



ARAB FOUNDATION
المؤسسة العربية
for freedoms & equality
للحريات والمساواة

ACTIVISM AND RESILIENCE: LGBTQ PROGRESS IN THE MIDDLE EAST AND NORTH AFRICA



OUTRIGHT
ACTION INTERNATIONAL

CASE STUDIES FROM JORDAN,
LEBANON, MOROCCO AND TUNISIA



About OutRight

Every day around the world, LGBTIQ people's human rights and dignity are abused in ways that shock the conscience. The stories of their struggles and their resilience are astounding, yet remain unknown—or willfully ignored—by those with the power to make change. OutRight Action International, founded in 1990 as the International Gay and Lesbian Human Rights Commission, works alongside LGBTIQ people in the Global South, with offices in six countries, to help identify community-focused solutions to promote policy for lasting change. We vigilantly monitor and document human rights abuses to spur action when they occur. We train partners to expose abuses and advocate for themselves. Headquartered in New York City, OutRight is the only global LGBTIQ-specific organization with a permanent presence at the United Nations in New York that advocates for human rights progress for LGBTIQ people.

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About AFE

The Arab Foundation for Freedoms and Equality (AFE) is an officially registered non-governmental organization based in Beirut, Lebanon.

AFE focuses its efforts exclusively on Arab states across the Middle East and North Africa (MENA).

AFE's vision is to have societies where sexuality, gender and bodily rights are promoted, recognized and respected.

The mission of AFE is to encourage and support sexuality, gender and bodily rights' movements in the Middle East and North Africa through capacity building, knowledge production, exchange, and security and emergency response.

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Foreword

This report is a love letter to activists and LGBTIQ people in the Middle East and North Africa (MENA).

There's a certain perception of the region. Journalists, donors and foreign governments ask the Arab Foundation for Equality and OutRight Action International all the time if 'anything can be done' and when there will finally be progress for LGBTIQ rights. Sometimes, they describe it as the worst place on earth to be LGBTIQ. It's not entirely surprising. The region has some of the world's harshest anti-LGBTIQ and pro-morality laws. Human rights, the rule of law, and economic stability are also suffering severely.

In spite of these challenges, we have seen enormous advances in the MENA region in LGBTIQ organizing and rights in recent years. Activists always find a way, even in the hardest places. We wrote this report to show a different kind of activism. The activism described in this report shows that progress is slow, but MENA activists have created original strategies to overcome seemingly insurmountable odds. Instead of seeing the MENA region as 'stuck', this report demonstrates the opposite. There's so much to learn about resilience, coalition-building and art for social change from LGBTIQ activists in MENA.

This report is a case study of four countries: Jordan, Lebanon, Morocco, and Tunisia. In each country, set-backs and progress have gone hand-in-hand. This report has many lessons learned. First, it showed us there's no right way to do things. Faced with similar morality laws and condemnation from government officials, the activists found varied ways to adapt. Second, the report reminds us that failure is integral to progress. When 100 community members were outed online in Jordan or community events were shut down in Lebanon, activists paused, recalibrated, and emerged even more determined. Third, the report demonstrates the strength and sophistication LGBTIQ organizations and activists in the region. In spite of enormous pressure from government, religion, the press, mainstream civil society, and the family, they persevere, and we should honor them.

We made a decision to co-author this report because of the value we bring as regional and international organizations respectively. We want to refute the notion that regional and international organizations don't need each other or that we are more effective alone. Ours is a partnership founded on deep respect and where there is enormous mutual learning. Because we learn from one another, we move forward together. Crucial to this comradeship is a shared commitment to supporting long-term change, using our platforms to amplify local agendas, accessing new resources through regional trainings and international advocacy, and centering an intersectional analysis that positions LGBTIQ rights as inextricably linked to other movements for social and economic justice.

This report gives a clear snapshot of these four countries today, but in a rapidly changing and often unstable region, we cannot predict how things will change next. What is consistent is that LGBTIQ activism in the MENA region over the past decade has not stopped, and it is moving forward. Even when activists had to flee their countries, they didn't stop! In the MENA region, LGBTIQ work has momentum. LGBTIQ activists have learned to adapt and thrive in this context.

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Acknowledgements

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This report was researched and written by Suraj Girijashanker, David W. Leebron Fellow based with AFE and OutRight. The report was reviewed and edited by staff members of OutRight and AFE including: Georges Azzi, Executive Director of AFE; Jessica Stern, Executive Director of OutRight; Siri May, United Nations (UN) Program Coordinator at OutRight; Sahar Moazami, UN Program Officer at OutRight; and Kris Tay, Seconded with the UN Program at OutRight. The report was also reviewed by Heather Regen, UN Program Intern at OutRight. The report's country chapters were reviewed by Senda Ben Jebara, Naoufal Bouzid, Hasan Kilani and a leading Lebanese activist who wishes to remain anonymous. Renita Edwin, UN Program Intern contributed to the report's background research.

The report's cover was designed by a Lebanese artist who wishes to remain anonymous.

This report would not have been possible without the contribution of activists, artists, and legal and medical professionals from Arabic-speaking states in the MENA region. In addition to participating in interviews, many have provided feedback that has framed the report. We hope that the report will make a contribution to supporting their movements and work.

Note

The following report emphasizes the progress made by resilient communities, but it by no means diminishes the experiences of discrimination and violence faced by many lesbian, bisexual, transgender and queer¹ (LGBTQ)² people in the Arabic-speaking states in the MENA region. LGBTQ people continue to face widespread and systematic discrimination and violence on the basis of their sexual orientation, gender identity, and gender expression in all four of the countries studied in this report. Specifically, we urge that the report is not cited as a source of *Country of Origin Information* in a way that misrepresents this reality in conducting refugee status determination for claimants from Jordan, Lebanon, Morocco, and Tunisia.

¹ This report does not address the experiences of intersex people as, despite efforts, contact with people with diverse sex characteristics in the four countries was not successful.

² Reference to LGBTQ throughout the report is intended to include people with diverse sexual orientations and gender identities, who may not necessarily identify as LGBTQ.

Executive Summary

Consensual same-sex relations remain criminalized in the majority of Arabic-speaking states in the Middle East and North Africa (MENA) region. Sodomy, debauchery and public morality laws are among the tools used by states to violate the rights of lesbian, bisexual, transgender and queer (LGBTQ) people. In addition to the risk of arrest, LGBTQ people are subject to violence and discrimination across both the public and private spheres.

Violations against LGBTQ people in the region have been explored in detail in human rights documentation, media coverage, and academic and policy discourse. However, the complex realities of LGBTQ people, including resilience, activism, and hard-fought legal and social progress remains largely neglected. Additionally, LGBTQ people are often misrepresented by select states from the region at international forums such as the United Nations General Assembly and Human Rights Council. Using arguments based on religious and cultural values, certain states undermine the rights of LGBTQ people, and project Arabic-speaking and Muslim-majority states as a homogenous entity with a uniform view on LGBTQ people.

The Arab Foundation for Freedoms and Equality (AFE) and OutRight Action International (OutRight) conceived this report to expand on the narrow discourse surrounding LGBTQ people's experiences in the MENA region. The report aims to provide an insight into legal and social contexts; organizing and movement-building; and progress, challenges and opportunities, as told by LGBTQ people in four different countries in the region with distinct contexts: **Jordan, Lebanon, Morocco, and Tunisia**. The report's findings are based on over 40 interviews with LGBTQ activists; members of feminist and human rights organizations; academics with expertise in gender and sexuality in the region; and legal and medical professionals. Key findings in the four focus countries include:

JORDAN

- 
- A vertical timeline on the right side of the page, titled 'JORDAN'. It features a central vertical line with circular markers for each year. A green rectangular bar is positioned at the top, corresponding to the year 1951. The events listed are:
- 1951:** Same-sex sexual relations are decriminalized under the Jordanian penal code
 - 2007:** *My.Kali*, Jordan's first LGBTQ magazine, is launched
 - 2009:** Rejection of applications to register LGBTQ+ Organizations
 - 2014:** An unidentified blogger published nearly 100 photos of Jordanian users of Grindr and Scruff dating applications
 - 2015:** International Day against Homophobia, Transphobia and Biphobia (IDAHOBIT) commemoration in Amman leads to backlash against LGBTQ activists and the broader community
 - 2016:** Banning of *My.Kali* on July 14th 2016 after its launch in Arabic
 - 2016** and **2017:** New groups established A3deh (2016) and Cinamji (2017)
 - 2017:** Open letter by the Jordanian LGBT+ community to a Jordanian parliament member is published publicly
 - 2017:** The Interior Minister responds to an inquiry in an intolerant way against the LGBT+ community but does use the right terminology "meem community" for the first time

Although consensual same-sex relations have been effectively decriminalized since 1951, activists reported cases of morality laws being used primarily to target transwomen. Additionally, structures of family, tribe and honor, contributed to violence and discrimination against LGBTQ Jordanians. Since 2009, applications to register an LGBTQ organization have been rejected by the Ministry of Social Development. However, LGBTQ organizing continues to take place through informal mechanisms such as individual initiatives, community groups, online platforms, the arts, and the media. LGBTQ activists carefully negotiate a balance in their initiatives in light of adverse media representation and increased scrutiny from the members of the executive and parliamentarians following high-

profile events associated with the community. Key initiatives include My.Kali, Jordan's first LGBTQ magazine, which continues to operate despite challenges; the use of theatre, art and cinema as a catalyst to promote discussion and awareness of LGBTQ people; sexual health outreach; and service provision for LGBTQ refugees. Ongoing challenges and opportunities include greater collaboration between activists and organizations; creating space for LGBTQ women; and engagement with UN mechanisms.

LEBANON

- 1942** ● Lebanese Penal Code adopted, including Article 534, which criminalizes sexual acts which "contradict the laws of nature"
- 2002-2004** ● Formation of Helem, the first LGBTQ organization in an Arabic-speaking state in the region
- 2005** ● IDAHOBIT commemorated for the first time in Lebanon
- 2007** ● Founding of Meem, a Queer feminist organization
- 2008** ● The first LGBTQ-led protest against police violence
- 2009** ● Batroun court decision where the judge refused to apply Article 534, stating same-sex sexual relations could not be considered against the "rules of nature"
- 2012** ● The Lebanese Order of Physicians and Minister of Justice issue circulars calling for an end to forced anal testing
- 2013** ● The Lebanese Psychological Association (LPA) and Lebanese Psychiatric Society (LPS) issue statements recognizing that homosexuality is not a mental illness and attempts to change one's sexual orientation is futile and potentially harmful
- 2014** ● Jdeide court decision where the judge questioned the ability to define "unnatural" under Article 534, and recognized the defendant's gender identity
- 2016** ● el-Metn court decision where the judge refused to apply Article 534, citing international human rights conventions and the International Statistical Classification of Diseases and Related Health Problems
- 2017** ● el-Metn court decision where the judge refused to apply Article 534, adopting a rights-based approach and incorporating arguments related to freedom of expression
- 2018** ● Mount Lebanon Court of Criminal Appeal upheld 2017 el-Metn court acquittal

LGBTQ people continue to be targeted by a series of laws under the Lebanese Penal Code, including Article 534 which criminalizes sexual acts which are "contrary to nature." Activists reported that transwomen, LGBTQ refugees and GBQ men belonging to a low socio-economic status are particularly susceptible to arrest. While many noted that violence, discrimination, and negative perceptions of LGBTQ are widespread, they also highlighted the role of LGBTQ organizing in challenging violations. Structured LGBTQ activism in Lebanese dates back to the mid-1990s. Subsequent milestones include the founding of Helem, the first LGBTQ organization in an Arabic-speaking state in the MENA region, and Meem, a queer feminist organization which set the foundations for LGBTQ organizing. Today, the majority of organizations working with LGBTQ people are registered and have diverse briefs including legal representation, sexual and reproductive health, and service provision for marginalized groups including LGBTQ refugees. Key successes include lobbying for an end to forced anal testing as part of evidence in convictions; effective engagement of healthcare professionals in LGBTQ advocacy; progressive court rulings relating to the interpretation of Article 534; queer feminist organizing; and the creation of safe spaces. Ongoing challenges and opportunities include documentation of arrests; engagement with political parties; coalition-building and intersectional work; and continued engagement with UN mechanisms.

MOROCCO

- 1913: Consensual same-sex sexual relations criminalized under the French colonial Penal Code
- 2011 ● The 20th February Movement and demands for freedoms and liberties leads to growth in civil society and LGBTQ activism
- 2016 ● Case of “Beni Mellal”
Case of “The Two Girls of Marrakech”
- 2017 ● Morocco accepts three Universal Periodic Review recommendations relating to sexual orientation and gender identity/expression
- 2018 ● L’Union Feministe formally registered

LGBTQ Moroccans continue to be targeted by Article 489 which criminalizes consensual same-sex sexual relations, and laws relating to public decency. This is despite the fact that these laws contravene provisions of the Morocco’s 2011 Constitution. LGBTQ Moroccans have also been the subject of negative statements from former and serving members of the Moroccan executive and adverse representations by sections of the media. The 20 February Movement in 2011 contributed to a growth in civil society and LGBTQ organizing. Today there are numerous LGBTQ organizations and collectives, the majority of which remain unregistered. Despite this challenge, activists have been able to effectively intervene in high-profile cases of arrests; form partnerships with legal and medical professionals; and engage in community building and the creation of a safe space. Ongoing challenges and opportunities include addressing violence against LGBTQ people; advocacy through UN mechanisms; and legal reform and sensitization.

TUNISIA

- 1913: Consensual same-sex sexual relations criminalized under the French colonial penal code
- 2002 ● Damj, Tunisia’s First LGBTQ organization is founded
- 2011 ● The Tunisian Revolution
- 2014 ● International Day against Homophobia is publicly marked for the first time in Tunisia
- 2015 ● Launch of *Chouftouhonna*, a feminist art festival with LGBTQ themes
The “Marwen” case
- 2015-2016 ● The “Kairouan 6” case
- 2016 ● The Civil Collective for Individual Liberties, consisting of over 35 civil society organizations including LGBTQ organizations, is launched

Restaurants, shops and internet cafes place signs which say “no homosexuals allowed”
- 2017 ● Tunisia accepts Universal Periodic Review recommendations relating to banning forced anal examination and countering discrimination based on sexual orientation and gender identity/expression
- 2018 ● LGBTQ film festival launched in Tunis

Tunisian Commission appointed by the President recommends for Article 230 criminalizing same-sex sexual relations to be repealed

Article 230 of the Tunisian Penal Code, which criminalizes consensual same-sex sexual relations, and laws related to “moral standards” and “public decency” are used against LGBTQ people. Members of the transgender community and GBQ men are at particular risk. Notably, these laws contravene provisions of the 2014 Tunisian Constitution. Tunisian LGBTQ people continue to live in a challenging social context. Challenges include restrictions to the mobility of LBQ women by family structures and documented hate crimes against LGBTQ people. Since the Tunisian revolution in 2011, several new membership based organizations which work on LGBTQ advocacy have emerged. In 2016, the Civil Collective for Individual Liberties which consists of over 35 civil society organizations, including LGBTQ organizations, was formed. LGBTQ rights is part of the Collective’s agenda, which activists state has contributed to increased security, credibility, and visibility for LGBTQ organizations. Key

successes of the Tunisian LGBTQ movement include effective campaigning around high-profile cases of arrests; utilizing UN mechanisms to communicate with and hold the government accountable; legal and social progress impacting LGBTQ women; and the use of art as a tool in activism. In a key sign of progress, in 2018 the Commission des libertés individuelles et de l'égalité appointed by the President recommended for Article 230 to be repealed. Activists have identified the Commission's recommendations as well as the Tunisian Constitutional Court, which is yet to be created, as avenues for achieving legal reform. Additional challenges and opportunities include increased data collection of violence and discrimination against LGBTQ people; ensuring accountability for the use of forced anal examinations as part of evidence in convictions; and the creation of an LGBTQ shelter.

While there are clear distinctions in each country context, there were also common strategies adopted by activists to achieve progress. The report provides evidence that LGBTQ rights in the region can be supported through a multi-pronged approach with local LGBTQ organizations, coalition-building, feminist organizing and artistic production at the forefront. The findings also suggest that carefully-tailored intersectional regional and international engagement can support and accelerate local progress.

Introduction

This report aims to capture a snapshot of experiences, progress and challenges as told by LGBTQ people across four Arabic-speaking states in the MENA region: Jordan, Lebanon, Morocco, and Tunisia. AFE and OutRight sought to document culturally contextualized activism and key areas of legal and social progress for LGBTQ people in four distinct contexts across the region. It is the hope of the authors that this report will go some way in extrapolating on the existing narrow scope of LGBTQ people's experiences, and specifically the lack of recognition for local activism and movements in existing multilateral fora, human rights documentation, media coverage, and academic and policy discourse.

Consensual same-sex relations remain criminalized in the majority of Arabic-speaking states in the MENA region. Sodomy, debauchery and public morality laws are among the tools used by states to violate the rights of LGBTQ people. In addition to the risk of arrest, experiences of violence and discrimination often pervade the lives of LGBTQ people in the region, across both the public and private spheres.

The implications of the laws, and violence and discrimination against LGBTQ people in the Arabic-speaking states have been explored in detail by human rights organizations and in media coverage. However, the complex realities facing LGBTQ people on the ground, including the resilience and progress of local LGBTQ communities and movements, is often absent from discourse. LGBTQ people in the region also have experiences which are shaped by locally grounded activism and hard-fought legal and social progress.

In particular, the diversity of experiences of LGBTQ people in the region, and areas of progress in LGBTQ activism and human rights, are historically ignored or misrepresented at the international level by key countries from the region. In such cases the human rights of LGBTQ persons have been misused as political and rhetorical tools to undermine the integrity of multilateral systems. At the United Nations (UN) Human Rights Council and General Assembly (GA) in particular, some states from the region manipulate the influence of UN blocs and regional groups including the Organization for Islamic Cooperation (OIC), the Africa Group and the Arab Group to oppose the implementation of universal human rights in relation to sexual orientation and gender identity and expression (SOGIE). In this debate, it is falsely argued that respecting the human rights of LGBTQ people somehow compromises cultural and religious values, imposes unwanted 'Western values' on Arabic-speaking MENA states, and undermines international consensus by enforcing new norms under international human rights law.

