enforced with the same zeal used to enforce provisions currently in force in Kuwait.

Examples of Enforcement

A trans woman recounted to Human Rights Watch that she had been arrested twice before Kuwait’s law against “imitating the opposite sex” was passed in 2007. Each time, she was held for at least four hours and beaten before being released without charge. She claimed she

and a friend were arrested again in **March 2008** (after the law was passed) when police saw their ID documents at a checkpoint. Instead of taking them into the police station, however, they held them at a neighbouring house, took photos of them, beat and sexually assaulted them. When they complained, police said that it was not really sexual harassment to touch their breasts because they were “really men”. After this abuse police transferred them to the Criminal Investigation Department in Salmiya where they were held for five days and further mistreated. They were released on a bail of 100 dinars (USD 360) and a court later fined them 1,000 dinars each (USD 3,600) for “imitating the opposite sex” plus three years’ probation. She was arrested again in **2010** despite wearing men’s clothing, and was held for three days when she refused the officer’s promise to release her in exchange for the chance to touch her breasts. This time her father came to the police station with medical documents identifying her as transgender, but police refused to add these to her file for future reference.¹⁴⁷

In **March 2008** a Bidun trans woman was arrested. The Bidun are a stateless class within Kuwait considered illegal residents, and as such reportedly face significantly higher rates of violence and marginalisation. The woman in question was stopped at a police checkpoint and though she was wearing typical male clothing they searched the vehicle she was in and found her makeup in her bag. They dragged her out of the car, kicked her and punched her, and took her to Salmiya police station. She tried to avoid further violence by telling them she was a man, but they beat her again to force her to confess to being of the “third sex”. In **2009**, a court fined her 1,000 dinars (USD 3,000) for “imitating the opposite sex”. She claims that she had been detained up to nine times between **2008** and **2012** because of her gender expression and Bidun status. Police would also make sure to “out” her and her friends to conservative family members.¹⁴⁸

A trans woman was arrested outside a restaurant in broad daylight in **2008**, despite wearing a tracksuit instead of anything typically considered feminine. She was released on the condition that she give her phone number to the officer so that he could come have sex with her later. She claimed this was the second time she had been arrested because of her identity.¹⁴⁹

Another trans woman was arrested in **2008** despite wearing a tracksuit and attempting to appear masculine in public. Police whistled at her as they came over and told her they would allow her to walk free if she let them grope her breasts, and so she complied. They took her to the Criminal Investigation Department anyway, where she was beaten, stripped, and made to pose for humiliating photographs. She was held for two days without her family being informed of her whereabouts

¹⁴⁴ Committee against Torture, *Fourth periodic report submitted by Kuwait under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2020*, CAT/C/KWT/4 (2020), para. 174.

¹⁴⁵ “نواب يقدمون مقترحاً بقانون لسجن مروجي فكر الشواذ - مجلة المجتمع 5” [Five MPs submit a proposal for a law to imprison the promoters of gay thought], *Al Mugtama*, 11 October 2021; “نواب لسجن مروجي فكر الشواذ - جريدة الجريدة 5” [Five deputies to imprison the promoters of gay thought], *Al Jarida (Kuwait)*, 10 October 2021.

¹⁴⁶ “Al-Azhar Observatory condemns raising of rainbow flag by US embassy in Bahrain”, *Egypt Independent*, 11 June 2021; “Clamp on gays proposed”, *GDN Online*, 17 October 2021.

¹⁴⁷ Human Rights Watch, “They Hunt Us Down for Fun”: *Discrimination and Police Violence Against Transgender Women in Kuwait* (2012), 28, 36.

¹⁴⁸ *Id.*, 28-32.

¹⁴⁹ *Id.*, 27.

before being taken to the Vice Unit and made to parade in front of staff there. She was forced to sign a document promising that she would never “imitate the opposite sex again” before being released into the custody of her brother, who they also mocked for being related to a trans woman.¹⁵⁰

A trans woman who claims to have been arrested several times (though the number of arrests is not known), told Human Rights Watch that she was reported to police by a man whose sexual advances she had refused in 2008. She noted that she was held in Salmiya prison for nine days. The facility, she says, has 40 solitary confinement cells and only trans women are placed there. They are made to sleep on the hard ground without blankets and only a bottle in which to urinate. It is claimed that one room in the facility is called the “VIP Room” as it has been decked out with a bed and private bathroom, and some trans women are permitted to stay there in exchange for sex.¹⁵¹

On 10 March 2009 officers from the Criminal Investigations Division raided a coffee shop and arrested “five men for cross-dressing”, according to the US Bureau of Democracy, Human Rights and Labor. It is not clear whether these detainees may also have been trans women.¹⁵²

In July 2009 a trans woman was stopped by a patrol car and detained for “imitating the opposite sex”. When she asked how that was possible as she was wearing men’s clothing and had short hair as a result of police shaving it during a previous arrest, they simply said “your face”. This highlights the plight of trans women in Kuwait who by virtue of being women often cannot escape punishment, regardless of their gender expression. She was sexually assaulted and burnt with a cigarette while in custody. She complained about the incident on national television, and so when police arrested a friend of hers later that year they instructed the friend to relay the message that they would “destroy” her for it.¹⁵³

In October 2009 a transgender university student was stopped at a police checkpoint. The officer who saw her male gender marker on her ID blackmailed her with arrest, seemingly under Kuwait’s laws against impersonation and cross-dressing, so that she would engage in sex acts with him until she completed her studies.¹⁵⁴

In October 2009 police allegedly stopped three trans women as they left a party and threatened them with arrest if one of them didn’t come with them in their car.

She was said to have been arrested twice before and so went to avoid a third arrest, but was raped by officers that night.¹⁵⁵

A trans woman reported to Human Rights Watch that she had been arbitrarily arrested because of her appearance at least four times by the start of 2010, each time being released without charge. During her most recent arrest she was allegedly raped by four officers while in detention, and then “released” by being thrown into the street from a moving vehicle.¹⁵⁶

In January 2010 a trans woman had her car rammed by men whose sexual advances she was refusing. Police arrived on the scene but instead of assisting the injured woman they arrested her, shaved her head, and made her sign a declaration that she would not “imitate the opposite sex” again.¹⁵⁷

In March 2010 a trans woman was arrested outside a dentist’s office after going there for a medical appointment. Police told her that another patient in the waiting room had reported her.¹⁵⁸

In July 2010, according to a Kuwaiti journalist, a trans woman went to Salmiya police station to file a complaint against a man who broke her cell phone. She had changed into men’s clothing and removed her makeup to avoid trouble but forgot to take off her earrings. Police arrested her for “imitating the opposite sex” before she could even explain to them why she was there.¹⁵⁹

In October 2010 it was reported by *The Arab Times* and *Gulf News* that four “cross-dressers”—possibly but not verifiably trans women—were arrested in Kuwait City and charged with violating rules on public decency. Three were arrested when their “behaviour caused traffic congestion”, though how their presence as gender-diverse individuals in their own vehicle might have caused traffic is not clear. A fourth was arrested in an unrelated incident, though details of this are not known.¹⁶⁰

According to local newspaper *Al Rai*, on 28 January 2011 three trans women were arrested at the Traffic Control Department in the Surra district of Kuwait City. Police reportedly abused and humiliated the detainees and forced them to undress and dance for them. One officer reportedly fired his gun several times to scare them.¹⁶¹

Another young trans person reported in February 2011 to Human Rights Watch that police stopped her at a

¹⁵⁰ *Id.*, 35.

¹⁵¹ *Id.*, 38-39, 41.

¹⁵² Bureau of Democracy, Human Rights and Labor, 2009 *Country Reports on Human Rights Practices: Kuwait* (2010).

¹⁵³ Human Rights Watch, “*They Hunt Us Down for Fun: Discrimination and Police Violence Against Transgender Women in Kuwait*” (2012), 38-39, 41.

¹⁵⁴ *Id.*, 24-25.

¹⁵⁵ *Id.*, 26-27.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Id.*, 48.

¹⁵⁸ *Id.*, 42.

¹⁵⁹ *Id.*, 49.

¹⁶⁰ “Cross-dressers arrested in Kuwait”, *Gulf News*, 11 October 2010.

¹⁶¹ Human Rights Watch, “*They Hunt Us Down for Fun: Discrimination and Police Violence Against Transgender Women in Kuwait*” (2012), 49.

checkpoint and attempted to blackmail her with arrest if she did not submit to having sex with them. After the incident she tried to ignore one officer's repeated phone calls, so police tracked her down at her place of work and took her to a local police station to "make a man of" her. She was held for two weeks, being regularly beaten and sexually assaulted without officials informing her family of her whereabouts at all. They released her without ever charging her or bringing her before a judge, after shaving her head and making her sign a confession that she had been caught causing a public disturbance because of her gender expression.¹⁶²

In **2012** police in Salmiya arrested a foreign national "who disguised himself as a woman to beg for money". A woman who gave money to the accused became suspicious and her husband went to report the situation to police, who promptly returned to detain the beggar. Beyond restrictions on gender expression, street begging is also reportedly illegal in Kuwait.¹⁶³

In **October 2012**, 11 transgender men and women were imprisoned for separate incidents, but all faced the same charges. Officials stated that they had raided "transsexual only parties" while other arrests came from police patrols stopping cars and questioning people about their identity. It was reported that authorities were using the article prohibiting "imitating the opposite sex" in these cases. How many individual instances of enforcement this report represents is not known.¹⁶⁴

Over 215 suspected gay men and lesbian women were arrested in **May 2013**. This came after Kuwaiti police began a criminal investigation into "internet cafes and suspicious places" across the country. A similar investigation had apparently taken place **the year before**, where police identified and arrested 149 gay and transgender individuals on suspicion of their engaging in sex work. It is not clear how many individual instances of enforcement are represented in these reports.¹⁶⁵

It was reported on **25 July 2013** by *Gulf Daily News* and other local sources that a "cross-dresser"—perhaps a trans woman—was arrested in a lingerie shop in the Salmiyah area of Kuwait City. Other clientele complained, but the accused claimed the right to shop there too, which led to the police being called by staff. The accused was taken to a local police station and charged with cross-dressing and getting into a public fight. It is not clear what sentence, if any, the accused received. Comments on social media regarding the case saw calls

from the public for specific segregated spaces for transgender individuals to express their gender identities.¹⁶⁶

On **21 January 2014** a trans woman was arrested by police in Hawalli as she was leaving her home to go to work. She was reportedly taken to the Salmiya branch of the Department of Criminal Investigation and held for two days before being charged with "imitation of the opposite sex". On **23 January** she was reportedly transferred to the Kuwait Central Prison. The following month, Kuwaiti officials were sent a letter of concern from several UN Special Procedures regarding the woman's arbitrary arrest, the likelihood that she faced violence while incarcerated, and the existence of the legal provisions targeting people on the basis of gender expression.¹⁶⁷

In **May 2014** police raided a livestock farm, arresting 32 people during an alleged "gay" party. News reports said those arrested included, "drunken persons, cross-dressers and tomboys". The report further stated that, "foreigners caught in the raid will be deported and legal action will be taken against others, as per directives from the Assistant Undersecretary for Criminal Affairs".¹⁶⁸

In **October 2014** Kuwaiti police arrested 23 "cross-dressers and homosexuals" after they busted a "wild party" held at a chalet in the south of the country. Details of what happened to those detained are unclear.¹⁶⁹

On **5 January 2015** it was reported that three "cross-dressers"—possibly trans women—were arrested when the loud music they played from their car caught the attention of traffic police in Salmiya. One of the detainees reportedly had previous charges of "cross-dressing" on record and had signed a pledge "not to wear women's dresses in public again" as a condition of release. It is not clear if violating this pledge would have been an aggravating circumstance in any potential legal proceedings.¹⁷⁰

In **April 2016**, 41 men were arrested at an alleged gay massage parlour. Officials reported that the men were arrested for engaging in sexual services offered under the guise of massages. Although the authorities stated that the raid was part of a campaign to stop people from abusing the labour market, other reports suggest the raid was explicitly targeting the men due to their presumed sexual orientations.¹⁷¹

¹⁶² *Id.*, 25-26.

¹⁶³ "Dude looks like a lady: Saudi man arrested for crossdressing in mall", *Al Bawaba*, 30 December 2015.

¹⁶⁴ "Eleven trans arrested in Kuwait", *Gay Star News*, 30 October 2012.

¹⁶⁵ "Kuwaiti Police Sweep Cafes, Arrest 215 People for Being Gay", *The Atlantic*, 14 May 2013.

¹⁶⁶ "Cross-dresser arrested after entering lingerie shop in Kuwait", *Gulf News*, 25 July 2013.

¹⁶⁷ OHCHR, UA G/SO 218/2 G/SO 214 (89-15) KWT 1/2014 (2014).

¹⁶⁸ "Kuwait police raid 'gay' party, arrest 32", *Erasing 76 Crimes*, 11 May 2014.

¹⁶⁹ "Married' gay couples arrested in Saudi raid", *Gulf News*, 26 January 2016.

¹⁷⁰ "Who would've thought cross-dressing was illegal? Three men arrested in Kuwait for dressing as women", *Al Bawaba*, 5 January 2015.

¹⁷¹ "41 arrested in raid on homosexual massage parlour in Kuwait", *Gulf News*, 17 April 2016.



In **July 2017** the government's Inter-Ministry Morals Committee ordered the deportation of 76 gay men and the closure of 22 massage parlours.¹⁷²

It was reported on **15 September 2017** that a 19-year-old Polish social media "influencer" was detained by undercover members of the Criminal Investigation Department for looking too "feminine" and held for two weeks as a result. Authorities allegedly said they would "make a man out of" him, and as such beat him and shaved his head while he was being held. Eventually he was freed, but also deported and banned from re-entry into Kuwait. The year prior he had also been detained in Qatar for two months, allegedly because of his gender expression.¹⁷³

A well-known trans woman claims that she was detained for seven months in a male prison in **2019** for "imitating the opposite sex", where she was raped and beaten by police officers numerous times. This is but one of six instances where she was held for her identity, with just three of the instances disaggregated in this report.¹⁷⁴

The trans woman was detained again in **June 2020**, this time held for three days, allegedly on account of her identity. Police abused her by spitting on and insulting her, and sexually assaulted her by taking turns touching her breasts. This is but one of six instances where she was held for her identity, with just three of the instances disaggregated in this report.¹⁷⁵

In **February 2021** it was reported that police detained "an effeminate young man in women's clothes and blatant makeup"—possibly a transgender woman—after requesting ID and finding that the feminine person they had stopped in the street was legally considered male. Police reportedly transferred the suspect to the "competent authorities" on charges of "imitating the opposite sex".¹⁷⁶

In **June 2021** police raided a farmhouse in Kabad and detained 40 people—young men, women and "cross-dressers". Authorities claimed that the people were involved in an "immoral party" and that it was a violation of health laws. The 40 people were referred to the Ethics Department for legal action.¹⁷⁷

On **3 October 2021** a well-known trans woman was sentenced in absentia to two years in prison and a fine of 1,000 dinars (USD 3,315) for "misusing phone communication" by "imitating the opposite sex" online under Article 70 of the Telecommunication Law, and Article 198 of the Penal Code. Prosecutors reportedly used photos she had uploaded to social media in which

she was wearing makeup as evidence against her, and she was further charged for criticising the government. The woman only became aware of her conviction on **8 October**, whereafter she went into hiding. Police located and arrested her at a hotel on **11 October**, however. She was taken to Kuwait Central Prison, a men's prison, and held in a solitary confinement cell apparently reserved for transgender detainees. Her appeals hearing was set for **31 October**, and her lawyer indicated confidence that the appeal would succeed, but also noted that should the verdict be upheld they would seek to at least have the woman housed in a women's prison. The woman has claimed that this was her sixth arrest on the basis of her gender identity and expression since **2019**, though only three of the cases are disaggregated in this report. Her lawyer has stated that of all her arrests, this latest incident was the most difficult for her.¹⁷⁸



Lebanon

Criminalising Provisions

Article 534 of the [Penal Code](#) (1943) criminalises "sexual intercourse against nature", which is punishable with up to one year imprisonment.¹⁷⁹

In relation to gender expression, Article 521 states that "any man who disguises himself as a woman" and enters a place specifically for women only, or a place in which anyone aside from women are prohibited from entering, may be jailed for no more than six months.¹⁸⁰

Enforcement Overview

ILGA World was able to identify 20 examples of criminal enforcement in Lebanon between 2007 and 2021, with a significant number of persons targeted being vulnerable migrants or refugees from jurisdictions such as Syria.

While Lebanon has been considered a "safer" country within the SWANA (South-West Asia and North Africa) region, the reality remains that criminalising provisions continue to be enforced, while stigma and violence remains all too common. Indeed Helem, a local civil society organisation, identified in a 2017 report submitted to the UN Human Rights Committee apparent evidence of a steady increase in the number of arrests between 2012 and 2016. Furthermore, the report also identified two patterns for arresting LGBT individuals in Lebanon, namely informal public profiling and the illegal

¹⁷² "Kuwait deports 76 gay men in crackdown", *Gulf News*, 7 August 2017.

¹⁷³ "This controversial Instagram star was arrested and abused for being 'too feminine' in Kuwait", *The New Arab*, 15 September 2017.

¹⁷⁴ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

¹⁷⁵ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

¹⁷⁶ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

¹⁷⁷ "40 Young men, women, cross-dressers held in Kabad farmhouse 'wild' party", *Arab Times*, 2 June 2021.

¹⁷⁸ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

¹⁷⁹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 133.

¹⁸⁰ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report: Recognition before the law* (2020), 85.

search of suspects' mobile data. It is usually only after informal or illegal means are employed to arbitrarily detain suspects that formal investigations are initiated.¹⁸¹

Criminalising provisions continue to be enforced, while stigma and violence remain all too common

Once in detention, suspects are often subjected to torture, sexual abuse, or other forms of degrading treatment, and are commonly held without charge for well beyond the prescribed legal limit of 48 hours.¹⁸² It is also reported that non-consensual HIV testing and forced anal examinations are regularly carried out, despite the latter practice being long-debunked as a means of gathering evidence of anal sex, and even being banned in Lebanon in 2012.¹⁸³

Trans women and persons of feminine gender expression are at particular risk of police targeting and violence. A 2015 study identified anecdotal evidence from local trans women who reported that either themselves or their friends had been arrested several times on the streets for "masquerading" as women, and were often detained for long periods of time without receiving information or legal assistance.¹⁸⁴ Further, a 2019 report by Helem, Human Rights Watch and Mosaic found that transgender women are at greater risk of arbitrary arrest and physical violence at police checkpoints. The report shows that these arrests take place under article 534 of the Penal Code (sexual intercourse contrary to the order of nature) and under laws against "violating public morality", "incitement to debauchery," and "secret prostitution".¹⁸⁵

Many of these cases come after, and in spite of, a 2007 case where a judge acquitted two suspected gay men on the basis that a law prohibiting "sexual intercourse against nature" should not include consensual same-sex activity, given that it forms part of nature.¹⁸⁶ In 2018 the UN Human Rights Committee in its third periodic report on Lebanon expressed concern "that, despite the information about court judgments holding that article 534 of the Criminal Code is not applicable to [LGBTI]

individuals, such individuals continue to be arrested and prosecuted, including for sexual relations between consenting adults of the same sex".¹⁸⁷

Examples of Enforcement

In **February 2007** two men in the city of Batroun were arrested when a police patrol found them sitting together in a car. The presiding judge, however, used his discretion in interpreting the law so as to order that the criminal investigation be stopped. The law prohibits sexual activity that is "against nature", which the judge countered by saying "if the sky is raining during summertime or if we have hot weather during winter or if a tree is giving unusual fruits, all these can be according to and in harmony with nature and are part of its rules themselves".¹⁸⁸ Unfortunately, as is made evident in the cases outlined below, not all State actors in Lebanon have shared this sentiment.

In **2009** a young man suspected of being gay was reported to authorities by his mother for "acting like a woman". On this basis the public prosecutor had him arrested and subjected to the pseudo-scientific practice of anal examination to seek supposed evidence of same-sex sexual activity. The invasive exam yielded no such evidence, but the prosecutor indicted the suspect anyway. Eventually, a judge dismissed the charges for lack of evidence.¹⁸⁹

In early **2010** a trans woman was arrested in the northern Lebanese city of Tripoli when a neighbour mistook her for a sex worker and reported her to police, after three male relatives came to her home. She was detained and beaten in order to force her to confess to engaging in anal sex. Though she was brought in under the false accusation of being a sex worker, her admission and her gender identity ended up being what led the judge to sentence her anyway. She was imprisoned for three months for "unnatural sexual acts", having already spent five months in pre-trial detention.¹⁹⁰

A young gay man told Human Rights Watch in **2010** that his mother asked police to arrest him and detain him for a night in order to "scare" him out of being gay. Police assisted the mother with her request.¹⁹¹

On **28 July 2012** police conducted a raid on a cinema in the Bourj Hammoud neighbourhood of Beirut. 36 people

¹⁸¹ Helem, *Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon: A Shadow Report submitted to the Human Rights Committee* (2017), 3-4.

¹⁸² Human Rights Watch, "It's Part of the Job": *Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations* (2013), 12.

¹⁸³ "Dakwaneh's 'No Gay Land' Triggers Debate on Homophobia", *The Legal Agenda*, 2 December 2013; Human Rights Watch, [HYPERLINK "https://www.hrw.org/sites/default/files/report_pdf/globalgbtanalexams0716web.pdf"](https://www.hrw.org/sites/default/files/report_pdf/globalgbtanalexams0716web.pdf) Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions (2016); Arab Foundation for Freedoms and Equality and Outright Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa* (2018), 26; ALEF et al., *Civil society report on the implementation of the International Covenant on Civil and Political Rights in Lebanon* (2018), 4.(2016); Arab Foundation for Freedoms and Equality and Outright Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa* (2018), 26; ALEF et al., *Civil society report on the implementation of the International Covenant on Civil and Political Rights in Lebanon* (2018), 4.

¹⁸⁴ Ahmad J. Saleh, Adriana A. Qubaia, *Transwomen's Navigation of Arrest and Detention In Beirut: A Case Study* (Civil Society Knowledge Centre, 2015).

¹⁸⁵ Helem, Human Rights Watch and Mosaic, "Don't Punish Me for Who I Am": *Systemic Discrimination Against Transgender Women in Lebanon* (2019).

¹⁸⁶ Human Rights Watch, "It's Part of the Job": *Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations* (2013), 11.

¹⁸⁷ Human Rights Committee, *Concluding observations on the third periodic report of Lebanon*, CCPR/C/LBN/CO/3 (2018), para. 13.

¹⁸⁸ Human Rights Watch, "It's Part of the Job": *Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations* (2013), 11.

¹⁸⁹ *Id.*, 12.

¹⁹⁰ *Id.*, 21.

¹⁹¹ *Id.*, 12.

were arrested, while the cinema itself was temporarily closed down for “posing a threat to public morality”. This came in response to a local television station publishing video content of gay men using a cinema as a dating location, though the video clip itself seems to have been filmed in the northern city of Tripoli, not Beirut. The detainees were all made to undergo invasive anal exams aimed at finding out whether they had engaged in same-sex activity. Public outcry led Lebanon’s Justice Minister to speak out, saying “from a humanitarian point of view, this is totally unacceptable”. He wrote to the public prosecutor, who in turn issued a memorandum calling for restraint in the application of forced anal exams.¹⁹² The same year, through sustained advocacy by local groups such as Helem, forced anal testing was banned,¹⁹³ though the practice appears to have continued in the years since.

As reported by Helem, in **2013** three men were arrested on the assumption that they were gay and, in the absence of any evidence, the public prosecutor ordered an anal examination.¹⁹⁴

On **22 April 2013** authorities raided a nightclub in Dekwaneh on the order of the mayor, arresting an unknown number of gay and trans individuals from both Lebanon and Syria. At the police station they were beaten, stripped, and forced to kiss each other while being photographed. The images were then distributed to local news outlets. The club was forced to close and the names of the detainees were affixed to the outside of the venue for the public to see. The mayor defended the actions, saying:

“I saw 25 men outside, or what looked like boys and men. I went inside and saw people kissing, touching each other, and a man wearing a skirt. These homosexual acts that are happening are scandalous sexual acts [...] Of course we made them take off their clothes. We saw a scandalous situation and we had to know what these people were. Is it a woman or a man? Turned out to be a half-man. I do not accept this in Dekwaneh”.¹⁹⁵

On **8 January 2014** five men were arrested in the Msaytbeh neighborhood after police received a tip-off regarding “illegal activities” taking place in a private apartment. Upon arrest they were asked if they would like to call anyone, and two (who were refugees from Syria) asked to contact the UN High Commission for Refugees. Authorities denied them this request, claiming

that the right to a phone call extended only as far as phoning family members. On the orders of the public prosecutor, they were subjected to anal examinations. They were released after two days in custody.¹⁹⁶

On **9 August 2014** the Morals Protection Bureau raided a Turkish bathhouse and arrested all 27 employees, and customers present, including the owner. This came in response to an investigation being carried out against a “foreigner” whose behaviour authorities described simply as “uneven”. Police illegally search his phone, where videos were found apparently identifying the bathhouse as a place for MSM to meet or pay for sex. Detainees were charged under Article 534 of the Penal Code and allegedly tortured into confessing to “sodomy” and outing more MSM individuals. Forms of torture went beyond physical beatings and allegedly included guards putting plastic bags over detainees’ heads. At one point they were transferred to Zahle Prison where they were made to pay a bribe to avoid sexual assault. Those who did not pay were made to sleep in the bathroom and denied food and water. They were also subjected to forced HIV/Aids testing. All except the owner of the bathhouse were released on bail after four to 10 days, though many were held and beaten for several days after a court order mandated their immediate release.¹⁹⁷

In **2015** two men were detained on suspicion of smoking hash, but when police found intimate conversations between them on their cell phones, an investigation into possible same-sex sexual activity began. The pair were also reportedly tortured into providing the names of other MSM in Lebanon.¹⁹⁸

In **2016** it was reported that a gay asylum seeker from Syria was arbitrarily arrested and held at Rehanieh military police station. He was tortured into confessing his sexual orientation, and was subjected to an improvised anal examination by means of a rod being painfully inserted into his rectum.¹⁹⁹

Around the Spring of **2015** a young man, his boyfriend and another friend were caught up in a random stop and search at a checkpoint run by Hezbollah. When the Hezbollah fighters found nude photographs on his phone, they presumed he was gay and transferred him to the Lebanese Internal Security Forces. He was detained for 12 hours, without food and water, and reported that the officers used both psychological and physical torture

¹⁹² “The Cinema Plaza Scandal: 36 citizens underwent homosexuality test”, *LBC International*, 31 July 2012; “Lebanon: Inflammatory TV Show Leads to Arrests of Gay Men”, *Global Voices*, 1 August 2012; “Outraged Lebanese demand end to anal exams on gay men”, *BBC News*, 8 August 2012.

¹⁹³ “Dakwaneh’s “No Gay Land” Triggers Debate on Homophobia”, *The Legal Agenda*, 2 December 2013.

¹⁹⁴ Helem, *Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon: A Shadow Report submitted to the Human Rights Committee* (2017), 6.

¹⁹⁵ “Lebanese Mayor Cracks Down on Gay Men in His Town Dekwaneh”, *Kaos GL*, 26 April 2013; “Mayor Shakhtoura: Responsible for Sexual and Racial Violations in Lebanon”, *Kaos GL*, 29 April 2013; “Lebanese Police Arrest Four During Gay Club Raid”, *Global Voices*, 8 May 2013; “Dakwaneh’s “No Gay Land” Triggers Debate on Homophobia”, *The Legal Agenda*, 2 December 2013.

¹⁹⁶ “Lebanon’s Republic of Shame: Law and Medicine as Means to Humiliate and Frighten”, *The Legal Agenda*, 29 July 2014; Helem, *Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon: A Shadow Report submitted to the Human Rights Committee* (2017), 6; Proud Lebanon, *The LGBTQ+ community in Lebanon, documenting stories of torture & abuse* (2017), 9.

¹⁹⁷ “Lebanon Launches Police Raids Targeting Gay Men”, *Huffington Post*, 15 August 2014; “The Hammam al-Agha Raid: Collective Prosecution in Violation of Individual Rights”, *The Legal Agenda*, 18 September 2014; “Torture at Every Stage: The Unofficial Narrative of the Hammam al-Agha Raid”, *The Legal Agenda*, 12 November 2014; Proud Lebanon, *The LGBTQ+ community in Lebanon, documenting stories of torture & abuse* (2017), 6-8.

¹⁹⁸ Proud Lebanon, *The LGBTQ+ community in Lebanon, documenting stories of torture & abuse* (2017), 6.

¹⁹⁹ *Id.*, 9.

before he was able to pay a fine of USD 500 to secure his release.²⁰⁰

On **12 January 2016** a trans woman from Syria who was waiting in Lebanon for approval to relocate to Canada was arrested. She was being sexually harassed in the street by a stranger who did not realise she was transgender, and police arrested them both for the public disturbance caused. She was held for three days at Ramlet Al-Baida station, chained to a chair in one of the station's offices as authorities could not decide whether to house her with men or women. She was subjected to violence, denied access to the bathroom, and claimed she had nothing to eat or drink in that time. Police searched her phone for "others like her" but came up short. Eventually she was permitted to make a phone call and so reached out to Helem, a local SOGIESC advocacy organisation. A representative of Helem arrived but was not permitted to see her, and left quickly when police started questioning him on whether or not he was gay. Later, a representative from the UN High Commission for Refugees arrived, but was also not allowed access to the victim. The woman was eventually released but further details are not clear.²⁰¹

In **December 2016**, a gay Syrian refugee was detained for five days and allegedly tortured by Lebanese security services and Internal Security Forces. He was asked to confess to having sex with men, beaten and suffered an anal examination to prove he was homosexual.²⁰²

In **August 2017** a Palestinian trans woman was lured to a police station after one of the officer's wives accused her of being sexually involved with him. She was held in a cramped cell with several men, and when a Syrian man attempted to defend her from sexual assault in the cell, both he and the trans woman were beaten by police. The next morning she was brought to an investigator who did not interview her at all, having already had a confession written for her. He told her "everything that is written in this paper is final. The confession is not going to change. You will sign this, or I will finish you". She was denied access to a lawyer and when her mother came to bring her vital kidney medication police refused to give it to her. After eight days the public prosecutor had her released for lack of evidence.²⁰³

On **13 August 2017** another trans woman was detained on accusations of "sodomy". She was held at a police station for seven weeks—well beyond the 48-hour limit prescribed for pre-trial detention under Lebanese law—suffering regular violence and denied access to a lawyer, before being transferred to Roumieh Prison and held there for five months. Purely by chance, representatives of the International Red Cross would go on to conduct a

routine inspection of the prison, and thus intervene to have her given access to a lawyer and a fair trial. The judge displayed a vitriolic contempt for the accused, calling her a "piece of shit", but ordered her release, regardless. While in detention her landlord, not knowing where she had disappeared to, disposed of her belongings. She tried to stay with friends and former colleagues, but she had been outed publicly during her case and was largely shunned by everyone she knew.²⁰⁴

In **December 2017** a Syrian trans woman and her boyfriend were stopped at a police checkpoint in Bekaa. The officer checking their vehicle turned to ask his superior if homosexuality was punishable under the law, and when the response came in the affirmative the officer dragged them from the car and proceeded to beat them for several hours through the night. The beating reportedly lasted several shifts, with fresh officers coming in to man the checkpoint taking over the beatings from those who went home. The trans woman's boyfriend requested his kidney medication from their car, but the presiding officer said "I'd rather you suffocate and die than be a faggot". Eventually they were taken to the police station and beaten further. The pair were held in a cramped cell for eight days and given only limited food. They were subjected to sexual abuse from other inmates, and verbal abuse from officers for being Syrian. They were eventually moved to a police station near the Syrian border and held for 10 days before being brought before a judge. Police could provide no evidence of any romantic or sexual relationship between the accused and so the judge ruled for the pair to be released.²⁰⁵

In **2018** a gender and sexuality conference, held annually since **2013**, was shut down by Lebanese authorities. Non-Lebanese SOGIESC activists present at the event were indefinitely denied permission to re-enter the country. This comes after religious groups called for the cancellation of the conference for "inciting immorality".²⁰⁶

A trans woman reported to Human Rights Watch in **2018** that police violently evicted her and her friends from their home when neighbours complained about their presence.²⁰⁷

On **16 May 2018** police arrested the organiser of Beirut's Pride celebrations after a judge ordered all planned Pride events be cancelled. He was held and interrogated overnight, being made to sign a pledge that he would cancel the remaining Pride activities. Police warned him that if he did not put an end to the activities he would be referred to an investigating judge for "incitement to immorality".²⁰⁸

²⁰⁰ "Despite allegedly torturing gay people, UK still funds Lebanese police force", *Middle East Eye*, 11 August 2017.

²⁰¹ "Detained Transgender in Lebanon: This is What Happened to Me", *The Legal Agenda*, 23 February 2016; Proud Lebanon, *The LGBTIQ+ community in Lebanon, documenting stories of torture & abuse* (2017), 6.

²⁰² "Despite allegedly torturing gay people, UK still funds Lebanese police force", *Middle East Eye*, 11 August 2017.

²⁰³ Helem, Human Rights Watch and Mosaic, *"Don't Punish Me for Who I Am": Systemic Discrimination Against Transgender Women in Lebanon* (2019), 34.

²⁰⁴ *Id.*, 36.

²⁰⁵ *Id.*, 29.

²⁰⁶ "Cleaning up the streets of faggots", *Human Rights Watch*, 4 August 2021.

²⁰⁷ Helem, Human Rights Watch and Mosaic, *"Don't Punish Me for Who I Am": Systemic Discrimination Against Transgender Women in Lebanon* (2019), 53.

²⁰⁸ Civil Society Knowledge Centre, *Beirut pride organiser detained, Judge ordered cancellation of events* (2019).



Malaysia

Criminalising Provisions

Article 377A of the [Penal Code](#) criminalises same-sex activity between men, with punishments of up to 20 years in prison and whipping. It defines the perpetrator of “carnal intercourse against the order of nature” as “[a]ny person who has sexual connection with another person by the introduction of the penis into the anus or mouth of [another] person”. Section 377B (Punishment for committing carnal intercourse against the order of nature) states “[w]hoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable for whipping”.

Section 377D (outrages on decency) states that “[a]ny person who, in public or private, commits, or abets the Commission of, or procures or attempt to procures the Commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years”.²⁰⁹

At the sub-national level, all of Malaysia’s 13 states and three federal territories have state-enacted Syariah (Sharia) laws that criminalise trans women based on their gender identity and gender expression, while three also criminalise trans men and transmasculine persons. While most of these provisions are contained in Syariah law (and apply to Muslims only), there are a number of provisions in criminal law that are used to arrest and harass trans people generally. Syariah laws are enacted by the State Legislatures, and contain laws that prohibit “posing as a woman”, or cross-dressing for “immoral purposes”.²¹⁰

Diverse gender expressions can also be criminalised under Federal law. Non-Muslim transgender persons are subject to s.21 of the Minor Offences Act (1995) which prohibits “indecent behaviour”. What constitutes “indecent behaviour” is not defined in the law, and as such has reportedly given discretionary powers to authorities for arbitrary arrests.²¹¹

Enforcement Overview

Between 2000 and 2021 ILGA World has identified at least 33 individual examples of criminal enforcement—mostly against trans women and persons of a feminine gender expression. However, by including reports from just four trans women who allege multiple arrests (the

individual circumstances of which ILGA World could not disaggregate), the number of known cases spikes to between 99 and 110 from the same period. Given the sheer number of additional cases alleged by such a small group, it must be assumed that the number of cases of criminal enforcement based on SOGIE is significantly higher than is reported. Indeed, based on the Attorney General’s Chambers and Royal Malaysia Police statistics, a total of 171 cases have been charged under section 377B of Penal Code (which prohibits same-sex sexual activity) between 2010 and 2014.²¹²

A 2019 study carried out by the Human Rights Commission of Malaysia (SUHAKAM) in Kuala Lumpur and Selangor showed that most of the arrests under the criminalising provisions were carried out against transgender and gender-diverse people—predominantly at the hands of police, with the second highest number of arrests from various state religious authorities.²¹³

A 2019 study carried out by the Human Rights Commission of Malaysia showed that most of the arrests under the criminalising provisions were carried out against transgender and gender-diverse people

The report also notes that while Syariah laws apply only to Muslims, non-Muslims have also been subjected to “moral policing”. They are subjected to arrests during police raids in entertainment outlets and for “roaming around on the street as cross-dressers which may be accused of disorderly behaviour in public places”. A non-Muslim transgender woman could also be charged under the Section 21 of the Minor Offence Act 1955 for “obscene” behaviour.²¹⁴

Some of the cases summarised by ILGA World in the next section demonstrate that trans women with breasts will often be detained for “cross-dressing” even when they are wearing typical men’s clothing over their bras. It appears that this issue is prevalent enough that some trans women opt to not even wear bras so as to avoid being targeted.²¹⁵

Some progress seemed to be on the cards in November 2014 when the Court of Appeals ruled Section 66 of Negeri Sembilan’s Syariah law prohibiting Muslims from cross-dressing to be unconstitutional. Though the basis upon which the ruling was made was that trans women are seen as “male” by the State and that it is thus

²⁰⁹ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report: Recognition before the law* (2020), 88.

²¹⁰ Asia Pacific Transgender Network, SEED Malaysia, *Legal Gender Recognition in Malaysia: A Legal & Policy Review in the Context of Human Rights* (2017), 30.

²¹¹ Asia Pacific Transgender Network and RFSL, *Leave No One Behind: Malaysian Transgender at Risk A Spotlight Report on SDGs Implementation in Malaysia* (2021), 12.

²¹² Human Rights Commission of Malaysia (SUHAKAM), *Study on discrimination against transgender persons based in Kuala Lumpur and Selangor* (2019), para. 48.

²¹³ *Id.*, para. 209.

²¹⁴ *Id.*, para. 48.

²¹⁵ “Malaysian court to rule on sharia law, transgender women”, *Erasing 76 Crimes*, 29 May 2014.

discrimination against men to be banned from wearing women's clothing when no parallel provision existed for women, the judgement was well-received as a partial victory. However, the Federal Court overturned the ruling in October 2015 on procedural grounds. According to the local organisation, Justice for Sisters, this set off a wave of raids and arrests across the country.²¹⁶

In the years since, it appears that governing and religious authorities have doubled down on their policies against gender-diverse persons, not only through arrests but through practices appearing to constitute so-called "conversion therapies". In July 2020 Zulkifli Mohamad Al-Bakri, Malaysia's Religious Affairs Minister, drew widespread backlash from local human rights activists for defending a government-led campaign of apparent "conversion therapy" camps. He claimed federal religious police have "full license" to arrest trans people and subject them to "religious education" to "return to the right path".²¹⁷ The following year, in June 2021, the Prime Minister of Malaysia informed Parliament that 1,733 people had been sent to a "rehabilitation camp" run by the Department of Islamic Development to "bring them back to the right path", though the details of almost all of the individuals detained remain unknown.²¹⁸

In September 2021 it was announced that the Fatwa Committee for the state of Perlis had adopted a new segregationist policy barring trans women from entering Islamic places of worship. The head Mufti for Perlis is reported as saying:

Those who deliberately resemble the opposite sex are included in the wicked group [that is] prohibited from entering the mosque in a state of gender confusion because it can disrupt the atmosphere of worship.²¹⁹

Examples of Enforcement

In 2000, a trans woman was targeted by Religious Department police for "cross-dressing" despite wearing a gender-neutral t-shirt and jeans, because they had spotted the bra she was wearing underneath. They released her when she told them "I have breasts! This is between me and God, this has nothing to do with you." Many others were not so lucky. A report by Human Rights Watch notes that at an **unknown date** and

location, religious police raided a private function being held at a golf course and arrested eight people accused of being crossdressers. As members of the event tried to flee across the golf course, police allegedly used golf carts to chase them down. The report further makes mention of a trans woman who claimed to have been arrested between 20 and 30 times in the two decades preceding her interview with the researchers in 2014, which underscores the inherent difficulty in identifying anything close to a precise count of incidents of criminal enforcement.²²⁰

The same report indicates that one trans woman in Johor was arrested five times between 2002 and 2014, with one incident at a club in 2009 reportedly involving the arrest of 76 trans women. It is alleged in Human Rights Watch's interview with the woman in question that she was detained solely because she had breasts as a result of hormone replacement therapy, as she was not wearing typically feminine attire at the time and thus should not have been considered to be cross-dressing under existing legal parameters. She was released on condition she attend counselling sessions aimed at encouraging her to be a man. She was targeted in 2010 but not arrested, by a police officer who recognised her from previous arrests and demanded a bribe and her cellphone in order to leave her alone.²²¹

In 2007 in Malacca, religious police arrested a trans woman and reportedly beat her so violently that she had to undergo surgery. Local activists from an organisation called Justice For Sisters sought to file a complaint, but the victim declined out of fear that she would be further targeted by authorities.²²²

It was reported by *The Guardian* that 37 men in northern Penang Island were arrested in a raid of a fitness centre on **4 November 2007**. Police alleged that they had found pornographic videos, condoms, lubricant and other incriminating evidence at the scene. The men, including at least one British and one Chinese national, were released pending an investigation into whether they could be charged with "unnatural sex acts".²²³

In 2009 a trans woman in Kedah state was arrested for wearing a sundress, and while being taken to the Religious Department police van, she was kicked by an officer until her leg started bleeding.²²⁴

²¹⁶ "Raids, arrests of 21 trans women after Malaysian ruling", *Erasing 76 Crimes*, 26 October 2015; Asia Pacific Transgender Network (APTN), SEED Malaysia, *Legal Gender Recognition in Malaysia: A Legal & Policy Review in the Context of Human Rights* (2017), 30-31.

²¹⁷ "What trans people need is the license to be respected as human", *Justice for Sisters*, 11 July 2020; "Strong rebukes for Malaysian minister's anti-trans stance", *Erasing 76 Crimes*, 15 July 2020; Asia Pacific Transgender Network, "Because it makes people believe in the lie that it is possible to pretend to be something you're not. Just so that you can, you know, have a day in heaven or whatever": *Conversion Therapy Practices in Malaysia* (2020), 9.

²¹⁸ "Malaisie : le Département du développement islamique a arrêté et déporté 1.730 LGBT dans un « camp de réhabilitation » afin de les « ramener sur le droit chemin »" [Malaysia: Department of Islamic Development arrested and deported 1,730 LGBT people to "rehabilitation camp" in order to "bring them back to the right path"], *Fdesouche*, 19 September 2021.

²¹⁹ "Bingung Gender, Mufti Perlis Haramkan Waria Masuk Masjid" [Confused by Gender, Mufti of Perlis Bans Shemales from Entering Mosques], *Hidayatullah*, 24 September 2021.

²²⁰ Human Rights Watch, *I'm Scared to Be a Woman: Human Rights Abuses Against Transgender People in Malaysia* (2014), 25-26.

²²¹ *Id.*, 23-24, 30.

²²² *Id.*, 29.

²²³ "Malaysian police arrest 37 at gay sex party", *The Guardian*, 6 November 2007.

²²⁴ Human Rights Watch, *I'm Scared to Be a Woman: Human Rights Abuses Against Transgender People in Malaysia* (2014), 29.

In May 2010 a trans woman in Seremban was punched in the face and choked by religious police for wearing pyjamas deemed to be too feminine. Another trans woman arrested in 2010 was assaulted with a police flashlight and was refused medical care at the police station where she was taken, despite reportedly bleeding heavily.²²⁵

In 2011 a trans woman was arrested while at a local food stall by Religious Department officials, and at the police station was stripped in front of other detainees and sexually assaulted.²²⁶

In March 2011 a trans woman gave an interview published in a 2014 OutRight Action International report. She claimed she and her friends were getting food on their way home after work one evening, when police began arresting a group of nearby sex workers. Presuming she and her friends to be sex workers as well, due to their trans status, they were also detained. They were later released, but personal items, including bras, were confiscated for further investigation.²²⁷

Another trans woman, interviewed by Human Rights Watch, had been arrested five times between 2012 and 2014 in Kedah state for cross-dressing, and was accused of prostitution at one point for handing out condoms to other trans women as part of her work as a sexual health activist.²²⁸

Also in 2012, three Muslim trans woman were arrested by religious police in Seremban and charged with cross-dressing. They were attempting to hide in the home of a Christian friend, as only Muslims are normally subject to Syariah law in Malaysia, but police forced their way in and arrested them, leaving the Christian trans woman behind.²²⁹

In July 2013, three trans women in Seremban were arrested by religious police who had informed a television station ahead of time so that the raid could be covered on the news. The women were forced to hold a media interview where they were asked about details of their presumed lives as sex workers, before being hauled away to the police station.²³⁰

On 9 June 2014, 16 transgender women were arrested in Negeri Sembilan while at a wedding in a private home, with police tearing their clothes, beating and choking

them in the process. They were charged with contravening Article 66 of the local Syariah Criminal Enactment prohibiting “men” from wearing women’s clothing. The women were held in a men’s facility and had their heads shaved while there. They were fined 950 ringgit (USD 300) each by a Syariah religious court, and sent to Sungai Udang Prison for seven days. Local advocacy group Justice for Sisters raised money to pay their fines and fund their legal appeals.²³¹

On 1 September 2014 two women in Johor Bahru were arrested when their hotel was raided by the Johor Islamic Religious Department. Authorities claimed that they were being held on suspicion of engaging in same-sex sexual activity as one of the women was naked at the time of arrest and there was a sex toy in the hotel room, but human rights defenders who took up their case called for their acquittal as no witness had observed any of the alleged same-sex activity, which is often a requirement for conviction. Their fates are not known.²³²

In the aforementioned 2014 OutRight report, a trans woman from Malaysia’s Indian minority community claimed to have been arrested 36 times, and repeatedly subjected to degrading treatment, physical violence, and sexual abuse. As only Muslim residents are subject to Syariah law, authorities were never able to charge her with “imitating a woman”, and rather targeted her under the guise of “public indecency”.²³³

Another trans woman claimed in 2014 to have been arrested by religious police four or five times, and charged for “imitating a woman”. During her repeated detentions she would have her hair cut, her personal belongings confiscated, and would have her breasts groped by officers.²³⁴

In February 2015, leading opposition leader, and former Deputy Prime Minister, Anwar Ibrahim, was convicted of sodomy and sentenced to five years’ imprisonment—though the case is widely considered to have been politically motivated and Ibrahim received a royal pardon in 2018.²³⁵

On 12 October 2015 three trans women were arrested while out shopping in Kuala Lumpur, Malaysia’s capital, when a man approached them for sex. When they refused, he told police they had stolen his wallet, and even when it became apparent that they did not steal

²²⁵ *Id.*, 28-29

²²⁶ *Id.*, 27.

²²⁷ IGLHRC (now OutRight Action International), *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia* (2014), 114.

²²⁸ Human Rights Watch, *I’m Scared to Be a Woman: Human Rights Abuses Against Transgender People in Malaysia* (2014), 22-23.

²²⁹ *Id.*, 30-31.

²³⁰ *Id.*, 31.

²³¹ Human Rights Watch, *I’m Scared to Be a Woman: Human Rights Abuses Against Transgender People in Malaysia* (2014), 20; “Malaysia: Support overwhelms 16 jailed trans women”, *Erasing 76 Crimes*, 12 June 2014.

²³² “Islamic women’s group defends Malaysian arrestees”, *Erasing 76 Crimes*, 3 September 2014.

²³³ IGLHRC (now OutRight Action International), *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia* (2014), 114-115.

²³⁴ *Id.*, 127.

²³⁵ “Malaysia’s Anwar jailed for five years after losing appeal in sodomy trial”, *Reuters*, 10 February 2015; “Anwar Ibrahim fails to strike out legal challenge to pardon for his 2014 sodomy conviction”, *Channel News Asia*, 21 September 2020; “Court of Appeal to hear Anwar’s pardon case on Jan 11”, *New Straits Times*, 14 October 2020.

anything, police took them into custody and held them for three days.²³⁶

On **15 October 2015**, in an apparent coordinated raid (though this is not verified), 15 trans women were arrested in Bukit Bintang, Pudu and Chow Kit. They were held in detention for six days, where they reportedly suffered physical violence and had their hair shaved off. Four were charged with “posing as women for immoral purposes” under Section 28 of the Penal Code and subsequently fined 990 ringgit each (around USD 237). The remaining 11 were allowed to leave on bail, but on the condition that a man of masculine gender-expression (i.e., a cisgender man) post bail for them.²³⁷

On **21 October 2015** three trans women from the Philippines were arrested in Terengganu when members of the Immigration Department went undercover to solicit sex from them as a form of entrapment. It is not clear if this is a case of targeting because of their gender identity, or if the case hinges on issues of immigration and a prohibition on sex work instead. For this reason, it is not included in the tally above.²³⁸

On **2 March 2016**, 12 “cross-dressers”—possibly trans women—were arrested in Chulia Street, George Town. Several were apprehended for allegedly robbing a tourist in the area, but six not involved in the robbery were detained and investigated for contravening Section 28 of the Penal Code. A police official told reporters that “Chulia Street is a place crowded with tourists and it is not right to have men impersonating women there”.²³⁹

On **3 April 2016** a trans woman was arrested in the raid of a trans-friendly event she had organised, and was held for a day without being informed of why she had been arrested. Her guests were permitted to walk free. One news outlet has claimed that the raid took place because of a local *fatwa* (religious edict) against beauty pageants. Later she was charged with “obstructing the duties of [an] officer”, though a Kuala Lumpur Magistrate’s court acquitted her of this on **21 August**. She and a group of additional complainants have taken the Federal Territory Islamic Religious Department, the Federal Territory Islamic Religious Council, and the office of the Prime Minister to court for wrongful arrest and malicious prosecution. At the time of publication the case is ongoing.²⁴⁰

On **12 August 2018** the Syariah court in Terengganu sentenced two women who pled guilty to engaging in same-sex sexual activity to six lashings each, as well as a fine of 3,300 ringgit (USD 805 at the time). The

Terengganu Executive Councillor stated in response to outcry from human rights groups and the Human Rights Commission of Malaysia that “no one has the right to interfere in the court’s judgement—not even politicians”. The punishment was temporarily postponed due to “technical issues”.²⁴¹

On **7 November 2019** the Selangor Syariah Court sentenced five men accused of participating in same-sex sexual activity. Four were given six-month prison sentences, six lashes, and a fine of 4,800 ringgit (USD 1 163). The fifth was given a slightly higher fine of 4,900 ringgit, also received six lashes, and was sent to jail for seven months. On **19 November** four of the five received their lashes, though the fifth attempted to appeal the ruling and so was not caned at the time. Religious police had arrested the group the **previous year** in an apartment raid after monitoring their cell phone activity, and claim that they found evidence there of “an attempt to carry out intercourse outside of the order of nature [which] was not in the early stages of preparation”.²⁴²

On **12 November 2019** a Vietnamese gay couple were arrested in a raid after it was found that they were engaging in possible sex work at their hotel. They were fined 1,000 ringgit (USD 240), with possible further investigations underway by the Penang Immigration Department.²⁴³

On **25 February 2021** the Malaysian Federal Court unanimously declared that a man from Selangor state charged with “sodomy” in **2019** could challenge the ruling. The Court found that the Syariah Crimes (Selangor) Enactment of 1995 violated the country’s constitution, but former Deputy Public Prosecutors have told the media that the State could still investigate and charge the man under the Malaysian Penal Code, as sections 377B and 377C of the Code carry a penalty for same-sex sexual activity (sodomy) of up to 20 years’ imprisonment and whipping.²⁴⁴ Several conservative groups and religious organisations have publicly urged the government to investigate the incident so that the man may be re-imprisoned.²⁴⁵

Also on **25 February 2021**, in Selangor, the Islamic Religious Department issued a warrant of arrest for a trans woman who failed to appear in court on charges of “insulting Islam”. Those charges came from an incident in **2018** where she attended a social event at a religious school in a dress, as well as another similar complaint against her from **2020**. If found guilty of “offences relating to the sanctity” of Islam, she would face a fine of 5,000 ringgit (USD 1,200) and up to three years’

²³⁶ “Raids, arrests of 21 trans women after Malaysian ruling”, *Erasing 76 Crimes*, 26 October 2015.

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ “12 cross-dressers taken off the streets”, *The Star*, 4 March 2016.

²⁴⁰ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

²⁴¹ “Syariah Court’s judgement against lesbian couple is final”, *The Star Online*, 16 August 2018; “Caning for Alleged Lesbian Acts in Malaysia Postponed”, *Human Rights Watch*, 28 August 2018.

²⁴² “Malaysia sentences five men to jail, caning and fines for gay sex”, *Reuters*, 7 November 2019; “Malaysian men caned for gay sex under Islamic law”, *The Straits Times*, 19 November 2019.

²⁴³ “Gay Vietnamese tourists fined for committing ‘immoral act’ in Penang hotel”, *New Straits Times*, 25 November 2019; “Two Vietnamese males held for offering massages to men”, *The Star*, 14 November 2019.

²⁴⁴ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

²⁴⁵ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.



imprisonment. The Selangor Islamic Religious Department allegedly sent at least 122 officers to hunt her down, which led her to flee the country. She was arrested on 8 September in Thailand for breaching immigration protocols, but at the time of publication has sought asylum through the UNHCR.²⁴⁶

In March 2021 authorities in Kuala Lumpur raided a massage parlour on suspicion of offering sexual services to MSM. Authorities from the Kuala Lumpur City Hall Enforcement Department ostensibly closed the premises on account of it not being appropriately licenced as a massage parlour, but noted that they had uncovered “immoral activities such as massage services for gays” on the premises, confiscating lubricant gel and condoms during the raid.²⁴⁷ This was just one of at least three raids on massage parlours reported in March and April, with five women believed to be sex workers and four allegedly gay men from Pakistan, Vietnam and Indonesia being arrested across all three raids.²⁴⁸

In June 2021 the Prime Minister reportedly informed Parliament that 1,733 people of diverse sexual orientations and gender identities had been sent to a “rehabilitation camp” run by the Department of Islamic Development to “bring them back to the right path”, though the details of almost all of the individuals detained remain unknown.²⁴⁹ Indeed, in 2019, a local activist informed ILGA World that those who are “soft spoken” and those who “dress against masculinity” have been reportedly forced to attend “conversion camps” to change their behaviour and sexual orientation.²⁵⁰



Criminalising Provisions

Section 411(a)(2) of the Penal Code (Law No. 6) (2014) criminalises “unlawful sexual intercourse”, which is committed when a person engages in sexual intercourse with a person of the same sex.

“Same-sex intercourse” is defined either as: (a) insertion by a man his sexual organ or any other object into the anus of another man for sexual gratification; or the insertion into another man’s mouth the penis of a man; or

(a) insertion of a woman’s organ or any object into the vagina or anus of another woman for sexual gratification.

The offences in the section range from Class 1 misdemeanours to Class 3 felonies that carry a jail term of between six months and eight years. It may also result in an additional punishment of 100 lashes.²⁵¹

Section 412(c) of the Penal Code criminalises “unlawful sexual contact” with a person of the same sex, which includes indecent acts for obtaining sexual gratification other than those listed under Section 411(a)(2). The offences in the section range from Class 1 misdemeanours to Class 3 felonies that carry a jail term between six months and eight years.²⁵²

Enforcement Overview

ILGA World could identify only one clear example of criminal enforcement in the Maldives at the time of publication. However, the existence of any such instances, or indeed the criminalising provisions themselves, demonstrate that an otherwise “quiet” country can seemingly at any moment target its residents.

It is believed that a moratorium on arbitrary arrests had existed for some time in the Maldives, though this appears to have been revoked. The government of the Maldives has further demonstrated no recent action in repealing these criminalising provisions. In 2020 during its Universal Periodic Review at the UN, the Maldives received the following recommendation from Chile:

Repeal the laws that criminalise consensual same-sex relationships and immediately reinstate the moratorium on the arbitrary arrest and detention of persons based on their sexual orientation (real or perceived), gender identity or expression.²⁵³

The recommendation was rejected, with the following justification coming from Maldivian delegates:

Islam is the religion of Maldives and Islamic principles are fundamental to the Maldivian identity, forming the basis of the Constitution of the Republic of Maldives and all our laws.²⁵⁴

²⁴⁶ “JAIS can’t say why they needed 122 officers to get Nur Sajat”, *Coconuts*, 26 February 2021; “Celebrity transwoman Nur Sajat seeking asylum in Australia after Bangkok arrest”, *Coconuts*, 20 September 2021.

²⁴⁷ “Pusat urut tawar khidmat seks sejenis diserbu” [A bargain massage center for same-sex services was raided], *Sinar Harian*, 30 March 2021; “DBKL serbu, tutup premis urut gay - Malaysiapost” [DBKL raids, closes former gay premises], *Malaysia Post*, 31 March 2021.

²⁴⁸ “5 wanita, 4 gay warga asing ditahan dalam serbuan rumah urut” [5 women, 4 gay foreigners arrested in massage parlor raid], *Malaysia Gazette*, 10 April 2021; “DBKL serbu tiga pusat urut gay - Malay News” [DBKL raids three gay massage parlors - Malay News], *Malay News*, 11 April 2021.

²⁴⁹ “Malaisie : le Département du développement islamique a arrêté et déporté 1.730 LGBT dans un « camp de réhabilitation » afin de les « ramener sur le droit chemin »” [Malaysia: Department of Islamic Development arrested and deported 1,730 LGBT people to “rehabilitation camp” in order to “bring them back to the right path”], *Fdesouche*, 19 September 2021.

²⁵⁰ Jeremy Tan Fok Jun, “On the impact of government policies to “convert” LGBT people” in ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (March 2019), 451.

²⁵¹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 133.

²⁵² *Id.*, 134.

²⁵³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Maldives*, A/HRC/46/10 (2020), para. 133.67.

²⁵⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Maldives: Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/46/10/Add.1 (2020), para 133.30.

Examples of Enforcement

In 2015, an organisation called Rainbow Warriors reported that a gay couple was arrested in their home on the island of Dhaandhoo under the accusation of “homosexual activities”. Police had reportedly not actively tackled “private behaviour” until then.²⁵⁵



Myanmar

Criminalising Provisions

Section 377 of the Penal Code (Act No. 45/1860) criminalises “carnal intercourse against the order of nature”. This carries the potential punishment of imprisonment for a term which may extend to ten years and a fine.²⁵⁶

Further, Section 30 of the Rangoon Police Act (1899) and Section 35 of the Police Act (1945), colloquially called “Shadow Laws” or “Darkness Laws”, permit police to take into custody virtually any suspected person for up to three months without a warrant. Section C of both acts criminalises “any person found between sunset and sunrise having his face covered or otherwise disguised and who is unable to give a satisfactory account of himself.” This provision is reportedly used to *de facto* criminalise trans and gender-diverse persons.²⁵⁷

Enforcement Overview

Between 2011 and 2021 ILGA World notes at least 20 examples of criminal enforcement, with a significant number of incidents constituting a form of *de facto* criminalisation of trans women and gender-diverse persons. The tally is likely higher, as the predominant source used to identify cases was a 2019 report by Equality Myanmar, the LGBT Rights Network, Color Rainbow, and KNQ, which interviewed “dozens of lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals [who] spoke of how Myanmar’s criminal laws, law enforcement officials, and the whole justice system fail them”. These stories were not always tallied or individually disaggregated, and thus may not have been included in this report.²⁵⁸ Further, ILGA Asia has reported that in the years prior to 2020 at least 67 cases of arrest have been documented across the country.²⁵⁹

Trans women are especially targeted under Section 35C of the Police Act, also known as the “Darkness Law”, which allows authorities to detain someone whose face is covered or otherwise “disguised”

While ILGA World has not been able to include each specific incident in the country, local activists have claimed that people of diverse SOGIE—especially transgender women—are targeted under Section 35C of the Police Act, also known as the “Darkness Law”, which allows authorities to detain someone whose face is covered or otherwise “disguised”.²⁶⁰ According to a submission by ILGA Asia and C.A.N-Myanmar to the UN Special Rapporteur on Torture, many of the documented arbitrary arrests take place under a local law enforcement operation called “Peace and Tranquility projects” where police hunt for cases “to meet their target quota”.²⁶¹

In 2014 the Asian Human Rights Commission “expressed concerns over the police violence against transgender persons” that commonly take place across the country.²⁶² The situation, however, seems to have worsened in the years since.