In June 2016 for example, Morocco opposed the creation of the mandate of the Independent

Expert on SOGI³ at the UN Human Rights Council, arguing that the mandate conflicted with the “values and beliefs of at least 1.5 billion people that belong to one civilization.”⁴ The same delegate also argued that the mandate created ambiguity for youth and challenged the universality of human rights.⁵

Similarly, in November 2016 at the UNGA, Egypt purportedly speaking on behalf of all of the countries within the OIC also rejected the establishment of the Independent Expert on SOGI. The Egyptian delegate claimed that the creation of the mandate was “highly divisive and aims to impose a set of values on the world.”⁶

Such claims are problematic as they misrepresent Arabic-speaking and Muslim-majority states as a homogenous entity with a uniform view on LGBTQ people. In the cases of joint statements made by the OIC and the Africa Group against the Independent Expert on SOGI at the UNGA for example, the voting records of individual countries did not reflect the consensus asserted by Egypt.⁷ These statements also fail to acknowledge local realities, movements, culturally contextualized activism, and incremental progress achieved in the recognition of LGBTQ people in the region.

The contexts in Jordan, Lebanon, Morocco, and Tunisia provide a limited insight of the diversity of LGBTQ communities, activism and progress across the Arabic-speaking MENA states. The four case studies were selected to profile LGBTQ activism and progress at different stages in the Arabic-speaking MENA region in distinct social and legal contexts. While each context revealed a diversity of challenges and successes, a number of clear commonalities across the strategies activists have used to achieve progress were also identified. The report provides evidence that LGBTQ rights in the region can be supported through a multi-pronged approach with local LGBTQ

organizations, coalition-building, feminist organizing and artistic production at the forefront. Progress cannot be measured solely based on legislation, and therefore advocating for legal reform alone is inadequate. The findings also suggest that carefully-tailored intersectional regional and international engagement can support and accelerate local progress.

Methodology

The report process engaged key stakeholders before, during, and after the formal research was conducted to assist in defining the primary and key research questions. The formal research process included a comprehensive literature review, a focus group, and over 40 semi-structured interviews, primarily conducted in-person during country visits to Jordan, Lebanon, Morocco, and Tunisia between November 2017 and February 2018.

The report is divided into four country case studies. Prior to delving into activism and progress, the report outlines the legal and social context in all four countries, including challenges. Each case study concludes with an assessment of gaps in present activism and priorities identified by activists. The report’s drafting and review was completed in consultation with experts from the four focus countries.

Pre-Research stakeholder engagement

At the inception of the project, outreach was conducted to leading academics and activists from Arabic-speaking states in the MENA region, and specifically in the four countries profiled by the report. The outreach was intended to help identify LGBTQ activists, organizations, and networks, as well as inform the focus of interviews. The stakeholders were engaged at key stages throughout process including in a semi-structured post-research focus group.

3 The mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was established to “assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, and to identify and address the root causes of violence and discrimination.” (See United Nations Human Rights, “Independent Expert on sexual orientation and gender identity”, available at: <http://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/Index.aspx>).

4 Allied Rainbow Communities International (ARC International), and the International Gay, Lesbian, Trans and Intersex Association (ILGA), “Compilation of the Adoption of the 2016 SOGI resolution”, June 30, 2016, available at: https://www.ilga.org/downloads/SOGI_Resolution_Vote_compilation.pdf, 96).

5 Ibid

6 OutRight, International Service for Human Rights, International Lesbian, Gay, Bisexual, Trans and Intersex Association, and ARC International, “Defending the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity at the 71st Session of the United Nations General Assembly”, available at: https://www.outrightinternational.org/sites/default/files/OutRightGAA4_V5_LR.pdf, pp.34-35.

7 As an example, both Tunisia and Lebanon Did Not Vote in amendments before the General Assembly which sought to block the mandate of the Independent Expert on SOGI (see Ibid, 14)

Selection of countries

The focus countries of the report were proposed by AFE and supported through the stakeholder engagement process. Each country demonstrates distinct legal and social contexts, and together the profiles are indicative of diversity in both stages of activism and areas of progress. The diversity represented by the four country case studies serves to challenge the view that there is homogeneity across Arabic-speaking states in the MENA region with regard to the circumstances experienced by LGBTQ people.

Interviews

Interviews were conducted with LGBTQ activists; members of feminist and human rights organizations; academics with expertise in gender and sexuality in the region; and legal and medical professionals. Interviewees were identified through existing networks of the AFE, OutRight, and LGBTQ activists in all four countries. In response to the under-representation of Lesbian, Bisexual, Transgender and Queer (LBTQ) women in regional human rights documentation we proactively sought to ensure representation of voices of LBTQ women in the report, prioritizing engagement with feminist networks, women's organizations, arts-based communities, and services for women.

All interviewees provided informed consent to participating in the report. Names of certain interviewees have been withheld in light of security concerns and/or respect for privacy. Interviews which were conducted in Arabic were interpreted by a member of the LGBTQ community or an ally, selected by or in consultation with the interviewee.

Engagement with activists from Jordan, Lebanon, Morocco, and Tunisia

Each country case study was reviewed by a leading LGBTQ activist from the country. All four reviewers participated in a focus group in June 2018 to agree upon the content and framing of the report.

Note on discrimination and violence based on religious and cultural grounds

Violence and discrimination against LGBTQ people in these four focus countries is often

justified by perpetrators and those complicit in human rights violations with arguments based on religious freedom and cultural values. A cannon of academic and legal research exists on the use of cultural relativism and religion as an excuse for human rights violations against women and a range of communities including LGBTQ people. While we have acknowledged this throughout the report, we do not focus on an in-depth analysis of these factors. This report works on the fundamental principle that culture and religion are never legitimate justification for the violation of a person's human rights.

Jordan

- 1951: Same-sex sexual relations are decriminalized under the Jordanian penal code
- 2007 ● *My.Kali*, Jordan's first LGBTQ magazine, is launched
- 2009 ● Rejection of applications to register LGBTQ+ Organizations
- 2014 ● An unidentified blogger published nearly 100 photos of Jordanian users of Grindr and Scruff dating applications
- 2015 ● International Day against Homophobia, Transphobia and Biphobia (IDAHOBIT) commemoration in Amman leads to backlash against LGBTQ activists and the broader community
- 2016 ● Banning of *My.Kali* on July 14th 2016 after its launch in Arabic
- 2016 ● New groups established A3deh (2016) and Cinamji (2017)
- 2017 ● Open letter by the Jordanian LGBT+ community to a Jordanian parliament member is published publicly
- 2017 ● The Interior Minister responds to an inquiry in an intolerant way against the LGBT+ community but does use the right terminology "meem community" for the first time

1. The legal and social context

(a) The law and its application

The Jordanian Penal Code, which was adopted in 1951, does not explicitly criminalize same-sex sexual relations. Notably, the British Mandate Criminal Code that preceded the current penal code criminalized same-sex sexual activity between men with a penalty of up to 10 years imprisonment.⁸

However, despite the absence of a specific law, anecdotal evidence suggests police use morality and public decency laws to target LGBTQ people.⁹ Among the provisions which can be applied to LGBTQ people is Article 320 of the Penal Code:

Anyone who commits an act incompatible with modesty or expresses signs incompatible with modesty in a public place or a public assemblage or by manner that could be seen by those in a public place shall be punished with imprisonment not exceeding 6 months or a fine not exceeding 50 Dinars.¹⁰

The view that same-sex sexual relations are effectively criminalized in Jordan was supported by the Jordanian Minister of Justice, Dr. Awad Abu Jarad Al-Mashagbeh, in 2017:

[G]ranting rights to those who are called sexual deviants...violates the provisions of Jordanian constitution and national legislations, where the constitution states in [A]rticle no. 2 that "Islam is the religion of the State and Arabic is its official language" whereas sexual deviance violates the provisions of Islamic law (Sharia) and the [S]tate's general system and decency.¹¹

Notably, the Minister of Justice did not cite specific provisions of the Penal Code in his statement. An independent Jordanian LGBTQ activist suggests that the lack of clarity surrounding the law provides scope for abuse by law enforcement officials. The activist noted, "Police do not need a specific law to target LGBTQ people—they just need to be homophobic or transphobic. Morality laws and the evidence used are fluid—all you need is the word of two police officers against you."¹²

Based on information from community networks, three Jordanian LGBTQ activists suggested that harassment and in some cases arrests of gay men and transwomen took place as a consequence of a challenging social climate for the community [see section two]. Other activists however disputed the extent by which gay men were targeted by the law, suggesting the impact was predominantly felt by transwomen.¹³ They further clarified that individuals taken into police custody were

⁸ Section 152(2)(c) - "Any person who— permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony, and is liable to imprisonment for ten years." (See General Penal Code of Palestine, available at: https://www.nevo.co.il/law_html/law21/PG-e-0633.pdf).

⁹ OutRight and AFE interview with LGBTQ activist [name omitted], Amman, October 27, 2017; OutRight and AFE Interview LGBTQ activist [name withheld], Amman, October 30, 2017

¹⁰ International Lesbian, Gay, Bisexual, Trans and Intersex Association, "State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalization, protection and recognition", 42.

¹¹ Letter from Minister of Justice, Dr. Awad Abu Jarad Al-Mashagbeh, July 16, 2017, available at: https://www.hrw.org/sites/default/files/supporting_resources/letter_from_ministry_of_justice.pdf

¹² OutRight and AFE Interview with LGBTQ activist [name withheld], Amman, October 27, 2017

¹³ OutRight and AFE WhatsApp Interview with LGBTQ activist [name withheld], July 4, 2018

normally released within a day.¹⁴ Examples of arrests cited by activists include: transwomen accused of “presenting in the opposite gender” and/or engaging in sex work;¹⁵ and entrapment of men and transwomen by police in public spaces.¹⁶

While activists often learn of cases through their own networks, gaining a complete picture of the number of charges and convictions remains challenging. An independent LGBTQ activist suggests that many cases go unreported. “The number of cases is more than what we hear from our networks or the media,” the activist said. “There is no transparency in our detention system. Also, those targeted and their families will try and cover-up the case to protect honor and reputation.”¹⁷

According to anecdotal evidence, the individuals targeted and the nature of proceedings against them is largely dependent on their socio-economic status and family connections. “Jordanian society is dominated by tribes and families,” one activist explained. “Those targeted by police mostly come from lower socio-economic backgrounds and do not have much influence. Otherwise families may be able to apply pressure.”¹⁸ While activists note that families and tribes may be able to influence proceedings, in many cases these structures are also the source of violence and discrimination against LGBTQ people [explored in section 1(b)].

One activist suggests that despite harassment by law enforcement, formal legal proceedings are rarely initiated against LGBTQ people. “From the cases that I know—they will normally be called into the police station, and released after a few hours,” the activist said. “It is easier to get released if their family is influential. The prosecutors rarely get involved.”¹⁹

In relation to cases that are heard before the courts, activists provided varying information

about the ability of those charged to seek legal representation. While some activists noted that there are legal aid services technically available to LGBTQ people,²⁰ others reported that lawyers refuse to take on cases, leaving many unrepresented.²¹ Further, one activist explained that even where legal assistance may be available, LGBTQ people often refuse representation to limit knowledge of their charges in order to avoid causing disrepute to their family and/or tribe.²²

Several activists reflected that they were unaware of morality or public decency laws being applied to lesbian, bisexual, and queer (LBQ) women. One activist provided a possible explanation, “LBQ women are often invisible in the public spaces where the law is mostly applied.”²³ Therefore, the lack of arrests of LBQ women is likely to be indicative of their lack of mobility and the need to self-regulate their sexuality to ensure safety.

Transwomen face specific risks under the Jordanian Penal Code. Article 307 stipulates that a sentence of up to six months will be imposed on “any man, disguised as a woman who enter into a place reserved, or restricted for the use of women at the time of the commission of his act.”²⁴ One activist noted that the law had been applied to transwomen in public places, including while using women’s changing rooms.²⁵

Jordanian law remains silent on the recognition or protection of transgender people. However, one activist told of two cases where judges allowed for gender and name changes on official documentation, although the circumstances surrounding the cases were unique and procedurally complex:

Both individuals had completed gender reassignment surgeries and [had] the support of their extended families. Such support is rare—usually families will try and block any recognition...But in one of the cases, even with family support and

¹⁴ Ibid

¹⁵ OutRight and AFE Skype Interview with independent activist [name withheld], March 10, 2018

¹⁶ OutRight and AFE Interview with LGBTQ activist [name withheld], Amman, October 27, 2017

¹⁷ Ibid

¹⁸ Ibid

¹⁹ OutRight and AFE telephone interview with LGBTQ activist [name withheld], May 9, 2018.

²⁰ OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 27, 2017.

²¹ OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 30, 2017; OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 29, 2017.

²² OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 27, 2017.

²³ OutRight and AFE Skype interview with LGBTQ activist [name withheld], April 18, 2018.

²⁴ Jordanian Penal Code No. 16 of 1960, available at: http://irckhf.org/check_1.php?l=legislation&f=HRIDJL0084_PenalCode_En_1960

²⁵ OutRight and AFE Skype interview with LGBTQ activist [name withheld], April 18, 2018.

medical evidence, it was not easy for her—the judge was still hesitant.²⁶

(b) Social attitudes, violence, and discrimination

According to activists, violence and discrimination against LGBTQ people remains pervasive in both the private and public spheres.²⁷ Across the interviews conducted, the structures of family, tribes, and honor in particular within Jordanian society impact LGBTQ people. As Madian Al Jazerah, an independent activist, stated:

The name and the pride of the tribe and the family comes before everything. LGBTQ are viewed as a stain on the honor of the tribe and family...There have been cases of rape, blackmail, and detention in family homes²⁸

Activists emphasized that unreported violence within the family and tribe remains a deep concern. Recent legal reform has barred mitigated sentences for those who commit crimes against women,²⁹ however it is questionable if this will have any implications on LBQ women who are still unlikely to benefit from legal protection or redress for cases involving violence from the family. As one activist explained, “Police and the judiciary continue to be influenced by families and tribes. We are also not sure of the extent of violence against LGBTQ people committed by families for this reason.”³⁰ Activists expressed that they have a well-founded fear of violence, however the impact of shame and stigma on their ability to collect data prevented certainty of the extent of violence.

The significance of honor and family has an impact on the visibility of LGBTQ people in Jordan. Within the context of broader patriarchal oppression, this challenge is particularly acute for LBTQ women. An activist

working on creating more spaces for queer women emphasizes these particular pressures. “There are less than 10 LBTQ women I know in Jordan who are open about their sexual orientation,” the activist said, “and this is within my extended circles. Women have to think more about family pressure and reputation.”³¹

Transgender people face specific challenges accessing and remaining in education, healthcare, and employment. These challenges can be exacerbated by the influence of family structures in public life. A transwoman activist living in Amman stated that she knows transgender people who felt forced to drop out from school due to harassment and bullying.³² She shared her experience seeking medical services:

I was visiting a doctor as part of my transition process. The doctor was very helpful at the beginning. But then my family visited her and she changed completely. She refused to write prescriptions for hormones, told me I needed sessions with a psychiatrist and even started using male pronouns and my name assigned at birth. She took my family’s side—doctors will always take the family’s side because they fear being attacked.³³

She also described the challenges transwomen can face in seeking employment:

All the transwomen I know are unemployed. I am an engineer with ten years of overseas work experience but am yet to find employment in Jordan. After job interviews, employers have not stated anything directly, but I guess my appearance is not satisfactory for them.³⁴

Gay, bisexual, transgender, and queer (GBTQ) men in Jordan report exposure to blackmail,

26 OutRight and AFE Skype interview with independent activist [name withheld], March 10, 2018.

27 OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 27, 2017; OutRight and AFE interview with LGBTQ activist [name withheld] October 30, 2017; OutRight and AFE Skype interview with independent activist [name withheld], March 10, 2018.

28 OutRight and AFE interview with Madian Al Jazerah, Amman, October 30, 2017

29 Human Rights Watch, “Jordan: Parliament Passes Human Rights Reforms”, October 4, 2017, available at: <https://www.hrw.org/news/2017/10/04/jordan-parliament-passes-human-rights-reforms>.

30 OutRight and AFE WhatsApp interview with LGBTQ activist [name withheld], October 30, 2017.

31 OutRight and AFE WhatsApp interview with LGBTQ activist [name withheld], April 18, 2017.

32 OutRight and AFE Skype interview with independent activist [name withheld], March 10, 2018.

33 Ibid

34 Ibid

outing, and violence, often stemming from the use of dating applications.³⁵ In one coordinated incident in August 2014, nearly 100 pictures of Jordanian users of Grindr and Scruff dating applications were posted on a public blog.³⁶ Attempts by members of the LGBTQ community to report the blog to law enforcement officials were futile, and the photos were later republished on other websites.³⁷

A service provider who has worked closely with LGBTQ refugees in Jordan noted that they often risk economic exclusion:

In the case of Syrian refugees—Jordan has been working to issue work permits under some conditions. However, many LGBTQ people often do not receive permits as they are outside of the [traditional] family. Priority is given to people with [traditional] families to support. As a result, we hear of cases of both LGBTQ men and women engaging in sex work to survive.³⁸

In the public sphere, discriminatory language and policies towards LGBTQ people continue to be adopted by the Jordanian government and political parties. In 2015, after it became known that the US Ambassador to Jordan attended an event organized by LGBTQ activists to commemorate IDAHOTB in Amman, the media and members of the Islamic Action Front (the political wing of the Muslim Brotherhood) responded with hostility, associating the event with a so-called Western agenda. The Islamic Action Front suggested that such meetings were a form of “corruption and deviation,” which threaten the stability and security of the country.³⁹ A Jordanian lawyer even attempted to sue the US ambassador and the Jordanian Minister of Social Development for allowing



Mashrou' Leila

“unlicensed activity” to take place.⁴⁰ The lawyer stated that he had received support from Members of Parliament.⁴¹

In 2016 and 2017, the Lebanese band Mashrou' Leila was banned from holding concerts in Jordan. While the Ministry of Interior issued the 2017 ban without providing any official reasons, the ban contributed to increased scrutiny of the Jordanian LGBTQ community as the lead singer of the band is openly gay and the band's songs address themes of sexuality. When questioned on Deutsche Welle television about the ban, Muslim Brotherhood Member of Parliament Dima Tahboub claimed that she supported it as the action aligns with her constituents' views and that it was a “kind of unanimous decision between the Members of Parliament.”⁴² On the same day, Tahboub tweeted a photo of a bearded man in a wedding dress getting married with the caption, “Shall I say congratulations?!?”⁴³ There was widespread support for Tahboub's response in Jordanian media outlets, which activists suggest led to hate speech and threats against the LGBTQ community.⁴⁴ The increased focus on LGBTQ Jordanians resulted in the Jordanian Interior⁴⁵

³⁵ Khalid Abdel-Hadi, “Digital threats and opportunities for LGBT activists in Jordan”, November 1, 2016, available at: <https://drive.google.com/file/d/0B-C8GvtOEfB3UTdHc0ZzUzR2M0FTTExFbVNLQkxkQVBDMtc0/view>.