In February 2021 the military retook the country in an apparent coup.²⁶³ C.A.N-Myanmar and ILGA Asia have noted that “the threat of being arbitrarily arrested and tortured has tripled among LGBTI anti-coup protesters. Reports from local LGBTI organizations have already indicated that many LGBTI activists are arrested, tortured, and killed due to their participation in the peaceful demonstrations and civil disobedience movement in the past six months. Moreover, a recent report on situations of LGBTI persons in Myanmar, co-published by the Ministry of Human Rights and Ministry of Women, Youth and Children Affairs of the National Unity Government of Myanmar, also highlighted 12 cases of LGBTI fatalities; with 73 being arrested and/or charged under Sections 505(a) of the Penal Code and 65 still being detained”.²⁶⁴

²⁵⁵ “Worrying arrest in the Maldives”, *Rainbow Warriors*, 31 August 2015.

²⁵⁶ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 134.

²⁵⁷ Equality Myanmar, LGBT Rights Network, Color Rainbow, and KNQ, *In the shadows: Systemic injustice based on sexual orientation and gender identity /expression in Myanmar* (2019), 29-31.

²⁵⁸ *Id.*, 7.

²⁵⁹ ILGA Asia, *At an impasse: How decade-long dictatorship, systemic oppression and social conservatism empowered (or fueled) discrimination and, stigma towards LGBTI people in Myanmar* (2021), 7.

²⁶⁰ “Prejudice and progress: a snapshot of LGBT rights in Myanmar”, *MM Times*, 1 June 2017.

²⁶¹ ILGA Asia and C.A.N-Myanmar, *Submission of Inputs for the report on the Impact of thematic reports presented by the Special Rapporteur on Torture* (2021), 6.

²⁶² Sida, *Compilation of Briefs on Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons* (2014), Section 22, 1.

²⁶³ “Myanmar coup: What is happening and why?”, *BBC News*, 1 April 2021.

²⁶⁴ ILGA Asia and C.A.N-Myanmar, *Submission of Inputs for the report on the Impact of thematic reports presented by the Special Rapporteur on Torture* (2021), 8.

Examples of Enforcement

A trans woman was detained by police allegedly on account of her gender identity in **2011**, and again in **2012**, and both times was sexually assaulted instead of being formally charged with any crime.²⁶⁵

In **2014** a trans woman was arrested at a night-time cultural festival after another festival-goer accused her of stealing her earrings. When it became clear that she had not stolen the earrings, police decided to detain her anyway under one of Myanmar's "Darkness Laws" allegedly for no reason other than her gender identity. She was released after she managed to pay a bribe.²⁶⁶

One evening in **June 2016** an individual in Mandalay who was described as "cross-dressing" was arrested by five plainclothes police officers. She asked why she was being arrested and was told she was "being detained under Section 377 (prohibiting same-sex acts) and the Shadow Law" with no further explanation. She was beaten at the police station where police made her remove her clothes and wig.²⁶⁷

Another trans woman was targeted in **June 2016**, this time in the Sagaing region, when police followed her home from a tea house. They told her "we know you aretransgender, so you need to follow us". They took her to the police station and only then told her she was being arrested for violating Section 377 of the Penal Code for engaging in same-sex sexual activity. She retorted that police had no evidence of this, to which one officer responded that "all trans women engage in anal sex and are bottoms". She and several other trans women detained that night were beaten at the station, but eventually released.²⁶⁸

A trans woman was reportedly arrested under one of Myanmar's "Darkness Laws" in **2017** while heading to a wholesale flower market to get bouquets to set up at her business.²⁶⁹ Another trans woman was arrested in **2017**, along with a friend of hers, when police came by a popular hangout spot. They were beaten on the street before being taken into custody, and when the woman asked why, they told her she had no right to ask questions. At the station they were made to hop up and down like frogs and were sexually assaulted by officers. They were held for 15 days before being transferred to a court holding area, where by chance the woman's friend spotted her sister there who was a lawyer, and they were released.²⁷⁰

In **November 2017** a transgender makeup artist and her friend were stopped in the streets of Yangon by an unmarked police vehicle. Officers took pictures of them before transporting them to the police station. They were not charged, but were made to clean the station while shouting "I am a man" repeatedly. The woman recounts that other detainees were given food and allowed to phone their families, and when she asked why she and her friend were not permitted the same, an officer told her "because you are transgender!"²⁷¹

In **2018** a gay man was held under a "Darkness Law" when police arrested a group of young men for an unrelated fight close to where he happened to be standing. One officer recognised him and so told the others "he is gay, so arrest him too". At the station the men who had been arrested for their brawl were allowed to call their families and post bail, but police held the gay man for several hours after the others were released before allowing him to do the same.²⁷²

In **2018** a trans woman reported that she and her friends were walking home from work after dark in Yangon when they noticed police following and photographing them. When they asked why the police were doing this, they were taken into a police vehicle and held at a station under one of the "Darkness Laws".²⁷³

A trans makeup artist also reported in **2018** that she was arrested in Shan state when she refused the sexual advances of a police officer. She was held under the "Darkness Law" until she agreed to sex with two officers at the station.²⁷⁴

It was reported in **2018** that seven trans women were arrested at Mandalay's U Bein bridge, a hotspot for arrests, for being caught "behind the shadow" (out after dark). They were each made to pay a bribe of 50,000 kyats (USD 32), but one woman who could not afford that amount was taken into police custody.²⁷⁵

Another trans woman reported in **2018** her case in which an officer arrested her for violating the Rangoon Police Act. At the police station she was made to do 100 squats as a form of corporal punishment and was beaten with a stick until it broke. Her uncle was a high-ranking government official at the time and thus secured her release.²⁷⁶

²⁶⁵ Equality Myanmar, LGBT Rights Network, Color Rainbow, and KNQ, *In the shadows: Systemic injustice based on sexual orientation and gender identity /expression in Myanmar* (2019), 41.

²⁶⁶ *Id.*, 31.

²⁶⁷ *Id.*, 32.

²⁶⁸ *Id.*, 39.

²⁶⁹ *Id.*, 31.

²⁷⁰ *Id.*, 45.

²⁷¹ *Id.*, 44.

²⁷² *Id.*, 46.

²⁷³ *Id.*, 31.

²⁷⁴ *Id.*, 33.

²⁷⁵ *Id.*, 33.

²⁷⁶ *Id.*, 47.

Three more transgender individuals recounted in **2018** that they were arrested under “Darkness Laws” because of their sexual orientations or gender identities, with one claiming to have asked police the reason for the arrest, to which they responded: “Because you are a trans woman! Because you are gay!”²⁷⁷

Also reported in **2018** were the cases of a gay couple walking together in the street arrested under the “Darkness Law”, and an individual of unknown SOGIE identity detained while walking through a park one evening.²⁷⁸

In **March 2018** an outspoken SOGIE activist in Yangon was charged with engaging in homosexual acts, though he had also been accused of sexual assault by an employee and was denied bail. Reports imply that the evidence for his incarceration was one-sided and that he is in fact facing discrimination because of his sexual orientation and HIV status, though the veracity of these claims could not be ascertained. The accused was allegedly also denied bail and antiretroviral treatment while in detention.²⁷⁹

In a **2020** report by C.A.N.-Myanmar, it was noted that a trans woman who worked as a sexual health educator and counsellor in the Mandalay region was arrested under the so-called “Darkness Law”. Beyond being held under Police Acts 30C and 35D they threatened to charge her under Article 3B of the Anti-prostitution Act because they found condoms and lubricant on her person, which she used for her outreach work. After two nights in police custody the organisation she worked for managed to bail her out, but the experience left her too afraid to continue doing community outreach work.²⁸⁰



Oman

Criminalising Provisions

Under the new Penal Law (2018), which replaced the 1978 Penal Code (per [Royal Decree 7/2018](#)), Article 261 criminalises consensual same-sex sexual intercourse between men and carries a maximum punishment of three years. Article 263 defines sexual intercourse as completed “upon the penetration of the male organ,

however slight, into the genital or anal opening whether or not accompanied by the ejaculation of semen”. Furthermore, Article 262 punishes “lustful acts with a person of the same sex”, with imprisonment of up to three years.²⁸¹

Further, Article 266 criminalises gender expression by stating: “Any male who [...] (c) Disguises himself as a female and enters a female-only area; (d) publicly appears in a female outfit, either in his way of clothing or body appearance. Will be subject to a prison sentence of one month to one year and a fine of 100 to 300 Omani Riyal or by either of these penalties”.²⁸²

Enforcement Overview

Significant restrictions on freedom of expression and media exist in Oman, with the State telecommunications company, Omantel, blocking access to a local LGBTI blog in 2010, and government officials suing and shutting down a newspaper in 2013 after it published a story about Oman’s LGBT community and made inferences about the Sultan’s sexuality.²⁸³ These instances are telling, and serve as reminder that additional cases of enforcement may exist which simply were not publicised. Further, under Sultan Qaboos legal punishments for consensual same-sex sexual acts were actually aggravated.²⁸⁴

Under Sultan Qaboos legal punishments for consensual same-sex sexual acts were aggravated

As such, from 2009 to the time of publication ILGA World has noted between three and 13 possible examples of criminal enforcement, though many details remain unknown.

Examples of Enforcement

According to the US Department of State, nine men were prosecuted for “sodomy” in **2009**, though further details are not clear. Whether this was a single case or multiple, and what the fates of the accused were, are not known.²⁸⁵

²⁷⁷ *Id.*, 38.

²⁷⁸ *Id.*, 32.

²⁷⁹ “Two Gay Men Arrested in Myanmar while anti gay crackdown intensifies in Tanzania”, *Kuchu Times*, 8 November 2018; ILGA Asia, *At an impasse: How decade-long dictatorship, systemic oppression and social conservatism empowered (or fueled) discrimination and, stigma towards LGBTI people in Myanmar* (2021), 6.

²⁸⁰ C.A.N.-Myanmar, *Leaving no one but LGBTI behind in Myanmar: Spotlight Report from the perspective of LGBTI NGO/CSOs on the implementation of Sustainable Development Goals in Myanmar* (2020), 15.

²⁸¹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Leles, Enrique López de la Peña, Iliá Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 134.

²⁸² ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report: Recognition before the law* (2020), 95.

²⁸³ “Stop Press: New Omani Blog Community Queer blocked by ... Omantel”, *Muscat Confidential*, 14 February 2010; “Sultanate of Oman takes newspaper to court over gay story”, *Gay Star News*, 10 September 2013.

²⁸⁴ Human Rights Watch, *Oman: Events of 2020* (2021).

²⁸⁵ United States Department of State, *Oman 2013 Human Rights Report* (2013), 19.

In **August 2013** a local newspaper, *The Week*, reportedly published a story about Oman's LGBTI community in which it praised the country's openness and inferred that the Sultan was of a diverse sexual orientation. Despite then publishing a front-page retraction and apology, the government sued the paper and ordered it to suspend operations. The writer of the article and editor of the paper faced criminal charges.²⁸⁶

On **27 January 2018**, less than two weeks after Article 266 of the Penal Law came into force, Royal Oman Police arrested four "men wearing women's clothes" in the city of Salalah. Police were alerted to social media posts and images which showed attendees at a private party wearing feminine attire. On **15 February** a Salalah court convicted them of "immoral conduct", "distributing material that violates public ethics", and "imitating the opposite sex". Each of the accused was sentenced to three years in prison, a fine of 3,000 Omani Riyals (about USD 7,800), and a month of street cleaning for four hours a day. The social media accounts of one of the accused were also shut down.²⁸⁷

On **11 March 2018** the *Times of Oman* reported that Royal Oman Police arrested a foreign national of "Asian nationality in Al-Buraimi park, dressed in women's clothing". Reportedly, the park was hosting a women's-only event at the time.²⁸⁸

On **19 September 2018** it was reported that four individuals in Salalah were found guilty of "publishing immoral acts on social media". Two of the group were reported as being men who were wearing men's clothing, while two others were called "cross-dressers" in media reports. All were arrested for appearing in a video and photos together, which were uploaded to social media. The masculine-presenting pair were only ordered to shut down their social media accounts, but the feminine-presenting pair were additionally sentenced to three years' imprisonment and a fine of 3,000 Omani Riyals (about USD 7,800). All four were further sentenced to four hours of community service every day for one month.²⁸⁹ Similarities between this case and the one documented on **27 January** mean this may be a case of contradictory reporting on a single incident, though both are included here given that this could not be verified at the time of publication.

Pakistan

Criminalising Provisions

Section 377 of the [Penal Code \(Act XLV of 1860\)](#) punishes "carnal intercourse against the order of nature" with up to life imprisonment. It is further explained that "penetration is sufficient to constitute the carnal intercourse" (i.e., no need to prove emission of semen).²⁹⁰ It is unclear if it is possible for the death penalty to be imposed for consensual same-sex sexual conduct, with no known data or reports on enforcement of this type of extreme punishment.

Additionally, Section 294 of the Penal Code criminalises "obscene acts and songs" in public, "to the annoyance of others", which may result in imprisonment for up to three months, a fine, or both. This section is reportedly often deployed to target male and trans sex workers.²⁹¹

Enforcement Overview

Pakistan represents in many ways a paradoxical legal and social situation for many groups and individuals of diverse SOGIE. While a special legislative bill like the Transgender Persons Protection of Rights Act (2018) guarantees gender-diverse people in Pakistan the right to assembly and social welfare (among other things), and 2021 alone saw several social empowerment initiatives aimed at trans and gender-diverse individuals in various states,²⁹² discrimination and violence remain rife and protections are seemingly not always enforced.²⁹³ This seems to have allowed a kind of *de facto* criminalisation to take place in some regions.

Further, same-sex activity is still *de jure* illegal and considered "unethical and sinful" in the eyes of Pakistani society. According to a report by ILGA Asia, "the religious community does not support LGB persons at all".²⁹⁴

²⁸⁶ "Sultanate of Oman takes newspaper to court over gay story", *Gay Star News*, 10 September 2013; United States Department of State, *Oman 2013 Human Rights Report* (2013), 19.

²⁸⁷ "Letter Re: Arrests and Convictions Under Oman's 2018 Penal Code", *Human Rights Watch*, 13 July 2020.

²⁸⁸ *Ibid.*

²⁸⁹ "Playing dress-up: Four cross-dressers jailed in Oman", *Roya News*, 19 September 2018.

²⁹⁰ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 134.

²⁹¹ Kaleidoscope Australia, *Shadow Report to the Committee on Economic, Social and Cultural Rights Regarding Pakistan's Protection of the Rights of LGBTI Persons* (2016), 3; Immigration and Refugee Board of Canada, *Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013)* (2014).

²⁹² "LG Dept recommends 2pc job quota for trans people", *Pakistan Observer*, 25 May 2021; "Punjab govt to give monthly stipend to transgender persons", *The Current*, 29 May 2021; "Educational institutions to be established for transgenders: Murad Raas", *Daily Times (Pakistan)*, 7 July 2021; "Lahore to have country's first Transgender Rehabilitation Centre", *The News International*, 5 September 2021.

²⁹³ ILGA Asia, *Disapproval and rejection: The LGBTIQ struggle for freedom bounded by social and religious beliefs in Pakistan* (2021), 9-14.

²⁹⁴ *Id.*, 6.

In all, ILGA World has identified five examples of criminal enforcement in Pakistan between 2006 and the date of publication. There is a strong likelihood that additional cases exist which may be revealed under further investigation.

Examples of Enforcement

In **September 2006** a trans man and a cisgender woman wed, which led to widespread public outcry against the perceived "same-sex wedding". The bride's father lodged a complaint against the marriage with the police, and they launched an investigation. The court in Lahore appointed a panel of doctors "to settle the issue of legal identity". In the end the legal ambiguity around how provisions against same-sex sexual activity should be applied to trans and gender-diverse individuals led the prosecutors to drop their case against the couple. However, on **28 May 2007** a High Court judge sentenced the couple to a "lenient" three-year imprisonment for perjury, as they had told the Lahore court that the transgender man was a man. IGLHRC (now Outright Action International) and activists from ASR Centre worked to advocate for the couple, and in **June 2007** a Supreme Court judge ordered the case to be reopened and for the couple to be released on bail.²⁹⁵

On **24 May 2010**, 47 people in Peshawar were arrested in a raid of an alleged "hijra wedding". Hijra are the transfeminine "third gender" culturally specific to several regions in South Asia. The group denied it was a wedding and claimed it was an annual cultural event for their community, but police had been tipped off that a hijra and a cisgender man were getting married and thus raided the property. They also confiscated clothing, musical instruments and a Kalashnikov rifle on the premises. The two people alleged to be getting married, a hijra and a cisgender man, were held and charged under Article 377 of the Penal code prohibiting "carnal knowledge against the order of nature", given that authorities viewed this as a same-sex relationship. They were also charged under numerous other provisions, including Article 294 which prohibits "obscene acts and songs". They denied that they were a couple, but authorities provided photographs of a wedding dress as supposed evidence against their claims.²⁹⁶

In **June 2015** it was reported that two men in Balochistan were arrested after getting married in a ceremony they would later downplay as being just a joke between friends. The man who facilitated the ceremony was also arrested. The couple offered to get divorced if it would mean an end to their troubles, but one official reportedly told the media that "divorce cannot save them from

prosecution. The law doesn't recognise gay marriages, so we can obviously not recognise a gay divorce". It is unclear what happened to them thereafter.²⁹⁷

In **August 2020** an arrest warrant was reportedly issued for a trans man who married a cisgender woman, for what authorities viewed as a same-sex wedding.²⁹⁸

The following month, in **October 2020**, a Pakistan-based digital media platform reported that two lesbian women were "arrested by the police after their relatives and friends reported about their relationship and marriage plan".²⁹⁹



Criminalising Provisions

Article 285 of the [Penal Code \(Law No. 11\) \(2004\)](#) states that whoever "copulates with a male over 16 years of age without compulsion, duress or ruse shall be punished with imprisonment for a term up to seven years". The same penalty applies "to the male for his consent".

Article 296(3) criminalises the leading, instigating, or seducing of a male to commit sodomy and Article 296(4) criminalises the inducing or seducing of a male or female in any way to commit illegal or immoral actions. Both may result in imprisonment for up to three years.

Additionally, Article 298 criminalises "sodomy as a profession or for a living" with imprisonment for a term up to 10 years.³⁰⁰

Enforcement Overview

A Wahhabi interpretation of Sharia continues to be a significant influence in Qatar's policies and remains the official legal system under the Constitution, though a seemingly dual secular-religious legal system is employed. As such, Qatar is one of the 11 remaining UN member States where there is some legal possibility that the death penalty exists as a prescribed punishment for same-sex sexual acts. No individuals are known to have been executed in recent decades based on their SOGIE, however.³⁰¹ That said, a nearly two-decade informal moratorium on capital punishment ended in April 2021 with the execution of a Nepali migrant worker found guilty of homicide.³⁰²

²⁹⁵ Human Rights Watch, *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism* (2008), 55-56; IGLHRC (now Outright Action International), *Annual Report 2007* (2008), 7.

²⁹⁶ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

²⁹⁷ "Pakistani men arrested for exchanging marriage vows", CBS News, 17 June 2015.

²⁹⁸ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

²⁹⁹ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

³⁰⁰ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 135.

³⁰¹ *Id.*, 67-68.

³⁰² "Qatar Executed Nepali Man, Ending 20 Year Hiatus: Amnesty", *Barron's News*, 21 April 2021.

People of diverse SOGIE living in Qatar face severe forms of criminalisation or hostility from State actors and the public.³⁰³ During its first United Nations Universal Periodic Review in 2010, Sweden issued Qatar with the recommendation that it “ensure that LGBT persons are not discriminated against and, as an immediate step, to amend the provisions of the penal code criminalising consensual same-sex sexual acts and to ensure that no one is punished for such activity under Sharia law”. The recommendation was rejected, with no further response issued by the State.³⁰⁴ In its third Universal Periodic Review in 2019, Qatar rejected all recommendations relating to SOGIE issues and the death penalty “on account of their incompatibility with the Islamic Sharia, the Constitution or domestic legislation, on grounds related to sovereignty, or because they require further study or are based on unsubstantiated allegations”.³⁰⁵

In 2013 Qatar was one of the countries in the Gulf Cooperation Council (GCC) that was exploring a ban on LGBT foreigners from working in the region, though the initiative was first proposed by Kuwait. Some analysts have suggested that Qatar backtracked on this decision only as a result of significant international criticism, in light of a potential boycott of the 2022 football World Cup.³⁰⁶

In 2013, Qatar was one of the countries in the Gulf Cooperation Council that was exploring a ban on LGBT foreigners from working in the region

Indeed, the 2022 World Cup has brought to the fore the issue of Human Rights in the host nation and the possibility of enforcement of criminalising provisions on locals and visitors. The Qatari Chief Executive for the World Cup, Nasser Al-Khater, is reported in 2020 as saying: “When it comes to the rainbow flags in the stadiums, FIFA (International Federation of Association Football) have their own guidelines, they have their rules and regulations. Whatever they may be, we will respect them”. Al-Khater may have implied in his statement that the country’s inclusive policies had their limitations when he said “we also expect people to respect our culture”.³⁰⁷

In response to a 2018 case of apparent censorship of LGBT-related news content, FIFA said it would investigate the matter ahead of the World Cup, but one official added “Qatar as a host country is not subject to FIFA’s Statutes, nor is it bound by FIFA’s Human Rights Policy and related FIFA regulations”.³⁰⁸

ILGA World has identified five examples of apparent enforcement between 1995 and the time of publication.

Examples of Enforcement

In 1995 a US citizen was sentenced to six months’ imprisonment and 90 lashes for alleged “homosexual activity”, but further details are not known.³⁰⁹

It was also reported that in **October 1997**, 36 gay Filipino migrant workers were deported from the country on account of their sexual orientation.³¹⁰

In **2002** a gay man—seemingly from Germany or Finland—was in the process of ending a work contract with his employer in Qatar and preparing to move home, when he was befriended by a local man. After getting to know each other the man invited him over to smoke hash, at which point 25 individuals barged into the house and arrested him. He was held for four months, ostensibly on drug-related charges, though he claims he was entrapped by authorities because of his sexual orientation. His country’s ambassador bailed him out, but he was still required to pay a fine of 50,000 Rials (USD 13,700).³¹¹

On **27 June 2016** an 18-year-old gay social media influencer from Poland was arrested at Doha International Airport and jailed for almost two months. His arrest was not formally recorded for 10 days, leaving his family and Polish authorities entirely unaware of his location, nor was he afforded a lawyer in that time. Qatari officials deny that the arrest was as a result of his sexual orientation, and rather because of “money extortion, blackmail, and assault on a Qatari national’s privacy online”. The accused, however, denies this, and claims that he was briefly rearrested shortly after his release for wearing makeup on social media, with authorities telling him he looked like a “she-male”. The accused further claims he has now been banned from all Gulf Cooperation Council (GCC) countries (United Arab Emirates, Saudi Arabia, Qatar, Bahrain, Kuwait, Oman) as a result of his arrest.³¹²

³⁰³ “Resisting gay rights in Qatar”, *Al Bab*, 9 August 2016; “What it’s like to be gay and Qatari”, *Doha News*, 5 August 2016.

³⁰⁴ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Qatar*, A/HRC/14/2 (2010), para. 6.

³⁰⁵ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: State of Qatar. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/42/15/Add.1 (2019), para. 4.

³⁰⁶ “Kuwait must reject proposed homophobic ‘medical tests’ on migrant workers”, *Amnesty International*, 11 October 2013; “Ban on homosexuals working in Gulf countries ‘just a proposal’: Kuwaiti official”, *Big News Network*, 22 October 2013; “Qatar 2022: Gulf States’ ‘Gay Tests’ Trigger World Cup Boycott Call”, *International Business Times*, 8 October 2013 (updated 1 July 2014).

³⁰⁷ “2022 World Cup: Qatar to allow LGBTQ displays, rainbow flags in stadiums”, *ESPN*, 10 December 2020.

³⁰⁸ “Under World Cup spotlight, Qataris crack down on LGBT news coverage”, *ABC News*, 20 July 2018.

³⁰⁹ “Qatar’s Gay Rights Policy Under Scrutiny”, *The Cornell Daily Sun*, 4 December 2002.

³¹⁰ *Ibid.*

³¹¹ “Interview with a Gay Who Was Arrested in Qatar”, *Gay Middle East* (accessed at GLAPN), 11 July 2003.

³¹² “Teen Instagram star jailed in Qatar for two months, claims it was for ‘being gay’”, *Daily Dot*, 29 August 2016.



Saudi Arabia

Criminalising Provisions

There is no codified Penal Law in Saudi Arabia, with a local interpretation of Sharia law being the law of the land. All sexual relations outside of marriage are illegal and the penalty for a married man who engages in consensual same-sex intercourse is generally understood to be death by stoning.³¹³

Enforcement Overview

ILGA World has identified at least 40 examples of criminal enforcement between 2000 and 2021. The total number of arrests, prosecutions and convictions remains largely unknown, however, due to the opaque nature of Saudi Arabian law enforcement, judicial proceedings, and restrictions on media reporting and freedom of expression.³¹⁴ According to a 2012 report by Saudi newspaper, *Okaz*, the government had arrested over 260 people for “homosexuality” over a one-year period around 2012 alone, which highlights the significant degree to which stories go under-represented or entirely unpublicised.³¹⁵

The Commission for the Promotion of Virtue and Prevention of Vice has a leading role in enforcement

The Commission for the Promotion of Virtue and Prevention of Vice (CPVPV) is mentioned in some reporting as having a leading role in known instances of enforcement. In April 2012, the Commission was reportedly asked to enforce new orders to bar the entry of “gays and tomboys” from its government schools and universities until they “prove they have been corrected and have stopped such practices”. There are also reports of the use of forced anal examinations—a pseudo-scientific and ineffective method by which authorities search for presumed evidence of anal intercourse.³¹⁶

Saudi Arabia’s legal system is largely based on the primacy of a Wahhabi interpretation of Sharia law, as read and ruled upon by various religious officials, making it often difficult to delineate exactly what the legal status of SOGIESC groups in the country is. Imams of the Hanbali school of thought—which is predominant in Saudi Arabia’s jurisprudence—have maintained that sodomy should be treated and punished in the same way as adultery (i.e., with death by stoning). Additionally, Saudi Arabian authorities have issued *fatwas* (religious edicts) delineating the death penalty for “corruption on Earth”, an offence primarily meant to target suspected terrorists but which has reportedly been used arbitrarily by judges to punish illicit sexual acts.³¹⁷

In 2013, during its second United Nations Universal Periodic Review cycle Saudi Arabia accepted a recommendation from Italy to make efforts to increase transparency in legal proceedings contemplating the death penalty, but rejected all country recommendations relating to repealing the death penalty or the institution of a moratorium on executions. It again rejected all such recommendations during its third cycle in 2018.³¹⁸

Examples of Enforcement

On **16 April 2000**, nine young Saudi individuals reported to be men were each sentenced to more than 2,000 lashes and at least five years in prison for “deviant” sexual behaviour. Five of them were sentenced to six years in prison and 2,600 lashes. They were flogged 52 times in 50 sessions. The other four were sentenced to five years and 2,400 lashes. They were to be flogged 48 times in 50 sessions. Reports suggest that police started tailing the nine men after reports that they were acting strangely. Police found that the nine men were dressing in women’s clothes and engaging in “deviant sexual behaviour” with each other.³¹⁹

On **14 July 2000** three Yemeni nationals in Jizan province were beheaded for “homosexuality, transvestism, same-sex marriage and luring boys into sexual activity”. It is not clear what is meant by “luring” here, but three other people were executed under similar charges **three days prior**, and are not included in the tally of examples of criminal enforcement above as they had been very explicitly charged with raping a minor as well.³²⁰

In **2001**, a Saudi teacher and playwright was sentenced to three years in prison and 300 lashes after he was

³¹³ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 135.

³¹⁴ *Id.*, 69-74.

³¹⁵ “Saudi Arabia: 260 arrests for homosexuality in 1 year”, *Erasing 76 Crimes*, 6 June 2012.

³¹⁶ “Saudi Arabia bans ‘gays, tom-boys’ from schools”, *Emirates* 24/7, 16 April 2012; “Three ‘effeminate’ men arrested at Saudi Arabia Starbucks”, *Washington Blade*, 18 October 2016; “Police kicked and tortured blogger to make him confess he is gay”, *Gay Star News*, 8 June 2020.

³¹⁷ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 69.

³¹⁸ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, A/HRC/25/3 (2013); *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, A/HRC/25/3/Add.1 (2014); *Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/40/4/Add.1 (2019).

³¹⁹ “Nine Saudi Transvestites Jailed”, *Associated Press*, 16 April 2000.

³²⁰ “Saudi Gays Beheaded”, *Windy City Times*, 19 July 2000.

accused of encouraging his students at an intermediate school in Riyadh to “indulge in homosexuality and adultery”. After only serving two weeks, the teacher received a royal pardon.³²¹

On **1 January 2002** three men in Asir province were executed. According to Amnesty International, the “Ministry of Interior issued a statement announcing that the three were convicted of homosexual acts, adding vaguely-worded charges of ‘luring Children’s rights and harming others’ without providing any further details”. The group’s court proceedings were also said to be “shrouded in secrecy”.³²² In response to the case, a representative of the Saudi Arabian Embassy in Washington D.C. claimed that the execution was for sexual assault and not the men’s sexual orientation, saying “I would guess there’s sodomy going on daily in Saudi Arabia [...] but we don’t have executions for it all the time”. An anonymous reporter from *Arab News*, however, told the American LGBTI+ news outlet, *Washington Blade*, that while the men were indicted for “molestation” they in fact “were executed for homosexuality”.³²³

In **2004**, Saudi police raided an event described as a gay wedding party for two men from Chad at a hotel in the holy city of Medina. About 50 people were arrested. One of the Chadians later claimed that the party was a rehearsal for his wedding to a woman, and this was supported by a Saudi who said he had provided money to meet the marriage expenses. But according to the daily *Arab News*, investigators said that party invitations “indicated it was a gay function”. The investigators also found it suspicious that many of the guests had fled at the sight of the police and left their cars behind. It is not known whether anyone was prosecuted.³²⁴

In **2005**, police arrested 92 people in a raid at a “gay party” in al-Qatif. Many were wearing women’s clothes, makeup, and wigs, which sources reported as the reasons for their arrest. No further details could be identified.³²⁵

In **March 2005** dozens of Saudi men who were caught dancing and “behaving like women” at a party, were arrested and sentenced to a total of 14,200 lashes, after a trial held behind closed doors and without defence lawyers. They were arrested when police in Jeddah raided a party which was described by a Saudi newspaper as a “gay wedding”. It was reported that 31 of the men received prison sentences of six months to one year, plus 200 lashes each. Four were jailed for two years with

2,000 lashes. A further 70 men were released after the raid but summoned to a police station on **3 April**, where they were told they had been sentenced to one year’s imprisonment.³²⁶

In **April 2005**, in Batha, Saudi police arrested five expatriates, including three Filipinos, for “sodomy”. It is unclear where the other two victims were from, and no further details on their fates are known.³²⁷

In **November 2005**, Saudi police broke up a beauty contest for gay men on the east coast of the kingdom. It was reported that five men were previously arrested **six months prior** for the same offence. The men were preparing to stage the competition and were set to have an attendance of 80 people. Police found beauty products which were used as evidence in court. Four of the men were reported to be from other Asian countries and the fifth a Saudi national.³²⁸

In **April 2006**, a court in Saudi Arabia sentenced two Saudis, one Yemeni and a Jordanian to two years in jail and 2,000 lashes after a police raid on an alleged gay party. No further details could be identified at the time of publication.³²⁹

In **August 2006** Saudi police in Jizan province raided an alleged ceremonial gay wedding with some 400 people in attendance in the south of the country. 250 people were detained but later released. 20 remained and were charged with possible prison time and flogging. No further details could be verified regarding their fates.³³⁰

In **October 2007**, two men were publicly flogged after being found guilty of “sodomy”. The men were sentenced to 7,000 lashes.³³¹

In **June 2008**, 21 individuals were arrested for alleged homosexuality while at a farmhouse in Saihat. Some of those arrested were Filipino and Pakistani migrants living in Saudi Arabia. Many of them were reportedly wearing women’s clothes and makeup at the party which was organised to celebrate the birthday of one of the group’s members.³³²

On **26 July 2008**, 55 people were arrested after police raided a “gay party”, also in the city of Saihat where the farmhouse documented above was raided. Police reported that among the 55 people, two young men

³²¹ “Justice Served In Al-Suhaimi Case”, *Arab News*, 4 January 2006.

³²² “Saudi Arabia: ‘Sexual orientation’ executions condemned”, *Amnesty International*, 9 January 2002.

³²³ “Saudi Official: Molestation Led to Beheadings”, *Washington Blade*, 11 January 2002 (archived at: GLAPN.org).

³²⁴ “Arrests at Saudi ‘gay wedding’”, *The Guardian*, 18 March 2005.

³²⁵ “Saudi Arabia: Police Break Up Gay Beauty Contest”, *Ahbab News*, 7 November 2005.

³²⁶ “Saudis’ tough line on gays”, *The Guardian*, 9 April 2005.

³²⁷ “Busloads Of Illegals Rounded Up In Riyadh Crime Swoop”, *Arab News*, 9 April 2005.

³²⁸ “Saudi Arabia: Police Break Up Gay Beauty Contest”, *Ahbab News*, 7 November 2005.

³²⁹ “20 arrested at gay ‘wedding’ in Saudi Arabia”, *Pink News*, 17 August 2006.

³³⁰ *Ibid.*

³³¹ “Sentenced to 7,000 lashes for sodomy in Saudi Arabia”, *Pink News*, 5 October 2007.

³³² “Police in Saudi Arabia Raid ‘gay Party’ and Arrest 55”, *Towleroad*, 30 July 2008.

were allegedly found wearing women's makeup and dancing on stage together.³³³

In **August 2008** two Filipino men were arrested by Saudi police on suspicion of participating in same-sex sexual activity. No further details could be identified.³³⁴

On **13 June 2009**, 67 people, including one Yemeni and numerous Filipinos, were arrested. Police reported that several men outside a private party, held in an east Riyadh neighbourhood, were celebrating the Philippines' Independence Day. The Police raided the party and told sources that the raid was due to "suspicious behaviour" because they saw men wearing women's clothing.³³⁵

On **16 March 2010** a gay man was arrested after posting a video online impersonating a police officer and flirting with the male friend that was filming the video. Sources reported that the man had been previously charged for homosexuality but was bailed out.³³⁶

49 people were arrested during a raid at a party sometime in **March 2012**. Police say that the arrested persons included six Yemeni and Sudanese migrants, as well as Saudi nationals. Police reportedly caught people dancing and hugging each other "indecently", with some wearing dresses that showed off parts of their body while others had tattoos on their hands and necks.³³⁷

In **October 2012** five men were arrested on suspicion of homosexuality. This came after local police were tipped off and began raiding suspected gay clubs. No further details could be identified regarding their fates.³³⁸

On **6 January 2013** Saudi police arrested six Filipino migrants who had allegedly used their massage centre at a hotel to engage in homosexual acts. A source said police caught one Filipino with another man "red handed practicing obscene actions" in one room before raiding other rooms in the massage centre and arresting six staff members and one customer.³³⁹

In **June 2013**, Saudi Arabia's religious police raided a party at a well-known hotel where nearly 100 girls were allegedly participating in a contest for the most beautiful "tomboy". It is not clear how many were arrested in total, though it was reported that the two individuals responsible for organising the party were held and that most of the attendees were released.³⁴⁰

It was reported on **20 August 2013** that authorities in Dammam arrested a "man caught cross-dressing as a woman in order to beg for money". Further details are unclear, but beyond "cross-dressing", street begging is also reportedly criminalised in Saudi Arabia.³⁴¹

Police and agents from the Committee for the Promotion of Virtue and the Prevention of Vice (CPVPV) in **2014** arrested 35 people at a party in Jeddah, with many being said to have been "wearing women's clothing" at the time.³⁴²

In **July 2014**, a young Saudi man was arrested and sentenced to three years in jail and 450 lashes after he was caught using social media to arrange dates with other men. The man was arrested after an entrapment ploy by officials was set up, posing as a potential suitor online. When the man arrived, he was arrested and his phone confiscated, which revealed "indecent images" and other evidence that allegedly proved his "homosexuality".³⁴³

A man in the port city of Dammam was arrested in **November 2014** for allegedly posting nude pictures of himself on social media and offering to have sex with other men. He was sentenced to three years' imprisonment and a fine of 100,000 riyals (more than USD 26,000) for "immoral acts".³⁴⁴

In **2015** authorities in Saudi Arabia arrested several people on suspicion of homosexuality in raids on two parties in the city of Jeddah. The raids led to the arrest of several people, mainly gay men, a source connected to the raids reported, though no further details could be verified regarding this incident.³⁴⁵

Sometime in **June 2015** police raided a party in Jeddah and arrested several suspected gay individuals. Before storming the venue, they meticulously recorded the licence plates of all vehicles present to ensure anyone who escaped could be tracked down. Saudi Arabian officials denied media claims the **following year** that further raids on parties had taken place.³⁴⁶

Saudi police arrested a famous social media "influencer" in **October 2015** and accused him of cross-dressing online. It is alleged that video clips of the man dressed like a woman made the rounds online before citizens had

³³³ *Ibid.*; "Saudi security authorities arrest 55 young men in a perverse party", *Al Arabiya*, 30 July 2008.

³³⁴ "15 Held on Bootlegging, Gay Prostitution Charges", *Arab News*, 11 August 2008.

³³⁵ "Saudi Arabia: Drop 'Cross-Dressing' Charges", *Human Rights Watch*, 24 June 2009.

³³⁶ "Saudi Arabian gay man arrested after video goes viral", *Towleroad*, 16 March 2010.

³³⁷ "49 gays arrested in Saudi", *Emirates* 24/7, 18 March 2012.

³³⁸ "'Gay club' raided and shut in Saudi", *Emirates* 24/7, 23 October 2012.

³³⁹ "Filipino vice ring busted at key Saudi hotel", *Emirates* 24/7, 6 January 2013.

³⁴⁰ "'Tomboy' pageantry raided; energy drinks seized", *Emirates* 24/7, 10 June 2013.

³⁴¹ "Cross-dressing beggar nabbed in Saudi", *Arabian Business*, 20 August 2013.

³⁴² "Three 'effeminate' men arrested at Saudi Arabia Starbucks", *Washington Blade*, 18 October 2016.

³⁴³ "Gay Saudi Arabian man sentenced to three years and 450 lashes for meeting men via Twitter", *The Independent*, 25 July 2014.

³⁴⁴ "'Married' gay couples arrested in Saudi raid", *Gulf News*, 26 January 2016.

³⁴⁵ "'Gay Parties' Raided in Saudi Arabia; Religious Police Arrest Several People on Suspicion of Homosexuality", *International Business Times*, 15 June 2015.

³⁴⁶ "'Married' gay couples arrested in Saudi raid", *Gulf News*, 26 January 2016.

complained about his dressing “inappropriately” and reported the situation to officials.³⁴⁷

A “cross-dresser” wearing a traditional women’s *abaya* (a black coverall traditionally worn by women in the Gulf) was arrested at a shopping mall in the town of Taef in **December 2015**. A woman in the mall became suspicious and alerted members of the CPVPV, who handed the accused over to police. The accused was then referred to the public prosecutor for further questioning and possible legal action, the result of which could not be determined at the time of publication.³⁴⁸

It was reported on **26 January 2016** that religious police in Riyadh arrested four “gay men”, though at least two may have been transgender women, given that they were trying to “get rid of the fake breasts they were wearing” when their home was being raided. The four claimed to be living as two married couples. No further details of what transpired after the arrest could be ascertained.³⁴⁹

On **13 October 2016** three “effeminate men” under the age of 20 were arrested by CPVPV officials at a coffee shop in Riyadh. Further details are not known.³⁵⁰

On **18 October 2016** it was reported that police in Qassim arrested a social media “influencer” who had uploaded videos of themselves wearing makeup and women’s clothing. The accused was charged with “producing and distributing material insulting to public order”.³⁵¹

It was reported on **26 February 2017** that 35 Pakistani migrants who had gathered and were “imitating women” were arrested in a raid south of Riyadh. They were taken to a local police station, but no details thereafter could be verified.³⁵²

In **March 2017** Saudi Arabian media reported that police had arrested around 35 people—identified as transgender women in some reports—from Pakistan. Police raided a party in Riyadh, where they claimed to have arrested “men dressed as women” and wearing makeup. Pakistani activists claimed that two of the suspects were beaten to death with sticks by police—a claim denied by Saudi officials. Authorities did later admit that one detainee had died, though this was claimed to be due to a heart attack.³⁵³

In **2018** a young gay man was charged with “parental disobedience” under a Saudi Arabian provision allowing

parents to hold their children in contempt. In the young man’s case, he was charged and held when his parents discovered that he was gay, but was released after learning the Quran by heart and was permitted to study in the United States. While abroad, he posted photos on social media of himself wearing “short-shorts” at the beach, and spoke openly about his sexual orientation online. As a result, his family arranged for him to return home under the false pretence that his mother was unwell. Upon his return, on **6 October 2019**, he was arrested and sentenced to three years’ imprisonment and 800 lashes for “violating public taste”, “appearing as a woman”, and “cyber-crimes”. While in prison, Saudi officials have refused anyone access to the young man and have allegedly tortured him.³⁵⁴

In **April 2019** a coordinated mass-execution took place in public spaces across the country and saw 37 men put to death. Most were accused of being spies or terrorists working for Iran (an accusation that seems to have stemmed from their presence at an anti-government protest in 2012), but five people were also convicted of same-sex sexual activity after one of the men was tortured into confessing.³⁵⁵

In **April 2020** a Saudi court sentenced a Yemeni blogger to 10 months in prison, a fine equivalent to USD 2,700, and deportation to Yemen at the end of his sentence. This was in response to a social media post supporting LGBTQ+ rights in Saudi Arabia. It is reported that the accused’s gender expression was one of the reasons he initially fled Yemen, given the threats of violence he faced there. It is impossible here to assume the pronouns of the accused given this history of gender-nonconformity, though all media outlets and reports seem to identify him as a man. The accused was held in solitary confinement for six weeks before the trial, with no windows or air-conditioning in the harsh Saudi Arabian climate, and was denied access to legal representation in court. Officers also gave a forced anal examination to seek “proof” that he was queer and repeatedly beat him since the day of his arrest. The court charged the blogger with “violating public morality by promoting homosexuality online”, and “imitating women”.³⁵⁶ The case was formally decried by multiple UN Special Procedures mandates and Rapporteurs, who expressed concern at the arbitrary arrest and reports of torture. Though in two official responses to their queries, Saudi Arabia stated that the “allegations and claims [...] are inaccurate and based entirely on unfounded and unsubstantiated information”, and justified the incident on the basis that the blogger had been “charged with

³⁴⁷ “Snapchat cross-dresser arrested in Saudi Arabia”, *The National News*, 18 October 2016.

³⁴⁸ “Dude looks like a lady: Saudi man arrested for crossdressing in mall”, *Al Bawaba*, 30 December 2015.

³⁴⁹ “‘Married’ gay couples arrested in Saudi raid”, *Gulf News*, 26 January 2016.

³⁵⁰ “Three ‘effeminate’ men arrested at Saudi Arabia Starbucks”, *Washington Blade*, 18 October 2016.

³⁵¹ “Saudi police arrest ‘online cross-dresser’”, *Middle East Eye*, 18 October 2016.

³⁵² This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁵³ “Saudi Arabia denies Pakistani reports transgender women killed by police”, *Reuters*, 6 March 2017.

³⁵⁴ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

³⁵⁵ “Saudi Arabia beheaded 5 men ‘proven’ to be gay under torture”, *LGBTQ Nation*, 28 April 2019.

³⁵⁶ This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.

committing offenses that are punishable under the laws of Saudi Arabia".³⁵⁷

Five people in Northern Borders province were arrested for "cross-dressing" in **October 2021**. The group reportedly walked the streets in women's clothing and uploaded a video of them doing so to social media.³⁵⁸



Singapore

Criminalising Provisions

Section 377A of the Penal Code (Chapter 224) criminalises any male person "who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person". This carries a possible punishment of imprisonment which may extend to two years. Additionally, Section 294A of the Penal Code criminalises "obscene acts" in public, "to the annoyance of others", which may result in imprisonment for up to three months, a fine, or both.³⁵⁹

Enforcement Overview

ILGA World has identified three apparent examples of criminal enforcement between 2001 and 2021.

In two of the examples of enforcement identified, the accused persons were initially charged under Section 377A against "gross indecency" between men, but these charges would go on to be replaced with different provisions prior to legal proceedings commencing.

377A's continued existence permits the institutionalisation of discriminatory policies against not just gay men, but the whole LGBT community

A 2020 submission made by Pink Dot and Oogachaga to the UN Human Rights Council for Singapore's Universal

Periodic Review indicated that "377A has not been enforced since the last Review of Singapore in 2016", but added that the law's "continued existence permits the institutionalisation of discriminatory policies against not just gay men, but the whole lesbian, gay, bisexual and transgender community".³⁶⁰

Singapore's government shows no signs of repealing the legislation any time soon, even if it is rarely utilised, with the Prime Minister reportedly saying in 2019 that Section 377A will be around "for some time".³⁶¹ Several attempts to have Section 377A struck down have failed, with the prominent case of *Tan Eng Hong v. Attorney-General* (2012) (in which a man charged under Section 377A sought to have it declared unconstitutional) being dismissed. A blogger who wrote critically of the High Court's decision was charged with contempt of court and threatened with jail.³⁶² The most recent attempt—*Ong Ming Johnson v. Attorney-General* (2020)—was dismissed as well by the High Court. The judge ruled that the criminalising provision was "not so patently unreasonable", and that it "serves the purpose of safeguarding public morality by showing societal moral disapproval of male homosexual acts".³⁶³

Issues of morality and social attitudes have resulted in other forms of targeting by the State in prior years as well. In 2014 police refused to grant permission to a "Pink Run", which formed part of the country's annual Pride celebrations. The reason cited was that it was "in the interest of public order", as the planned run was "related to LGBT advocacy, which remains a socially divisive issue".³⁶²

Examples of Enforcement

In **2001** police raided a sauna and arrested four men. The men were initially charged under Section 377A of the penal code which criminalises same-sex sexual activity, though this was later amended to a charge under Section 20 of the Miscellaneous Offences (Public Order and Nuisance) Act, resulting in a hefty fine.³⁶⁴

On **14 April 2005** another sauna was raided and four men were again arrested, though further details of the case are unclear.³⁶⁵

On **9 March 2010** two men were arrested for engaging in oral sex in the cubicle of a public toilet, and were separately charged per Section 377A of the penal code with "gross indecency with another male person". In **September** one of the accused sought to have Section

³⁵⁷ OHCHR, UA SAU 10/2020 (2020); Permanent Mission of the Kingdom of Saudi Arabia to the United Nations Office at Geneva, HRC/NONE/2020/SP/72 (2020); OHCHR, UA SAU 2/2021 (2021); Permanent Mission of the Kingdom of Saudi Arabia to the United Nations Office at Geneva, HRC/NONE/2021/SP/18 (2021).

³⁵⁸ "Five 'arrested for cross-dressing' in Saudi Arabia: report", *Al Araby*, 25 October 2021.

³⁵⁹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliá Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 136.

³⁶⁰ Pink Dot and Oogachaga, *Singapore OCPD Submission* (2020), para. 1.2.

³⁶¹ *Ibid.*

³⁶² "Tan Eng Hong v. Attorney-General: Media Summary", *Supreme Court of Singapore*, 21 August 2012; "Blogger risks jail for comments on Singapore anti-gay law", *Erasing 76 Crimes*, 26 January 2015.

³⁶³ "High Court judge dismisses all three challenges to Section 377A", *Channel News Asia*, 30 March 2020; "Gay Sex Still a Crime in Singapore Thanks to Dubious Legal Rulings", *Human Rights Watch*, 14 April 2020.

³⁶⁴ Human Rights Watch, *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism* (2008), 56.

³⁶⁵ "Singapore - May 3, 2005", *Utopia*, 3 May 2005.

377A ruled unconstitutional, whereafter he was informed that the charge against him and the co-accused had been substituted with one under Section 294A of the penal code, which prohibits “an obscene act in a public place”. The two accused pleaded guilty in **December** and paid a fine of 3,000 Singapore Dollars (USD 2,400).³⁶⁶



Sri Lanka

Criminalising Provisions

Article 365 of the *Penal Code (Cap. 19)* punishes “unnatural offences”— defined as “carnal intercourse against the order of nature with any man, woman or animal”—with imprisonment for up to 10 years.

Article 365A of the *Penal Code* criminalises “acts of gross indecency between persons” in public or private with imprisonment of up to 2 years and/or a fine.³⁶⁷

Section 399 of the *Penal Code* (cheating by personation) has further been said to be used in targeting persons of diverse gender identities and expressions. Section 399 states “a person is said to ‘cheat by personation’ if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is”.³⁶⁸

Enforcement Overview

On 3 August 2021 the Sri Lankan Cabinet co-spokesperson, Keheliya Rambukwella, reportedly said that discussions within government about the expansion of rights for people of diverse SOGIE in Sri Lanka were in the works, but claimed also to be unaware of any police action against queer communities.³⁶⁹ Looking at the two decades preceding, however, completely belies the idea that persons of diverse sexual orientations and gender expressions are not targeted.

Between 2000 and the time of publication ILGA World has noted at least 20 documented examples of apparent criminal enforcement in Sri Lanka, including cases of prosecution. Official statistics from the Sri Lanka Police indicate at least 26 additional cases between 2016 and 2018 (involving a total of 48 people), the details of which

could not be further discerned.³⁷⁰ As Sri Lankan authorities appear to only disaggregate cases of rape and sexual assault where women and minors are involved, it cannot be said how many of the cases in the police report represent consensual same-sex activity. Regardless, even the combined tally of 46 examples likely falls short of the real figure, as several detainees have alleged multiple arrests. A local civil society organisation even estimated that in 2019 alone, around 800 arrests were made with police citing “unnatural sex” as justification.³⁷¹ Further, human rights defenders in Sri Lanka have informed ILGA World that at least 7 additional court cases are ongoing as of 2021.³⁷²

A local CSO estimated that in 2019 alone, around 800 arrests were made with police citing “unnatural sex” as justification

Specific details of cases or more accurate statistics are often difficult to come by as police regularly merge cases of consensual same-sex sexual acts with “unnatural offenses” and “sexual abuse” in their official reporting.³⁷³ Documentation of cases in lower courts is also sporadic, and lawyers and activists regularly intervene to secure a victim’s release before charges are filed as this is reportedly the only way to prevent prosecution in court, meaning that a majority of cases of State-targeting have no formal record at all.³⁷⁴

Abuses at the hands of police are also rife, in part due to negative social attitudes against persons of diverse SOGIE, but also due to an apparent lack of standard operating procedures for police.³⁷⁵ This means that “anal examinations” and “virginity tests” remain common practice. Both procedures have long been discredited as meaningful ways of gathering evidence of same-sex intercourse, and have been decried as human rights abuses. Between 2017 and 2020 authorities in Sri Lanka subjected at least seven people to forced anal examinations, with one defence lawyer claiming every single client he worked with was made to undergo the procedure by State actors. Beyond prosecutors regularly submitting the findings of these procedures to courts as so-called “evidence”, courts themselves also often impose similar harmful tests on detainees, such as mandatory HIV/Aids testing.³⁷⁶

³⁶⁶ “Tan Eng Hong v Attorney-General: Media Summary”, *Supreme Court of Singapore*, 21 August 2012.

³⁶⁷ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliá Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 136.

³⁶⁸ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report: Recognition before the law* (2020), 103.

³⁶⁹ “LGBT rights still under discussion”, *MENA FN*, 6 August 2021.

³⁷⁰ Sri Lanka Police, *Performance Report* (2018), 36; *Arrests and Harassment of LGBTIQ Persons*, *Groundviews*, 22 October 2020.

³⁷¹ “LGBTQ: A marginalised community in Sri Lanka”, *MenaFN.com*, 27 September 2020.

³⁷² Information supplied by the Community Welfare and Development Fund.

³⁷³ Sri Lanka Police, *Crimes Statistics webpage* (2020).

³⁷⁴ Information supplied by the Community Welfare and Development Fund.

³⁷⁵ Information supplied by the Community Welfare and Development Fund.

³⁷⁶ “Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions” *Human Rights Watch*, 20 October 2020; ILGA Asia, *Living without legal protection: constant fear from stigma, discrimination and violence against LGBTIQ community in Sri Lanka* (2021), 19.

On the occasions that cases do go to trial and are presided over by sympathetic judges, Sri Lankan courts have no power of judicial review over enacted laws, and as such even judgments in favour of defendants do not typically set any precedent for future cases. The restrictions within which the judiciary must operate, and thus uphold criminalising legislation, can be plainly seen in the 2016 Supreme Court case of *OIC Maradana v Wimalasiri*, in which the judge acknowledged that the accused's crime of "gross indecency" was a 19th century colonial relic and that imprisoning the accused was unwarranted, yet still noted in his ruling that:

I see no reason to interfere with the finding of guilt of the Appellant [...] The contemporary thinking, that consensual sex between adults should not be policed by the state nor should it be grounds for criminalisation appears to have developed over the years and may be the rationale that led to repealing of the offence of gross indecency and buggery in England. The offence however remains very much a part of our law.³⁷⁷

Courts have no power of judicial review over enacted laws, and as such judgments in favour of defendants do not set any precedent for future cases

Those suspected of engaging in consensual same-sex acts are not the only ones targeted under Sri Lankan law.³⁷⁸

Examples of Enforcement

In **2000** a trans woman from Ambalangoda was allegedly detained by police while waiting at a bus stop. They took her away in the police vehicle, letting her go after raping her. She was 17 at the time.³⁷⁹

In **2006** two men in the Colombo Fort area were accused of having sex in a public bathroom and were arrested. They were released after paying a bribe.³⁸⁰

In **2008** an anonymous call to an organisation called Equal Ground reported that two gay men had been arrested in a guest house near the capital city, Colombo,

which police knew to be frequented by LGBT+ people. They barged into a room being used by a local man and a Belgian national, allegedly forcing them to put their fingers into unused condoms so that they could be planted at the scene. In order to secure release from detention, the Sri Lankan accused had to agree to turn State's-witness against the Belgian man, who in turn had to pay a fine.³⁸¹

In **December 2011** an anonymous gay activist reported that he had been arrested twice for his sexual orientation, leading him to leave the country.³⁸²

In **December 2012** a gay man engaging in sex work was arrested and beaten in a suburb of Colombo. He claims it was but one of four arrests he had faced.³⁸³

In **2014** a gay teenager, also from Ambalangoda, was arbitrarily arrested and taken to a police station where officers demanded he have sex with them under threat of being arrested again. He resisted and was eventually released, but claims that a year later police picked him up at night and raped him in their vehicle.³⁸⁴

Sometime in **2015** a trans man from Galle was being sued for marrying a woman under provisions against "cheating by impersonation", though the outcome of the case is unclear.³⁸⁵

In **January 2015** a young trans woman studying at the University of Colombo was arrested. Police had started by harassing her friends—also trans women—while they waited for a bus and when one called her to help, police turned their attention to her as well. They grabbed her by the hair, kicking and dragging her on the ground. She told them that they could not do that as it is a violation of her human rights, to which one officer allegedly responded, "how dare you talk to me about the rules?" He wrote up a formal complaint against her and ensured that she and her friends were detained. She was released when a high-profile family contact intervened, but has suffered chronic back pain since her assault.³⁸⁶

She and a group of friends were arrested again in **May 2015** when a group of police officers saw them walking home one evening and demanded they get into their vehicle. When the group refused, they were forcibly taken to a nearby police station and asked invasive questions about their sex lives. When she insisted they had done nothing wrong, one officer attempted to hit her. The group spent the night in a men's prison cell without food or water and were taken the next day to a court in Maligawatta. On the advice of a lawyer they pleaded guilty to being caught in a sexual act to avoid a

³⁷⁷ District Court of the Democratic Socialist Republic of Sri Lanka, *OIC Maradana v Wimalasiri*, 30 November 2016.

³⁷⁸ Women's Support Group, Sri Lanka, *The Status of Lesbians, Bisexual Women and Transgendered Persons in Sri Lanka NGO Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women* (2011), 4.

³⁷⁹ Human Rights Watch, *All Five Fingers Are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka* (2016), 31.

³⁸⁰ *Id.*, 10-11.

³⁸¹ ILGA Asia, *Living without legal protection: constant fear from stigma, discrimination and violence against LGBTIQ community in Sri Lanka* (2021), 10-11.

³⁸² *Id.*, 10.

³⁸³ Human Rights Watch, *All Five Fingers Are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka* (2016), 33-34.

³⁸⁴ *Id.*, 32.

³⁸⁵ Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts* (2019), 28.

³⁸⁶ Human Rights Watch, *All Five Fingers Are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka* (2016), 32-33.

14-day prison sentence, instead paying a fine of 1,500 Sri Lankan rupees (USD 10).³⁸⁷

In **October 2015** a trans sex worker reported in an interview with Human Rights Watch that she had been arrested at least three times—sometimes under provisions against “vagrancy” which are often used to target trans women and sex workers in the streets, but also for “cheat[ing] by impersonation.”³⁸⁸

In **October 2015** a man from Colombo was arbitrarily arrested for “looking gay”—and alleges multiple such arrests over the years. He complained to the officers that he loses work every time they arrest him without reason, to which they responded “that is not our concern; take it up with the courts.”³⁸⁹

On **30 November 2016** the Supreme Court ruled to reaffirm the guilty verdict against two men for “gross indecency” under Article 365A of the Penal Code. Details of the incident, which took place thirteen years prior (in **2002** or **2003**), are unclear, as both the defendant and police testimonies were found by the judge to be unreliable. It appears the men were arrested for performing oral sex in a van, and refused to pay a bribe to the officers. They were sentenced to one year in prison by a Magistrate’s Court and a fine of 1,500 Sri Lankan rupees (USD 10), though one of the defendants appealed the decision. The Supreme Court found the punishment to be unwarranted and ordered a two-year suspended sentence instead, observing that the defendants should be given an opportunity to “reform”. Notably, the judge seemed to acknowledge that Article 365A was a remnant of British colonial law, and that same-sex sexual activity was no longer criminalised in Great Britain due to a global shift toward decriminalisation, but added: “I see no reason to interfere with the finding of guilt [...] There is no question that the individuals involved in the case are adults and the impugned act, no doubt was consensual [...] The offence however remains very much a part of our law.”³⁹⁰

A lesbian couple were arrested in **2016**. The pair were waiting at a bus stop in Avissawella when a “trishaw” driver tipped off the police. Police detained them, questioning their relationship, and apparently held them under provisions banning indecent acts in public, though it is not clear if they were charged.³⁹¹

Beyond the lesbian women targeted by police above, a Sri Lanka police performance report from **2018** indicated

that the year **2016** saw 17 arrests on charges of “homosexuality”, with all cases being prosecuted. Details of the cases and their outcomes were not disclosed, however it appears that the 17 cases represent 33 individual detainees.³⁹²

The same police performance report noted four raids and arrests for six individuals suspected of “homosexuality” in **2017**, of which three cases were prosecuted.³⁹³

The report further indicates that nine suspected gay men were arrested in five raids across the country in **2018**,³⁹⁴ though details of the individual cases are not known except for the fact that three men were ordered by courts to undergo HIV tests without their consent.³⁹⁵

According to Human Rights Watch, police arrested a trans man in **2019** on charges of same-sex sexual activity with his cisgender wife, and allegedly subjected him to an invasive and ineffectual “virginity test” to prove it. A magistrate dismissed the case as the man had legally amended his gender marker already.³⁹⁶

In **2020** a local activist reported that three men had been arrested in a police raid of their hotel room in Colombo in **2019**. They were charged with engaging in same-sex sexual activity despite there being no evidence of this, on account of the fact that police found condoms in their wallets.³⁹⁷

In **September 2020** it was reported that two men were due to be sentenced for same-sex sexual activity by the Colombo Fort Magistrate’s Court, though further details could not be identified at the time of publication.³⁹⁸



Criminalising Provisions

Article 520 of the [Penal Code](#) (1949) criminalises “unnatural sexual intercourse” with a potential imprisonment of up to three years. Additionally, Article 517 criminalises any “act against public decency”, which is an act carried out in a public or open area where one could possibly see, intentionally or accidentally, the act. It

³⁸⁷ *Id.*, 33.