³⁶ Ibid

³⁷ Ibid

³⁸ OutRight and AFE WhatsApp interview with LGBTQ activist [name withheld], April 18, 2017.

³⁹ Rights in Exile, “Jordan LGBTI Resources”, available at: <http://www.refugeelegalaidinformation.org/jordan-lgbti-resources>

⁴⁰ Raed Omari, “Lawyer looks to sue US ambassador, social development minister over illegal ‘meeting for homosexuals’”, *The Jordan Times*, June 1, 2015, available at: <http://www.jordantimes.com/news/local/lawyer-looks-sue-us-ambassador-social-development-minister-over-illegal-meeting>

⁴¹ Ibid

⁴² Deutsche Welle, “Dima Tahboub on Conflict Zone”, available at: <http://www.dw.com/en/dima-tahboub-on-conflict-zone/av-39757352>

⁴³ Jason Lemon, “This Jordanian MP is leading a war against the LGBT community”, *Step Feed*, August 1, 2017, available at: <https://stepfeed.com/this-jordanian-mp-is-leading-a-war-against-the-lgbt-community-0827>

⁴⁴ Olivia Cuthbert, “Jordan activists targeted after MP says gay people unwelcome”, *Middle East Eye*, August 11, 2017, available at: <http://www.middleeasteye.net/news/debate-renewed-around-lgbt-rights-jordan-mp-says-homosexuality-unwelcome-2128400833>

⁴⁵ Letter from Minister of Interior, Ghaleb Alzu'bi, reference to the Prime Minister's letter ref. no. (51/12/4/A/31430) July 25, 2017, available at: https://www.hrw.org/sites/default/files/supporting_resources/letter_from_ministry_of_interior.pdf

and Justice Ministers⁴⁶ issuing letters to the Minister of Political and Parliamentary Affairs, which stated that LGBT people violated cultural norms and the Jordanian constitution. The Interior Minister announced:

Jordan has not and will never endorse any charter or protocol acknowledging homosexuals—known as LGBT community—or granting them any rights as it is considered a deviation from Islamic law and Jordanian Constitution, and that any initiatives by those who have sexual deviancy are violating the provisions of Islamic religion and the general system.⁴⁷

Jordanian media outlets continue to perpetuate negative perceptions about LGBTQ people. A study by Khalid Abdel-Hadi, founder of *My.Kali* magazine, notes that the media's coverage of LGBTQ people often involves "misinformation, stereotypes, and sensationalism."⁴⁸ Specifically, provocative homophobic and transphobic headlines are often used by websites as "clickbait" to attract viewers and advertising revenue.⁴⁹ Examples of headlines and stories include "Social catastrophe that threatens Jordan" and "Engagement party (for gays) in a coffee shop in Amman", which reported that two men played a music CD with a picture of a devil holding a microphone on the cover at their engagement celebration.⁵⁰

Negative homophobic and transphobic media coverage increased in Jordan following both the 2015 IDAHOTB event and the Mashrou' Leila ban in 2017. A qualitative analysis conducted of 35 articles published in relation to the IDAHOTB event suggests that the coverage was overwhelmingly negative.⁵¹ The articles argued that homosexuality contravened religious and

cultural norms and was a threat to national security.⁵²

2. LGBTQ activism in Jordan: survival in the face of repression

LGBTQ activism and organizing in Jordan has occurred primarily through informal mechanisms such as individual initiatives, community groups, online platforms, the arts, and media. Efforts to form LGBTQ organizations or increase visibility through highly publicized events have thus far been unsustainable and ultimately endangered activists and the broader community. Negative media coverage following the 2015 IDAHOTB event led to an increase in hate speech and violence towards LGBTQ people, with videos of homophobic attacks being posted on social media.⁵³

Civil society organizing in Jordan is fraught with challenges, including restrictive laws and pressure from the state in relation to their areas of focus.⁵⁴ Registration for LGBTQ organizations has proven particularly challenging. For example, in 2009 the Ministry of Social Development rejected an application to establish a non-governmental organization (NGO) supporting LGBTQ rights, stating that it would "violate the public morals and decency."⁵⁵ Subsequent attempts to form LGBTQ organizations have been unsuccessful.⁵⁶ As of the publication of this report, the government's stance has not shifted. In 2017, the Jordanian Interior Minister stated that LGBTQ organizations and their activities would not be permitted:

As for permitting this group to hold any activity or to establish organizations or associations that represent them, the government did not permit such

46 Letter from Minister of Justice, Dr. Awad Abu Jarad Al-Mashagbeh, July 16, 2017, available at: https://www.hrw.org/sites/default/files/supporting_resources/letter_from_ministry_of_justice.pdf

47 Letter from Minister of Interior, Ghaleb Alzu'bi, reference to the Prime Minister's letter ref. no. (51/12/4/A/31430) July 25, 2017, available at: https://www.hrw.org/sites/default/files/supporting_resources/letter_from_ministry_of_interior.pdf

48 Khalid Abdel-Hadi, "Digital threats and opportunities for LGBT activists in Jordan", November 1, 2016, available at: <https://drive.google.com/file/d/0B-C8GvtQEpb3UTdHc0ZzUzR2M0FTTExFbVNLQkxkQVBDMTc0/view>, 3.

49 Ibid

50 Ibid

51 Ahmed El-Sharif, "Addressing the Question of Homophobia in Jordanian Public Discourse". *International Journal of Applied Linguistics and English Literature*. 6.1 (2017) 47.

52 Ibid

53 Khalid Abdel-Hadi, *Digital threats and opportunities for LGBT activists in Jordan*, November 1, 2016, available at: <https://drive.google.com/file/d/0B-C8GvtQEpb3UTdHc0ZzUzR2M0FTTExFbVNLQkxkQVBDMTc0/view>

54 Heba W. AlNasser, "New Social Enterprises in Jordan: Redefining the Meaning of Civil Society", Chatham House, September 2016, available at: <http://www.chathamhouse.org/sites/default/files/publications/research/2016-09-28-jordan-civil-society-al-nasser-final.pdf>

55 Freedom House, "Jordan – 2015 Freedom in the World report", available at: <https://freedomhouse.org/report/freedom-world/2015/jordan>

56 OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 27, 2017

actions. And according to the act of effective meetings, holding any activity or gathering, the organizer must notify the administrative governor, which has never happened and will never be tolerated.⁵⁷

In order to continue working safely, LGBTQ activists negotiate a careful balance in their efforts, particularly in light of the backlash following the 2015 IDAHOTB event and the events following the 2017 Mashrou' Leila ban. Anecdotal evidence suggests both events were followed by adverse media representations⁵⁸ and a rise in hate speech and violence.⁵⁹ This backlash coincided with negative statements from members of the Jordanian executive.⁶⁰ In light of this reaction, one interviewee recognized the broader impact of engaging in LGBTQ activism. "There is no separation between activists and the broader community. When we are targeted, it also extends to the community," the activist said.⁶¹

One activist noted the continued implications of the aftermath of the IDAHOTB day event even today:

People's perception of activism changed after IDAHOTB. We lost activists in the process—people who are no longer willing to work on LGBTQ issues. They were dreamers, hardworking people, and the older generation of activists. There is a gap in knowledge.⁶²

Another implication of IDAHOTB 2015 is reflected in attempts by some activists to limit associations with symbols of the Global North. The US Ambassador's attendance at the IDAHOTB event led to a politicized discussion with suggestions that the LGBTQ movement was not locally-owned, but part of an attempt to distort Jordanian culture. As a result, several activists expressed the need to be cautious

while collaborating with organizations in the Global North in the future.⁶³

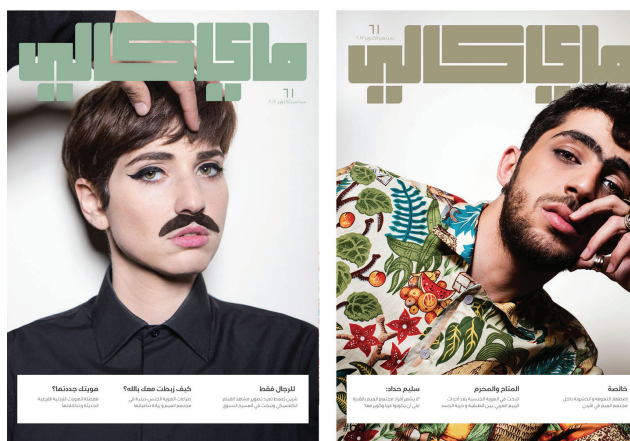
3. Key areas of progress

Despite working in a challenging context with considerable security risks, Jordanian activists have continued to survive, work, and build community. The LGBTQ community has been able to make considerable progress in the following areas:

(a) Online publications

In 2007, Khalid Abdel-Hadi founded Jordan's first LGBTQ magazine, *My.Kali*, as a form of self-expression. The magazine was initially published in English, as the founder believed English-speaking audiences within the region would be more receptive to the content.⁶⁴ Abdel-Hadi explained the motivation behind *My.Kali*,

“There were limited resources in the region which dealt with gender and sexuality,” he said. “I simply wanted to write and blog, but I was rejected by local and regional publications.”⁶⁵



57 Letter from Minister of Interior, Ghaleb Alzu'bi, reference to the Prime Minister's letter ref. no. (51/12/4/A/31430), July 24, 2017, available at: https://www.hrw.org/sites/default/files/supporting_resources/letter_from_ministry_of_interior.pdf

58 Ahmed El-Sharif, "Addressing the Question of Homophobia in Jordanian Public Discourse". *International Journal of Applied Linguistics and English Literature*, 6.1 (2017) 47.

59 Khalid Abdel-Hadi, "Digital threats and opportunities for LGBT activists in Jordan", November 1, 2016, available at: <https://drive.google.com/file/d/0B-C8GvtQEpB3UTdHc0ZzUzR2M0FTTExFbVNLQkxkQVBDMTc0/view>, 5.

60 Letter from Minister of Interior, Ghaleb Alzu'bi, reference to the Prime Minister's letter ref. no. (51/12/4/A/31430), 24 July 2017, available at: https://www.hrw.org/sites/default/files/supporting_resources/letter_from_ministry_of_interior.pdf; Letter from Minister of Justice, Dr. Awad Abu Jarad Al-Mashagbeh, July 16, 2017, available at: https://www.hrw.org/sites/default/files/supporting_resources/letter_from_ministry_of_justice.pdf

61 OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 27, 2017

62 OutRight and AFE Interview with activist [name withheld], April 18, 2018

63 OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 27, 2017; OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 30, 2017

64 OutRight and AFE Skype interview with Khalid Abdel-Hadi, November 20, 2017

65 Ibid

Early editions of the magazine addressed light themes, such as fashion and dating; however, Abdel-Hadi soon became increasingly conscious of the influence the magazine held. As he explained, this led to a gradual shift in the magazine's content:

We received emails of support from LGBTQ people, many of whom were facing serious challenges. We realized we had responsibility and the magazine could be used as a tool. Our response was to start addressing issues such as sexual health and concepts around gender and sexuality.⁶⁶

In 2016, *My.Kali* launched an Arabic language edition. The magazine's Arabic language editor explained that this significant step was aimed at reaching a broader public in the Arab world, rather than just the region's "English-speaking elite."⁶⁷ The first Arabic edition addressed contentious subjects and included an interview with a gay Jordanian imam and an article discussing the sexual orientation of iconic Egyptian singer Umm Kulthum.⁶⁸

Since its inception, the magazine has faced considerable opposition. In 2007, an Islamist newspaper wrote an article about the magazine entitled, "Revolution of the fags in Jordan."⁶⁹ The article was republished by multiple news outlets, and Abdel-Hadi was publicly outed after a website published a photo of him without consent. In 2016, three Jordanian Internet Service Providers blocked the magazine's website.⁷⁰ This action followed an interview Abdel-Hadi gave with independent Jordanian news outlet *Raseef 22* with the headline titled, "How do homosexuals live in Jordan?"⁷¹ Since being blocked, the magazine has been hosted through the Qurium Media Foundation, which also maintains a copy of the website.⁷² The magazine also shares articles and posts through its Facebook and Twitter accounts. According

to the magazine's Arabic language editor, readership to the magazine has grown despite the website being blocked.⁷³

In 2017, *My.Kali* faced another attack when parliamentarian Tahboub called on the Jordanian Media Commission to launch an inquiry into whether the magazine had registered and obtained the license required under the Press and Publications Law.⁷⁴ In her complaint to the Media Commission, Tahboub used the term "shawath" ("perverts" or "deviants") to refer to *My.Kali*.⁷⁵ Many media outlets and social media users supported Tahboub's campaign. On social media, the magazine received some support, however threats were also made against Abdel-Hadi.⁷⁶ While the magazine was not registered and had already been blocked online, media outlets misreported the case, attributing the existing circumstances as outcomes of the Tahboub-led campaign.

My.Kali responded by publishing an open letter to Tahboub, which took a strong stance in support of LGBTQ rights:

As we've seen before, public demonization of the LGBTQ+ community will undermine public health and safety, encouraging physical violence against a vulnerable group of Jordanians. As we all aspire for a Jordan that is safe for all—a country governed by the rule of law, justice, and pluralism—we believe that we must begin to live and let live, thrive and let thrive, accept and be accepted.⁷⁷

The open letter received support from some Jordanian social media users, who suggested Tahboub should prioritize other national issues rather than target LGBTQ people. Abdel-Hadi explained that engagement with Tahboub was a significant step forward:

66 Ibid

67 OutRight and AFE interview with *My.Kali*'s Arabic language editor [name withheld], Amman, October 27, 2017

68 Ibid

69 OutRight and AFE Skype interview with Khalid Abdel-Hadi, November 20, 2017

70 Qurium - The Media Foundation, "Internet Blocking in Jordan", available at: <https://www.qurium.org/alerts/jordan/internet-blocking-in-jordan/>

71 Ibid

72 Ibid

73 OutRight and AFE interview with *My.Kali*'s Arabic editor [name withheld], Amman, October 27, 2017

74 The New Arab "Jordan MP describes LGBTQ+ magazine as 'deviant and perverted'", August 2, 2017, available at: <https://www.alaraby.co.uk/english/blog/2017/8/2/jordan-mp-describes-lgbtq-magazine-as-deviant-and-perverted>

75 Ibid

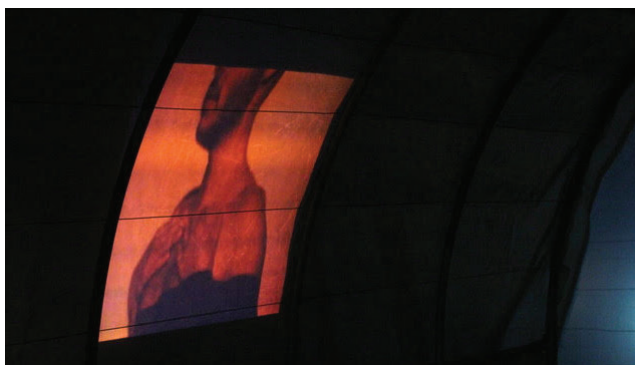
76 OutRight and AFE Skype interview with Khalid Abdel-Hadi, November 20, 2017

77 *My.Kali Magazine*, "Open Letter to Jordanian MP Dima Tahboub", August 2, 2017, available at: <https://medium.com/my-kali-magazine/open-letter-to-jordanian-mp-dima-tahboub-ec586b338b4>

Ten years ago, Jordan did not have this kind of dialogue or discussion regarding LGBT issues. Now you're talking about a Member of Parliament who represents the Brotherhood actually trying to take action against our platform...[t]hat on its own is an acknowledgement.⁷⁸

Despite a series of obstacles, *My.Kali* is currently planning for the publication of its 10th anniversary edition. The magazine's Arabic language editor explained the significance of *My.Kali* resisting pressure to shut down.

“The continuation of *My.Kali* till now is something to be proud of,” he said. “Most LGBTQ magazines in the region have disappeared—which is one of the reasons we need to keep going.”⁷⁹



A Sensitive Swing - Video Installation, 2016 by Reema Du Sam



A Desire for Men - Photographic Series by Reema Du Sam

(b) Activism and the arts

An activist who organizes private theatre performances and storytelling events with queer themes explained why art has been an effective form of activism and resistance in a Jordanian context:

“The theatre and arts allow us to convey messages without being too vocal in the eyes of the government,” she said. “People are also more open to learning about the experiences of LGBTQ people when we use art.”⁸⁰

Her performances and storytelling have included plots around coming out to family and same-sex love. She emphasizes that her work is particularly significant as visibility around LBQ women in Jordan is limited.

“It is important for both queer Jordanian women and also the broader community,” she explained. “They should know we exist.”⁸¹

Another queer artist, known as *Reema du Sam* who has exhibited photography, film, and art installations in Jordan with LGBTQ themes, explained the significance of art in activism:

Art is consumed everyday—it is locally owned and not a Western import. My work does not have to be labeled LGBTQ artwork—it can be interpreted in many ways. But it will also speak to LGBTQ people in a unique way. We can also reach out to the older generation or those who run the country.⁸²

Reema du Sam noted that often LGBTQ themes are implied rather than directly referenced, given the Jordanian context. For example, the

⁷⁸ Olivia Cuthbert “Jordan activists targeted after MP says gay people unwelcome”, *Middle East Eye*, August 11, 2017, available at: <http://www.middleeasteye.net/news/debate-renewed-around-lgbt-rights-jordan-mp-says-homosexuality-unwelcome-2128400833>

⁷⁹ OutRight and AFE interview with *My.Kali*'s Arabic editor [name withheld], Amman, October 27, 2017

⁸⁰ OutRight and AFE interview with LGBTQ activist [name withheld], April 18, 2018

⁸¹ Ibid

⁸² OutRight and AFE interview with *Reema Du Sam*, [location withheld], October 1, 2017

artist, who uses they/them pronouns, has used swings and shadows in an installation to symbolize their own gender fluidity. These symbols were enough to lead to discussions within the local community around sexual orientation, gender identity, and gender expression. As a result, there has been a reported growth in art dealing with LGBTQ themes since their exhibits began in Jordan.

Reema du Sam also exhibits their work overseas, which raises awareness of Jordanian LGBTQ experiences internationally. While not entirely open to family and social circles about their art's focus on gender and sexuality, LGBTQ themes feature strongly in their overseas exhibits:

When I was contacted to exhibit my art overseas, the nature of the exhibit meant it could be easily labeled as LGBTQ art. This [label] would raise questions at home and [impact my] work. But at the same time, I wanted people close to me to know that I had been contacted to exhibit overseas—this was an achievement. So I came up with an idea of creating two exhibits—one real, and one a cover up—both which were open to the public, who are given a background to my situation. I posted photos from the cover up exhibition on social media, so people in Jordan would not suspect. I have continued conducting dual exhibitions since. I am creating an impact through these exhibitions, while protecting my identity.⁸³

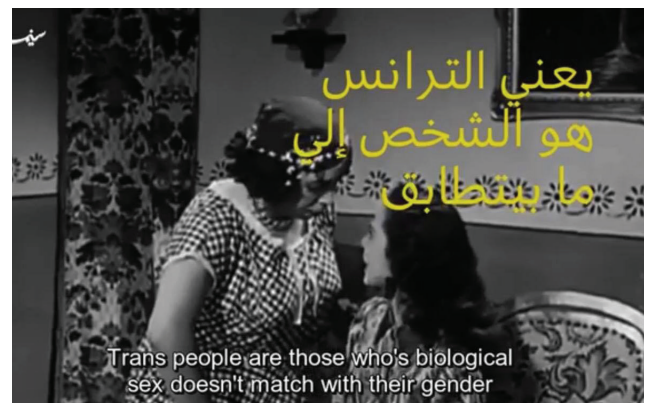
In 2016, a thematic support group that goes by the name of 'A3deh' was established as well. A3deh works on creating a safe space for the LGBT+ community and supports community members to network and share personal experiences. Since 2017,

A regional arts-based initiative in Jordan, called Cinamji (an old Arabic term for cinema lover), organizes monthly screenings of queer movies followed by discussions of the themes. Cinamji has collaborated with 12 organizations that provide venues for screenings, as well as

with queer filmmakers from across the region, who send the initiative their films. Cinamji also seeks to provide a platform for activists and service providers to connect with the LGBTQ community. The founder of Cinamji, Musa Al-Shadeedi, stressed the importance of screening queer Arabic language films.

“Most people watch LGBTQ representations in Hollywood films,” they said. “However, it gives you the feeling that if you want glamour and happiness, you need to be white. We want to challenge that.”⁸⁴

Al-Shadeedi also expressed that initiative aims to produce “queer Arab cinematic knowledge” through brochures and short videos, based on discussion notes following film screenings.⁸⁵ As an example, Cinamji produced an online video, “What is trans?” to dispel myths surrounding transgender people based on old Arabic-language cinema clips.⁸⁶



Cinamji, “What is Trans?”

(c) Services provision for LGBTQ people

Healthcare

LGBTQ Jordanians face structural barriers to healthcare access due to discrimination and stigma. Activists report that medical professionals have been known to ask invasive questions and show little respect for privacy, potentially

⁸³ Ibid

⁸⁴ OutRight and AFE interview with Musa Al-Shadeedi, Amman, October 27, 2017

⁸⁵ Ibid

⁸⁶ Cinamji, “What is Trans?”, November 17, 2017, available at: <https://www.youtube.com/watch?v=UyJU6t-mvM&t=17s>

jeopardizing the safety of clients in a hostile social and legal environment. Mohammad Nasralla working with the healthcare organization Forearms for Change Center to Enable Community spoke about the difficulty of interacting with doctors and service providers.

“Seeking medical care can be traumatizing for LGBTQ people,” he said. “Many professionals are unable get rid of their bias and simply perform their jobs.”⁸⁷

As a result, members of the LGBTQ community are often reluctant to seek medical services, including psychological testing and care as well as testing and treatment for blood-borne viruses and other sexually transmitted infections.

In response, a group of 20 volunteers have worked since 2016 to raise awareness of LGBTQ health issues and put the community in touch with LGBTQ-friendly medical professionals. The group conducts outreach in areas frequented by the LGBTQ community and on dating applications. While the initiative is relatively new, one volunteer who was interviewed reported that there has been an increase in awareness of sexual health among many in the community, as well as an openness to getting tested.⁸⁸

Refugees

Refugees constitute approximately one third of Jordan’s population.⁸⁹ LGBTQ refugees face unique challenges in accessing employment, healthcare, and housing, as well as stigma from both refugee and host communities, which often results in security risks.⁹⁰ Rainbow Street is an organization that seeks to provide immediate and long-term solutions to both LGBTQ Jordanians and refugees. Amer Halasa, who heads Rainbow Street’s casework team,

explained that a team of 11 caseworkers based around the country identifies vulnerabilities and seeks to provide assistance through cash stipends, assistance obtaining accommodations, and referrals to counseling and health services.⁹¹ In specific cases of refugees with high vulnerabilities, the organization works to provide durable solutions outside of Jordan, including individual sponsorship programs.

(d) Consciousness-building and language training

Activists have been working on an informal basis to provide training to build consensus around the politics of language, both within the LGBTQ community and to government officials, news outlets, and humanitarian service providers.⁹² An activist who has been conducting training sessions since 2010 elaborated:

Over one thousand people in Jordan have received our training so far. We started our work within the community—and then branched out. A key success has been ensuring that the correct terminology is used to address gay and lesbian people—“mithly” and “mithiliya” News outlets, particularly the new media have gotten better at using the correct language. But of course, there is a lot more to be done.⁹³

One activist suggested that the language training has reached government spheres.⁹⁴ In 2017, the Minister of Interior (in an overall negative statement) used the wording “homosexuals—referred to as the LGBT community”.⁹⁵ The activist questioned the implications of this statement.

“The statement was negative—it said we are not accepted,” the activist explained. “But it was also historic as it was the first time that a high-level official in the region had used the correct term LGBT. I wonder if you can count that as progress?”⁹⁶

⁸⁷ OutRight and AFE interview with Mohammad Nasralla, Amman, October 29, 2017

⁸⁸ Ibid

⁸⁹ The World Bank, “Refugee population by country or territory of asylum”, available at: <https://data.worldbank.org/indicator/SM.POP.PREFG>

⁹⁰ OutRight and AFE interview with Amer Halasa, Rainbow Street, Amman, October 29, 2017

⁹¹ Ibid

⁹² OutRight and AFE telephone interview with LGBTQ activist [name withheld], May 9, 2018.

⁹³ OutRight and AFE telephone interview with LGBTQ activist [name withheld], May 9, 2018.

⁹⁴ OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 27, 2017.

⁹⁵ Letter from Minister of Justice, Dr. Awad Abu Jarad Al-Mashagbeh, July 16, 2017, available at: https://www.hrw.org/sites/default/files/supporting_resources/letter_from_ministry_of_justice.pdf

⁹⁶ OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 27, 2017

4. Ongoing challenges and opportunities

Despite a degree of progress in LGBTQ activism and service provision in Jordan, activists identify numerous challenges and opportunities that will shape their future work.

(a) Collaboration between LGBTQ activists and initiatives

In the absence of a Jordanian LGBTQ rights organization, and with the presence of security risks associated with activism, collaboration between activists can be infrequent. Given that LGBTQ initiatives in Jordan have diverse concentrations, ranging from art to healthcare, activists have suggested that building partnerships would be particularly beneficial.⁹⁷ One activist mentioned that collaboration is key to gaining a more thorough understanding of the targeting of LGBTQ people under the law, given that information is often obtained through personal networks.⁹⁸ Further, they said that exchanging strategies for promoting online and physical security would strengthen the movement.⁹⁹

(b) Creating spaces for LBTQ women

A queer activist woman identified the need for greater visibility of LBTQ women both within the movement and more broadly. She recognized the implications of cisgender men leading the LGBTQ movement. “Men are directing the movement,” she said, “and even if they mean well, I don’t always feel like I belong in those spaces.”¹⁰⁰ She also explained that it is challenging for LBTQ women to collaborate with local feminist organizations, as has been the case in other parts of the region. “The feminist space is [generally] simply not inclusive of queer and transwomen,” she said.¹⁰¹

While there once was an initiative known as “community conversations,” a support group led by a queer woman, their meetings have now ceased.¹⁰² Until such an initiative is revived, the activist interviewed plans to increase the visibility of LBTQ women through art, specifically theatre.¹⁰³

(c) Engagement with UN mechanisms

Jordanian LGBTQ activists have yet to actively engage in advocacy through UN mechanisms. Activists have questioned whether this has been a conscious decision or a lack of opportunities and capacity.¹⁰⁴ Recent developments suggest that there is further scope for engagement at the UN headquarters system level. For example, in August 2015, Jordan participated in the UN Security Council’s *Arria-formula meeting on vulnerable groups in conflict: The Islamic State of Iraq and the Levant’s (ISIL) targeting of LGBTI individuals*. The meeting represented the first discussion focused exclusively on LGBTQ issues at the UN’s primary organ dedicated to peace and security. Significantly, the Jordanian delegate made statement where they acknowledged the actions of ISIL’s impact on minorities, whether religious or otherwise.¹⁰⁵

During its past two Universal Periodic Review¹⁰⁶ sessions in 2009 and 2013, Jordan did not receive any recommendations that specifically referred to sexual orientation, gender identity, or gender expression. In 2013, Jordan accepted gender-specific recommendations including those relating to strengthening legislation around forced marriage, reducing violence against women, and measures aimed at eradicating honor crimes.¹⁰⁷ However, Jordan also rejected recommendations calling for the inclusion of gender as a ground for discrimination in legislation and the removal of extenuating circumstances as a factor to be considered in prosecutions of honor crimes.¹⁰⁸

97 OutRight and AFE interview with LGBTQ activist [name withheld], October 27, 2017; OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 30, 2017.

98 OutRight and AFE interview with LGBTQ activist [name withheld], October 27, 2017.

99 Ibid

100 OutRight and AFE Interview with activist [name withheld], April 18, 2018

101 Ibid

102 Ibid

103 Ibid

104 OutRight and AFE Skype interview with Jordanian activist [name withheld], July 22, 2018

105 Jessica Stern, Notes from Arria-formula meeting, August 24, 2015 [on file]

106 Universal Periodic Review is a process before the UN Human Rights Council, where the human rights records of all UN member states are reviewed. (see United Nations Human Rights Council, “Universal Periodic Review”, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>)

107 ILGA and ARC International, *Outcomes of the 17th UPR session Final adoption Country Reports UN Human Rights Council - 25th session*, February 2016, available at: <https://ilga.org/wp-content/uploads/2016/02/Outcomes-of-the-17th-UPR-session-Final-adoption-Country-Reports-UN-Human-Rights-Council-25th-session.pdf>, 15.

108 Ibid

In light of recent statements from the Justice and Interior Ministers stating that they would not recognize the rights of LGBTQ people, activists are skeptical of whether Jordan would accept any prospective recommendations relating to sexual orientation and gender identity.¹⁰⁹ However, several recognized UN mechanisms as an avenue for communicating with the government.¹¹⁰

¹⁰⁹ OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 27, 2017; OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 29, 2017

¹¹⁰ OutRight and AFE interview with LGBTQ activist [name withheld], Amman, October 29, 2017.

Lebanon

- 1942:** Lebanese Penal Code adopted, including Article 534, which criminalizes sexual acts which “contradict the laws of nature”
- 2002-2004** ● Formation of Helem, the first LGBTQ organization in an Arabic-speaking state in the region
- 2005** ● IDAHOBIT commemorated for the first time in Lebanon
- 2007** ● Funding of Meem, a Queer feminist organization
- 2008** ● The first LGBTQ-led protest against police violence
- 2009** ● Batroun court decision where the judge refused to apply Article 534, stating same-sex sexual relations could not be considered against the “rules of nature”
- 2012** ● The Lebanese Order of Physicians and Minister of Justice issue circulars calling for an end to forced anal testing
- 2013** ● The Lebanese Psychological Association (LPA) and Lebanese Psychiatric Society (LPS) issue statements recognizing that homosexuality is not a mental illness and attempts to change one’s sexual orientation is futile and potentially harmful
- 2014** ● Jdeide court decision where the judge questioned the ability to define “unnatural” under Article 534, and recognized the defendant’s gender identity
- 2016** ● el-Metn court decision where the judge refused to apply Article 534, citing international human rights conventions and the International Statistical Classification of Diseases and Related Health Problems
- 2017** ● el-Metn court decision where the judge refused to apply Article 534, adopting a rights-based approach and incorporating arguments related to freedom of expression
- 2018** ● Mount Lebanon Court of Criminal Appeal upheld 2017 el-Metn court acquittal

1. The legal and social context

(a) The law and its application

Article 534 of the Lebanese Penal Code criminalizes sexual acts which are “contrary to nature” with a punishment of up to one-year imprisonment.¹¹¹ The term “contradict the laws of nature” is interpreted broadly to apply to LGBTQ people.¹¹² Despite the wording of the Article, activists have noted that the law has been applied to people on the basis of sexual orientation, without evidence of engaging in sexual acts.¹¹³ Youmna Makhoulf, a lawyer working with Legal Agenda who represents defendants charged under Article 534, noted that there is yet-to-be a comprehensive study on the origins of the law.¹¹⁴ Despite progressive judgments in relation to Article 534 being issued in Lebanese courts [see section 3(c)], statistics compiled by Helem, Lebanon’s first LGBTQ organization, suggest that the number of documented arrests under the article have gradually increased over the years:¹¹⁵

Year	Number of Arrests
2012	43
2013	57
2014	63
2015	76
2016	76

Stronger community networks and improved documentation methods, including the ability to identify patterns in arrests, are contributing factors to the increase in documented arrests.¹¹⁶

Genwa Samhat, the Executive Director of Helem, stated that transwomen, LGBTQ refugees and GBQ men belonging to a low socio-economic status are particularly susceptible to violence and stigma.¹¹⁷ Activists suggested that the targeting of these groups is driven by a combination of stigma and the belief from

¹¹¹ Wahid Al Farchichi and Nizar Saghiyeh, “Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia”, available at: <http://daleel-madani.org/sites/default/files/HelemStudy.pdf>, 10

¹¹² Ibid, 10.

¹¹³ One activist pointed to a 2016 court decision by Judge Helena Iskander (OutRight and AFE email correspondence with LGBTQ activist [name withheld], June 17, 2018)

¹¹⁴ OutRight and AFE interview with Youmna Makhoulf, Legal Agenda, Beirut, October 4, 2017.

¹¹⁵ Helem, “Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon A Shadow Report submitted to the Human Rights Committee”, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBN/INT_CCPR_ICO_LBN_27152_E.pdf, 3.

¹¹⁶ OutRight and AFE interview with LGBTQ activist [name and location withheld], March 22, 2018; OutRight and AFE Skype Interview with LGBTQ activist [name withheld], April 11, 2018.

¹¹⁷ OutRight and AFE WhatsApp interview with Genwa Samhat, Helem, April 4, 2018.

authorities that they will not be able to access redress.¹¹⁸

Physical and psychological violence have also been reported in detention facilities. Key cases of violence documented by LGBTQ groups include arrests following a 2013 police raid on a nightclub in Dekwaneh¹¹⁹ and a 2014 raid on a Beirut hammam¹²⁰ in which 28 men were arrested. In both raids, Syrian refugees were amongst those arrested and subject to violence. An independent activist noted how broader political and security conditions can influence the interaction between Syrian LGBTQ refugees and the Lebanese police:

The Syrian/Lebanese political history of shared borders manifests in the everyday lives of queer Syrian bodies in ways that render them more disposable and othered via an intersection of nationalism and masculinity. There's a very complex political, economic, military, and social history between Lebanon and Syria, where the tensions of those histories manifest the most when a Syrian refugee is detained, especially if the refugee is detained under article 534. These dynamics have become inscribed on the bodies of LGBTQ refugees through torture in police stations and other detention centers.¹²¹

Reported cases of Article 534 being applied to LBQ women have been rare. One activist suggested potential reasons for this. "Women do not have the same mobility in Lebanon—and many of the arrests have been in public places," the activist said. "Also, the sexuality of queer women is not acknowledged by the law—legally there is nothing which says we can have sex without a penis.¹²² The activist noted that LBQ women continue to risk being targeted by debauchery and public morality laws.¹²³

While the language in Article 534 would suggest that it is only applied in relation to sexual acts, it is also used to target people based on their perceived sexual orientation and/or gender identity. Makhoul notes that charges have been initiated on the basis of gender non-conforming appearances in public spaces and photos and chat histories obtained from mobile phones.¹²⁴ The fact that the Lebanese Code of Criminal Procedure does not guarantee access to lawyers during the investigation phase of proceedings often gives police a broad mandate in collecting evidence.¹²⁵

Traditionally, forced anal examinations were used as evidence in Article 534 proceedings. The practice, which has been widely discredited by medical professionals, amounts to torture and is scientifically unfounded. It involves inserting fingers or sometimes an object into the accused's anus in an attempt to establish if they have engaged in sexual intercourse. However, in light of a sustained advocacy campaign from Lebanese civil society and medical professionals and associations, the practice is no longer common [see section 3(a)].

In addition to Article 534, other morality laws and laws criminalizing sex work have been used to target LGBTQ people. These include Article 523: practicing and facilitating prostitution; Article 526: luring the public into acts of depravity; Article 527: relying on the prostitution of others; Articles 531 and 532: infringing public morals and ethics; and Article 533: trading indecent material.¹²⁶ Makhoul explained that transwomen are particularly susceptible to being targeted by laws that criminalize sex work:

Generally, the laws other than 534 are not applied unless they relate to the circumstances of the case. However, [law enforcement officials] associate transwomen with sex work. We have seen cases where transwomen are arrested off

118 OutRight and AFE interview with LGBTQ activist [name and location withheld], March 22, 2018; OutRight and AFE Skype Interview with LGBTQ activist [name withheld], April 11, 2018.

119 Sabiha Allouche, "(Dis)-Intersecting Intersectionality in the Time of Queer Syrian Refugee-ness in Lebanon", Kohl: a Journal for Body and Gender Research Vol. 3, No. 1 (Summer 2017), available at: <http://eprints.soas.ac.uk/24731/1/Allouche-Dis-Intersecting-Intersectionality.pdf>

120 Sarah Wansa, "Torture at Every Stage: The Unofficial Narrative of the Hammam al-Agha Raid", November 12, 2014, available at: <http://legal-agenda.com/en/article.php?id=3043>

121 OutRight and AFE interview with LGBTQ activist [name and location withheld], March 22, 2018.

122 Ibid.

123 Ibid.

124 OutRight and AFE interview with Youmna Makhoul, Legal Agenda, Beirut, October 4, 2017

125 See Article 47, Lebanese Criminal Code of Procedure, (Special Tribunal for Lebanon Draft Official Translation from Arabic, available at: <https://www.stl-tsl.org/en/documents/relevant-law-and-case-law/applicable-lebanese-law/340-lebanese-code-of-criminal-procedure>)

126 Ghida Frangieh, "The Hammam al-Agha Raid: Collective Prosecution in Violation of Individual Rights", *Legal Agenda*, available at: <http://legal-agenda.com/en/article.php?id=3029>

reluctant to seek redress in light of Article 534:

There are cases where they meet someone from an application in a private space, are drugged, and then wake up on the sidewalk. We hear of many rapes. Legally there is little you can do—the law gives the perpetrator the upper hand—they can always say this person is gay.¹³⁵

LGBTQ refugees living in Lebanon face multiple and intersecting forms of discrimination and violence from the public, government agents, and within the broader LGBTQ community. Charbel Maydaa, the Director of the MENA Organization for Services, Advocacy, Integration and Capacity building (MOSAIC), an organization working to improve the health and wellness of marginalized groups, explained the negative perceptions within the community.