³⁸⁸ *Id.*, 30.

³⁸⁹ *Id.*, 30-31.

³⁹⁰ District Court of the Democratic Socialist Republic of Sri Lanka, *OIC Maradana v Wimalasiri*, 30 November 2016.

³⁹¹ ILGA Asia, *Living without legal protection: constant fear from stigma, discrimination and violence against LGBTIQ community in Sri Lanka* (2021), 15.

³⁹² Sri Lanka Police, *Performance Report* (2018), 36.

³⁹³ *Id.*, 36.

³⁹⁴ *Id.*, 36.

³⁹⁵ “Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions”, *Human Rights Watch*, 20 October 2020.

³⁹⁶ *Ibid.*

³⁹⁷ “Arrests and Harassment of LGBTIQ Persons”, *Groundviews*, 22 October 2020.

³⁹⁸ *Ibid.*

is punishable with imprisonment of three months to three years.³⁹⁹

Enforcement Overview

Given the opaque nature of Syrian law enforcement and legal procedures, as well as the widespread instability and disruption caused by the Syrian revolution in 2011 and subsequent civil war and armed conflict with Islamic State militants, it remains incredibly challenging to identify examples of enforcement, and to distinguish such enforcement from prejudice or personal abuses of power by members of the military or security forces. ILGA World has identified several potential cases, however, and reporting from several other organisations further indicates that arrests and State-targeting of persons of diverse SOGIE has taken place, even where individual instances could not be readily disaggregated.

Human Rights Watch noted in 2020 that since the start of the armed conflict in Syria in 2011 persons of diverse SOGIE, especially men, boys and trans women who look “soft”, have faced extreme abuse and sexual violence at the hands of police and military personnel at checkpoints, and in detention centres.⁴⁰⁰ A recent report published in June 2021 by the Center for Operational Analysis and Research (COAR Global) found that, given that the risk of arbitrary detention is “omni-present” in government-held areas, “LGBTQ+ status is a pronounced factor affecting personal safety and protection status”. Documented abuses include forced nudity rape, and anal or vaginal “examinations” carried out by Syrian Government forces and militia groups.⁴⁰¹ A submission to the 2016 UN Universal Periodic Review cycle by AWUSAR noted that:

LGBT identified individuals are persecuted [...] by the law through security trailing and detention, where many men have been beaten, tortured, and raped—individually and in groups—at checkpoints due to their sexual orientation.⁴⁰²

This trend has apparently not abated, with reports of authorities targeting and sexually harassing LGBT individuals into 2020.⁴⁰³ Additionally, as stated by COAR Global:

Perhaps the most visible security risk pertains to transgender persons. Acute danger arises when individuals pass through army and security service checkpoints, where they are forced to provide ID cards that often do not

match their current physical appearance, which frequently leads to humiliation, verbal abuse, assault, and arbitrary arrest.⁴⁰⁴

Men, boys and trans women who look “soft” face extreme abuse and sexual violence from police and military staff at checkpoints and detention centres

At the height of Syria’s conflict, numerous individuals were violently and publicly executed by members of the Islamic State in Iraq and the Levant (ISIL), which held *de facto* legislative and judicial control over a large part of Syria and Iraq’s territories for several years. Between 2013 and 2016 the Islamic State claimed to have executed at least 16 persons in Syria for various forms of “sodomy” or “indecent behaviour”, which included same-sex activity, with a preferred mechanism for execution being to throw suspected homosexuals from tall buildings.⁴⁰⁵ Executions carried out by ISIL have not been included in the Examples of Enforcement section below.

In 2018, the UN Independent International Commission of Inquiry on the Syrian Arab Republic declared that “by targeting sexual minorities on grounds universally recognised as impermissible under international law, and severely depriving sexual minorities of their fundamental rights, ISIL’s treatment of sexual minorities constitutes the crime against humanity of persecution”.⁴⁰⁶

Examples of Enforcement

In **June 2011** intelligence officials detained a heterosexual man for 18 days, in which time they beat him on his genitals and burnt him with a candle. He was released when it was discovered that they had arrested the wrong person in a case of mistaken identity.⁴⁰⁷

In **2012** a gay man and his friend were arrested after attending an anti-government protest in the capital, Damascus. Police found evidence on their phones that they were gay, and at this point the violence and interrogations reportedly increased significantly, even though they were not initially detained for their sexual orientation. One of the men told Human Rights Watch

³⁹⁹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 137.

⁴⁰⁰ Human Rights Watch and Helem, *“They Treated Us in Monstrous Ways”: Sexual Violence Against Men, Boys, and Transgender Women in the Syrian Conflict* (2020), 2.

⁴⁰¹ COAR Global, *LGBTQ+ Syria: Experiences, Challenges, and Priorities for the Aid Sector* (2021), 5.

⁴⁰² AWASUR, *PHRO Joint Submission* (2016).

⁴⁰³ “اخر اخبار لبنان : فظائع المخابرات السورية ضد المثليين.. ودعم ناقص في لبنان”, [Lebanon’s latest news: Syrian intelligence’s atrocities against homosexuals... and incomplete support in Lebanon], *Adramout*, 29 July 2020.

⁴⁰⁴ COAR Global, *LGBTQ+ Syria: Experiences, Challenges, and Priorities for the Aid Sector* (2021), 13.

⁴⁰⁵ Human Rights Council, *“I lost my dignity”: Sexual and gender-based violence in the Syrian Arab Republic*, A/HRC/37/72/CRP.1, 8 March 2018, paras. 65, 72, 77; “IS bắn vào đầu 10 người với cáo buộc đồng tính” [IS shoots 10 people in the head on accusations of being gay], *Bao Quang Ninh*, 22 September 2015; “Timeline of publicized executions for “indecent behavior” by IS militias”, *Outright Action International*, 2 April 2016; Human Rights Watch and Helem, *“They Treated Us in Monstrous Ways”: Sexual Violence Against Men, Boys, and Transgender Women in the Syrian Conflict* (2020), 28-29; *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/31/68, para. 113.

⁴⁰⁶ Human Rights Council, *“I lost my dignity”: Sexual and gender-based violence in the Syrian Arab Republic*, A/HRC/37/72/CRP.1, 8 March 2018, para. 128.

⁴⁰⁷ Human Rights Watch and Helem, *“They Treated Us in Monstrous Ways”: Sexual Violence Against Men, Boys, and Transgender Women in the Syrian Conflict* (2020), 45.

that they had been raped by police using sticks or other such objects. Police also threatened to “out” the man to his family.⁴⁰⁸

In 2012 a trans woman was detained for three months in Damascus. She was made to strip and subjected to corporal punishment in a crowded cell.⁴⁰⁹

A trans woman was arrested twice in 2013 for participating in anti-government protests, though police also found pamphlets in her home about gender identity. They placed her in a cell with multiple men during her second arrest and refused to intervene as she was raped. She was then transferred to a different cell with police telling her the reason was that the first cell’s occupants “took what they wanted” (in other words, police were allegedly now giving her to a new group of assailants as a punishment for her identity).⁴¹⁰

In 2014 a non-binary teenager, aged 15, was arrested after police at a checkpoint saw pictures of her on her sister’s phone (Human Rights Watch indicates feminine pronouns). She was held for 10 days and raped multiple times. The officer who raped her continued to call her for sex after she was released, threatening to provide her personal details to all checkpoints in the country if she refused.⁴¹¹

In 2019 Human Rights Watch was told that a queer individual was detained by intelligence officials after her family complained to them of her sexual orientation and gender expression. She was held in a central prison from the age of 13 until she was 17, suffering regular abuse and rape from other inmates.⁴¹²



Turkmenistan

Criminalising Provisions

Article 135 of the *Criminal Code* (1997) punishes sodomy—defined as “sexual intercourse between men”—with imprisonment of up to 2 years. In case of repeated acts or acts committed by a group of two or more persons, the punishment is imprisonment between two

to five years with obligatory living in a certain place from five to ten years.⁴¹³

Enforcement Overview

Between 2012 and 2021 ILGA World has identified at least eight examples of enforcement, though the country remains relatively isolated, with strict controls on media and free expression, making it challenging for researchers to attain clarity on the number of cases of enforcement, or the situation on the ground more generally.

The law criminalising same-sex sexual acts appears to be enforced selectively. While there are reports of arrests, prosecutions are either relatively rare or remain largely unpublicised. “Homosexuality” is widely considered a mental disorder in the country, including by law enforcement, medical institutions, and judicial officials, and so punishment for perceived “homosexual” behaviour can also include forced placement into psychiatric institutions.⁴¹⁴

In 2016 in its concluding observations to Turkmenistan’s second periodic report, the UN Human Rights Committee stated that it was “concerned about discrimination against and social stigmatization of lesbian, gay, bisexual and transgender persons, including violence, arbitrary arrests and detention and other abuses perpetrated on the basis of sexual orientation and gender identity with total impunity”.⁴¹⁵

In October 2021 the media reported on a coordinated campaign to “expose” and arrest “homosexuals”

In October 2021 widespread media reports surfaced—in stark contrast to the aforementioned norm of cases going unnoticed and unpublicised—indicating that police in the Eastern Region of Lebap had arrested around 30 men and threatened even those who merely sat next to each other in public, as part of a coordinated campaign to “expose” homosexuals in the area. Even visiting performers from another part of the country were warned that if any man entered the hotel room of another, he would be arrested.⁴¹⁶

⁴⁰⁸ *Id.*, 34.

⁴⁰⁹ *Id.*, 40-41.

⁴¹⁰ *Id.*, 36-37.

⁴¹¹ *Id.*, 38-39.

⁴¹² *Id.*, 35.

⁴¹³ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 137.

⁴¹⁴ Labrys and Sexual Rights Initiative, *Submission on Turkmenistan – Third Round of the Universal Periodic Review* (2008), para. 33; Human Rights Watch, *United Nations Human Rights Committee Review of Turkmenistan* (2016), 3.

⁴¹⁵ Human Rights Committee, *Concluding observations on the second periodic report of Turkmenistan*, CCPR/C/TKM/CO/2 (2017), para. 8.

⁴¹⁶ “В Лебапе полиция допрашивает сидящих вместе мужчин, подозревая их в гомосексуализме” [In Lebap, police interrogate men sitting together, suspecting them of homosexuality], *Radio Liberty (Turkmenistan)*, 2 October 2021.

Examples of Enforcement

In **2012** a gay man was arrested by police after being “outed” by another gay man who had himself been targeted and blackmailed. He was made to pay a bribe “approximately 10 times the average monthly wage in Turkmenistan” to avoid prison. This is but one of numerous cases, according to persons interviewed by Amnesty International, but further details were not disclosed due to fear of reprisal from State actors.⁴¹⁷

In **January 2013** police arrested an 18-year-old gay man after he was reported by an informant. He was held for 11 days alongside around 20 other people suspected of being gay, then subjected to a forced anal examination, with the medical examiner making derisive comments about his rectum and sex life the whole time, as well as saying that he “should be burned”. It is important to note that such anal examinations have been proven to have no value in determining whether a person has engaged in anal sex and have been defined as a human rights abuse in and of themselves. Before he was removed from an examination room, he claims, another suspected gay man was brought in and subjected to the same treatment. All of the detainees were reportedly tried together in **March** under charges of violating Article 135, and subsequently sentenced to two years’ imprisonment. The prosecution is said to have used the results of the anal examinations as evidence in the case. In **May 2014**, after one year and three months behind bars the group was pardoned and released by Presidential decree, alongside more than two thousand others who were convicted of various crimes. Notably, this was not a shift in Turkmen policy but merely part of the government’s celebrations of the “Day of Revival, Unity and Poetry of Makhtumkuli Fragi”.⁴¹⁸

In **May 2017** a video began circulating online showing a trans woman in detention with a group of police officers, apparently in the capital city of Ashgabat. They verbally and sexually harassed her, and threatened to kick her in the groin to verify her gender. She was later made to

strip in the video and bend over for them to check her genitals. Further details of her fate are not known.⁴¹⁹

In **October 2019**, a 24-year-old gay doctor disappeared for several days after being summoned to a police station in Ashgabat, having shared with a local media outlet his experience of being entrapped by an undercover police officer, arrested, humiliated, and tortured the **previous year**.⁴²⁰ The doctor reappeared a few days later and retracted all of his previous statements.⁴²¹ The Turkmen authorities then demanded all medical personnel to get tested for STIs, after deeming the doctor to be immoral and a dishonour to the medical profession.⁴²²

In **May 2020**, local media reported that in **mid-March** a well-known showman in Ashgabat had been arrested on charges of homosexuality. Along with the young man, about a dozen other people, including well-known personalities in the country’s showbusiness and modelling industry were arrested. The young showman was sentenced to two years’ imprisonment. It was hoped that he would be pardoned at an upcoming cultural festival, but anonymous sources told reporters that gay people are no longer considered eligible for amnesty.⁴²³

In **August 2021** police in Turkmenabat arrested a well-known hairdresser and charged him with “sodomy”. They severely beat and tortured him, and forced him to disclose the names of other MSM in the city. The most recent reporting on the matter indicated that he was being detained in an “isolation ward”.⁴²⁴

In **September 2021** police in the city of Turkmenabat, as part of a “crackdown on homosexuality” throughout the region of Lebap, arrested between 20 and 30 men suspected of being gay in a raid. Details are unclear, but the accused were reportedly transferred to an “isolation ward” for pre-trial detention. Many in the group were allegedly members of the Turkmenabat fire department.⁴²⁵

⁴¹⁷ Amnesty International, *Turkmenistan: An “era of happiness” or more of the same repression?* (2013), 25, 40.

⁴¹⁸ “Another amnesty announced in Turkmenistan”, *Turkmen Inform*, 17 May 2014; Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 10, 48-49.

⁴¹⁹ “Video Appears To Show Turkmen Police Shaming Transgender Woman”, *Radio Free Europe: Radio Liberty*, 17 May 2017.

⁴²⁰ “Gay man in Turkmenistan goes missing after posting heart-breaking video fearing he might be ‘forcibly taken away’”, *Pink News*, 1 November 2019.

⁴²¹ “Turkmenistan: Gay Man Summoned by Police and Disappeared: Kasymberdi Garaev”, *Amnesty International*, 6 November 2019, Index number: EUR 61/1363/2019; “Gay man missing in Turkmenistan establishes contact and denies his statements”, *Chronicles of Turkmenistan*, 8 November 2019; “Gay Turkmen Doctor Who Vanished Returns Home, Recants”, *Radio Free Europe: Radio Liberty*, 6 November 2019.

⁴²² “После скандала с врачом-геем, медиков отправили сдавать анализы на венерические болезни” [After scandal with a gay doctor, doctors were sent to be tested for sexually transmitted diseases], *Chronicles of Turkmenistan*, 2 November 2019.

⁴²³ “Aşgabatda ‘gomoseksuallykda aýyplanyp belli şoumen tutuldy’” [Showman arrested for homosexuality’ arrested in Ashgabat], *Azathabar*, 16 April 2020; “”, *Human Rights Watch*, 26 May 2020; “В полицейском изоляторе в Туркменабаде содержатся около 30 обвиняемых в гомосексуальных связях” [About 30 accused of homosexual relations are held in a police detention center in Turkmenabat], *Turkmen News*, 24 September 2021. Two Years in Prison for Gay Sex in Turkmenistan”, *Human Rights Watch*, 26 May 2020; “В полицейском изоляторе в Туркменабаде содержатся около 30 обвиняемых в гомосексуальных связях” [About 30 accused of homosexual relations are held in a police detention center in Turkmenabat], *Turkmen News*, 24 September 2021.

⁴²⁴ “По подозрению в гомосексуальности в Туркменабаде задержали известного парикмахера и стилиста” [Famous hairdresser and stylist detained on suspicion of homosexuality in Turkmenabat], *Turkmen News*, 9 August 2021; “” [About 30 accused of homosexual relations are held in a police detention center in Turkmenabat], *Turkmen News*, 24 September 2021. Связях” [About 30 accused of homosexual relations are held in a police detention center in Turkmenabat], *Turkmen News*, 24 September 2021.

⁴²⁵ “В полицейском изоляторе в Туркменабаде содержатся около 30 обвиняемых в гомосексуальных связях” [About 30 accused of homosexual relations are being held in a police detention facility in Turkmenabat], *Turkmen.news*, 24 September 2021; “В Туркмении полиция устроила облаву на геев и подвергла их пыткам” [In Turkmenistan, police raided and tortured gay men], *Lenta*, 29 September 2021; “Полиция Туркмении задержала 30 мужчин по статье о мужеложестве. Их избивают и требуют выдать других геев” [The Turkmen police detained 30 men under the article on sodomy. They are beaten and demanded to betray other gays.], *Snob*, 29 September 2021; “” [In Lebap, police interrogate men sitting together, suspecting them of homosexuality], *Radio Liberty (Turkmenistan)*, 2 October 2021; “Туркменстанда ондогон адам кумсалыкка шектелип кармалды” [Dozens of people have been arrested in



United Arab Emirates

Criminalising Provisions

Certain interpretations posit that Article 354 of the [Federal Penal Code](#) (1987) prescribes the death penalty for “sodomy with a male”. Similarly, Article 356 has been interpreted by various scholars to criminalise consensual same-sex sexual activity. In 2016, [Federal Decree-Law No. 7](#) (2016) amended Article 358 to establish that any person who publicly commits a “disgraceful act” would be punished by a jail sentence for no less than six months. The same penalty applies to any person who says or commits any “act against the public morals”.

The Emirates of Abu Dhabi, Dubai, and Sharjah further criminalise consensual same-sex activity through local provisions.⁴²⁶

In terms of gender expression, *de facto* criminalisation exists through Article 359 of the Penal Code, which states “any male disguised in a female apparel and enters in this disguise a place reserved for women or where entry is forbidden, at that time, for other than women. Should the male perpetrate a crime in this condition, this shall be considered an aggravating circumstance”.⁴²⁷

Enforcement Overview

Between 2004 and 2021 ILGA World has identified 21 examples of criminal enforcement in the UAE, though this likely does not represent a totality of cases, and does not account for broader ways in which Emirati society and State officials discriminate against or sideline persons and groups based on their SOGIE. Though the legal potential exists for the adoption of the death penalty for same-sex acts, as Islamic Sharia is considered the main source of UAE law when it comes to civil and criminal cases, ILGA World has found no evidence of such a punishment being meted out in recent years.⁴²⁸ A 2008 report by Amnesty International states that the UAE “does not carry the death penalty for same-sex

consensual sexual relations” and has indicated that Article 354 addresses “rape, not consensual same-sex sexual relations”. However, in the same report, the organisation considers that, depending on each case, it is still “theoretically possible” that consensual same-sex sexual activity would be punishable by death if considered a form of *zina* (extramarital sexual activity),⁴²⁹ which leaves the door open for potential future abuses.

Other forms of criminal enforcement or abuse are explicitly documented, however. In 2008 police asked the government to “carry out research into the trend” of *boyat*, or “tomboys” (trans men, butch lesbian women and other gender-diverse individuals). In a 2011 official statement, the Dubai Police Security Awareness Administration formally announced that it was planning the launch of campaigns targeting “transsexuals” and *boyat*. Officials from the Community Development Authority stated they would work together with the police on plans to combat *boyat* and other “cross-dressers” for “indulging in a dangerous practice”⁴³⁰ [OBJ].

In 2011 the Dubai Police formally announced the launch of campaigns targeting “transsexuals” and *boyat* (trans men, butch lesbians and other gender-diverse individuals)

Official support for criminal enforcement against so-called immoral practices had not abated by 2021. In that year the Public Prosecution (PP) office stated on social media that “whoever publicly performs an indecent act shall be subject to a fine of not less than AED 1,000 and not more than AED 50,000”, and further indicated that “any repeated incident of public indecency shall be punishable by imprisonment for a period of not less than three months and a fine not more than AED 100,000”.⁴³¹

For those who are incarcerated, there have been reports of anal examinations—a long-debunked practice aimed at gathering presumed evidence of same-sex intercourse—being used against multiple detainees. The “evidence” gathered by these procedures is known to be used in the

Turkmenistan on suspicion of homosexuality], *Azattyk Unalgyssy*, 6 October 2021; “Радио Свобода: в Туркменабаде задержали около 25 человек, подозреваемых в гомосексуальных связях” [Radio Liberty: about 25 people suspected of homosexual relations were detained in Turkmenabat], *Current Time*, 7 October 2021. “Гомосексуализм” [In Lebar, police interrogate men sitting together, suspecting them of homosexuality], *Radio Liberty (Turkmenistan)*, 2 October 2021; “Туркменстанда ондогон адам кумсалыкка шектелип кармалды” [Dozens of people have been arrested in Turkmenistan on suspicion of homosexuality], *Azattyk Unalgyssy*, 6 October 2021; “Радио Свобода: в Туркменабаде задержали около 25 человек, подозреваемых в гомосексуальных связях” [Radio Liberty: about 25 people suspected of homosexual relations were detained in Turkmenabat], *Current Time*, 7 October 2021.

⁴²⁶ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 138.

⁴²⁷ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report: Recognition before the law* (2020), 107.

⁴²⁸ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 81-82.

⁴²⁹ Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), 48.

⁴³⁰ “Cross-dressing women targeted in Dubai campaign”, *The National News*, 1 June 2011.

⁴³¹ “PP explains punishment for public indecency offences”, *Sharjah* 24, 25 May 2021.

sentencing of suspects to prison for homosexuality and “obscene acts” under Sharia law, according to the UN Special Rapporteur on torture⁴³² and reported by Human Rights Watch.⁴³³

Examples of Enforcement

In 2004 reports claimed that a “gay wedding” was raided in Sharjah. Two dozen men were apparently arrested, lashed and released according to a prominent lawyer. Details of the case remain unclear.⁴³⁴

In November 2005 police arrested 26 individuals in a hotel in Ghantoot. Details surrounding the case are unclear but it was reported that half of the group, including both UAE nationals and migrants from other Gulf and Asian countries, were “dressed as women” with make-up and feminine hairstyles. Reports stated that the group were allegedly preparing for a mass “homosexual wedding”. It was reported that the individuals underwent psychological evaluations and invasive “medical examinations”. It was further claimed that the Interior Ministry’s department of social support would attempt to dissuade those detained from future “homosexual behaviour” by various means, including forced treatment with male hormones, though the government denied this. In February 2006 it was reported that 11 of the 26 confessed in court to “practicing homosexuality” and were sentenced to 5 years in jail and an additional year for obscenity, with a 13th given a “lesser sentence” and the rest acquitted.⁴³⁵

In 2007 a French boy, aged 15, was raped in the UAE by three men at knifepoint in a secluded part of the desert. He was threatened and told that his family would be killed if he reported the incident. Regardless, the men were arrested by police and pleaded not guilty. The doctor who examined the boy after he was raped would go on to claim that there was supposed evidence of a history of anal intercourse and that he did not believe force was used. As such, the boy was discouraged by the police from pressing charges and was told he even faced the possibility of being charged with criminal homosexual activity himself.⁴³⁶

In 2008 it was reported that 17 individuals were arrested and deported for alleged same-sex sexual activity and cross-dressing. No further details could be identified.⁴³⁷

In April 2008 a lesbian couple—a 30-year-old Lebanese national and a 36-year-old Bulgarian—were charged with kissing, and “indecent acts” in public near Al Mamzar beach. The couple pleaded “not guilty” to the accusations but the court upheld the charges and stated that they would be deported after serving their sentence of one month in prison.⁴³⁸

In 2009 a Canadian couple was detained for 28 days in Dubai. The couple felt that they were targeted for being gay. They were detained for carrying prescription arthritis medication, the specific brand of which had been banned in the UAE. The couple had been together for almost 20 years before the arrest and only stopped in Dubai for a day in transit before returning to Toronto from their vacation in India. They claim that the airport security was targeting young people coming from or heading to the “West”. It was suspected they were looking for party drugs. The couple was given little information regarding their detention and were not given the opportunity to contact a lawyer or consular officials. Instead, one of the detainees was able to contact some friends on his cell phone, who provided him the emergency contact number for the Canadian embassy in Abu Dhabi, which he called before his phone was confiscated. They were taken to the detention centre and forced to provide urine samples for drug testing. They were held for 10 days with around eight other prisoners before they were sent to separate prisons; their only means of communication was through the Canadian consular office. While it is unclear to what degree the pair were explicitly targeted for their perceived sexual orientation, later years would show that individuals do regularly face targeting based on their SOGIE when transiting through Emirati airports.⁴³⁹

On 20 July 2009, a 22-year-old Emirati student was arrested and convicted of public indecency, cross-dressing, insulting a religious creed and committing same-sex acts. The student had their sentence reduced from three years to one after an appeal. It is reported that the student was travelling to Europe with a male partner, another Emirati who had been convicted of homosexuality and sentenced to a year in jail. The defendant’s lawyer told the Dubai Court of Appeals that the procedures of the arrest were illegal, given the undated warrant. Police reported that they had found pornographic material at the defendant’s home. Prosecutors also accused the student of posing dressed

⁴³² Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Addendum: Summary of information, including individual cases, transmitted to Governments and replies received*, A/HRC/4/33/Add.1, 20 March 2007, para. 317.

⁴³³ Human Rights Watch, *Audacity in Adversity: LGBT Activism in the Middle East and North Africa* (2018), 20. See also: “UAE sentences 11 men to five years in jail for homosexuality”, *Khaleej Times*, 13 February 2006.

⁴³⁴ “Homosexuality in the UAE”, *Detained in Dubai (website)*. Accessed on 23 October 2020.

⁴³⁵ “Gay party men may be given hormone treatment”, *Khaleej Times*, 27 November 2005; “US condemns UAE gay men arrests”, *BBC News*, 29 November 2005; “UAE sentences 11 men to five years in jail for homosexuality”, *Khaleej Times*, 13 February 2006; Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak - Summary of information, including individual cases, transmitted to Governments and replies received*, A/HRC/4/33/Add.1 (2007), para. 317; “Homosexuality in the UAE”, *Detained in Dubai (website)*. Accessed on 23 October 2020.

⁴³⁶ “Homosexuality in the UAE”, *Detained in Dubai (website)*. Accessed on 23 October 2020.

⁴³⁷ *Ibid.*

⁴³⁸ “Lesbian couple jailed for kissing on beach in Dubai”, *London Evening Standard*, 2 September 2008; “Homosexuality in the UAE”, *Detained in Dubai (website)*. Accessed on 23 October 2020.

⁴³⁹ “Homosexuality in the UAE”, *Detained in Dubai (website)*. Accessed on 23 October 2020.

in a hijab while reading the Quran. The nature of the accusations were such that the student asked to be isolated from the general prison population if their sentence was upheld for their own safety. It is not known if this request was granted.⁴⁴⁰

In **March 2010** a male student was sentenced to one year's imprisonment for prostitution. The student's laptop was seized as it was alleged that he was luring men to have sex with him in exchange for money via the internet. The 18-year-old was caught when he unknowingly began engaging online with a police sergeant. The sergeant claimed he was conducting a "security patrol" on the internet and had a chat with the accused.⁴⁴¹

In **July 2010** police arrested two migrants from East Asia in a raid at the Ras al Khaimah hotel. They were arrested for "cross-dressing" after someone tipped off police, stating that they were offering women dance classes and make-up advice. A police official stated that one of the suspects had confessed to having been a cross-dresser since childhood. The pair were referred to prosecutors and immigration officials for further investigation. It is impossible here to assume the gender identity of the accused given the common conflation in criminalising countries of sexual orientation, gender identity and gender expression, though media outlets reporting on the case seem to identify them as men.⁴⁴²

On **9 April 2012** it was reported that two men were allegedly spotted fondling each other in a parked car. News reports claim that the pair were reported by a member of the public who saw what they were doing after becoming suspicious of the car parked in front of her house. Reporting by *The National News*, a local news site, seems to be contradictory, however, and it is unclear if there are indeed any witnesses to the alleged "fondling". The two men, one Filipino and the other Omani, had been friends for about five months after meeting on the internet, and were both sentenced to three months in prison to be followed by deportation.⁴⁴³

It was reported on **8 June 2012** by *Gulf World News* that a man from Belgium was arrested after his Filipino host had jumped out of their apartment to his death after being stood up on a date with a third party. The Belgian claimed the Filipino had become depressed and committed suicide, though the last words of the dying man seemed to accuse the Belgian of pushing him. Police dropped the murder charges as there was not enough

evidence to pursue the case, though the Belgian man was still sentenced to a year in jail followed by deportation by the Dubai Misdemeanour Court, as he had confessed to police that he and the deceased had been sexually intimate.⁴⁴⁴

In **July 2012** a Filipino migrant—possibly a trans woman—was charged for cross-dressing, pretending to be a woman, tricking a woman into undressing in front of her, assault, and practicing medicine without a proper permit. An undercover health inspector had gone to a nearby apartment where cosmetic treatments were said to be carried out. The salon worker then took the inspector to the laser-treatment room and asked her to take off her clothes. The salon worker then proceeded to use a laser treatment device to remove hair from the inspector's armpits, but burnt her in the process. It was only after this, when the health inspector complained and reported the salon to the police, that they uncovered the salon worker's identity. It does not appear that the accused intended to "trick" anyone into undressing, and was rather carrying out expected duties as a laser hair removal technician. The period of incarceration to which the accused was sentenced is unclear, though it was ruled that deportation back to the Philippines would follow.⁴⁴⁵

In **December 2012** an individual from the Philippines was arrested at a mall in Abu Dhabi for "causing a disturbance" on account of their being allegedly dressed in women's clothing. Staff at one of the stores called the police, who searched the accused's handbag and found makeup. The accused was charged with "imitating a female", but denied the accusation of being dressed as a woman.⁴⁴⁶

In **March 2014**, a court in the UAE upheld a six-month jail term handed down to two men who allegedly had been caught for "sodomy". The details surrounding the case are unclear but according to reports the prosecution stated that there was "forensic evidence" that the men had slept together. The pair deny the claims and state that they were coerced by police into confessing. After serving their six-months they were to be deported.⁴⁴⁷

On **9 March 2016**, UAE police denied claims that they had arrested 30 gay men at a private party held at the Shangri-La Hotel in Dubai. However, a local group collected first-hand witness accounts that they insist prove that arrests and even deportations did take place. Further details remain unclear.⁴⁴⁸

⁴⁴⁰ "Cross-dressing student has sentence reduced by appeal court", *The National News*, 20 July 2010 ; "Homosexuality in the UAE", *Detained in Dubai (website)*. Accessed on 23 October 2020.

⁴⁴¹ "Homosexuality in the UAE", *Detained in Dubai (website)*. Accessed on 23 October 2020.

⁴⁴² "Transvestites offering make-up advice at RAK hotel arrested", *The National News*, 9 July 2010.

⁴⁴³ "Jail terms for men caught fondling in car", *The National News*, 15 May 2012 ; "UAE: Two men jailed for alleged public gay 'fondling' highlight privacy issues", *Pink News*, 16 May 2012.

⁴⁴⁴ "Gay partner jailed for one year for having consensual sex with victim", *Gulf News*, 8 June 2012

⁴⁴⁵ "Cross-dresser jailed for tricking health inspector into stripping", *The National News*, 25 July 2012.

⁴⁴⁶ "Abu Dhabi police arrest man for allegedly cross-dressing", *The National News*, 19 December 2012.

⁴⁴⁷ "UAE: Court upholds men's 6-month jail term for 'sodomy'", *Pink News*, 25 March 2014.

⁴⁴⁸ "Dubai Police Chief Denies Reports That Gay People Were Arrested at Party", *HuffPost*, 21 March 2012.

On **9 August 2016**, Canadian transgender model and social media influencer, Gigi Gorgeous, reported that she had been detained and questioned at the Dubai airport for five hours because she is transgender. She had previously amended her legal gender marker and passport to reflect her gender identity and expression, so it must be presumed that some form of prejudice informed her detention rather than any obvious issue with her travel documents. She was later released and stated on her social media accounts that she was safely on her way “to somewhere much more accepting”.⁴⁴⁹

On **9 August 2017** Emirati police arrested two Singaporean nationals, a presumed cisgender man and a trans woman, in Abu Dhabi’s largest shopping mall, which is not a place “reserved for women”. Both were sentenced to a year in prison for “being disguised in women’s dress”, “attempting to resemble women” and “violation of public morals by being in a public place appearing as women” under Article 359 of the Penal Code which criminalises men who dress in women’s clothing and enter women-only spaces. The language used in the judgment suggests that the law is being abused to target people of diverse gender identities and expressions even when they are in mixed-gender public places, and that vague laws on “public morals” are also being misused to limit gender expression. The accused believed to be a cisgender man stated at the time of his arrest that he wore a chain around his neck, an ear piercing and a nose piercing, which authorities used to justify the charges against him, while the trans woman, who works as a model, simply had long hair. The pair later had their sentence reduced to a fine and the court had them deported on **28 August 2017**.⁴⁵⁰

A number of the other detainees, held in **2017** with the Singaporean nationals identified above, told them of the reasons for their arrests and detention. These detainees included Emirati nationals as well as migrants from Morocco and the Philippines, most of whom said that they had been arrested solely for “looking feminine”. Two men said they were arrested while in line at a movie theatre; another man said he was arrested at Yas Mall; a transgender woman said she was arrested while wearing a work uniform because of her feminine-looking face; and another transgender woman said that she, like the trans Singaporean, was arrested for having long hair but was wearing men’s clothing when arrested. Another detainee claimed that he had been charged with “sodomy” and had been subjected to a forced anal examination.⁴⁵¹



Criminalising Provisions

Article 120 of the [Criminal Code of Uzbekistan \(1994\)](#) criminalises “*besoqolbozlik*” (homosexual intercourse), which is voluntary sexual intercourse of two male individuals, with imprisonment up to three years.⁴⁵²

Enforcement Overview

ILGA World is aware of at least 10 examples of criminal enforcement in Uzbekistan between 2009 and 2021. It is almost certain that additional cases exist but are not included here. Limitations on freedom of expression and association mean that media reporting is likely often curtailed, and human rights defenders are documented to have been harassed or even jailed for speaking publicly on these issues.

In 2019 a local activist informed ILGA World that even though it is sex between adult men that is explicitly criminalised, women who have sex with women are also targeted under article 120 of the Criminal Code. This is due to the social effect of this provision, which condemns “homosexuality” in general without distinction of the involved person’s gender. Additionally, as in other parts of the world, criminalising provisions allow law enforcement agents to blackmail, extort, threaten and physically and sexually assault people of diverse SOGIE with impunity.⁴⁵³ Article 120 is also reportedly utilised for political ends, or as a form of extortion, with authorities utilising this provision against the protestations or demand for the protection of rights of those they target, as shown in at least one example below.

Notably, Uzbekistan’s Ministry of Internal Affairs claimed in April 2021 that there are currently at least 49 individuals detained in the penal colonies across the country for “sodomy”, per Article 120 of the Criminal Code. The Ministry stated that between 2016 and 2020 at least 44 individuals had been prosecuted on that basis—six in 2016, 15 in 2017, seven in 2018, seven in 2019, and nine in 2020.⁴⁵⁴ It has further been reported that authorities have subjected six men to forced anal exams between 2017 and 2021.⁴⁵⁵

⁴⁴⁹ “Model Gigi Gorgeous says she was detained at Dubai airport for being transgender”, *TIME*, 12 August 2016.

⁴⁵⁰ “UAE court sentences two Singaporeans to jail for cross-dressing”, *The National News*, 25 August 2017; “Two Singaporeans convicted of cross-dressing in Abu Dhabi have jail sentences reduced”, *The National News*, 27 August 2017; Human Dignity Trust, *Injustice Exposed - The Criminalisation of Transgender People and its Impacts* (2019), 24; “UAE Jails Two Singaporeans for Dressing ‘Feminine’”, *Fridae Asia*, 29 August 2017; “Singaporeans in UAE Have Sentence Reduced”, *Fridae Asia*, 30 August 2017.

⁴⁵¹ “UAE: Stop Policing Gender Expression”, *Human Rights Watch*, 7 September 2017.

⁴⁵² ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 139.

⁴⁵³ “The Human Rights Situation in Uzbekistan” in ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 484.

⁴⁵⁴ “Rasman: O‘zbekistonda besoqolbozligi uchun qamalganlar qanchaligi o‘chiqlandi” [Official: How many people have been imprisoned in Uzbekistan for homosexuality?], *Qalampir*, 22 April 2021.

⁴⁵⁵ “Uzbekistan: Forced Anal Testing in Homosexuality Prosecutions”, *Human Rights Watch*, 5 August 2021.

Uzbekistan's Ministry of Internal Affairs reported in April 2021 that there are currently at least 49 individuals detained in penal colonies across the country for "sodomy"

Beyond the long-debunked and invasive anal examinations, suspects are sometimes reportedly beaten and subjected to forced HIV/Aids testing. Section 113 of the Criminal Code makes it an offense for someone who is knowingly HIV-positive to put another at risk of infection,⁴⁵⁶ and multiple instances have been documented in which suspects have had their charges aggravated through an apparently broad reading of this provision.

SOGIE-based social stigma remains widespread as well, but victims of discrimination or violence often do not go to the police for assistance for fear of being re-victimised or outright arrested for their identities. It is further reported that access to justice for victims of hate crimes and for those charged under Section 120 remains elusive as lawyers are often reluctant to take up their cases for fear of public retaliation. It is said that lawyers who make a habit of taking on "sensitive" cases even risk disbarment.⁴⁵⁷

In June 2021 the Chair of the Uzbekistan National Revival Democratic Party—one of the country's five "officially sanctioned" political parties—suggested the mass-expulsion of citizens of diverse SOGIE from Uzbekistan rather than arresting them and "forc[ing] them to live in a society where they are not recognised". He claimed that dozens of LGBT persons had thanked him for the proposal to deport them.⁴⁵⁸ The same year, it was reported that a school in the capital, Tashkent, had adopted a policy of measuring the length of students' socks to uncover homosexuals, though the Ministry of Education stressed it did not instruct schools to do so and would investigate.⁴⁵⁹

In January 2020 as part of its concluding observations to the fifth periodic report on Uzbekistan, the UN Committee against Torture (CAT) expressed concern at:

Reports that lesbian, gay, bisexual and transgender persons are subjected to violence and torture while in detention; persecution by

the police, including through entrapment schemes carried out using websites, threatening videos and extortion; and violence by private persons.⁴⁶⁰

Further, the Committee was

concerned that the State party indicated that it has no cases open involving violence against lesbian, gay, bisexual or transgender persons [and] about reports that the criminalization of same-sex sexual relations in article 120 of the criminal procedure code renders lesbian, gay, bisexual and transgender persons particularly vulnerable to violence by both law enforcement officials and private persons. This is because lesbian, gay, bisexual and transgender persons are reluctant to contact the authorities to seek protection from violence for fear of being arrested.⁴⁶¹

Uzbekistan is considering a new Criminal Code, however the draft published on 22 February 2021 reportedly retains Section 120's criminalising provisions largely unchanged—under the new Article 154.⁴⁶² In 2018, the Regional Office for Central Asia of the UN Office on Drugs and Crime (UNODC) had recommended Uzbekistan to "exclude the criminalization of homosexuality, thereby bringing the term of inadmissibility of discrimination in the national law into accordance with international standards".⁴⁶³

Examples of Enforcement

In **January 2009** a human rights campaigner promoting HIV/Aids awareness was arrested after authorities deemed the educational booklets on HIV-prevention he was distributing to be "incompatible with local traditions". The booklet was not LGBT-specific but seems to have included information regarding MSM. He was convicted in **July** and sentenced to seven years in prison for "embezzlement of funds, involving minors in antisocial behaviour, molesting individuals, involving individuals with drugs, and tax evasion". The court declared the booklet's contents "illegal" and ordered all copies seized by police and immediately destroyed, and the activist's NGO, IZIS, was further struck off the roll of legally registered organisations. It was not until **February 2010** that news of the arrest became internationally known. In **May 2010** the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noted that the booklet had been funded by UNAIDS and UNICEF and expressed concern that a human rights defender would be arbitrarily

⁴⁵⁶ Estonian Network of People Living with HIV (EHPV), *NGO Submission In Connection with Uzbekistan's Mid-Term Reporting On the Implementation of the 2018 UPR Recommendations* (2020), para. 47.

⁴⁵⁷ *Id.*, para. 50-52.

⁴⁵⁸ "Алишер Кадиров заявил, что представители ЛГБТ-сообщества десятками благодарили его за предложение по их высылке из Узбекистана" [Alisher Kadyrov said that dozens of LGBT community representatives thanked him for the offer to expel them from Uzbekistan], *Podrobno*, 9 June 2021; "" [Alisher Kadyrov suggested expelling LGBT people en masse], RFE-RL, 10 June 2021.qildi" [Alisher Kadyrov suggested expelling LGBT people en masse], RFE-RL, 10 June 2021.

⁴⁵⁹ "One of the schools in Tashkent measured the length of students' socks as a fight against LGBT people", *Byo Cosplay*, 18 April 2021.

⁴⁶⁰ Committee against Torture, *Concluding observations on the fifth periodic report of Uzbekistan*, CAT/C/UZB/CO/5 (2020), para. 63.

⁴⁶¹ *Ibid.*

⁴⁶² "Uzbekistan: Gay Men Face Abuse, Prison", *Human Rights Watch*, 23 march 2021.

⁴⁶³ UNODC, *Criminal justice reforms in Uzbekistan: Brief analysis and recommendations* (2018), 17.

detained for peaceful advocacy work. A response from Uzbek officials was recorded in a **May 2011** report, in which they defended the judgement and noted the activist's "vile beliefs". Nevertheless, the accused was released the **following month** for unknown reasons (though news only broke in **August**). He was thereafter still required to report to officials on a daily basis, stay home when not at work, and give a significant portion of his salary to the State.⁴⁶⁴

In **October 2015**, a teacher from the city of Andijan complained about the lack of electricity and was threatened with being arrested for protesting. A month later he was accused of "homosexuality" by the authorities.⁴⁶⁵

It was reported in **December 2017** that two men living together in Tashkent had been arrested. They were subjected to invasive anal examinations to "prove" that they engaged in same-sex acts regularly, but details on their charges or sentencing could not be identified at the time of publication.⁴⁶⁶

In **August 2019** a human rights activist published a video to social media urging the President of Uzbekistan to repeal Section 120 criminalising same-sex sexual activity. As a result, police tracked down a friend of the activist and blackmailed him into revealing his whereabouts. The activist was arrested and beaten severely in detention. He paid a fine of around USD 2,000 to have an investigation against him closed, whereafter he fled the country.⁴⁶⁷

In late **2019** two teenage boys were arrested after they were reported to police for kissing in a public park. Police searched their phones for incriminating evidence and threatened them with charges under Section 120, though the mother of one of the boys paid a bribe to secure their release.⁴⁶⁸

A young man was apprehended in **2020** in Tashkent, Uzbekistan's capital, for allegedly providing sexual services in exchange for money, and was subsequently subjected to a colonoscopy procedure and forced HIV and STI testing. He was charged under Articles 120 and 113 of the Criminal Code and sentenced to one and a half years of house arrest by the Yunusabad District Court. He was released early, on **21 March 2021**, as part of Uzbekistan's Navruz Spring Equinox celebrations.⁴⁶⁹

In **mid-2020** a gay man was entrapped online by a gang of men who beat him severely and filmed the ordeal

before handing him over to police. Police threatened to charge him with selling sex and same-sex conduct if he did not either pay a bribe or become an informant reporting on MSM activities.⁴⁷⁰

On **19 February 2021** an individual, reported as being a man, was entrapped online by a police officer who came to his apartment under the pretences of wanting to have sex, but instead arrested him and seized his phone, a wig and makeup. He was charged under Article 120, but charges under Article 113 were added when it was found that he was living with HIV. Over a two-month period he was routinely summoned for interrogations, anal exams, and other cruel and degrading treatment, which included being outed to his friends and family. In a closed trial on **26 May** the accused was sentenced to two years' house arrest under Article 120, and prohibited from leaving the city of Tashkent, using the internet, and leaving home after 22:00. Sexually explicit videos on his phone were reportedly used as evidence in court and to target his boyfriend.⁴⁷¹

On **19 February 2021** another man—seemingly the boyfriend of the accused listed above—was called to a police station at lunch time and informed that his boyfriend had been arrested "on suspicion of prostitution and sodomy", and that sexual videos on his phone identified the man as an additional suspect. The man was subjected to the same degrading treatment over the next two months, which included HIV testing, anal examinations, and interrogations of his friends and family. Being outed publicly caused him to lose his job. He was allegedly further threatened to give up the names of other gay men and MSM residing in Tashkent. On **26 May** he was also sentenced to two years under house arrest, but at a location over 500km from that of his boyfriend.⁴⁷²

In **March 2021**, widespread and conflicting reports from both local and international media indicated that a group of anti-LGBT protestors had gathered in Tashkent to disrupt a group of activists calling for the easing of criminalising legislation—as well as a group which had gathered to celebrate Japanese anime and K-Pop (Korean pop music). During this, members of the group assaulted a blogger and SOGIESC rights activist. The attackers were detained and legal proceedings were initiated on the grounds of "hooliganism", with four of them later placed under house arrest, but despite calls from the United Nations and other international stakeholders the authorities have refused to investigate the incident further, implying strongly that if the victim had not been an advocate for SOGIESC rights, he would not have been

⁴⁶⁴ "Anti-AIDS Campaigner Serving 7-Year Sentence In Uzbekistan", RFE-RL, 24 February 2010; "Sex Education Deemed Illegal in Uzbekistan", *Civicus*, 9 May 2011; Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue: Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/17/27/Add.1* (2011), 315-320; "Uzbek AIDS Activist Freed From Jail", RFE-RL, 31 August 2011.

⁴⁶⁵ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

⁴⁶⁶ "Uzbekistan: Gay Couple Arrested for Engaging in Illegal Relations", *Eurasianet*, 4 December 2017.

⁴⁶⁷ Estonian Network of People Living With HIV (EHPV), *NGO Submission In Connection with Uzbekistan's Mid-Term Reporting On the Implementation of the 2018 UPR Recommendations* (2020), para. 53.

⁴⁶⁸ "Uzbekistan: Gay Men Face Abuse, Prison", *Human Rights Watch*, 23 march 2021.

⁴⁶⁹ Information supplied by the Eurasian Coalition on Health, Rights, Gender and Sexual Diversity (ECOM).

⁴⁷⁰ "Uzbekistan: Gay Men Face Abuse, Prison", *Human Rights Watch*, 23 march 2021.

⁴⁷¹ Information supplied by the Eurasian Coalition on Health, Rights, Gender and Sexual Diversity (ECOM); "Anal tests forced on men accused of homosexuality", *Mamba Online*, 6 August 2021.

⁴⁷² *Ibid*.

targeted, and that the anime and K-Pop fans may have been a sign of “homosexual influence” in the country. While recovering in hospital, police reportedly searched the blogger’s home and computer, and after he recovered placed him under house arrest for “slander with malice or malicious intent”.⁴⁷³



Criminalising Provisions

Article 264 of the *Penal Code* (1994) criminalises *liwat* (sodomy), which is defined as “the contact of one man to another through his posterior” and determines that “both sodomites whether males or females are punished with whipping of one hundred strokes if not married”. The Article further states that it is “admissible to reprimand it by imprisonment for a period not exceeding one year, punishment by stoning to death if married”.⁴⁷⁴

Article 268 also criminalises *sihaq* (lesbianism), which is defined as “intercourse between one female and another”. This carries the potential punishment of imprisonment for a period not exceeding three years.

Articles 270 and 271 also outline punishments relating to “honour” and “disgrace”, and Article 279 similarly criminalises “immorality or prostitution”.

Furthermore, Article 58(2) of the *Decree Issuing the Executive Regulations for Law No. 48 of 1991 Regarding the Organization of Prisons* (Decree Law No. 221 of 1999), people arrested on “homosexuality”⁴⁷⁵ charges are kept in separate cells, whose conditions, according to the United Institute for Peace, are “extremely poor, bordering on inhumane”.⁴⁷⁶

Enforcement Overview

ILGA World has identified six examples of criminal enforcement between 2011 and 2021, enforced variously by the internationally recognised coalition forming a Central Government, and the *de facto* Houthi government, which each control different sections of the

territory. However, this number surpasses 180 cases when instances of enforcement that could not be entirely disaggregated into individual stories are taken into account. ILGA World also notes at least four instances of extrajudicial enforcement of the death penalty between 2012 and 2014 by radical militia groups holding *de facto* control over parts of the country.

Evidently then, the situation in Yemen for persons of diverse SOGIE is unstable and ever-shifting, and providing a nuanced and up-to-date account of the conflict remains impossible within the scope of this report. Outside of the areas of the most intense conflict, it appears that both the Houthi and internationally recognised coalition forces have set up functioning government structures, which include police and Criminal Investigation Departments as well as courts. Survivors of the conflict who later fled Yemen report that both sides work to target people based on their SOGIE status, detaining or otherwise abusing them, but claim that they felt more at risk of persecution from Houthi authorities, which seem to have been more proactive in their criminal enforcement efforts.⁴⁷⁷

Survivors of the conflict who later fled Yemen report that both sides work to target people based on their SOGIE status

In 2019, the UN Group of Eminent International and Regional Experts on Yemen⁴⁷⁸ expressed concerns about the impact of a “resurgence of oppressive gender norms as a result of the conflict on persons with non-conforming sexual orientations and gender identities”.⁴⁷⁹

Between 2016 and 2020, the Group documented several instances of arbitrary arrests carried out by police forces and the Criminal Investigation Department (CID) of the *de facto* government in Sana’a (during a so-called “campaign against immorality”) and by the internationally-backed Security Belt forces. Victims interviewed by the Group included trans men, trans women, gay men and non-binary people. These arrests were usually followed by a plethora of human rights

⁴⁷³ “БМТ Тошкентдаги “ташвишли воқеалар”ни холис текширишга қақирди - video O'zbekiston ...” [UN calls for impartial investigation of “disturbing events” in Tashkent - video Uzbekistan ...], *BBC News*, 31 March 2021; “Toshkent markazida LGBT vakillari deb o'ylab, yosh yigit va qizni kaltaklashda ayblanayotganlarning 4 nafari uy qamog'iga olindi” [Four people accused of beating a young man and a girl have been placed under house arrest in central Tashkent on suspicion of being LGBT people.], *Daryo*, 1 May 2021; “LGBT targ'ibotchisi Miraziz Bozorov qamaldimi?” [Was LGBT propagandist Miraziz Bozorov imprisoned?], *Qalampir*, 2 May 2021; OHCHR, *AL UZB 3/21* (2021).

⁴⁷⁴ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliya Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 139.

⁴⁷⁵ The terms used in the original, Arabic-language version of this law are “شذوذ” and “شواذ” (“*shudhudh*” and “*shawaadh*”), the literal translations of which are “perversion” and “perverts”, respectively, but are largely understood as synonyms of “homosexuality” and “homosexuals”. An English language translation of this law is available in: Fiona Mangan with Erica Gaston, “Prisons in Yemen” (United States Institute of Peace, 2015), 85-101.

⁴⁷⁶ Fiona Mangan with Erica Gaston, “Prisons in Yemen” (United States Institute of Peace, 2015), 53.

⁴⁷⁷ Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014: Detailed findings of the Group of Eminent International and Regional Experts on Yemen*, A/HRC/45/CRP.7, para. 217-221.

⁴⁷⁸ This Group of Eminent International and Regional Experts was in operation between 2017 and 2021. In September 2017, the Human Rights Council requested the High Commissioner (through Resolution A/HRC/RES/36/31) to “establish a Group of Eminent International and Regional Experts on Yemen. The Group came to an end after a negative vote to renew its mandate at the Human Rights Council and was terminated at the close of its 48th session in October of 2021. For more information see: OHCHR, *Statement by Group of Experts on Yemen on HRC rejection of resolution to renew their mandate* (2021).

⁴⁷⁹ Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014: Detailed findings of the Group of Eminent International and Regional Experts on Yemen*, A/HRC/45/CRP.7, para. 214.

violations, including torture, sexual violence, forced anal or genital examinations (a pseudo-scientific means to “confirm” their sex or whether they had been penetrated in their anus), and being raped with bottles. During interrogations, victims were subject to beatings, electrocution, whipping with cables, hanging for long periods of time, dousing in cold water, burning with cigarettes, beating their sexual organs, interfering with their buttocks, and forced nudity. Among the charges brought against victims were “spreading immorality and homosexuality”, “corrupting society”, and “prostitution”, among others.⁴⁸⁰

Examples of Enforcement

Between 2011 and 2012, as many as 316 gay men across 18 of Yemen’s provinces were reportedly arrested on charges of homosexuality, with 95 cases in 2011 and 63 in 2012, though the specific details of many of these incidents remain unknown.⁴⁸¹

Two men in the city of Huta were summarily executed in two separate incidents in **June** and **July 2013**, on suspicion of being gay by members of the Ansar al Sharia militant group (a local affiliate of al Qaeda). The group held *de facto* control over Huta at the time and imposed a form of Sharia law.⁴⁸²

In **January 2014** another suspected gay man was summarily executed by members of Ansar al Sharia in the province of Lahj. Reportedly, at least 35 such killings had taken place between **2012** and **2014**.⁴⁸³

In **2015** it was reported that four gay men were executed in the city of Aden, after Ansar al Sharia took over parts of the city.⁴⁸⁴

According to the UN Group of Eminent International and Regional Experts on Yemen, 17 people were arrested in Sana’a by members of the Houthis police and Criminal Investigation Department (CID) between **2016** and **2020**. The 17 people reportedly comprised of 11 gay men, two trans women, one trans man, and three non-binary individuals. Details of individual incidents are unclear except for reports that all of the people involved were arbitrarily arrested and held for extended periods without charge, with some made to undergo anal and vaginal examinations and others subjected to electric shocks as a means to “cure” them.⁴⁸⁵

In **June 2019** a Yemeni blogger fled to Saudi Arabia after facing threats and violence from armed groups of uncertain affiliation, but was shortly arrested again in Saudi Arabia after posting online in support of SOGIESC rights. The Saudi court claimed that the accused confessed to fleeing Yemen for “dressing as a woman”. The blogger was due to be deported back to Yemen where further extrajudicial violence surely awaited. It is unclear if this had occurred by the time of publication.⁴⁸⁶

On **10 April 2020** it was reported that four individuals (reported as being men) were arrested in Ibb Governorate (seemingly under Houthi control at the time). They were accused of wearing women’s clothing, though this was allegedly only to put on a performance at a relative’s wedding. The East Ibb Court sentenced one of the accused to two years’ imprisonment, and two others to a year and a half each. The fourth was only sentenced to the time which had elapsed during pretrial detention and seems to have not spent any further time behind bars.⁴⁸⁷

In **August 2020** the story of a trans woman was publicised. At an unknown date she was apprehended by police for “the mere shape of her eyebrows” and was tortured during a 10-day detention period in an attempt to get her to confess to being a sex worker and engaging in same-sex sexual activity. She was then transferred to the Criminal Investigation Department (CID) where she was similarly tortured, by means which included waterboarding, for 10 days. Her family paid a bribe of 300,000 Yemeni rials (about USD 1,200) to put an end to her torture and have her case formally forwarded to the Public Prosecution office. The family, however, did not approve of her gender identity and severely abused her because of it. She spent 60 days in pretrial detention before a court sentenced her to one year in prison plus 100 lashes, which were implemented immediately in the courtroom. The judge allegedly also berated her lawyer for being willing to defend her in the first place. By **June 2021** she had managed to flee the country.⁴⁸⁸

In early **October 2020** it was reported that a “gay wedding” in the Crater region of Aden (an area under the control of the Central Government / Southern Transitional Council) had led to a brawl with angry community members. The two grooms were reportedly then detained by police, though authorities would later state that the so-called wedding was just a party and that

⁴⁸⁰ Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014: Detailed findings of the Group of Eminent International and Regional Experts on Yemen*, A/HRC/45/CRP.7, para. 217-221.

⁴⁸¹ “No Place for Gays in Yemen”, *IPS News*, 16 August 2013.

⁴⁸² “Man accused of being homosexual shot dead in Yemen”, *The National News*, 16 June 2013; “Al Qaeda suspects attack ‘gay’ man in Yemen”, *Gulf News*, 20 July 2013.

⁴⁸³ “Al-Qaida kills another Yemeni man suspected of being gay”, *LGL*, 8 January 2014; Ahmed Al-Hajj, “Yemen: Gunman kills man suspected of being gay”, *AP News*, 7 January 2014.

⁴⁸⁴ “4 Murders of Gay Men in Yemen”, *Huffington Post*, 11 September 2015.

⁴⁸⁵ Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014: Detailed findings of the Group of Eminent International and Regional Experts on Yemen*, A/HRC/45/CRP.7 (2020), para. 216-222.

⁴⁸⁶ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

⁴⁸⁷ “هذا مصير شبان مثليون باليمن أعلنوا زواجهم بالعلن” [This is the fate of gay men in Yemen who announced their marriage in public], *SA 24*, 10 April 2020.

⁴⁸⁸ “This body does not represent me: A Yemeni transwoman’s story”, *My Kali*, 1 August 2020; “Fleeing persecution: Transgender Yemeni woman speaks out”, *France 24*, 30 June 2021.

they would be searching for the instigators of the rumour which had led to the wrongful arrest.⁴⁸⁹

In **October 2020**, a newspaper reported that a man had been punished with 100 lashes in a public square after the Specialised First Instance Criminal Court of Sana'a (a court reportedly run by Houthi forces) found him guilty of practicing "sodomy" with another man (who was himself sentenced to death for other crimes).⁴⁹⁰

On **13 September 2021** it was reported that the Public Prosecutor of Sana'a referred 25 individuals to court for "imitating women and inciting others to practice it". The judge claimed that the accused were part of "an organised cell to commit immoral crimes" such as "sodomy", and formed part of a "soft war" against conservative Yemeni society. Reporting at the time indicated that only four people were in custody, with the remaining 21 being declared fugitives.⁴⁹¹

Asia (*de facto*)

As explained above, the *de facto* category groups States that do not have explicit criminalising provisions but substantial and consistent reports indicate that persons are arrested or prosecuted for their gender expression, their sexual orientation, or their alleged engagement in consensual same-sex intercourse based on other unrelated laws such as laws against debauchery, pornography, immorality or prostitution, among others. In other words, in these countries there are no laws *explicitly* criminalising such acts or expressions, but in practice (*de facto*) other laws are used to that end. So long as a number of instances have been documented, a State can be included as being a *de facto* criminalising jurisdiction.

Bahrain

Enforcement overview

While Bahrain is the only nation among the Gulf States to have formally decriminalised consensual same-sex sexual activity, three instances of *de facto* criminalisation and targeting through other laws and policies between 2011 and 2021 have come to ILGA World's attention, resulting in the country's inclusion in this report. Persons of diverse gender expressions seem to be particularly targeted.

In December 2017 the UN Human Rights Committee requested that the government of Bahrain "provide information on the legal and practical measures taken to combat discrimination on the basis of SOGI, [and] respond to reports that persons have been prosecuted for same-sex conduct under provisions of the Penal Code regarding, inter alia, 'debauchery' and 'obscenity'".⁴⁹²

The following year, the Bahraini delegation responded simply that

[n]o trials have been conducted on the basis of gender identity or homosexual behaviour, but they would be if such acts were to take place in public, where they would constitute the offence of a scandalous act offending public decency (article 350 of the Criminal Code), or indulging in an immoral practice without remuneration (article 326 of the Criminal Code).⁴⁹³

Indeed, throughout 2020 and 2021, ILGA World located several online reports issued by the Bahraini Police informing on several instances arrests for acts of "indecent" and on detainees being referred to

⁴⁸⁹ "عاجل اول زواج مثليين في عدن والامن يعتقل" [The fact that a "gay" marriage was established in Aden], *Al Mashhad Al Yameni*, 2 October 2020; "العروسين تفاصيل خاصة" [Urgent first gay marriage in Aden, security forces arrest the newlyweds, private details], *Yemen Vibe News*, 2 October 2020.