“Because LGBTQ refugees are eligible for resettlement to third countries, there is a view among many Lebanese LGBTQ people that they are in a position of advantage,” Maydaa said. “This leads to divisions.”¹³⁶

LGBTQ refugees also face risks when they seek assistance from police. An independent activist referred to one case that was indicative of such risks:

We documented a case where a Syrian refugee was beaten up and had his wallet stolen, while his attacker called him a ‘faggot.’ He went to the police to report the crime, but was detained for twenty days because he was not carrying documentation [as his wallet was stolen] ... It took a long time to obtain his release—we could not just allocate him a Lebanese lawyer. As he was Syrian, the United Nations High Commissioner for Refugees (UNHCR) had to intervene.¹³⁷

In terms of social attitudes, the 2015 AFE study shows that the Lebanese public continued to view “homosexual and transgender identities as a medical or psychological issue.”¹³⁸ Sixty-four percent of those surveyed in the study felt that homosexuals should not be accepted into society.¹³⁹

2. The growth of the Lebanese LGBTQ activism

The origins of LGBTQ activism in Lebanon date back to the mid-1990s through the creation of an online community. In 1998, after building a degree of trust, members of the community physically met and decided to form Club Free, a social group which in its original inception was not centered around activism. In 2002, realizing that human rights organizations were not advocating for LGBTQ rights, members of Club Free decided to form an advocacy-based organization. The subsequent organization, named Helem (“dream”), was the first LGBTQ rights organization in an Arabic-speaking state established with the aim of challenging Article 534. Helem sought formal registration in 2004, however the Ministry of Interior has yet to approve or reject Helem’s application as of the writing of this report.

Helem’s work expanded post-2005, as restrictions on personal freedoms eased following the end of the Syrian occupation of Lebanon. During the 2006 war with Israel, Helem opened its space to the broader community and earned respect from other civil society organizations. Tarek Zeidan, an activist at Helem, emphasized that there is a need to archive early years of activism, including the relationship between resistance to conflict and LGBTQ activism:

If you look back—LGBTQ activism did not begin in 2004 with the establishment of Helem, as queer organizing had been going on for years before that. The first time a rainbow flag was raised in the Arab world was actually in Beirut in 2003,

¹³⁵ Ibid.

¹³⁶ OutRight and AFE Skype Interview with Charbel Maydaa, MOSAIC, Beirut, September 30, 2017.

¹³⁷ OutRight and AFE interview with LGBTQ activist [name and location withheld], March 22, 2018.

¹³⁸ Nour Nasr & Tarek Zeidan, “As long as they stay away” - Exploring Lebanese Attitudes Towards Sexualities and Gender Identities”, AFE, available at: <http://afemena.org/wp-content/uploads/2015/12/Report-high-resolution.pdf>, 6.

¹³⁹ Ibid, 15.

during popular protests against the Iraq War. But instances of queer organizing and resistance were present as far back as the Lebanese civil war which began in 1975. Our history is long and rich but unfortunately under-researched and thus obscured.¹⁴⁰

Since its inception, Helem has been advocating for the decriminalization of same-sex relations. The organization remains membership-based and runs a community center and provides key services to members of the LGBTQ community [see section 3(e)].

In recognition of the need for a dedicated space for LGBTQ women, Meem, an underground queer feminist organization, was founded in 2007. Meem operated a safe space and provided services to LGBTQ women, including legal, medical, and psychological support. Key successes of Meem include the publishing of *Bareed Mista3jil*, a collection of stories documenting the experiences of LGBTQ women in Lebanon, and *Bekhsoos*, a monthly magazine. Meem ceased operating in 2014; however, former members have subsequently branched out to create new spaces and initiatives [see section 3(d)].

Historically, Lebanese LGBTQ activists have mobilized around key crackdowns by police. These include the 2012 raid of Cinema Plaza, where 36 men were detained and subject to forced anal examinations¹⁴¹ and the 2014 raid of Hammam Al-Agha, a bathhouse in Beirut where 28 men were arrested.¹⁴² The campaigns raised awareness about the application of the law to target LGBTQ people and the use of forced anal tests. Significantly, in 2012 the Minister of Justice called on the Public Prosecutor to issue a directive ending the examinations completely¹⁴³ [See section 3(a)].

Today, in addition to Helem, there are multiple Lebanese organizations that provide services to and advocate for LGBTQ people. The organizations have diverse briefs and focus areas including legal representation, sexual and reproductive health, and services for marginalized groups including LGBTQ refugees. Examples of organizations include the Lebanese Medical Association for Sexual Health (LebMASH), Legal Agenda, Marsa Sexual Health Centre, and MOSAIC. Many of these organizations are currently in the process of officially forming an LGBTQ human rights coalition after years of working together informally [see section 4(c)]. Notably, the majority of organizations have been able to obtain registration with the Ministry of Interior, with the exception of Helem.¹⁴⁴

Helem has successfully hosted a semi-public IDAHOTB event for LGBTQ people and allies since 2005. In 2017, Beirut's LGBTQ Pride was held for the first time, which coincided with IDAHOTB and involved a range of events including conferences, workshops, story-telling events and parties. In 2017, despite opposition and threats from groups including the League of Muslim Scholars, Beirut Pride events were largely unaffected.¹⁴⁵ However, that year for the first time, Helem and the co-organizing NGOs including the Legal Agenda, Marsa, MOSAIC and LebMASH were forced to move the event to safe place, not open to the public and the statements and talks prepared for that day were live streamed from a secure location.¹⁴⁶

In 2018, the co-organizer of Beirut Pride Hadi Damien was detained during one of Pride's events and released on the condition that he cancel all events or face prosecution for the "promotion of debauchery and breach of morality."¹⁴⁷ While many of the planned events were cancelled, other events and campaigns continued.¹⁴⁸ It has been suggested that the cancellation of Pride events has not impacted

¹⁴⁰ OutRight and AFE WhatsApp interview with Tarek Zeidan, January 28, 2018.

¹⁴¹ Damien Cave, "An Image of Tolerance Still Manages to Flicker in Old Movie Theaters", *The New York Times*, August 27, 2012, available at: <https://www.nytimes.com/2012/08/28/world/middleeast/old-beirut-cinemas-recall-more-tolerant-days.html>

¹⁴² Ghida Frangieh, "The Hammam al-Agha Raid: Collective Prosecution in Violation of Individual Rights", *Legal Agenda*, September 18, 2014, available at: <http://legal-agenda.com/en/article.php?id=3029>

¹⁴³ Human Rights Watch, "Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions", July 12, 2016, available at: <https://www.hrw.org/report/2016/07/12/dignity-debased/forced-anal-examinations-homosexuality-prosecutions>

¹⁴⁴ OutRight and AFE WhatsApp interview with Tarek Zeidan, January 28, 2018.

¹⁴⁵ OutRight and AFE email correspondence with LGBTQ activist [name withheld], June 17, 2018

¹⁴⁶ Ibid.

¹⁴⁷ AFE, "The fight for freedom persists", May 18, 2018, available at: <http://afemena.org/2018/05/16/afe-press-release-the-fight-for-freedom-persists/>

¹⁴⁸ AFE, "30 IDAHOTB 2018 activities from the MENA region", May 20, 2018, available at: <http://afemena.org/2018/05/20/29-idahotb-2018-activities-from-the-mena-region/>

the broader work of LGBTQ organizations in Lebanon, which extend beyond the week.¹⁴⁹ Helem and co-organizing groups were able to successfully hold an IDAHOTB event in 2018.¹⁵⁰

3. Key areas of progress

(a) Forced anal examinations

Forced anal examinations were frequently used as evidence in Article 534 proceedings. However, as of today, the use of the practice is increasingly rare.¹⁵¹ This shift can largely be credited to sustained advocacy from civil society which started with a 2012 campaign known as “Tests of Shame.” The campaign gained momentum following a raid by Internal Security Forces (ISF) of Cinema Plaza where 36 men were detained and subject to forced anal examinations.

Joseph Aoun, the Director of Helem’s Community Centre, explained the significance of the campaign:

Before this campaign, the public did not know the extent to which the tests were applied. Following the Cinema Plaza raid, the public were shocked. We targeted our campaigns at the police, the media, and medical associations. The Lebanese Broadcasting Cooperation even opened the news with the headline ‘the republic of shame’.¹⁵²

Support from the media and public and initiatives, including sit-ins outside the Ministry of Justice and the Lebanese Order of Physicians, led to the aforementioned circulars being issued by both the Order of Physicians and Minister of Justice calling for an end to the practice in 2012.

(b) Activism and health



Comic from Kharabish Nasawiya – Feminist doodles

Translation:

Her: Did you hear the good news: The World Health Organization (WHO) moves to end classifying trans identities as mental illness.

Her answer: Somebody is late to the party! wooo

LebMASH

Omar Fattal, the co-founder of the Lebanese Medical Association for Sexual Health (LebMASH), which focuses specifically on LGBTQ people and other marginalized communities, explained the significance of healthcare professionals engaging in LGBTQ advocacy:

There is a widespread belief that there is a relationship between LGBTQ people and medical conditions, including mental illness. For example, when you come out, the initial reaction people have is ‘see a psychiatrist.’ We believe such views are the main barrier to LGBTQ rights in Lebanon...and who better to debunk these misconceptions than healthcare professionals. We are able to speak the same language to convey messages to doctors and nurses.”¹⁵³

Similarly, Fattal described how framing arguments around health can be more convincing in comparison to those relating to human rights:

When you ask family members if they would want their son to marry a man–

¹⁴⁹ Nico Lang, “LGBTQ Events Will Go On in Lebanon Even After Cancellation of Beirut Pride Week”, *Into Magazine*, 17 May, 2018, available at: <https://intomore.com/impact/lgbtq-events-will-go-on-in-lebanon-even-after-cancellation-of-beirut-pride-week/c9c0507f987a4f9d>

¹⁵⁰ OutRight and AFE email correspondence with LGBTQ activist [name withheld], June 17, 2018

¹⁵¹ OutRight and AFE WhatsApp interview with Tarek Zeidan, January 28, 2018.

¹⁵² OutRight and AFE interview with Joseph Aoun, Helem, Beirut, October 3, 2017 (see link to news headline: LBCi- NEWS - , July 31, 2012, available at: <https://www.youtube.com/watch?v=iOqMhTfutjY&t=114s>)

¹⁵³ OutRight and AFE telephone interview with Omar Fattal, March 10, 2018.

they will probably say no. However, if you ask them if they would want their son to go to an emergency room, be ill-treated, or commit suicide due to pressure—they will also say no.¹⁵⁴

In 2013, LebMASH worked with the Lebanese Psychological Association (LPA) and Lebanese Psychiatric Society (LPS) to issue statements stating that homosexuality is not a mental illness and misguided attempts to change sexual orientation are futile and potentially harmful.¹⁵⁵ In 2015, the LPS issued an addendum to the statement, demanding the abolishment of Article 534. Omar Harfouch, the current President of LebMASH, stated that the organization's ability to present medical arguments and research to both LPA and LPS facilitated the statements.¹⁵⁶ Omar Fattal explained the significance of the statements.

“It is a local baseline,” he said. “Previously we would have to cite the position of the American Psychiatric and Psychological Associations. However, the statements are now in Arabic and it is no longer as easy for people to use the argument that we are referring to standards from the West.”¹⁵⁷

Following its launch, LebMASH has built upon its initial successes by organizing a video campaign “Shu El Sabab” (What is the Cause?) in 2016 to dispel medical myths surrounding homosexuality.¹⁵⁸ The organization has also launched a National LGBT Health Week in Lebanon, the first of its kind in the region, which includes a medical conference and student workshops. Harfouch explained that the initiative is significant as it promotes academic

work on LGBTQ people, which can feed into activism.¹⁵⁹ Further, through engaging with students they are able to promote LGBTQ-friendly healthcare at an early stage.



LebMASH's 2016 video campaign, “Shu El Sabab”

Marsa

Since 2011, Marsa, a sexual health center based in Beirut, has been offering confidential healthcare without stigma and discrimination, including to the LGBTQ community. In addition to providing healthcare, Marsa facilitates comprehensive sexual health education in universities with the aim of reaching medical practitioners in the future. Sara Abou Zaki, Project Coordinator for Marsa's Insight initiative, explained the rationale behind the project.

“We did a situational analysis and found that even well-established universities had gaps in sexual health education,” Abou Zaki said. “As an example, no university delegated a part of a course to focus on transgender health.”¹⁶⁰

In response, Marsa designed a sexual health course that can be adopted as a whole or in segments by universities. Communication, specifically how to address LGBTQ people, is a key aspect of the course. Several private

¹⁵⁴ Ibid.

¹⁵⁵ Lebanese Psychiatric Society Statement, July 2013, available at: <https://www.lebmash.org/statement-lebanese-psychiatric-society/>; Eman El-Shenawi, “Are the Lebanese becoming more tolerant to homosexuality?”, *Al-Arabiya*, July 20, 2013, available at: <https://english.alarabiya.net/en/perspective/features/2013/07/20/Are-the-Lebanese-becoming-more-tolerant-to-homosexuality-.html>

¹⁵⁶ OutRight and AFE WhatsApp interview with Omar Harfouch, LebMASH, September 21, 2017.

¹⁵⁷ OutRight and AFE telephone interview with Omar Fattal, March 10, 2018.

¹⁵⁸ LebMASH, *Shu El Sabab*, January 11, 2016, available at: https://www.youtube.com/watch?v=O_WKO34EoVE

¹⁵⁹ OutRight and AFE WhatsApp interview with Omar Harfouch, LebMASH, September 21, 2017.

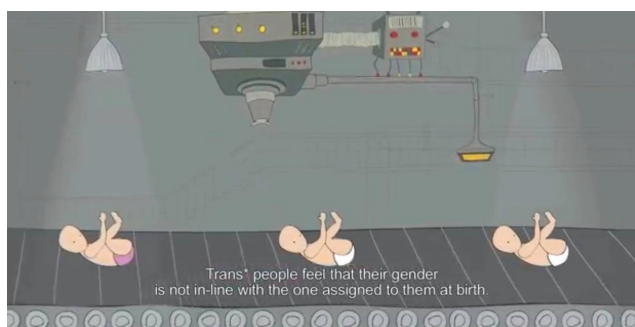
¹⁶⁰ OutRight and AFE interview with Sara Abou Zaki, Marsa, Beirut, October 4, 2017.

universities have already begun implementing the course.

Marsa has also launched several successful video campaigns relating to sexual health and misconceptions, including on women's health and sexuality and transgender health. An independent activist specifically expressed her appreciation for the fact that Marsa has tailored videos to women audiences, including on subjects that are not frequently discussed publicly such as menstruation.¹⁶¹ Diana Abou Abbas, the Executive Director of Marsa, explained the strategy behind the video on transgender health:¹⁶²

It is not easy to explain the concept of trans to a public that does not talk about sex and sexuality. We decided on animation as it would seem friendlier. Also, we used a voiceover—the same voice that is used at the airport or when you go to the bank—this is the most familiar voice in Lebanon. This is a small detail, but a great input from our production company.¹⁶³

Abou Abbas stated that the response from the broader public to the trans campaign as well as other video campaigns has been overwhelmingly positive.¹⁶⁴



Marsa's "Trans Meet World" video campaign

(c) Legal progress

Since 2009, there have been four progressive judgments issued by Lebanese lower courts which have acquitted defendants charged under Article 534. Additionally in 2018, one of the acquittals was upheld by the Court of Criminal Appeal in Mount Lebanon, which lawyers suggest is likely to influence subsequent decisions. Progress in the courts has come within the context of sustained advocacy from lawyers and LGBTQ organizations, including the creation of a model defense by Legal Agenda that documents legal arguments in cases under Article 534 and outreach by civil society to the judiciary.

The key rulings and their implications are documented below:

December 2009: Batroun court decision

Judge Mounir Sleiman refused to apply Article 534 against two men, stating same-sex sexual relations could not be considered as "unnatural" particularly in light of social change. He argued in his verdict that "the concept of the 'unnatural' is related to society's mindset, customs and its acceptability of new natural patterns which he is not familiar with or that are not acceptable yet."¹⁶⁵

Makhlouf, a lawyer working with Legal Agenda, suggested that the judge took a philosophical approach to the question of what could be considered "unnatural."¹⁶⁶ This is reflected in the wording of the ruling:

Whereas man is part of nature and one of its elements...it cannot be said that any practice of his or any behavior of his is against nature...therefore consensual same-sex relations are not 'unnatural', and therefore shouldn't be subjected to legal penalty.¹⁶⁷

¹⁶¹ OutRight and AFE email correspondence with LGBTQ activist [name withheld], June 17, 2018

¹⁶² Marsa Sexual Health, Trans Meet World, February 22, 2016, available at: <https://www.youtube.com/watch?v=iETepapE0og>

¹⁶³ OutRight and AFE interview with Diana Abou Abbas Marsa, Beirut, October 4, 2017.

¹⁶⁴ *ibid*

¹⁶⁵ Aimar Arriola, Francesca Bertolotti-Bailey, Grégory Castéra, and Sandra Terdjman, "A legal experiment on 'contra naturam' laws", *The Against Nature Journal*, available at: <http://www.council.art/inquiries/29/the-against-nature-journal/403/a-legal-experiment-on-contra-naturam-laws>

¹⁶⁶ OutRight and AFE interview with Youmna Makhlouf, Legal Agenda, Beirut, October 4, 2017.