⁴⁹⁰ "صنعاء... الإعدام لمدان بخطف واغتصاب 92 شخصا واستخدامهم في وقائع نصب" [Sanaa... the execution of a convict of kidnapping and raping 92 people and using them in fraud cases], *Ansar Allah*, 11 October 2020.

⁴⁹¹ "Referring 25 accused of immoral crimes to trial", 26 September net, 13 September 2021.

⁴⁹² Human Rights Committee, *List of issues in relation to the initial report of Bahrain*, CCPR/C/BHR/Q/1 (2017), para. 9.

⁴⁹³ Human Rights Committee, *List of issues in relation to the initial report of Bahrain Addendum: Replies of Bahrain to the list of issues*, CCPR/C/BHR/Q/1/Add.1 (2018), para. 42.

prosecution for such acts. Some of these instances involved more than a dozen people. However, reports do not contain enough information to ascertain whether any of these arrests involved people of diverse SOGIE or if anyone was targeted for their gender expression or for acts of same-sex intimacy.⁴⁹⁴ Therefore, these instances are not tallied nor included among the examples below.

The Bahraini delegation stated that homosexual behaviour in public constitute the offence of a “scandalous act offending public decency”

Social stigma and opposition from society at large and government representatives remains widespread, with several Members of Parliament writing a formal letter condemning the raising of a rainbow Pride flag at the US Embassy in Bahrain in 2021. In the wake of the backlash, a group of MPs were reported in October 2021 as having submitted a bill to criminalise “promoting homosexuality”. Should the bill be passed, it would potentially impose “a jail sentence of no more than five years and a fine of [about USD 8,000 – 13,200] to any person who raises a flag, logo or sign that symbolises homosexuality [or] promotes by any means the ideas and beliefs of homosexuals or calls for, organises or attends any gathering or meeting of homosexuals”.⁴⁹⁵

Examples of Enforcement

It was reported in **February 2011** that authorities in the town of Muharraq raided a “gay party”, arresting 200 “cross-dressers and male revellers” from Bahrain and other Gulf countries. *Al Ayam*, a local newspaper, reported that “a secret source said he saw a large group of people from the third sex wearing scandalous female clothing [...] and immediately called in the city patrol, which then surrounded the hall and arrested the suspects”. An official from the Ministry of the Interior gave the reason for the arrest as “immoral activities”.⁴⁹⁶

In **April 2014** two trans sex workers reportedly lost their bid to appeal a six-month jail sentence, which came after police were tipped off that they were “wearing women’s clothing, makeup and wigs”. The prosecution also reportedly used images they had posted online depicting themselves in a feminine gender expression as evidence. The pair plead guilty to “prostitution and homosexuality”

in the Lower Criminal Court, but held that they should not have been sentenced to more than three months’ imprisonment. When complaining to the appeals judge of their sentence being upheld, he told them to be quiet and threatened that if he ever saw them again he would jail them for two years.⁴⁹⁷

In **April 2021** it was reported that the Third Minor Criminal Court sentenced an individual to six months’ imprisonment under Article 329 of the Penal Code, which prohibits “incitement to debauchery or prostitution”. The person in question was claimed to be a “man” wearing “women’s pants, wearing a sports bra and wearing cosmetics”, though it is unclear whether or not the accused may thus actually have been a trans woman or transfeminine person.⁴⁹⁸ This case could potentially reflect the common conflation between gender identity and gender expression (and even sexual orientation) which makes determining the exact nature of criminalisation difficult to research in many jurisdictions.



Enforcement Overview

Iraq’s *Penal Code (Law No. 111 of 1969)* does not explicitly prohibit consensual same-sex relations. However, Article 401 of the Code criminalises “immodeest acts” in public, which are punishable by a period of detention not exceeding six months and/or a fine.⁴⁹⁹

Faced with continued armed conflict, the rise of militias, and the weakening of government institutions since 2003, people of diverse SOGIE in Iraq are especially vulnerable to violence from society and State actors.⁵⁰⁰ Iraq has experienced a number of organised campaigns targeting large numbers of people based on their real or perceived sexual orientation or gender identity since 2003, which are often carried out or tolerated not just by militia groups but also State actors themselves. For example, in 2009 in the low-income Sadr City area of Baghdad, dozens of men were killed under suspicion of being gay. Press suggested that a *fatwa* (religious edict) or other form of instigation by local religious clerics may have spurred militias, and even family members, to take part in the killing of suspected gay men there. In the weeks leading up to the spate of killings, local police said they had started cracking down on LGBT people, stating that they were cleaning up the streets to “get the

⁴⁹⁴ “Seven women held for indecency incitement”, *Bahrain Police Media Center*, 07 January 2021; “Four women arrested for indecency”, *Bahrain Police Media Center*, 06 November 2020; “CID arrests 16 individuals for indecency”, *Bahrain Police Media Center*, 02 November 2020; “Six held for indecency incitement”, *Bahrain Police Media Center*, 29 September 2020; “11 Asians held for indecency incitement and selling alcohol”, *Bahrain Police Media Center*, 10 August 2020.

⁴⁹⁵ “Al-Azhar Observatory condemns raising of rainbow flag by US embassy in Bahrain”, *Egypt Independent*, 11 June 2021; “Clamp on gays proposed”, *GDN Online*, 17 October 2021.

⁴⁹⁶ “Bahrain arrests 200 men at gay party - newspapers”, *Reuters*, 9 February 2011.

⁴⁹⁷ “Two transgender prostitutes in Bahrain have lost an appeal against a six-month jail sentence”, *Pink News*, 24 April 2014.

⁴⁹⁸ “الحبس ستة أشهر لشباب بتهمة التحريض على الفجور والدعارة” [Six months imprisonment for a young man for incitement to debauchery and prostitution], *Akhbar Al Khaleej*, 17 April 2021.

⁴⁹⁹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Leles, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 131.

⁵⁰⁰ IraQueer, OutRight Action International, *Dying to be free: LGBT Human rights violations in Iraq. In response to the fifth periodic report of the Republic of Iraq* (2015), 10.

beggars and homosexuals off them”, though it is not known how many people, if any, were arrested.⁵⁰¹

Organised campaigns targeting people based on their SOGIE are often carried out or tolerated not just by militia groups but also State actors

Further, there have been reports of executions ordered by Sharia judges,⁵⁰² and of both police and militias frequently kidnapping, extorting and killing people of diverse SOGIE.⁵⁰³ IraQueer, an organisation working for SOGIE advocacy in the country, is also in possession of several videos showing the police humiliating and physically abusing trans people, though the individual stories of the victims and their fates under Iraqi law could not be established at the time of publication. Similarly, individuals of diverse SOGIE, especially trans and gender-nonconforming persons, have faced physical abuse in Northern Iraq under the Kurdistan Regional Government, according to IraQueer. Many of those individuals have been detained without being informed about their rights, or without access to legal representation.⁵⁰⁴ In all, it is estimated that more than 70 individuals were detained in 2018 without being informed of their rights, and were still being held in 15 prisons awaiting charges as of March 2019. Some of the detainees are alleged to have been in prison for more than a year.⁵⁰⁵

It must be noted that between 2013 and 2017 members of the radical militant Islamic State in Iraq and the Levant (ISIL), which held *de facto* control over a large part of Syria and Iraq's territories, publicly executed numerous individuals suspected of being gay. Between 2013 and 2016 the Islamic State claimed to have executed at least 23 persons in Iraq for various forms of “sodomy” or “indecent behaviour”, which included same-sex activity, with two preferred mechanisms for execution being beheadings and throwing suspects from tall buildings.⁵⁰⁶ Executions carried out by ISIL have not been included in the Examples of Enforcement section below, given the Iraqi government's declaration of victory against the *de facto* ISIL “State”, and thus presumably its criminalising provisions, too.⁵⁰⁷

As such, between 2008 and 2021 ILGA World notes at least 10 examples of State actors targeting persons based on their SOGIE, but the specificities of these cases remain elusive, with the line between State criminal enforcement and extrajudicial violence remaining severely blurred.

Examples of Enforcement

In **February 2009** a young human rights defender was stopped at a police checkpoint and arrested. He had a bag placed over his head and was taken to the Interior Ministry, where he was held for several hours with five other gay men. An official demanded USD 10,000 from him, believing internationally-funded activists to be wealthy, and when he could not pay he was hung upside-down by his ankles naked for several hours, and denied food or water when he was eventually lowered to the ground. He was held overnight in a solitary confinement cell too small for him to lie down in, and the next day was taken to be interrogated about his work, being regularly beaten in the process. The activist was held for 25 days in total, being regularly tortured and raped by officers there. One officer told him that they were doing him a favour by withholding the report they should have sent to the judge, so that he could avoid being sentenced, and that if they did not receive at least USD 5,000 from him, they'd have to let him go to court. One day they showed him the bodies of the five men he was originally held with, and a document from a judge ordering their execution. After that they gave him a phone to contact friends in the United Kingdom to secure money for his release. It appears then that the officers and the judge, if indeed there was a judge giving these orders, were working alongside militia groups known for executing gay men, or abusing their power to extort money, as Iraqi State law does not permit such executions for same-sex sexual activity.⁵⁰⁸

On **16 June 2010** police raided a house in the city of Karbala, beating, blindfolding, and transporting the six residents to an unknown location. Police reportedly seized their computers and burned down the house as well. One of the detainees later wound up at a hospital, but reporting at the time indicated that the whereabouts of the remaining five—a lesbian woman, two gay men, and two trans women—was not known, and that they may have been taken to Interior Ministry in Baghdad, where persons of diverse SOGIE are alleged to have been routinely detained and tortured.⁵⁰⁹

⁵⁰¹ *Id.*, 11-12.

⁵⁰² “Timeline of publicized executions for “indecent behavior” *OutRight Action International*, 2 April 2016; OHCHR, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, A/HRC/38/44/Add.1 (2018).

⁵⁰³ “Exposing persecution of LGBT individuals in Iraq”, *OutRight Action International*, 19 November 2014.

⁵⁰⁴ IraQueer, *Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq* (2018), 15.

⁵⁰⁵ IraQueer, MADRE, and OutRight Action International, *Violence and Discrimination based on Sexual Orientation and Gender Identity in Iraq: A submission to the United Nations Human Rights Council for the Universal Periodic Review of IRAQ* (2018), para. 7.

⁵⁰⁶ “ISIS throws man accused of being gay off building in Iraq”, *Haaretz*, 13 December 2014; “ISIS beheads 3 gay men in northern Iraq”, *News 24*, 10 March 2015;

⁵⁰⁷ “Timeline of publicized executions for “indecent behavior” by its militias”, *Outright Action International*, 2 April 2016; Human Rights Watch and Helem, “They Treated Us in Monstrous Ways”: *Sexual Violence Against Men, Boys, and Transgender Women in the Syrian Conflict* (2020), 28-29.

⁵⁰⁸ “ISIS is beaten. But Iraq is still hell for LGBT+ people”, *Daily Beast*, 25 June 2018; “Timeline: the Rise, Spread, and Fall of the Islamic State”, *Wilson Center*, 28 October 2019.

⁵⁰⁹ *Ibid.*

⁵⁰⁹ “Iraqi police raid Karbala LGBT safe house; fears of ‘witch hunt’”, *Madikazemi*, 19 June 2010.

On **25 June 2010** members of the Interior Ministry raided a men's beauty parlour, beating those present with cattle prods so severely that one of the five suspected gay men arrested that day had to be carried out on a stretcher. The waxing and massage services of such venues are reportedly used by bodybuilders as part of their competition regimen and are not illegal, though several prominent pro-Sharia clerics have spoken out against them. Officers claimed that the location was raided as it was being used for sex work, though eyewitnesses have argued against this. At least one eyewitness who spoke to Amnesty International would go on to disappear mysteriously.⁵¹⁰

In **January 2014** a human rights defender was abducted by a group of men in the city of Sulaymaniyah in the autonomous region of Iraqi Kurdistan. They beat him, but he managed to contact police who arrived on the scene. Everyone was arrested, including the activist, who was interrogated about his work and sexual orientation rather than about his assailants before being released the following day without charge.⁵¹¹

In **October 2014** the human rights defender from Sulaymaniyah was apprehended at the local airport by two plainclothes individuals identifying themselves as airport security and taken to an unknown location for a "meeting". He was interrogated for thirteen hours about his work on sexual orientation and gender identity advocacy, and had his electronic devices searched and destroyed. Before he was released, he was told to "obey the rules of the Kurdish government and work in a profession which serves the government and the society".⁵¹²

In **2017** a trans woman had her apartment raided by six police officers as they had been informed of it being occupied by a "hermaphrodite" (an outdated and derogatory term for intersex people, often mistakenly used to identify gender-diverse persons). She tried to deny that she was trans, but was found to be wearing women's underwear when officers made her strip. They interrogated, mocked and slapped her in her home, before shaving her hair off in her bathroom. They did not arrest her, but told her "[t]his is your warning, next time we will not be this forgiving. If we ever hear you are doing anything feminine, we will be back and will solve the problem permanently". Since the incident the woman has reportedly been living in a safe-house.⁵¹³

In **January 2017** the militia group, Asa'ib Ahl Al-Haq, released a list of 100 "suspected homosexuals" to be executed. Some were killed while others fled the country, though it is not clear how many. This incident is recorded here as the militia forms part of the State-sponsored Hachd al-Chaabi coalition, which was created to fight the Islamic State insurgency.⁵¹⁴

A young gay man told the organisation IraQueer in **2018** about the time he was assaulted by a group of friends and acquaintances, and claimed that when he went to report the matter to police, they held him for two hours while deliberating if they should keep him overnight because of his "feminine behaviour". Before eventually releasing him, they sexually assaulted the young man.⁵¹⁵

A **2019** report by IraQueer, MADRE, OutRight Action International and the Organization of Women's Freedom in Iraq (OWFI) noted that there were several cases of suspected lesbian women being targeted by State actors in Kurdistan, with none being given formal hearings or access to lawyers despite being locked up for months. It is not known how many women have been detained for their presumed sexual orientations, but one woman told the organisations that she had been arrested and threatened with rape by police numerous times in Sulaymaniyah.⁵¹⁶

On **1 April 2021** in the city of Sulaymaniyah in Iraqi Kurdistan, several individuals of diverse SOGIE were arrested by police. One report indicated that eight individuals were arrested, another ten, and yet another claiming the number was up to 15.⁵¹⁷ Reporting is also unclear as to whether the accused were explicitly targeted for their sexual orientations, or if suspected "prostitution" and "immorality" were at the core of police action, as local authorities seem to have declared a campaign to "eradicate the phenomenon of prostitution",⁵¹⁸ though a news outlet called *Rudaw* reported that up to 17 members of Sulaymaniyah's provincial council signed a petition supporting the arrests as a means to combat "homosexuality".⁵¹⁹ At least one Kurdistan MP decried the arrests, however.⁵²⁰ There were also conflicting reports around **5 April** regarding the fates of those detained, with authorities claiming they had been released, and local activists denying this to be true—though by **10 April** it appears that all detainees were released, according to the same activists.⁵²¹

⁵¹⁰ "Iraqi police 'crackdown' on gays continues, protest by UK + USA needed", *Madikazemi*, 14 July 2010.

⁵¹¹ IraQueer, OutRight Action International, *Dying to be free: LGBT Human rights violations in Iraq. In response to the fifth periodic report of the Republic of Iraq* (2015), 10.

⁵¹² *Ibid.*

⁵¹³ IraQueer, *Living on the margins; LGBT+ stories from Iraq* (2018), 36-37.

⁵¹⁴ Human Dignity Trust, *Country Profile: Iraq* (2021).

⁵¹⁵ IraQueer, *Living on the margins; LGBT+ stories from Iraq* (2018), 34.

⁵¹⁶ IraQueer, MADRE, OutRight Action International and OWFI, *Violence and Discrimination Based on Sexual Orientation and Gender Identity in Iraq: A Report for the United Nations Committee on the Elimination of Discrimination against Women* (2019), pg. 5-6.

⁵¹⁷ *This entry has been redacted for the safety of those in involved. For more information, please contact ILGA World.*

⁵¹⁸ "قوات الأسياب تعتقل عددا من المثليين في السليمانية" [Asayish forces arrest a number of homosexuals in Sulaymaniyah], *Face Iraq*, 4 April 2021.

⁵¹⁹ "Kurdish parliamentarian slams Sulaimani LGBT+ arrests as possible 'crime'", *Khazan Jangiz*, 5 April 2021.

⁵²⁰ "Iraqi-Kurdish MP slams arrest of LGBTQ+ activists in Iraq", *Your Middle East*, 5 April 2021.

⁵²¹ "Verhaftete LGBTIQ im Nordirak offenbar wieder frei" [LGBTIQ arrested in northern Iraq apparently released], *Mannschaft Magazin*, 10 April 2021.



Jordan

Enforcement Overview

Though Jordan does not explicitly criminalise consensual same-sex sexual acts or gender expression, trans women and persons of feminine gender expression can be *de facto* targeted under Article 307 of the Penal Code (1960), which says:

Any male who is disguised in a female's dress and enters a place reserved for women only, or which cannot be entered by other than women at the time of committing the act [...] shall be punished by imprisonment for a period not to exceed six months.⁵²²

Given that consensual same-sex sexual activity is not illegal in Jordan, cases relating to the arrest of many accused persons are said to be referred to local Governors who then decide whether punishment should be meted out against the accused.⁵²³

Targeted persons are held by police, but formal proceedings in a court of law are rare

The Arab Foundation for Freedoms and Equality and OutRight Action International have interviewed activists who indicate that transgender women accused of "presenting in the opposite gender" or "engaging in sex work" are often those most targeted by society and State actors. Those interviewed, however, note that getting a detailed picture of the situation of criminal enforcement remains difficult, given many cases go unreported or formally registered. One activist has claimed that targeted persons may be held by police, but that formal proceedings in a court of law are rare.⁵²⁴

Given the above, it is important to note that the two apparent cases of enforcement identified by ILGA World between 2014 and 2021 are likely not representative of the entire situation.

Examples of Enforcement

In **February 2014** the Administrative Governor of the Marka area ordered the arrest of 10 gay and lesbian partygoers to "prevent a disturbance of the peace". According to an anonymous security official, with no laws against homosexuality in the country, discretion lies with Administrative Governors on how to handle such cases, including decisions on the length of any period of detention.⁵²⁵

On **19 August 2019**, somewhere between 13 and 19 people (sources are not consistent in regard to the exact number), were arrested on a farm in Shouna for having a "noisy" "homosexual party", with five alleged organisers being referred to the Governor of Shouna to make a decision about what punishment, if any, they should face. Authorities interviewed in the media noted that they had been monitoring phone calls between party organisers and social media posts about the party.⁵²⁶



Kyrgyzstan

Enforcement Overview

While Kyrgyzstan does not explicitly criminalise gender expression or same-sex sexual acts, ILGA World has identified four concerning cases of apparent *de facto* targeting by State actors between 2010 and the time of publication.

Additionally, discrimination and violence from society at large remains an issue, as documented by local organisations, with police often unwilling to assist LGBT victims.⁵²⁷ Political leaders, too, have been documented to incite violence or hatred of sexual and gender minorities in the country, or outright promote a move toward *de jure* criminalisation. In 2005 a representative of the Ministry of the Interior was reported as saying of gay men and lesbian women at a human rights roundtable: "I would also beat them. Let's say I walk in a park with my son. And there are two guys walking holding each other's hands. I would beat them up too".⁵²⁸ And in 2019 a Parliamentary Deputy, Jyldyz Musabekova, wrote on social media that "the men who do not want to have children and the girls who do not want to pour tea [...] must not only be cursed, they must be beaten," further

⁵²² ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report: Recognition before the law* (2020), 81.

⁵²³ "Jordan arrests 10 gays over get-together party", *Al Arabiya News*, 27 February 2014; "الامن يقبض على 13 مثليا في مزرعة", *Jfra News*, 4 July 2021; "19 arrested over 'gay party' in Jordan", *Gulf News*, 6 July 2021.

⁵²⁴ Arab Foundation for Freedoms and Equality (AFE) and OutRight Action International, *Activism and Resilience: LGBTQ progress in the Middle East and North Africa. Case studies from Jordan, Lebanon, Morocco and Tunisia* (2018), 9-11.

⁵²⁵ "Jordan arrests 10 gays over get-together party", *Al Arabiya News*, 27 February 2014.

⁵²⁶ "Photos: Police arrest 'homosexuals' gathering in rented farm near Jordan Valley", *Roya News*, 20 August 2019; "What will happen to 'homosexuals' arrested in rented farm near Jordan Valley?", *Roya News*, 20 August 2019; "الامن يقبض على 13 مثليا في مزرعة .. حفل صاحب" في البلقاء", *Jfra News*, 4 July 2021; "19 arrested over 'gay party' in Jordan", *Gulf News*, 6 July 2021. "بعد 'حفل صاحب' في البلقاء .. الامن يقبض على 13", *Jfra News*, 4 July 2021; "19 arrested over 'gay party' in Jordan", *Gulf News*, 6 July 2021.

⁵²⁷ "Kyrgyzstan: Halt Anti-Gay Raids", *Human Rights Watch*, 16 April 2008; Kyrgyz Indigo and Labrys, *Alternative report on the implementation of the provisions of ICCPR related to LGBT people in Kyrgyzstan* (2014) 9-10; Human Rights Watch, *"They Said We Deserved This": Police Violence Against Gay and Bisexual Men in Kyrgyzstan*, (2014).

⁵²⁸ "Kyrgyzstan: Protect Lesbians and Transgender Men From Abuse", *Human Rights Watch*, 6 October 2008.

asking if there “are there any decent guys out there [willing to do that]?” She was speaking in response to an International Women’s Day march, reported by some media as a “Pride” march, which authorities initially threatened to shut down if any SOGIE advocacy groups participated.⁵²⁹

Some media outlets have inferred that prior to 2014 Kyrgyzstan was a relatively safe and open environment for SOGIE individuals in the region. Though this subjective claim cannot be verified, it does appear that in the years since then a spike in police targeting and violent vigilante attacks has taken place. It appears that this has been a social response to a proposed bill against “gay propaganda”, though the legislation itself seems to have stalled in Parliament in 2018.⁵³⁰

Examples of Enforcement

A gay man and his friend were arrested by police in 2004 as they were leaving a gay club in the capital, Bishkek. They were driven to the outskirts of the city and raped by the officers. In 2009 the man and a friend were arrested again under similar circumstances, but taken to the police station where other inmates raped them with police taking no action to prevent it. In 2011 he was arrested again, and while in custody police made him perform oral sex on them. When he refused, saying that they were violating his rights, one officer said “no, here we decide who knows their rights and who doesn’t”.⁵³¹ ILGA World has identified numerous such cases of extreme violence and abuse meted out against individuals because of their sexual orientations or gender identities. Often, police use these situations as opportunities to extort bribes from their victims. This case has not been included in the tally of examples of enforcement above, and several others have not been included in the entry at all, as the distinction between State-backed targeting and base prejudice is often impossible to make. In December 2010 a 17 year old boy from Bishkek was arrested after trying to escape his family because of his sexual orientation. He was held for two and a half days in solitary confinement, subjected to torture and rape, and denied food or water. After his release he sought the assistance of a lawyer, but could not find one willing to help him.⁵³²

In 2012 two young men in Bishkek were arrested by police for heading upstairs to their rented apartment together, without any women. The pair refused to disclose any personal details and were eventually released.⁵³³

In May 2012 a gay man in southern Kyrgyzstan was arrested by police after they forced a friend to “out” him

to them. He was forced to write a letter identifying his personal details and confessing to same-sex sexual activity, and threatened with a criminal investigation into his alleged “sodomy” if he failed to comply, despite no law expressly outlawing consensual same-sex sexual activity in the country. They beat him when he refused to give them the details of other gay men they could extort, and released him for a bribe of 10,000 soms (USD 214). In February 2013 he was detained by police again and assaulted until he gave them money. They told him that if he were to tell anyone things would get worse.⁵³⁴

On 30 July 2012 a gay human rights defender from Kyrgyzstan’s northern Chui region was stopped by police, along with a friend of his, as they were going to a party. Police checked their IDs and immediately detained the pair, threatening them with rape at the police station for allegedly “kissing in public”. They were released after paying a bribe of 2,000 soms (USD 41).⁵³⁵

In October 2012 another man was arrested by police, beaten and kicked until he fell unconscious. He was threatened with a criminal “sodomy” investigation if he did not pay a bribe. He was repeatedly insulted for being an ethnic Uzbek, and later an Uzbek police officer helped him to get out of the police station—but not before also taking 120 soms (USD 3) from him.⁵³⁶



Tajikistan

Enforcement Overview

While Tajikistan does not expressly criminalise diverse gender expressions or consensual same-sex sexual acts, ILGA World has noted around seven cases of *de facto* enforcement by State actors between 2010 and the time of publication. Additional incidents, largely of police attempting to extort suspected gay men—knowing that negative social attitudes prevent many of them from coming out safely—have been noted as widespread in Tajikistan, but do not fall within the scope of this report.

In October 2017 it was reported that the Prosecutor-General’s office had compiled a list of “proven” gay and lesbian individuals in the country—319 gay men and 48 lesbian women. The individuals were identified under government initiatives titled “Operation Morality” and “Operation Purge”, officially “due to their vulnerability in society and for their safety and to prevent the transmission of sexually transmitted diseases”. It is not

⁵²⁹ “Rainbow Rage: Kyrgyz Rail Against LGBT Community After Central Asia’s ‘First’ Gay-Pride March”, *Radio Free Europe / Radio Liberty*, 16 March 2019; Human Rights Watch, *Country Profiles: Sexual Orientation and Gender Identity: Kyrgyzstan* (2019); Human Rights Watch, *Kyrgyzstan: Events of 2020* (2021).

⁵³⁰ “Bad news: Kyrgyzstan, Morocco, Egypt, Nigeria, more”, *Erasing 76 Crimes*, 16 July 2015; “Anti-gay bill inspires attacks in Kyrgyzstan”, *USA Today*, 13 May 2016; “All of us will be victims at some point: why Bishkek’s only gay club closed”, *The Guardian*, 19 October 2017; Human Rights Watch, *Country Profiles: Sexual Orientation and Gender Identity: Kyrgyzstan* (2019).

⁵³¹ Human Rights Watch, *“They Said We Deserved This”: Police Violence Against Gay and Bisexual Men in Kyrgyzstan*, (2014).

⁵³² *Ibid.*

⁵³³ *Ibid.*

⁵³⁴ Human Rights Watch, *“They Said We Deserved This”: Police Violence Against Gay and Bisexual Men in Kyrgyzstan*, (2014).

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid.*

known how the list would be used to prevent the spread of illness, but people of diverse SOGIE in the Central Asia region are believed to face significant levels of State targeting and harassment under the presumption that they are “carriers of Aids” and other diseases.⁵³⁷

In 2018, the UN Human Rights Committee expressed concern about reports that individuals suspected of being lesbian, gay, bisexual or transgender were identified following Operations “Morality” and “Purge” and placed on a registry, which could exacerbate their social stigmatisation, though the Tajikistan government formally denied this. The Committee also showed concern for reports of arbitrary arrest and harassment by police and security forces.⁵³⁸ The Committee recommended that the State

Investigate law enforcement practices to ensure that lesbian, gay, bisexual and transgender individuals are not registered and end any such practices that unduly interfere with their rights, including to privacy and to liberty and security.⁵³⁹

Examples of Enforcement

In **July 2010** police allegedly began rounding up gay, bisexual and other MSM who were believed to have had sex with a prominent politician. One man who was detained was severely beaten when he said he had never met the politician in question and thus could not offer any information on the case or other detained men.⁵⁴⁰

According to a report issued in **2018** by the Helsinki Foundation for Human Rights and International Partnership for Human Rights (IPHR), police regularly target individuals of diverse SOGIE for blackmail. In **March 2011** two men had arranged to meet up at a hotel, but were detained by three police officers who barged into their room and accused them of prostitution. Police threatened to perform anal examinations (an invasive and disproven method for gathering so-called evidence of anal intercourse) and to “out” the men to their families if they did not pay a USD 200 bribe each. They did not have the money but were taken back to their hotel room after paying USD 100 and giving the police their phones.⁵⁴¹

In **2014** police also detained a gay man doing community outreach and handing out safe-sex packs to community members. Police detained him and another man, taking them to the Ministry of Internal Affairs and demanding the names of other gay people under threat of being beaten.⁵⁴²

Another case outlined in the IPHR report, though of **uncertain date**, is that two men who were detained by police after a third “outed” one of them, possibly to secure his own release. One of the men asked if they have a warrant for their arrest, but police scoffed, indicating that “a gay man has no right to demand a warrant”. They said that homosexuality is illegal in Tajikistan, despite no provision against same-sex sexual activity actually existing, and so when one of the detained men asked them to cite the legal provision against homosexuality they showed him provisions criminalising rape instead. The man claimed his family already knew he was gay, and so apparently with no power to blackmail him and his friend, the police released the pair after five hours.⁵⁴³

In **June 2015** police allegedly arrested up to 500 individuals, some being sex workers while others were claimed to have been expressly targeted for their SOGIE status, as part of a nationwide crackdown on “immoral behaviour”. Those arrested, as well as others, were forced to undergo tests to check them for sexually transmitted diseases, and are said to have faced beatings, abuse and extortion by police. While it is not known how many of those detained were specifically queer, the Ministry of Internal Affairs stated that three people were taken to agencies which would “take the necessary measures for homosexual behaviour”.⁵⁴⁴

Sometime in **2015** a gay man and several friends went to a police station to assist his young cousin who had been in a car accident. The cousin was released, but police suspected the group of men were gay, and so detained the man and one of his friends for six hours. They told the pair that if they did not confess that they would be subjected to an anal examination, and that if they cooperated with the officers they would have a “quiet life”.⁵⁴⁵

⁵³⁷ “Tajikistan Creates Registry Of ‘Proven’ LGBT People, Official Journal Says” *Radio Free Europe - Radio Liberty*, 17 October, 2017; “Tajikistan authorities draw up list of gay and lesbian citizens”, *The Guardian*, 17 October 2017.

⁵³⁸ Human Rights Committee, *Concluding observations on the third periodic report of Tajikistan*, CCPR/C/TJK/CO/3 (2019), para. 15.

⁵³⁹ *Id.*, para. 16(c).