¹⁶⁷ Georges Azzi, "Lebanon's LGBT community is still suffering abuses", *Henrich Boll Stiftung - Gunda Werner Institute*, September 26, 2014, available at: <https://www.gwi-boell.de/en/2014/09/26/lebanons-lgbt-community-still-suffering-abuses>

January 2014: Jdeide court decision

In the case of a transgender woman who was accused of engaging in “same-sex relations” with a man, Judge Naji al-Dahdah also questioned the ability to define what is “unnatural.”¹⁶⁸ Makhoulf noted that there was a clear link between this judgment and the Batroun decision.¹⁶⁹ However, the decision arguably went a step further by acknowledging the defendant’s gender identity. The judge said, “Gender identity is not only defined by legal papers; the evolution of the person and his/her perception of his/her gender should be taken into consideration.”¹⁷⁰

May 2016: el-Metn court decision

Judge Hisham Qantar refused to apply Article 534 to a Syrian national assigned male at birth who was standing by the roadside wearing what was described as “feminine” clothing.¹⁷¹ The decision again centered around the definition of “nature,” however the judge’s position also included reference to international human rights conventions and the International Statistical Classification of Diseases and Related Health Problems, which states that homosexuality is not a disease.¹⁷²

January 2017: el-Metn court decision

While interpreting Article 534, Judge Rabih Maalouf stated, “Homosexuals have a right to human and intimate relationships with whoever they want, without any interference or discrimination in terms of their sexual inclinations, as is the case with other people.”¹⁷³ Judge Maalouf specifically cited Article 183 of the Penal Code, which relates to freedom of expression to support his position, saying, “The act committed is not considered to be a crime if exercised as a right without exceeding its limits.”¹⁷⁴ Makhoulf explained the significance of the case:

It was the first time [a decision relating to Article 534] was framed in terms of freedoms and liberties. The Judge was holistic in his approach—he referred to the right to privacy, Lebanese law, international medical criteria which states homosexuality is not a disorder, and international human rights conventions.¹⁷⁵

Makhoulf notes the decision sparked considerable public debate around Article 534 in light of media coverage and was even discussed among Lebanese parliamentarians.¹⁷⁶

July 2018: Mount Lebanon Criminal Court of Appeal decision

Judge Maalouf’s 2017 el-Metn acquittal was appealed by Lebanese prosecutors and heard before an appeals court in Mount Lebanon. Lawyers from Legal Agenda argued that the prosecution had no basis to appeal the decision as the law does not criminalize identities and/or orientations, but specific acts.¹⁷⁷ The lawyers further noted that homosexuality is not contrary to nature, relying on international medical conventions; statements from Lebanese psychiatric and psychological associations; and previous court rulings.¹⁷⁸ They also stressed the role of judges in interpreting Article 534, in light of the fact the wording of the law does criminalize homosexuality, and there is no indication from “preparatory works” that legislators intended to criminalize homosexuality.¹⁷⁹

A three-judge bench upheld the el-Metn acquittal, stating that consensual same-sex relations cannot be viewed as “unnatural,” unless it violates morality and ethics, for instance, “when it is seen or heard by others, or performed in a public place, or involving a minor who must be protected.”¹⁸⁰ The decision is significant as it is the first Court of Appeal

¹⁶⁸ Ibid

¹⁶⁹ OutRight and AFE interview with Youmna Makhoulf, Legal Agenda, Beirut, October 4, 2017.

¹⁷⁰ Georges Azzi, “Lebanon’s LGBT community is still suffering abuses”, Henrich Boll Stiftung - Gunda Werner Institute, September 26, 2014, available at: <https://www.gwi-boell.de/en/2014/09/26/lebanons-lgbt-community-still-suffering-abuses>

¹⁷¹ Lama Karame, “Lebanese Article 534 Struck Down: Homosexuality No Longer “Contrary to Nature”, *The Legal Agenda*, July 11, 2016, available at: <http://legal-agenda.com/en/article.php?id=3149>

¹⁷² OutRight and AFE interview with Youmna Makhoulf, Legal Agenda, Beirut, October 4, 2017.

¹⁷³ Graeme Reid, “Lebanon Edges Closer to Decriminalizing Same-sex Conduct”, *Human Rights Watch*, February 2, 2017, available at: <https://www.hrw.org/news/2017/02/02/lebanon-edges-closer-decriminalizing-same-sex-conduct>

¹⁷⁴ Susanah Walden, “Judge’s ruling ‘major step forward’ for sexual rights movement” *The Daily Star (Lebanon)*, January 31, 2017, available at: <https://www.pressreader.com/lebanon/the-daily-star-lebanon/20170131/281560880518492>

¹⁷⁵ OutRight and AFE interview with Youmna Makhoulf, Legal Agenda, Beirut, October 4, 2017.

¹⁷⁶ Ibid

¹⁷⁷ Ibid

¹⁷⁸ Ibid

¹⁷⁹ Ibid

¹⁸⁰ Human Rights Watch, “Lebanon: Same-sex relations not illegal”, July 19, 2018, available at: <https://www.hrw.org/news/2018/07/19/lebanon-same-sex-relations-not-illegal>

decision of its kind and is likely to have a bearing on future first-instance decisions. Makhlouf of Legal Agenda explained the implications of the decision:

This decision is important because the Court of Appeal stressed on the fact that the legislator's intention was not to criminalize sexual orientation and that the law should be interpreted according to its spirit and taking into consideration the evolution of the society and social justice standards. It also shows that there isn't a generational gap between judges addressing this matter since the Court of appeals joined lower courts in the manner of interpreting Article 534.¹⁸¹

(d) Progress for LBTQ women

The foundations for progress impacting LBTQ women were largely set by the work of Meem, the underground queer feminist organization and space which operated from 2007-2014. As a former member of Meem noted:

We were able to build a community based on queer feminism, despite our disagreements. Before Meem, work was primarily done by traditional women's rights organizations, which were not always inclusive of queer and transwomen. We raised the bar, and now homophobic and transphobic discourses are not accepted among the women's rights NGOs.¹⁸²

As an indication of a more inclusive space, during the International Women's Day March in Beirut in March 2018, members of the older women's rights organizations marched alongside queer and transgender activists.¹⁸³

Meem's legacy continues through the publication of *Bareed Mista3jil*, a collection of stories documenting the experiences of LBTQ women in Lebanon. A former member of Meem explained the significance of the collection:



Photo from 2018 Women's March in Beirut, Lebanon

It was the first book of its kind, featuring stories based on the lived experience of queer women in Lebanon. We received many orders from around the world, and there have been staged readings from the book. It has even been included in the curricula at universities, primarily in the United States.¹⁸⁴

Meem also helped develop the skillset of current LBTQ activists, which has led to the creation of new spaces and initiatives:

Today when I look back, Meem made me the writer and activist that I am. I can say this is the case for many activists—we empowered each other and built a community. Many of the current spaces for LBTQ women have been founded by former members of Meem.¹⁸⁵

¹⁸¹ OutRight and AFE Email interview with Youmna Makhlouf, Legal Agenda, July 20, 2018

¹⁸² OutRight and AFE Skype Interview with LBTQ activist [name withheld], April 11, 2018.

¹⁸³ OutRight and AFE WhatsApp interview with Genwa Samhat, Helem, April 4, 2018.

¹⁸⁴ OutRight and AFE Skype Interview with LBTQ activist [name withheld], April 11, 2018.

¹⁸⁵ OutRight and AFE Skype Interview with LBTQ activist [name withheld], April 11, 2018.

Since Meem's closure in 2014, former members have created physical spaces and initiatives that represent queer feminist voices in poetry and online platforms, including knowledge and artistic portals.

In the case of the transgender community, Genwa Samhat noted that Helem has sought to facilitate a separate space:

There needs to be parallel work creation [for the trans community]. We have a trans committee in Helem, which is one to one and a half years old. They launched their first campaign in November 2017 and participated in the women's march [in March 2018].¹⁸⁶

(e) Safe spaces

Since it was founded, Helem has operated a community center, which allows it to maintain what the center's coordinator, Joseph Aoun, describes as a "grassroots spirit."¹⁸⁷ The center offers a unique space in Beirut, which Aoun suggested brings together the LGBTQ community from different socioeconomic backgrounds and helps challenge divisions within the community.¹⁸⁸ The center also provides support to marginalized groups including LGBTQ refugees and transwomen.

Aoun explained the need for such a space. "Many people sleep on the streets," Aoun said. "They can do their laundry here and shower here. Once a week, we also do an open lunch. We try and preserve the sense of dignity of people at risk."¹⁸⁹

A core aspect of the center is its volunteer committee. Volunteers organize events and activities ranging from film screenings to art

therapy and help members access employment and services, including from humanitarian agencies. However, as Aoun explains, the fact that operations primarily involve volunteers also allows members from marginalized populations to feel empowered and take charge of initiatives.¹⁹⁰

MOSAIC organizes a range of community activities for LGBTQ people, including language training and art therapy. Charbel Maydaa, the Director of MOSAIC, explained how the activities help break down divisions between different LGBTQ communities:

We have had activities which put LGBTQ Lebanese, Syrian, Palestinian and Iraqi people in the same room, including a program for transwomen from different nationalities...Art therapy and drama are ways through which we can create dialogue.¹⁹¹

4. Ongoing challenges and opportunities

Despite significant progress achieved by LGBTQ activists in Lebanon, activists have identified ongoing challenges that will shape their future priorities.

(a) Arrests under Article 534 and associated laws

There has been a gradual increase in the number of documented arrests under Article 534 since 2012–2016.¹⁹² The increase can be attributed at least partially to stronger community networks and improved documentation. LGBTQ refugees, transwomen, and GBQ men from lower socio-economic groups are particularly susceptible to arrest. Activists state that arrests stem from systematic bias, and the perception from security forces that cases relating to marginalized groups are not documented, and that therefore they will not be held accountable.¹⁹³ There have been reports in recent years which suggest cases of alleged

¹⁸⁶ OutRight and AFE WhatsApp interview with Genwa Samhat, Helem, April 4, 2018.

¹⁸⁷ OutRight and AFE interview with Joseph Aoun, Helem, Beirut, October 3, 2017.

¹⁸⁸ Ibid

¹⁸⁹ Ibid

¹⁹⁰ Ibid

¹⁹¹ OutRight and AFE interview with Charbel Maydaa, September 30, 2017.

¹⁹² Helem, "Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon A Shadow Report submitted to the Human Rights Committee", available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBN/INT_CCPR_ICO_LBN_27152_E.pdf.

¹⁹³ OutRight and AFE Skype interview with LGBTQ activist [name withheld], March 20, 2018; OutRight and AFE Skype interview with LGBTQ activist [name withheld], April 13, 2018.

physical and psychological abuse and torture in detention.¹⁹⁴ Activists identified the need to continue documentation and apply pressure on security forces.

(b) Engagement with political parties and candidates

The Lebanese general elections of 2018 marked the first large-scale engagement by LGBTQ activists with political parties and candidates. Organizations including AFE have reached out to candidates and questioned them on their positions on Article 534 and LGBTQ rights. AFE has documented the positions of 150-180 candidates. In a sign of the growing influence of the LGBTQ community, many political parties expressed a pro-LGBTQ stance during the election, including traditional Christian political parties, which have been viewed by activists as right-wing.¹⁹⁵

In addition to the long-term aims of decriminalization and challenging the interpretation of laws relating to public morals and sex work, engagement with political parties has the potential to impact the legal proceedings against LGBTQ people in the short-term. Genwa Samhat of Helem explained the link:

General prosecutors [which initiate legal proceedings] are selected by major political parties. We hope engagement with the parties will allow us to work directly with prosecutors.¹⁹⁶

(c) The creation of an LGBTQ coalition and intersectional work

LGBTQ organizations are currently in the process of forming a coalition after years of working together informally. Tarek Zeidan, an activist at Helem, explained the process behind the coalition and its significance. “It has been an organic process, and the discussion has

been taking place for years,” Zeidan said. “Each organization does separate work, but the idea is to make things more efficient and amplify our voices, especially when dealing with external threats.”¹⁹⁷ He noted that given that none of the LGBTQ non-governmental organizations have active memberships, except Helem, the coalition will provide those organizations with greater legitimacy and thus greater impact.¹⁹⁸ Genwa Samhat of Helem described how the coalition may offer opportunities for building new partnerships and applying distinct approaches to advocacy. “We are going to try and build a network with other human rights organizations,” Samhat said. “We may try to frame advocacy around freedom of expression”¹⁹⁹

Activists have suggested that there is greater scope for LGBTQ organizations to engage with feminist organizations and organizations working with migrant workers.²⁰⁰ When questioned on scope for collaboration with feminist organizations, Samhat stated:

There are feminist platforms and spaces which contribute to the [LGBTQ] movement. We support the creation of new spaces and activists...it is difficult to attack us as an intersectional movement... it creates power and [applies] pressure on the government to negotiate with us.²⁰¹

(d) Continued engagement with UN mechanisms

Lebanese LGBTQ organizations have consistently engaged in advocacy with UN mechanisms, including the UNGA, the Commission on the Status of Women, the Human Rights Committee,²⁰² the Committee on the Elimination of Discrimination against Women,²⁰³ and the Universal Periodic Review process.²⁰⁴ In particular, recent engagement and development at the Commission on the

¹⁹⁴ Human Rights Watch, “Lebanon: Syrian Refugee’s Account of Torture – Detained, Beaten, Abused on Suspicion of Being Gay”, December 21, 2016, available at: <https://www.hrw.org/news/2016/12/21/lebanon-syrian-refugees-account-torture>; Human Rights Watch, “‘It’s Part of the Job’ Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations”, June 26, 2013, available at: <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations>

¹⁹⁵ OutRight and AFE email correspondence with LGBTQ activist [name withheld], June 17, 2018

¹⁹⁶ OutRight and AFE WhatsApp interview with Genwa Samhat, Helem, April 4, 2018.

¹⁹⁷ OutRight and AFE WhatsApp interview with Tarek Zeidan, January 28, 2018.

¹⁹⁸ Ibid.

¹⁹⁹ OutRight and AFE WhatsApp interview with Genwa Samhat, Helem, April 4, 2018.

²⁰⁰ OutRight and AFE Skype interview with LGBTQ activist [name withheld], March 20, 2018; OutRight and AFE Skype interview with LGBTQ activist [name withheld], April 13, 2018.

²⁰¹ OutRight and AFE WhatsApp interview with Genwa Samhat, Helem, April 4, 2018.

²⁰² Helem, “Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon A Shadow Report submitted to the Human Rights Committee”, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBN/INT_CCPR_ICO_LBN_27152_E.pdf

²⁰³ Helem, “Violence against women based on sexual orientation, Submitted for the 40th CEDAW Session Geneva, Switzerland January 14 – February 1, 2008”, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LBN/INT_CEDAW_NGO_LBN_40_9474_E.pdf

²⁰⁴ Helem and AFE, “Universal Periodic Report on Homosexuality and Gender in Lebanon” Submission of Universal Periodic Review (UPR) on its 23rd Session to the Office of the High Commissioner for Human Rights”. March 2015, available at: <https://ilga.org/wp-content/uploads/2016/02/Shadow-report-22.pdf>

Status of Women and the UNGA suggest that there may be greater scope for long-term progress by LGBTQ activists there. Activists have been building capacity in the New York UN headquarters system through attendance at conferences such as the Commission on the Status of Women and programs such as OutRight's Annual Week of Advocacy.

Notably, Lebanon was among two Arabic-speaking States from the MENA region which did not vote²⁰⁵ during the November 2016 vote on an amendment aiming to block the mandate of the Independent Expert on SOGI before the Third Committee of the UNGA.²⁰⁶ Given that the vote before the Third Committee was closely scrutinized and Lebanon was present at the vote, Lebanon's position can be viewed as a break from the regional consensus articulated through the formal OIC statement. Further, as another sign of Lebanon breaking with regional consensus, the Lebanese delegation cited a preference for "stronger language" and expressed support for human rights defenders, feminists groups, and sexual and reproductive rights at the formal adoption of the Agreed Conclusions of the 2018 Committee on the Status of Women.²⁰⁷ This was in contrast to the positions of other States from the region, including Saudi Arabia, which rejected terminology of sexual health reproductive rights and sexual orientation.²⁰⁸

In relation to advocacy before the Human Rights Council, during its last Universal Periodic Review session in 2015, Lebanon was unwilling to accept any of the five recommendations it received relating to SOGIE.²⁰⁹ Samhat, however, recognized the significance of the process for holding the government accountable:

The Lebanese delegate made a statement that there were no longer arrests under Article 534...we then made a counter-speech where we included figures of the number of arrests which were included in our shadow report—it was a powerful comeback—and led to recommendations from the international community. It was an evidence-based exposure."²¹⁰

Helem adopted a similar evidence-based approach in its 2017 shadow report to the Human Rights Committee, documenting the number of arrests under Article 534 and cases of discrimination and violence. In its Concluding Observations, the Human Rights Committee recognized continued arrests and incidences of violence and discrimination and called on Lebanon to decriminalize consensual same-sex relations and protect the rights of LGBTQ people.²¹¹

205 If a State does not vote it will be recorded as "Did not vote". This is distinct from if a State votes in favour, against or abstains. "Did not vote" is distinct from an abstention as it does not necessarily indicate the potential for a swing vote.

206 OutRight International, International Service for Human Rights, ILGA, and ARC International, "Defending the Independent Expert on Protection against Violence based on Sexual Orientation and Gender Identity at the 71st Session of the United Nations General Assembly", October 27, 2016, available at: https://www.outrightinternational.org/sites/default/files/OutRightGAA4_V5_LR.pdf, 5.

207 UN Web TV, (Part I) Commission on the Status of Women (CSW62 2018), 23 March, 2018, available at: <http://webtv.un.org/search/part-1-commission-on-the-status-of-women-csw62-2018/5757583581001/?term=commission%20on%20the%20status%20of%20women&sort=date>

208 Ibid

209 UPR Info, "2RP: Responses to Recommendations & Voluntary Pledges – Lebanon - , Review in the Working Group: 2 November 2015 Adoption in the Plenary", March 16, 2016, available at: https://www.upr-info.org/sites/default/files/document/lebanon/session_23_-_november_2015/recommendations_and_pledges_lebanon_2015.pdf

210 OutRight and AFE WhatsApp interview with Genwa Samhat, Helem, April 4, 2018.

211 Human Rights Committee, "Concluding observations on the third periods report on Lebanon, CCPR/C/LBN/CO/3", April 5, 2018, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBN/CCPR_C_LBN_CO_3_30780_E.pdf

Morocco

- 1913: Consensual same-sex sexual relations criminalized under the French colonial Penal Code
- 2011: The 20th February Movement and demands for freedoms and liberties leads to growth in civil society and LGBTQ activism
- 2016: Case of “Beni Mellal”
Case of “The Two Girls of Marrakech”
- 2017: Morocco accepts three Universal Periodic Review recommendations relating to sexual orientation and gender identity/expression
- 2018: L’Union Feministe formally registered

1. The legal and social context

(a) The law and its application

Same-sex sexual relations are criminalized under Article 489 of the Moroccan Penal Code. Article 489 specifies: “[A]ny person who commits a lewd or unnatural act with a person of the same sex shall be punished by a term of imprisonment of six months to three years and a fine of 200 to 1,200 dirhams.”²¹²

A human rights lawyer who works on cases under Article 489, noted that the origins of the law are multi-faceted:

Our law is inspired by French law and colonial history—the French did not want to destabilize people’s relationship with religion and culture. However, it is important to note that the penal code was adopted during the rule of King Hassan II, where personal freedoms were not considered a priority.²¹³

Naoufal Bouzid, an independent activist, cautioned against pinning responsibility for the law solely on French colonialism:

The law in general is a product of colonialism—however homosexuality has been decriminalized in France and is yet to be in Morocco...while same-sex relations were not criminalized before the modern penal code, the system which preceded it involved individual judges presiding over different regions. It was really up to the discretion of each judge on how they viewed same-sex relations.²¹⁴

The human rights lawyer further recognized that Article 489 should not be viewed in isolation, as the entire penal code embodies a “patriarchal spirit” which aims to control sexuality.²¹⁵ Specifically, Article 489 is closely associated with Articles 490 and 491, which criminalize sex outside of marriage and adultery.²¹⁶ Notably, the penalties for these articles, which apply to heterosexual sexual relations, are considerably lower than Article 489.²¹⁷



Akaliyat’s campaign against Article 489

The language used in Article 489 is gender-neutral, and therefore the law can be applied to women, men, and transgender people. An activist working on transgender rights with ASWAT Collective, which advocates for LGBTQ people in Morocco, reflected that while there is a legal vacuum regarding transgender people and their status in Morocco, law enforcement officials often associate transgender people with homosexuality.²¹⁸ Therefore, Article 489 continues to be used against trans people, often on the basis of their gender expression not conforming to official identity documents.²¹⁹

²¹² ILGA, “State-Sponsored Homophobia - 12th edition”, May 2017, available at: https://www.ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf, 94

²¹³ OutRight and AFE interview with lawyer [name withheld], Casablanca, February 27, 2018

²¹⁴ OutRight and AFE interview with Naoufal Bouzid, Rabat, February 24, 2018.

²¹⁵ OutRight and AFE interview with lawyer [name withheld], Casablanca, February 27, 2018

²¹⁶ Ibid

²¹⁷ Article 490 stipulates a punishment of between one month to one year imprisonment, while Article 491 stipulates a punishment between one to two years of imprisonment (see Code pénal (promulgué par Dahir n° 1-59-413 du 26 novembre 1962 (28 jomada II 1382), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=190447)

²¹⁸ Outright and AFE interview with ASWAT member [name withheld], Rabat, February 26, 2018.

²¹⁹ There are no laws or formalized procedures which permit transitioning or name/gender change in official documentation (OutRight and AFE interview with lawyer [name withheld], Casablanca, February 27, 2018)

In addition to Article 489, she noted that trans people are charged under Article 483 of the penal code, which relates to “public indecency” such as “nudity or obscenity.”²²⁰ Penalties under Article 483 range from one month to two years imprisonment.

There is a lack of publicly available data on the number of charges and convictions under Article 489. In 2016, however, the Ministry of Justice briefly published data on criminal convictions online.²²¹ Based on this data, ASWAT began conducting a study on convictions under Article 489, and noted that in the first three months of 2016, there were 19 convictions in the city of Casablanca alone.²²² Older statistics provided by the Ministry of Justice suggest that there were 81 trials relating to charges under Article 489 in 2011.²²³ Despite ASWAT’s work, a dearth of data remains. Smail Belqayaha, of Akaliyat, a collective which advocates for minorities in the country including LGBTQ people, recognized that organizations are unaware of many of the cases under Article 489, particularly as the law often targets people from lower socio-economic classes or vulnerable groups, such as sex workers, who lack access to lawyers and civil society support.²²⁴

In contrast to Articles 490 and 491, which criminalize heterosexual sexual relations in certain contexts, there is no indication in the penal code of what evidence is permissible in proceedings under Article 489.²²⁵ The language adopted under 489 requires a “lewd or deviant act” which essentially gives authorities “freedom of interpretation” when it comes to evidence.²²⁶ Examples of evidence used in proceedings include text messages, photos, and the accused’s physical appearance and choice of clothes.²²⁷

Further, activists argue that the particular stigma associated with Article 489 influences the attitudes of prosecutors and judges toward the

accused. A human rights lawyer noted that the stigma continues post-conviction in detention centers. She stated that she had encountered cases of violence against LGBTQ people in detention facilities, including sexual assault.²²⁸

The criminalization of same-sex sexual relations, however, has far-reaching consequences beyond convictions. Bouzid explained that the law impacted LGBTQ organizing, economic and social rights, and the ability of LGBTQ people to seek legal redress:

The stigma of the law and fear it creates impact freedom of assembly and the work of LGBTQ organizations. [LGBTQ] people are also unable to seek healthcare as well as social and economic protection... [A]nd if you are subject to violence or discrimination, you cannot pursue the perpetrator because you will be the one who goes to jail. The fear is real.²²⁹

Article 489 contravenes several provisions under Morocco’s 2011 Constitution. These include Article 22, which prohibits the infringement of the “physical or moral integrity” of anyone in private or public, and Article 24, which relates to the protection of private life.²³⁰ However, arguments based on the supremacy of the Constitution have thus far been unsuccessful in courts. A human rights lawyer stated that judges restrict themselves to a narrow reading of the penal code and are not inclined to consider the Constitution or international human rights law.²³¹

Morocco does not have legislation or regulations that allow for name or gender changes in official documentation.²³² As a result, transgender people find themselves in a legal vacuum, with the lack of recognition restricting their ability to access services.²³³

220 ILGA, “State-Sponsored Homophobia - 12th edition”, May 2017, available at: https://www.ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf, 94

221 OutRight and AFE interview with LGBTQ activist [name withheld], Rabat, February 24, 2018.

222 Ibid

223 Canada: Immigration and Refugee Board of Canada, “Morocco: Situation of sexual minorities, including treatment by the authorities and society; the application of Article 489 of the Penal Code and cases with convictions for homosexuality; state protection and support services” October 23, 2013, available at: <http://www.refworld.org/docid/53732cbf4.html>

224 OutRight and AFE interview with Smail Belqayaha, Akaliyat, Marrakech, February 18, 2018.

225 Code pénal (promulgué par Dahir n° 1-59-413 du 26 novembre 1962, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=190447

226 OutRight and AFE interview with lawyer [name withheld], Casablanca, February 27, 2018

227 Ibid

228 Ibid

229 OutRight and AFE interview with Naoufal Bouzid, Rabat, February 24, 2018.

Ibid

230 Constitue Project, “2011 Moroccan Constitution”, available at: https://www.constituteproject.org/constitution/Morocco_2011.pdf

231 OutRight and AFE interview with lawyer [name withheld], Casablanca, February 27, 2018

232 Ibid

233 OutRight and AFE interview with Zak [last name withheld], UFL, Rabat, February 22, 2018



Graffiti campaign in Rabat against Article 489

(b) Social attitudes, violence, and discrimination

Documented discrimination and violence against LGBTQ people are widespread in both the private and public spheres. Examples cited by activists include detention in family homes, corrective rape, and inability to access education and employment. A member of ASWAT stated that harm often emanates from family structures. “You could be kicked out from the family home and be socially ostracized, of course, if you are fortunate enough not to be subject to physical or psychological violence,” she said.²³⁴

She noted that the conduct of queer women is often more regulated in light of societal pressure. “Women are often forced to marry if they are found to have engaged in relations with another woman,” she explained. “The aim is to appease the neighborhood and society and ensure the incident is forgotten.”²³⁵

Nidal Azhary from L’Union Feministe Libre (UFL), a feminist – LGBTQI+ organization, stated that LGBTQ people who are disowned subsequently face social and economic exclusion without family support.²³⁶ She noted that the lines between the private and public spheres are increasingly blurred, and there is pressure to appease the broader community. “There was always a respect for the idea of privacy in our

culture—but this has now changed,” she said. “People now allow themselves to intervene in the lives of LGBTQ people.”²³⁷

Zak, a member of UFL, stated that members of the transgender community are often viewed as being mentally ill, explaining that, “Almost everyone says you should consult a psychiatrist.”²³⁸ Zak referred to his own experience of difficulty in accessing public services such as banks, as his gender expression does not correspond with his identity documents.²³⁹ Additionally, he stated that transgender Moroccans face particular challenges in accessing and remaining in education and employment in light of stigma and harassment.²⁴⁰

Moroccan government officials often emulate discriminatory language and views. A notable example is Mustapha Ramid, the current Minister of Human Rights and former Minister of Justice. In October 2017, he was reported to have referred to homosexuals as “trash” to a group of journalists.²⁴¹ He went on to expand on this comment in a Facebook post saying, “Homosexuality is a crime and is not acceptable within our society.”²⁴² In 2015, while he was Minister of Justice, Ramid stated on a radio program that, “In order to avoid problems with the law, homosexuals just have to undergo a sex change.”²⁴³

Smail Belqayaha from Akaliyat explained that such remarks from officials have broader implications. “When discourses of hate come from the State, it gives legitimacy to the masses to adopt the same language and views,” the activist said.²⁴⁴

Negative perceptions of LGBTQ people are also often fueled by negative media coverage. OutRight’s 2017 report on the representation of sexuality and gender identity in Arabic language mass media found that LGBTQ issues were the second most covered in Morocco, across

²³⁴ OutRight and AFE interview with ASWAT member [name withheld], Rabat, February 28, 2018

²³⁵ Ibid

²³⁶ OutRight and AFE interview with Nidal Azhary, UFL, Rabat, February 19, 2018.

²³⁷ Ibid

²³⁸ OutRight and AFE interview with Zak [last name withheld], UFL, Rabat, February 22, 2018

²³⁹ Ibid

²⁴⁰ Ibid

²⁴¹ Ansamed, “Homosexuals are trash, says Moroccan human rights minister”, October 19, 2017, available at: http://www.ansamed.info/ansamed/en/news/sections/politics/2017/10/18/homosexuals-are-trash-says-moroccan-human-rights-minister_20bcef82-b05b-4625-84b4-7b8bdcfc7971.html

²⁴² Ibid

²⁴³ Ibid

²⁴⁴ OutRight and AFE interview with Smail Belqayaha, Akaliyat, Marrakech, February 18, 2018.

the region.²⁴⁵ An independent LGBTQ activist conducted a study of the portrayal of LGBTQ people across 50 Moroccan media samples (across radio, television and electronic media) and found that the coverage was predominantly negative.²⁴⁶ LGBTQ people continue to be referred to in terms of perversion, and often there is no distinction drawn between sexual orientation and gender identity or expression. There is also little to no coverage of LGBTQ women. Amongst the worst examples of coverage that the study found was a 2015 cover story of *Maroc Hebdo* magazine titled “Faut-Il Brûler Les Homos?” (“Should we burn homosexuals?”).²⁴⁷ Widespread condemnation, however, resulted in copies of the edition being recalled.

2. The growth of Moroccan LGBTQ activism

Moroccan LGBTQ activists suggest that early organizing around LGBTQ rights was initiated by Moroccans living abroad.²⁴⁸ In 2004, Kif-Kif (“All the Same”) was founded by Moroccans based in Spain; the organization was formally registered in Spain in 2008. Kif-Kif was able to establish a membership base and hold events in Morocco, including the conference “Reality against Myths” in 2010.²⁴⁹ A key initiative was their monthly magazine *Mithly*, which had readership in Morocco and received criticism, including from *Attajdid*, a newspaper that is affiliated with the Islamic Justice and Development party, which is currently in power.²⁵⁰

In 2009, the organization ‘Mouvement alternative pour les libertes individuelles’ (MALI Movement) was established in Morocco. MALI advocates for democracy, freedom of choice, and secularism in Moroccan society, with LGBTQ and sexual rights part of its agenda.²⁵¹ A former member of MALI explains that by being outspoken on LGBTQ

rights, MALI was instrumental in stimulating discussion on the subject in the Moroccan news outlets and social media, including campaigns against Article 489.²⁵²

Belqayaha stated that a key turning point in organized LGBTQ activism in Morocco was the 20 February Movement in 2011.²⁵³ The movement was comprised of large-scale protests across the country inspired by uprisings elsewhere in the region that demanded political reform and respect for civil liberties. Post-2011, online LGBTQ publications including ASWAT and Akaliyat emerged. Both, in recognition of the challenges of their readership bases, have transitioned to collectives with a more prominent advocacy agenda. UFL, a feminist organization that works on LGBTQ rights, was officially founded in 2016 after working informally for a number of years.

Amongst the organizations to emerge post-2011, only UFL has obtained registration with the government, which happened in 2018 after over two years of advocacy.²⁵⁴ Akaliyat sought registration in 2016, but officials refused to accept their application, citing procedural reasons which Belqayaha termed “arbitrary.”²⁵⁵ ASWAT, however, has never sought registration and members have expressed reservations over whether prospective applications would be approved if they mentioned an agenda relating to ‘sexual and gender minorities.’²⁵⁶ Being unregistered poses numerous challenges for both organizations, from holding meetings to accessing funding.²⁵⁷ However, ASWAT and Akaliyat have sought to ameliorate these challenges in part through forming partnerships with broader civil society, including feminist and sexual health organizations.²⁵⁸ Belqayaha explained the value of intersectional partnerships for Akaliyat:

245 OutRight Action International, “Arab Mass Media - A Monitoring Report Looking at Sexuality and Gender Identity in Arabic Media from 2014 to 2017”, 2017, 25 [on file]

246 OutRight and AFE interview with independent LGBTQ activist [name withheld], Casablanca, February 28, 2018

247 France 24, “Moroccan magazine recalls issue with headline ‘Should We Burn Gays?’”, June 13, 2015, available at: <http://www.france24.com/en/20150613-morocco-maroc-hebdo-magazine-recalls-should-we-burn-gays-issue>

248 OutRight and AFE interview with independent LGBTQ activist [name withheld], Casablanca, February 22, 2018; OutRight and AFE interview with independent LGBTQ activist [name withheld], Casablanca, February 28, 2018

249 The Guardian, “Gay magazine launched in Morocco” May 20, 2010, available at: <https://www.theguardian.com/world/2010/may/20/gay-magazine-launch-morocco-rights>

250 Ibid

251 OutRight and AFE interview with independent LGBTQ activist [name withheld], Casablanca, February 28, 2018

252 Ibid

253 OutRight and AFE interview with Smail Belqayaha, Akaliyat, Marrakech, February 18, 2018.

254 L’Union Feministe Libre, “Pride in Morocco”, June 21, 2018, available at: <https://www.facebook.com/UnionFeministeLibre/posts/1828017240841353>

255 OutRight and AFE interview with Smail Belqayaha, Akaliyat, Marrakech, February 18, 2018.

256 OutRight and AFE interviews with ASWAT members [names withheld], Rabat, February 28, 2018

257 Ibid

258 Ibid

We have collaborated with a range of organizations, from informal groups to larger human rights organizations. They have provided us with safe spaces for meetings, signed on to communiqués for the cases [of LGBTQ people in detention] we work on, and put us in contact with lawyers, which may have otherwise been difficult to access. It is not just seen as an LGBTQ issue when we work with them.²⁵⁹

3. Key areas of progress

(a) Intervention in strategic cases

LGBTQ organizations in Morocco often intervene in cases of individuals charged under Article 489 and public decency laws. The role of LGBTQ organizations in such cases includes support to defendants in obtaining legal representation and domestic and international advocacy. These efforts have rarely resulted in acquittals, as judges continue to feel bound by the penal code and do not consider arguments based on the Moroccan constitution and international human rights law.²⁶⁰ However, progress in such interventions can be seen through reduced sentences and a shift in public opinion.²⁶¹ Yet, as a human rights lawyer noted, many of the cases which have attracted public sympathy for LGBTQ people involve violence being perpetrated against LGBTQ people.²⁶² Two interventions by civil society in high-profile cases are studied in this section.

March–April 2016: The case of “Beni Mellal”

In March 2016, a group of youths forcefully entered a home in the city of Beni Mellal. They proceeded to beat two men suspected of being involved in sexual relations, dragged them on to the street naked, and subjected them to physical and verbal abuse. Both the victims and perpetrators of violence were subsequently arrested. One of the victims was charged and sentenced to four months imprisonment by a first-instance court under Article 489, while the

other victim was charged under Article 489. The perpetrators were also charged with assault.

A video later emerged online showing the two men, beaten and bloodied, being subject to anti-gay epithets. This sparked outrage both domestically and internationally. In response, Moroccan LGBTQ organizations led by ASWAT and Akaliyat mobilized broader civil society and launched a campaign around the case. Initiatives included a joint communication signed by over 40 organizations, which called for the release of the victims and Article 489 to be repealed. A member of ASWAT suggested that the support of broader civil society was significant. “This was one of the first cases where there was consensus across civil society, not just LGBTQ organizations,” the activist said.²⁶³ “Capitalizing on intersectionality has been a key strategy we have adopted to get the maximum number of actors speaking out.”²⁶⁴

ASWAT and Akaliyat also reached out to domestic and international media. The case received considerable attention, particularly in France. A crew from the French program *Le Petit Journal* travelled to Beni Mellal and attempted to film in the neighborhood where the incident took place.²⁶⁵ However, they were subsequently detained and deported, which contributed to further attention towards the case.

In April 2016, the first victim was released on appeal based on term served. The second victim was given a four-month suspended sentence.²⁶⁶ Two of the perpetrators received six-month and four-month sentences respectively.²⁶⁷ An activist working with ASWAT suggested that the outcome of comparatively light sentences in the case was largely a result of international coverage and pressure, and Morocco being “conscious of its international image.”²⁶⁸

²⁵⁹ OutRight and AFE interview with Smail Belqayaha, Akaliyat, Marrakech, February 18, 2018.