⁵⁴⁰ IPHR and Helsinki Human Rights Foundation, “*We just want to be who we are!*”: *LGBT people in Tajikistan: beaten, raped and exploited by police* (2018), 46.

⁵⁴¹ *Id.*, 43.

⁵⁴² *Id.*, 45.

⁵⁴³ *Id.*, 44.

⁵⁴⁴ “Eye on LGBT Human Rights in Tajikistan”, *Human Rights First*, 12 January 2016; IPHR and Helsinki Human Rights Foundation, “*We just want to be who we are!*”: *LGBT people in Tajikistan: beaten, raped and exploited by police* (2018), 37-39.

⁵⁴⁵ *Id.*, 44.

One gay man interviewed in the IPHR report claimed to have been arrested three times in **2015** and again in **2016**, with police making sure to “register” him each time.⁵⁴⁶

In **2017** police detained a gay man, allegedly as part of “Operation Purge” which was aimed at compiling a list of known or suspected homosexuals. Police recorded all contacts in his cell phone, and told him they had to record his details and those of other alleged gay men as they were vectors for the spread of HIV/Aids.⁵⁴⁷

A **2020** article makes mention of a case from an **unknown date** in which police arrested two men at a Dushanbe bus stop when they noticed one of the pair crying. At the police station the men were accused of homosexuality and prostitution, with officers pinching their buttocks in a mocking fashion. They were released when they paid a bribe.⁵⁴⁸

⁵⁴⁶ *Id.*, 47.

⁵⁴⁷ *Id.*, 48.

⁵⁴⁸ “Tajikistan’s LGBT Community: Struggling For Recognition ‘As People’”, *Current Time*, 22 June 2020.

Europe

While no UN-member States in Europe have legal frameworks *explicitly* criminalising consensual same-sex sexual acts, in 2019 ILGA World identified at least three countries where certain laws are used to *de facto* criminalise trans and gender diverse people, namely Georgia, Azerbaijan, and Turkey. The multiplicity of laws used in the region to target trans people evinces the way in which even States with progressive legal frameworks will still appropriate indiscriminate laws, with prejudicial law enforcement using them to discriminate against trans and gender-diverse persons.

Many other countries in Europe are currently seeing a rise in detractor activities, and the passing of regressive legislation deeply affecting the rights of people of diverse SOGIE. The targeting of individuals for their real or perceived sexual orientations, gender identities and gender expressions continues to be an issue of concern in several countries, notably through legislative, religious and media attacks on freedom of expression, freedom of assembly and legal gender recognition. The focus of this report revolves around the enforcement of provisions that criminalise consensual same-sex sexual acts and diverse gender expressions, which are the main criminal law devices used to persecute our communities on the ground where those laws are still in force. This means

that many of the grave issues unfolding in Europe at the time of writing do not *technically* fall within the scope of this report. To name a few, the enforcement of Russian Federal Law No 135-FZ, commonly referred to as the “anti-LGBT propaganda” law,¹ the “LGBT-free zones” proliferating in Poland, Hungary’s ostensible bans on legal gender recognition and SOGIESC-related content for children under the so-called “anti-paedophilia law”, instances of several other States deporting vulnerable people to criminalising jurisdictions, the targeting of activists, as well the numerous cases of police violence and mistreatment occurring throughout the continent, all fall outside of the scope of this report.

Exceptionally, a summary of the situation unfolding in the Chechen Republic (Russian Federation) is included in this regional chapter. This entry incorporates a grouping of instances that have taken place in the autonomous region of Chechnya that cannot be technically framed under “law enforcement”, as while these cases have apparently occurred as a consequence of policies directly targeting people of diverse SOGIE, they appear to have been implemented in apparent disregard of the rule of law and due process, by means of the large-scale kidnapping, disappearing and killing victims by authorities.



Azerbaijan

Enforcement Overview

Though Azerbaijan does not expressly criminalise consensual same-sex sexual acts, several provisions from the Code of Administrative Offences are used to *de facto* criminalise trans people: Article 308 (prostitution), Article 510 (hooliganism), and Article 535(1) (resisting police orders).

As reported in ILGA World’s 2019 *Trans Legal Mapping Report*, a pattern emerging from the arrests of trans people was documented by the Nafas LGBT Azerbaijan Alliance:

Often, authorities use Article 308 (prostitution) as justification at the point of arrest. However,

in official charges documented later, sex work is not mentioned, but other offences under the Code of Administrative Offences, notably Articles 510 and 535(1). Authorities arrest trans people on the grounds of “prostitution” because the wider Azerbaijan public is hostile towards sex work and believe it is damaging to public health; it is easier for law enforcement to defend their actions citing public health issues rather than offences such as “obeying the lawful demand of an officer”.²

The violent crackdowns against SOGIE persons on the presumption of sex work or other “immoral practices” documented below seem to be only one form of political action taken against the already stigmatised group, with

¹ For an in-depth analysis of this law and its implementation up to 2019, see: Alexander Kondakov, “The Censorship “Propaganda” Legislation in Russia” in Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 213.

² ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 118-120.

government officials and political leaders espousing anti-SOGIE views and policies. In 2020, for example, a video conference between several opposition-party politicians leaked in which some espoused a wish that gay people had been exterminated in the holocaust.³ Further, Azerbaijan was one of only a few participant nations in the 2021 UEFA football competition where the display of the rainbow Pride flag was not permitted.⁴

Examples of Enforcement

Throughout **September 2017** Azeri authorities engaged in a mass-crackdown of suspected gay and bisexual men, as well as transgender women. Human Rights Watch verified the accounts of 45 individuals at the time, while other sources alleged up to 100 detainees. On **2 October**, by which time most detainees had been released, a joint statement by the Interior Ministry and Prosecutor General's Office indicated 83 people had been arrested for "petty hooliganism" and "disobeying police orders". One of the lawyers interviewed by Human Rights Watch said that despite the official charges, "[i]n some written official materials [...] police had written that these individuals were gay or transgender" or were engaging in sex work. The sheer scale of the arrests meant verifying details of individual cases remained difficult, and many were denied access to legal representation as a result of the pace of court proceedings. Some were sentenced to up to 15 days in jail and others were fined. Many victims have alleged beatings, electric shocks, and attempts to extort bribes while in police custody.⁵

11 gay and transgender individuals were also reportedly arrested in **October 2017**, possibly as part of the crackdown highlighted above, though all appear to have been released after a few hours in detention.⁶

In **April 2019** four transgender women were detained in an apparent crackdown in the capital, Baku, though it is unclear how many individual instances of enforcement occurred. At least one trans woman was arrested when she went to a local hotel to meet a client, but found police waiting for her there instead. Local activists and human rights lawyers have indicated that transgender sex workers are disproportionately targeted, and that the detainees in these incidents were verbally abused by police and forced to undergo STI testing. Activists also claimed that perhaps another dozen trans women were being held at the time, though details are unclear. Two of the trans women in question were fined, while the other two were sentenced to 15 days behind bars for "hooliganism" and "resisting police orders".⁷

According to Human Rights Watch, in **April 2020** police detained around 14 gay men and transgender women, claiming they engaged in illegal sex work. At least some were entrapped online by police pretending to be clients, and then subjected to HIV and STI testing. They were also charged with "hooliganism" and "disobeying police orders", with some fined and others sentenced to 15 days' imprisonment, though those who were jailed were released and fined instead upon appeal. Given the similarities between this case and the reports of a crackdown in **April 2019**, it is not entirely clear if both indeed represent separate incidents.⁸



Chechen Republic (Russian Federation)

Enforcement Overview

The following is only a brief overview of apparent State-backed persecution, in light of the violence and arrests documented in the semi-autonomous Chechen Republic (Chechnya), which the Russian Federal government has largely been unwilling to act against despite its ostensible mandate to protect all of its citizens. Indeed, the targeting of persons for their SOGIE status by the Federal Government itself is of serious concern, though the methods used—namely restriction of the freedoms of expression, association and assembly—do not strictly fall within the scope of this report.

In 2019, Russian activist Ekaterina Petrova provided ILGA World with a deep look into the underlying cultural, social and family norms prevalent in the North Caucasus and how they interplayed against the backdrop of reported human rights violations. She noted that prior to early 2017, very little was known or written about LGBT people's lives in the region—including by Russian SOGIE-related groups—although there had been some reports of transgender people fleeing family and police violence and death threats.⁹ Since then, Chechen officials have been documented not only targeting people of diverse SOGIE in isolated incidents, but also through concerted campaigns to systematically eradicate SOGIE identities from Chechen society.

In March and April 2017 a "purge" of suspected gay men occurred in the region, with the apparent support of the Speaker of Parliament. According to the Russian LGBT Network more than 75 people affected by the "purge"

³ "Leaked Zoom meetings reveal homophobia and discord among Azerbaijan's opposition", *OC Media*, 18 May 2020.

⁴ "UEFA: No rainbow-colour ads at Euro 2020 in Russia, Azerbaijan", *Aljazeera*, 2 July 2021.

⁵ "Outcry as Azerbaijan police launch crackdown on LGBT community", *The Guardian*, 28 September 2017; "Azerbaijan: Anti-Gay Crackdown", *Human Rights Watch*, 3 October 2017.

⁶ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 120.

⁷ "Fresh arrests evoke chilling memories for Azeri LGBT+", *Reuters*, 3 April 2019. **Note:** This case represents a departure from the kind of content that falls strictly within the scope of this report, as it is often difficult to discern whether such targeting is related to the SOGIE status of victims, or rather prejudice against and criminalisation of sex work. It is retained here for illustrative purposes, however, given the trends highlighted above by local organisations, such as the Nafas LGBT Azerbaijan Alliance.

⁸ Human Rights Watch, *Country Profiles: Sexual Orientation and Gender Identity - Azerbaijan* (2021).

⁹ Ekaterina Petrova, "Banishing Devils - Chechen Authorities against Laws of Life?" in Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 155.

had contacted them seeking help, including 52 who had been held and tortured in unlawful detention facilities. *Novaya Gazeta*, a local news outlet which first reported on the matter, sent Russia's Investigative Committee a list of 26 persons, including some of the people rounded up in the anti-gay purge, who were being held in unlawful confinement at the time.¹⁰

In response to international outcry and allegations that Chechen authorities were rounding up LGBT people, the leader of the region, Ramzan Kadyrov, declared:

There are no LGBT at all in the Chechen Republic. To be honest, I'm not sure what the acronym stands for, but I know it's something bad. And no such community exists in Chechnya.

A spokesperson for Kadyrov also stated that

if there were such people in Chechnya, law enforcement agencies wouldn't need to have anything to do with them because their relatives would send them somewhere from which there is no returning.

Indeed, negative social attitudes are prevalent throughout the public, and "honour-killings" by relatives of gay men and lesbian women have been documented. While such killings are not necessarily perpetrated by Chechen authorities, some have reportedly encouraged the carrying out of such homicides by families of SOGIE persons.¹¹

Below, then, is an evidently non-exhaustive list of reported incidents of direct targeting of LGBT people in Chechnya. Readers are encouraged to consult cited sources, among others, for further detail.

In **2016** a gay university student made arrangements to meet up with another man online, who turned out to be an informant working with the police. The student was driven out into a field, stripped naked and beaten by police officers while being filmed. The officials took the man's phone and found numerous, intimate photographs and some of his correspondence with other gay men. They let him go on the condition that he return to them with money, using the video of him and threats of "outing" him to his family as a means of blackmail.

In **February 2017** police detained a man in Chechnya's city of Argun for allegedly being under the influence of narcotic substances. While searching his phone, they found evidence that the man was gay. They did not formally record his arrest or detention, but using information on his phone and details he disclosed under torture, they put together a list of several other suspected gay men. These men were in turn located, detained, and forced to hand over details of more men, resulting in an ever-proliferating and concerted "purge" of suspected homosexuals by Chechen police between **March and April**.

Novaya Gazeta, the local news outlet which first began reporting on the situation, has claimed that far from it being a mere case of "police prejudice", officials went to Magomed Daudov, the speaker of the Chechen Parliament, with their initial list of suspects. Daudov appears to have formally approved the subsequent mass arrests and violence.¹² Those detained were held at "unofficial detention centres" in Argun and the capital, Grozny, which have been labelled "concentration camps" by some international media outlets.¹³ Detainees would reportedly be held for anything from a few days to two weeks, though it is believed some were held even after the "purge" had ended. Authorities allegedly would torture and abuse detainees by beating them with pipes, subjecting them to electric shocks, and by making prisoners fight each other, before releasing them publicly into the custody of male relatives. At least two men were killed shortly after their release in familial "honour-killings", and a third died as a result of injuries sustained from police torture.¹⁴ It is not known how many people were arrested or who died in all, though the Russian LGBT Network indicates at least 52 persons were arbitrarily detained, while some media reporting claimed the number to be around 100.¹⁵ Chechen political leaders, for their part, have denied the presence of any SOGIE persons in Chechnya at all, and publicly targeted media reporting on the matter.¹⁶

According to the Russian LGBT Network, between **December 2018 and April 2019** police in Chechnya rounded up and abused at least 23 men suspected of being gay in an apparent second "purge", though the true scope of detentions was likely broader, according to the group, with representatives indicating to media around this time that they knew of as many as 40 detainees. Most of those arrested were held at various locations in Argun and Grozny, where they were shaved and brutally

¹⁰ Human Rights Watch, "They Have Long Arms and They Can Find Me": Anti-Gay Purge by Local Authorities in Russia's Chechen Republic (2017), 15-16; Mai Sato and Christopher Alexander, "State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty" (February 2021), 52-55.

¹¹ *Ibid.*; An additional entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

¹² "Расправы над чеченскими геями" [Violence against Chechen gay men], *Novaya Gazeta*, 4 April 2017; "В Чечне идут профилактические работы" [Prophylactic work in Chechnya], *Novaya Gazeta*, 24 April 2017; Human Rights Watch, "They Have Long Arms and They Can Find Me": Anti-Gay Purge by Local Authorities in Russia's Chechen Republic (2017), 15-16.

¹³ "Chechnya opens world's first concentration camp for homosexual men since Hitler", *New Zealand Herald*, 10 April 2017; "Gay men sent to 'concentration camps' in Chechnya", *Washington Blade*, 11 April 2017; "Rights groups sound alarm over gay 'concentration camps' in Chechnya", *France 24*, 12 April 2017; Human Rights Watch, "They Have Long Arms and They Can Find Me": Anti-Gay Purge by Local Authorities in Russia's Chechen Republic (2017), 17.

¹⁴ Human Rights Watch, "They Have Long Arms and They Can Find Me": Anti-Gay Purge by Local Authorities in Russia's Chechen Republic (2017), 17-26; Mai Sato and Christopher Alexander, "State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty" (February 2021), 52-55.

¹⁵ "Chechnya opens world's first concentration camp for homosexual men since Hitler", *New Zealand Herald*, 10 April 2017; Human Rights Watch, "They Have Long Arms and They Can Find Me": Anti-Gay Purge by Local Authorities in Russia's Chechen Republic (2017), 15.

¹⁶ Human Rights Watch, "They Have Long Arms and They Can Find Me": Anti-Gay Purge by Local Authorities in Russia's Chechen Republic (2017), 26-30.



tortured through beatings and electric shocks. Most seem to have been released after between three and 20 days. It is not known if any persons were killed in this time, though survivor testimonies recorded by the Organisation for Security and Cooperation in Europe (OSCE) allege extrajudicial executions.¹⁷

In **April 2020** two Chechen siblings—one a gay man and the other occasionally reported as a trans woman—were arrested for criticising the government on social media. One of the two was not in Chechnya at the time of arrest, and was essentially kidnapped from St. Petersburg by security forces. They were held for two months along with 27 other political prisoners, where they were forced to recant their views, learn the Quran and national anthem by heart, and were regularly beaten. After their release, the siblings alleged that authorities justified their arrest and the violence they faced as being because of their SOGIE status, which was also subject to "correction" while in detention. On **4 February 2021**, as they were preparing to flee Russia, Chechen officials arrested them again and forced them to sign a confession without access to legal representation that they had been assisting an armed terrorist group.¹⁸

On **10 June 2021** local security forces in the autonomous region of Dagestan raided a shelter for victims of domestic violence, apprehending all residents and taking them to a police station. Most were released shortly thereafter, but a young lesbian woman from Chechnya, and possibly her girlfriend as well, were handed over to Chechen police. The young woman had previously fled Chechnya due to the abuse she faced at the hands of her family because of her sexual orientation, and due to alleged "persecution" from local authorities. After she fled, her family reported her missing, and police thus began operations to bring her back to Chechnya, despite the Interior Ministry in Dagestan being informed by activists that she should be removed from the wanted list, as she left her family of her own free will. A human rights defender working at the domestic violence shelter was accused by police of "failing to comply with the demands of the security forces" during the raid, but a court twice dismissed their case against her. The whereabouts of the two young women, however, remained unclear at the time of publication.¹⁹

On **8 November 2021** Russia's Justice Ministry announced that it had added the Russian LGBT Network and its members—who had been working to advocate for SOGIE persons in the country and help those in regions

such as Chechnya to flee—to a national list of "foreign agents". This would mean increased State scrutiny, as well as potential limitations on the group's ability to operate and access funding. The Russian LGBT Network has stated at the time of publication that it will challenge the decision in court.²⁰



Georgia

Enforcement Overview

While Georgia does not explicitly criminalise consensual same-sex sexual acts, ILGA World notes several concerning incidents of *de facto* criminalising of trans and gender diverse people.

In 2016, the civil society organisation Women's Initiatives Supporting Group (WISG) reported on at least six cases where transgender women were arrested under Article 166 (disorderly conduct) and Article 173 (resisting police orders) of the Administrative Offences Code. Reported instances include trans women who were victims of crimes and were arrested upon trying to report those crimes to the police. Several victims claimed in the report that their arrests occurred purely on the basis of the transphobic and homophobic prejudices of the police rather than their actions. Illegal detention or arrest, which is a crime according to Georgian law, was revealed in a number of cases litigated by the organisation in 2017. However, in all cases the victims did not want to take further action because the police "may treat them worse".²¹

Negative social attitudes are prevalent not only in the police forces, but in society at large, with several homophobic and transphobic attacks, protests, and statements from political figures being documented in 2021 alone.²²

Examples of Enforcement

On **14 April 2016**, a trans woman and a friend were viciously attacked in central Tbilisi—Georgia's capital. Upon the arrival of the police, the trans woman got arrested under Article 173 of the Administrative

¹⁷ "Chechnya LGBT: Dozens 'detained in new gay purge'", *BBC News*, 14 January 2019; "Russia: New Anti-Gay Crackdown in Chechnya", *Human Rights Watch*, 8 May 2019.

¹⁸ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

¹⁹ This entry has been redacted for the safety of those involved. For more information, please contact ILGA World.

²⁰ "Russia labels an LGBTQ rights group and a lawyers association as 'foreign agents'", *Los Angeles Times*, 9 November 2021.

²¹ Women's Initiatives Supporting Group (WISG), *Unidentified Violence: Litigation Report* (Tbilisi, 2017).

²² "თბილისში თავს დაესხნენ ტრანსგენდერ ქალს" [A transgender woman was attacked in Tbilisi], *Radio Liberty (Georgia)*, 11 June 2021; "Chairman of ruling Georgian Dream party: holding Tbilisi Pride week is unreasonable", *Jam News (Asia)*, 19 June 2021; "ბოლო წლებია ლგბტ თემს და მის მხარდამჭერებს ..." [In recent years, the LGBT community and its supporters have been hindered from exercising their constitutional rights - Public Defender], *PTN (Georgia)*, 19 June 2021; "В Тбилиси на акции против ЛГБТ закидали камнями журналистов" [Journalists were stoned at anti-LGBT rally in Tbilisi], *Lenta*, 2 July 2021; "პოლიციამ დააკავებელი ძალადობრივი ჯგუფის 20 წევრი ხელწერილით გაათავისუფლა" [Police released 20 members of the arrested violent group with a handwriting], *Radio Liberty (Georgia)*, 2 July 2021; "თავდასხმა ჰომოფობიური მოტივით - არსებული ინფორმაციით, თბილისში ტრანსგენდერ ქალს დაზიანებები მიყენეს" [Homophobic attack - Transgender woman reportedly injured in Tbilisi], *TV Privilii (Georgia)*, 3 August 2021; "სუხიშვილი ჰომოფობიურ განცხადებას აკეთებს და ამბობს, რომ ქართული ცეკვა ჰომოსექსუალებისთვის "მასკულინურია" [Sukhishvili makes homophobic statement and says Georgian dance is "masculine" for homosexuals], *On*, 26 September 2021; "ცისარტყელას დროშა ჰომოფობიური პროტესტის თავზე" [Rainbow flag on top of homophobic protest], *Newposts*, 10 October 2021.

Offences Code (disorderly conduct). A few days later she was found guilty and sentenced to five days jail.²³

On **13 June 2016**, two trans women were attacked in central Tbilisi by a group of several men. The men tried to set them on fire by pouring petrol on them, but they both managed to escape and called the police, only to be immediately arrested, detained, and referred for prosecution. On the second day of proceedings, the court found the trans women guilty based on Article 166 of the Administrative Offences Code (disorderly conduct) and they were ordered to pay a fine.²⁴

On **25 June 2016** two trans women were arrested after calling police to deal with a separate crime. They were made to sign a confession of “disorderly conduct” without having the chance to read it. In court, the judge issued the women with a verbal warning on the basis that they “may have committed an administrative offence”, but did not violate the rights or privacies of any other person, and did not hinder police activities.²⁵

On **13 July 2016** three trans women in Tbilisi were being verbally harassed by an unknown man, and as such called the police. Police arrested them and charged them under Article 166 of the Administrative Offences Code, though this was later thrown out of court for lack of evidence and the aggressor was fined instead.²⁶

On **2 August 2016** another trans woman was arrested in Tbilisi after calling the police to intervene when a man in the street started abusing and harassing her. She was charged under Article 166 and made to sign a declaration of guilt even though she contended that the document’s contents were inaccurate. Despite the interventions of a lawyer, the woman was found guilty and fined 100 lari (USD 38). Her attacker was also found guilty of “disorderly conduct” under Article 166 and fined the same amount.²⁷

On **13 November 2016** a trans woman faced discrimination at a bakery which refused to serve her. She called the police to intervene, but they immediately arrested and charged her with “petty hooliganism” instead. On **6 December** the court threw the case out due to a lack of evidence.²⁸



Enforcement Overview

Consensual same-sex sexual activity between adults in private has not been criminalised in Turkey and its predecessor, the Ottoman Empire, for more than a century and a half,²⁹ though ILGA World notes several concerning cases of apparent State-targeting between 2010 and 2021. In recent years, freedom of assembly and expression, and diverse gender expressions, have seemingly come under increased State scrutiny, with the arrests of activists and transgender individuals resulting in the country’s tentative inclusion in this report.

Between 2003 and 2014, annual Pride parades in the city of Istanbul have taken place, though they have been disrupted or banned by authorities annually since 2015. In 2018 the capital city, Ankara, followed suit by adopting an “indefinite ban” on SOGIESC-related gatherings.³⁰ Further, 2021 saw a group of students put on trial for displaying rainbow posters during an anti-government protest, and the apparent disproportionate targeting of SOGIE protestors at a rally against Turkey’s withdrawal from the Istanbul Convention on women’s rights.³¹

Beyond the targeting of SOGIE persons and activists strictly within its borders, Turkish authorities have also displayed a disregard for the rights of migrants and asylum seekers coming from criminalising countries, with several alleged instances of trans women and other refugees of diverse SOGIE being deported back to places such as Syria, where they faced possible imprisonment or death.³² These cases, and many others, fall well outside the scope of this report, though the developing situation in Turkey warrants continued observation, regardless.

Examples of Enforcement

On **19 June 2010** three activists from Pink Life LGBTT Solidarity Association (Pembe Hayat) were arrested by

²³ Women’s Initiatives Supporting Group (WISG), *Unidentified Violence: Litigation Report* (Tbilisi, 2017), 132

²⁴ *Id.*, 132.

²⁵ *Id.*, 133-134.

²⁶ *Id.*, 130-131.

²⁷ *Id.*, 133.

²⁸ *Id.*, 131.

²⁹ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020) 108.

³⁰ OHCHR, *AL TUR 1/2020* (2020) 1; “Policia reprime protesto LGBTQI+ na Turquia e prende ao menos 25 pessoas | DW | 27.06.2021” [Police crack down on LGBTQI+ protest in Turkey, arrest at least 25 people | DW | 27.06.2021], *Deutsche Welle*, 28 June 2021.

³¹ “Türkei: Arrest für trans Aktivistinnen nach Demo zum Weltfrauentag” [Turkey: arrest for trans activists after demonstration on International Women’s Day], GGG, 8 March 2021; “LGBTI+ bayrağı açtıkları için gözaltına alınan öğrenciler serbest bırakıldı” [Students detained for unfurling the LGBTI + flag were released], *Cumhuriyet*, 27 March 2021; “Turkey detains students and supporters over LGBT flags”, *Mainichi*, 28 March 2021.

³² “Trans refugee in danger of being deported to Syrian war zone amid Turkey’s ‘illegal crackdown’”, *Pink News*, 6 August 2021.

police in Turkey's capital, Ankara. Initially not given a reason for their arrest, the three were eventually told by officers that it was for "transvestism". They were pulled from their vehicle and held for five hours at a local police station where they were verbally abused. They laid a formal complaint regarding their mistreatment with the Public Prosecutor, though it was rejected. On **25 October 2011** the trio were reportedly found guilty of "resisting public officials and preventing them from performing their duty" and "insults" by the Ankara 15th Court of First Instance. One of the activists was sentenced to five months in prison, with the other two receiving six and 18 month suspended sentences. The UN Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on violence against women, its causes and consequences, expressed concern at the arrest and conviction of the activists, to which the Turkish Permanent Representative in Geneva responded by saying that the group were "absolutely not" targeted as a result of their "sexual orientation, gender identity or

activities as human rights defenders", claiming rather that they were arrested for "prostitution" and "creating a disturbance".³³

The following month, **July 2021**, it was reported that at least two trans women were targeted in the Taksim area of Istanbul, with one being made to show her identity documents to local guards while sitting on a bench, and another detained right before getting into a taxi. It seems that the trans women were taken to local police stations on the grounds that they were accused of "disgraceful acts", but no formal charges were laid against them.³⁴ According to Pembe Hayat, the trans women were called to a police station in **October** on the grounds of providing formal statements about the incident, and also had their health status checked. The group also alleges that police had previously "sealed" their homes, though further details are unclear.³⁵

³³ OHCHR, AL G/SO 214 (107-9) G/SO 214 (89-15) TUR 7/2011 (2011); Ambassador and Permanent Representative of Turkey, 2012/BMCO/3483193 (2012).

³⁴ "90'lara dönüş: Bekçiler, yolda gördükleri transları gözaltına almaya başladı" [Back to the 90s: guards started detaining trans people they saw on the road], T24, 19 July 2021.

³⁵ "Bayram Sokak: Trans kadınlar yine gözaltına alındı" [Bayram Sokak: Trans women were detained again], *Pink Life Association LGBTT Solidarity* (Pembe Hayat), 17 October 2021.

Oceania

Six out of 14 UN Member States in Oceania criminalise same-sex sexual activity and at least one (Tonga) criminalises “female impersonation”,¹ though documented cases of enforcement of such laws remain rare. This may be due to a lack of enforcement from State actors, but small national populations and a lack of international reporting may also contribute. More research is needed on the matter.

It is notable that while Tonga is not included in this report due to a lack of known cases of enforcement, the country’s Supreme Court refused to grant custody of a

child to a gay man in 2013. The judge stated that because Tonga’s criminal law still prohibits “carnal knowledge” between consenting adults of the same sex, “[n]o court would entrust a very young child into the care of person whose lifestyle carries with it a very real risk of prosecution”.²

This case, then, demonstrates that well beyond the issues of detention or jail-time, criminalising legislation the world over can and does negatively contribute to the lives and dignity of our communities in very tangible ways.



Papua New Guinea

Criminalising Provisions

Section 210 of the *Criminal Code* (1974) penalises “unnatural offences” with “imprisonment for a term not exceeding 14 years”. The crime is defined as sexual penetration of any person “against the order of nature”. Attempts to commit this “crime” are also punished with imprisonment for up to seven years. “Indecent practices between males” are further criminalised under Section 212, with imprisonment of up to three years.³

Enforcement Overview

ILGA World notes at least two examples of enforcement between 2011 and the time of publication. Even when evidence of formal enforcement is not abundant, the existence of such provisions contributes to the discrimination and violence perpetrated by hostile elements in society.⁴ Further, a 2011 study found the police to be one of the main sources of gender-based violence and discrimination against men who have sex with men (MSM) and trans people.⁵

Between its first UN Universal Periodic Review cycle in 2011 and its fourth in 2021, multiple calls have been made by several bodies and organisations to decriminalise. However, such recommendations have been widely rejected, and all government discussions on the matter seem to have stalled.⁶

Examples of Enforcement

A 2011 report on gender-based violence in Bangladesh and Papua New Guinea interviewed one victim who spoke of Papua New Guinean police arresting several transgender women, releasing them only when they agreed to sex with the officers.⁷

In March 2015, a Malalaua District resident was prosecuted and pleaded guilty to “indecent acts” between males, receiving a suspended sentence and being made to undergo mandatory counselling and community service work.⁸

¹ See: ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 140; ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (2020), 241.

² Supreme Court of Tonga, FA 39 of 2011 (2013).

³ ILGA World: Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia: Global Legislation Overview Update* (2020), 140.

⁴ “Papua New Guinea’s gay and transgender community finds safety in Hanuabada village”, ABC News, 8 October 2014; Human Dignity Trust, *Country Profile: Papua New Guinea* (2021).

⁵ Christina Misa Wong and Shanti Noriega, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities in Bangladesh and Papua New Guinea* (FHI 360, 2011), 21.

⁶ Human Dignity Trust, *Country Profile: Papua New Guinea* (2021); “Papua New Guinea: Abuses Raised at UN Review”, *Human Rights Watch*, 10 November 2021.

⁷ Christina Misa Wong and Shanti Noriega, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities in Bangladesh and Papua New Guinea* (FHI 360, 2011), 21.

⁸ Kaleidoscope Trust et. al., *Speaking Out* (2015); Pacific Islands Legal Info. Institute, *Papua New Guinea [National Court of Justice]* (2015).