²⁶⁰ OutRight and AFE interview with a lawyer [name withheld], Casablanca, February 28, 2018

²⁶¹ Ibid

²⁶² Ibid

²⁶³ OutRight and AFE Interview with ASWAT member [name withheld], Rabat, February 28, 2018

²⁶⁴ Ibid

²⁶⁵ Zainab Calcuttawala, “Le Petit Journal Reports on Homophobic Attacks, Show’s News Team Deported From Morocco”, Morocco World News, April 6, 2016, available at: <https://www.morocoworldnews.com/2016/04/183705/le-petit-journal-reports-on-homophobic-attacks-shows-news-team-deported-from-morocco/>

²⁶⁶ OutRight and AFE interview with a lawyer [name withheld] working, Casablanca, February 28, 2018

²⁶⁷ Ibid

²⁶⁸ OutRight and AFE Interview with LGBTQ activist [name withheld], Rabat, February 24, 2018

October - December 2016: The two girls of Marrakech

In November 2016, two girls who were aged 16 and 17 at the time were charged under Article 489 after they were allegedly photographed kissing on a rooftop. LGBTQ activists suggest that this was the first case involving girls that received widespread attention. Nidal Azhary of UFL noted the significance of the case. “There is a lack of visibility around LBTQ women,” Azhary explained. “Many in the public doubted if the law could be applied against women. If it was not for the case of the two girls, no one would have spoken about arrests.”²⁶⁹

While awaiting trial, the girls were sent to an adult prison rather than a juvenile facility.²⁷⁰ Naoufal Bouzid stated that he believes the girls were treated as adults due to their perceived sexual orientation.²⁷¹

Organizations including UFL, ASWAT, and Akaliyat responded by issuing a joint statement condemning the arrests and calling for the release of the girls. The statement was signed by 22 civil society organizations. Organizations also launched an international petition, which received approximately 90,000 signatures.²⁷² The decision to launch an international campaign was partially due to the fact that arrests coincided with the UN Marrakech Climate Change Conference (COP 22). As an activist working with ASWAT stated, “We wanted to tell the international community—Marrakech may be trying to market itself as an open international city, but look at the contradiction.”²⁷³

UFL specifically helped secure legal representation for the girls by contacting partners within the feminist organizations. ASWAT and Akaliyat contacted the regional section of the National Human Rights Council, which intervened by issuing guidance suggesting that the arrests should not have taken place, as the girls were minors.²⁷⁴

Media coverage also played a critical role in the case, with arguably long-term implications on discourse surrounding LGBTQ rights in Morocco. While the media coverage was predominantly negative, media outlets also “provided a wide space to LGBTIQ organizations and advocacy groups to defend the two girls and to publish their opinions publicly.”²⁷⁵ It has been argued that this “paved the way for increased discussion about personal freedom and the rights of LGBTIQ people to live freely and with dignity.”²⁷⁶

The girls were released on bail and subsequently acquitted. In reaching his decision, the trial judge recognized that the girls were minors and the prosecutor should not have initiated proceedings against them.²⁷⁷ Azhary noted that as a matter of symbolic significance, UFL and the head of another registered civil society organization were present during the verdict.²⁷⁸

(b) Establishing partnerships with legal and medical professionals

Organizations including ASWAT, Akaliyat, and UFL have been instrumental in ensuring that LGBTQ people who are charged under the law or face violence and discrimination have access to legal representation. These organizations, sometimes in collaboration with the L'Association Marocaine des Droits Humains, have helped secure representation despite the stigma that many lawyers associate with taking up the cases of LGBTQ people. A human rights lawyer recognized that it has been challenging to establish a pool of lawyers to take up LGBTQ cases. “There are a small number of us who work on these cases,” the lawyer said. “Lawyers will often say I have nothing against them [LGBTQ people], but I can’t advocate. Or they will ask for money, which the client cannot afford.”²⁷⁹

Akaliyat aims to create a network of legal professionals that are both versed in the challenges facing LGBTQ people under Moroccan law and willing to provide services. In

269 OutRight and AFE interview with Nidal Azhary, UFL, Rabat, February 19, 2018

270 Ibid

271 OutRight and AFE Interview with Naoufal Bouzid, Rabat, February 24, 2018

272 All Out, “Morocco: the girls are free!”, available at: <https://allout.org/en/victories/morocco-girls-are-free>

273 OutRight and AFE Interview with LGBTQ activist [name withheld], Rabat, February 24, 2018

274 Ibid

275 OutRight Action International, “Arab Mass Media - A Monitoring Report Looking at Sexuality and Gender Identity in Arabic Media from 2014 to 2017”, 2017, 25 [on file]

276 Ibid

277 OutRight and AFE Interview with Naoufal Bouzid, Rabat, February 24, 2018

278 OutRight and AFE interview with Nidal Azhary, UFL, Rabat, February 19, 2018

279 OutRight and AFE interview with a lawyer [name withheld], Casablanca, February 28, 2018

January 2018, they organized a training session that brought together legal professionals and activists. The training initiated discussions around the creation of a model defense for cases under Article 489 and public obscenity laws, as well as a legal toolkit for the physical safety of LGBTQ activists. A human rights lawyer reflects that engaging legal professionals is key to advocating for decriminalizing both same-sex sexual relations and repealing Articles 490 and 491, which criminalize sex outside of marriage and adultery.²⁸⁰

ASWAT and Akaliyat also initiated a similar project aimed to create a network of LGBTQ-friendly doctors. The objective is for the doctors to provide informed services to LGBTQ people, as well as get them involved in advocacy initiatives. An activist working with ASWAT explained the rationale of involving doctors in advocacy. “Doctors remain highly respected in Moroccan society...and the reality is being LGBTQ continues to be associated with disease as well as mental and physical disability,” he said. “I believe the first barrier is addressing this stigma”²⁸¹

ASWAT held a training session for a group of doctors in September 2017, and among the key areas of discussion was ensuring that curricula at medical schools are LGBTQ-friendly.

(c) Creating a safe-space and community building

UFL’s ability to obtain registration with the Moroccan government in 2018 and secure an office in Rabat has created one of the few safe spaces available to the LGBTQ community. Nidal Azhary of UFL observed that establishing an office, which is open to the public, is a key milestone:

The space itself is a success...we pay our own bills under the organization’s name. We are able to provide legal and psychological support for women and the LGBTQ community...We also organize training and events here which bring together women and LGBTQ people.

Bringing together both women and LGBTQ people in the same space allows us to share experiences and build a sense of community. For many, it is the first time they are interacting with a lesbian or a trans woman.²⁸²

Beyond the office, UFL has launched an initiative known as “Community Learning Tours,” which will take them to five cities to provide training for women and LGBTQ people focused on promoting health and legal and physical security. Azhary explained the significance of the training. “For many outside of Rabat, accessing our office can be challenging, the activist said. “We are committed to remaining a grassroots organization which helps build community leaders across the country.”²⁸³

4. Ongoing challenges and opportunities

Despite significant progress achieved by LGBTQ activists in Morocco, activists have identified gaps in existing work that will shape their future priorities.

(a) Addressing violence against LGBTQ people

There has yet to be a comprehensive study on the number of charges and convictions under Article 489 and obscenity laws. This is partly a result of challenges to accessing Ministry of Justice records, which are only available to the public on a sporadic basis. Activists note that the Ministry of Justice website has recently restarted publishing statistics on criminal convictions online.²⁸⁴ In response, ASWAT has identified the continuation of its 2016 study on convictions under Article 489 as a priority.²⁸⁵

Additionally, civil society organizations continue efforts to understand the extent to which violence and discrimination impact LGBTQ Moroccans. As part of these efforts, UFL launched the ‘Manchoufouch’ platform in April 2018, which comprises of a hotline, website, and mobile phone application. The application enables people to report homophobic and

²⁸⁰ Ibid

²⁸¹ OutRight and AFE Interview with LGBTQ activist [name withheld], Rabat, February 24, 2018

²⁸² OutRight and AFE interview with Nidal Azhary, UFL, Rabat, February 19, 2018

²⁸³ Ibid

²⁸⁴ OutRight and AFE interviews with ASWAT members [names withheld], Rabat, 28 February, 2018

²⁸⁵ Ibid

transphobic incidents through their phones.²⁸⁶ Azhary noted that this is the first initiative in the country to provide an accessible platform to report homophobic and transphobic violence.²⁸⁷ After reporting incidents, users have an “ask for help” option, which will allow UFL to facilitate legal and/or psychological help.²⁸⁸

UFL has also collaborated with the gay men’s online dating application Grindr in which a weekly message is published on the application to raise awareness of UFL’s legal services. Azhary said that greater access to legal services increases understanding of the challenges facing LGBTQ Moroccans.²⁸⁹ She went further to suggest that this data substantiates effective direct advocacy with Moroccan government officials.

(b) Advocacy through UN mechanisms

The engagement of Moroccan LGBTQ civil society organizations with UN mechanisms is at a nascent stage. During Morocco’s last Universal Periodic Review session in 2017, numerous domestic and international civil society organizations and collectives called for the decriminalization of consensual same-sex activity and protection from violence and discrimination based on sexual orientation and gender identity/expression. However, these issues were raised within multi-issue shadow reports, rather than an LGBTQ-specific report.

Notably, Morocco received ten recommendations from UN Member States relating to sexual orientation and gender identity. In a positive step, three of these recommendations relating to violence, discrimination, and repealing legislation were wholly accepted by Morocco.²⁹⁰ In comparison to Morocco’s previous Universal Periodic Review sessions in 2008 and 2012 where there were no recommendations relating to sexual orientation and gender identity/expression, the 2017 session

proved to be a significant advance.²⁹¹ Several activists have expressed a desire to build on the progress achieved during the 2017 session and are in the process of developing capacity to submit a shadow report for Morocco’s next Universal Periodic Review session.²⁹²

Beyond the Universal Periodic Review process, in 2017 Naoufal Bouzid drafted and submitted a shadow report to the Committee on the Rights of Persons with Disabilities identifying that LGBTQ people continue to be pathologized and are viewed as having physical and/or mental disabilities.²⁹³ In response, the Committee expressed concern about stigmatizing attitudes based on “gender and sex identity and its association with disability” and the “confusion between having a different sexual orientation and being a person with disabilities.”²⁹⁴ The Committee specifically recommended that the Morocco develop awareness-raising campaigns and a revision of educational material in response.²⁹⁵

(c) Legal reform and sensitization

Decriminalization

Decriminalizing consensual same-sex sexual relations remains a key objective of LGBTQ activists. However, several activists expressed reservations about the pace of any reform process. As a member of ASWAT stated:

Repealing Article 489 is a priority. However, there is a lack of political will at the moment for legal reform. Until then, we need to try and advocate for the police to stop applying the law. As things stand, police may see someone with a non-conforming appearance, then they will check their cellphone, and then the investigation will start.²⁹⁶

²⁸⁶ Hajare El Khaldi, ““Manchoufouch” Denounces Sexual Harassment in Morocco”, Morocco World News, March 22, 2018, available at: <https://www.moroccoworldnews.com/2018/03/242962/manchoufouch-denounces-sexual-harassment-morocco/>

²⁸⁷ OutRight and AFE interview with Nidal Azhary, UFL, Rabat, February 19, 2018

²⁸⁸ Hajare El Khaldi, ““Manchoufouch” Denounces Sexual Harassment in Morocco”, Morocco World News, 22 March 2018, available at: <https://www.moroccoworldnews.com/2018/03/242962/manchoufouch-denounces-sexual-harassment-morocco/>

²⁸⁹ OutRight and AFE interview with Nidal Azhary, UFL, Rabat, February 19, 2018

²⁹⁰ ILGA, 27th UPR Working Group Sessions, SOGIESC Recommendations (May 1 - May 12, 2017), available at: https://ilga.org/downloads/27TH_UPR_WORKING_GROUP_SESSIONS_SOGIESC_RECOMMENDATIONS.pdf, 33

²⁹¹ Ibid, 35

²⁹² OutRight and AFE interviews with ASWAT members [names withheld], Rabat, February 28, 2018

²⁹³ Submission to the Committee on Rights of Persons with Disabilities, 8th Session (14th - 31 August) [on file]

²⁹⁴ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Morocco, 25 September 2017, CRPD/C/MAR/CO/1, 2, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/MAR/CO/1&Lang=En

²⁹⁵ Ibid

²⁹⁶ OutRight and AFE interview with ASWAT member [name withheld], Rabat, February 28, 2018

In addition to data collection and UN advocacy, LGBTQ activists have identified additional strategies that could be used to advocate for legal reform. A member of ASWAT specifically pointed to greater collaboration with feminist organizations:

We need to strengthen our partnerships with feminist organizations. Article 489, 490 and 491 all stem from attempts to control sexuality and are based on the concepts of protection of family and public decency. A campaign for legal reform cannot be based on just Article 489.²⁹⁷

LBTQ Women

The need for legislation that promotes gender equality extends beyond the three above-mentioned articles. In February 2018, after long-term efforts from women's rights organizations, Morocco adopted a law dedicated to combatting violence against women.²⁹⁸

While the law is a sign of progress and defines violence against women as “any act based on gender discrimination that entails physical, psychological, sexual or economic harm to a woman,” in many cases it requires women to file legal proceedings to receive protection.²⁹⁹ The law also criminalizes forced marriage, which activists have identified as a specific concern for LBTQ women. However, for the law to be effective activists insist that law enforcement officials and prosecutors must be sensitized to the needs of LBTQ women. An additional challenge arises for many LBTQ women who may be unwilling to seek assistance for the fear of being charged under Article 489.

²⁹⁷ Ibid

²⁹⁸ Ahmed El Amraoui, “Will Morocco's new law protect women from violence?”, *Al Jazeera*, February 14, 2018, available at: <https://www.aljazeera.com/indepth/features/morocco-adopts-law-protect-women-violence-180306230636981.html>

²⁹⁹ Ibid

Tunisia

- 1913: Consensual same-sex sexual relations criminalized under the French colonial penal code
- 2002 ● Damj, Tunisia's First LGBTQ organization is founded
- 2011 ● The Tunisian Revolution
- 2014 ● International Day against Homophobia is publicly marked for the first time in Tunisia
- 2015 ● Launch of *Chouftouhonna*, a feminist art festival with LGBTQ themes
The "Marwen" case
- 2015-2016 ● The "Kairouan 6" case
- 2016 ● The Civil Collective for Individual Liberties, consisting of over 35 civil society organizations including LGBTQ organizations, is launched

Restaurants, shops and internet cafes place signs which say "no homosexuals allowed"
- 2017 ● Tunisia accepts Universal Periodic Review recommendations relating to banning forced anal examination and countering discrimination based on sexual orientation and gender identity/expression
- 2018 ● LGBTQ film festival launched in Tunis

Tunisian Commission appointed by the President recommends for Article 230 criminalizing same-sex sexual relations to be repealed

1. The legal and social context

(a) The law and its application

Consensual same-sex sexual relations are criminalized under Article 230 of the Tunisian Penal Code; those convicted under the article face up to three years of imprisonment.³⁰⁰ The origins of Article 230 date back to the 1913 Penal Code, which was adopted when Tunisia was a French Protectorate.³⁰¹ Notably, previous versions of the Penal Code, such as the Qanun Al Jinayat Wal Ahkam Al Urfya (issued in the 1860s under the Husanid dynasty) did not criminalize consensual same-sex sexual relations.³⁰²



Street art campaign against Article 230

Professor Amel Grami, based with the University of Manouba's Department of Political Science, has conducted research into the origins of the law. She explains that the adoption of the law was indicative of the spread of "sexual conservatism" by the French Empire.³⁰³ In contrast, she notes that segments of Tunisian society in different periods of history have been accepting of people with diverse sexual orientations and gender identities, evident from the country's art and literature.³⁰⁴

The Tunisian Penal Code is available in both French and Arabic versions. There is discrepancy, however, in the scope of Article 230 between the two versions. While the French version criminalizes "sodomy," the Arabic-language version addresses both "male and female" homosexuality.³⁰⁵ As Arabic is the national language of Tunisia and predominantly used by law-enforcement officials and the courts, Article 230 effectively applies to both men and women.³⁰⁶

Badr Baabou, the Director of Damj ("Inclusion"), the oldest LGBTQ rights organization in Tunisia, clarified that Article 230 is predominantly applied to men, with 72 reported arrests in 2017.³⁰⁷ Baabou recognized, however, that there is likely to be significant underreporting. Hamdi Khalifa, an independent consultant working on LGBTQ rights, highlighted that evidence used for charges under Article 230 can

³⁰⁰ Code Pénal (Conformément à la loi n° 2005-46 du 6 juin 2005), available at: http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Code_penal_12_07_2010_fr.pdf

³⁰¹ OutRight and AFE interview with Professor Amel Grami, University of Manouba, Tunis, October 17, 2017

³⁰² Ramy Khouili and Daniel Levine-Spound, "Why does Tunisia still criminalize homosexuality", Heinrich Böll Stiftung, October 30, 2017, available at: <https://tn.boell.org/en/2017/10/30/why-does-tunisia-still-criminalize-homosexuality>

³⁰³ OutRight and AFE interview with Professor Amel Grami, University of Manouba, Tunis, October 17, 2017

³⁰⁴ Ibid

³⁰⁵ Ramy Khouili and Daniel Levine-Spound, "Why does Tunisia still criminalize homosexuality", Heinrich Böll Stiftung, October 30, 2017, available at: <https://tn.boell.org/en/2017/10/30/why-does-tunisia-still-criminalize-homosexuality>

³⁰⁶ OutRight and AFE interview with Hamdi Khalifa, Tunis, October 17, 2017.

³⁰⁷ OutRight and AFE interview with Badr Baabou, Damj, Tunis, October 16, 2017.

be arbitrary, based on as little as the appearance of the accused or private messages on their mobile phone.³⁰⁸ He explains that forced anal examinations have often formed a part of the evidence used for convictions.³⁰⁹

The extent to which the law has been used to target LBQ women is less clear. Bochra Triki from Chouf, a feminist organization that works closely with LBQ women, provided one possible explanation:

Women's sexuality itself is taboo in Tunisia. When a woman is found to have sex outside of marriage, and that too with another woman, there is even more stigma. Family and friends will try and ensure the case does not receive any further attention.³¹⁰

Triki noted that the cases of women being charged under Article 230 that have been brought to her organization's attention often involve two scenarios. First, and most common, are cases of women who engaged in sexual relations with other women in criminal detention while serving sentences related to charges under other laws. Chouf is often notified of such cases through the lawyers they work with. The second scenario involves neighbors alerting police of women they suspect to be involved in same-sex relations.

Najma Kousri Labidi, the Coordinator of the Tunisian Association for Democratic Women's Sexual and Bodily Rights Program, reiterates the challenges in gaining a thorough understanding of how the law impacts women. The Association has documented cases where women have been blackmailed and asked for bribes by the police in order to avoid being charged under Article 230.³¹¹ Kousri Labidi states that cases of women charged under Article 230 are unlikely to come to the attention of the Association, in light of the

unique stigma facing LGBTQ women, particularly in rural areas of Tunisia.³¹²

Triki emphasized that transgender women and men and gender non-conforming people are most at risk of being targeted under Tunisian law. They are often charged under public decency laws. These include Article 226 and Article 226 bis, which criminalizes outraging "moral standards" and "public decency"; and Article 231, which criminalizes the "solicitation" of "prostitution." Article 226 in particular is expansive and requires limited evidence for convictions.³¹³ Triki noted that such charges are often laid by police on the basis of physical appearance or failure to produce documents which correspond to the person's gender expression. Notably, there are currently no laws or formalized procedures that allow for changing gender markers on official documentation.³¹⁴

Senda Ben Jebara of the LGBTQ organization Mawjoudin ("We Exist") described how the discriminatory laws and their application "gives legitimacy to homophobia, transphobia, and hate crimes and has a severe psychological impact on many LGBTQ people who grow to view themselves as criminals."³¹⁵



Mawjoudin's social media campaign - There is homosexuality here

308 OutRight and AFE interview with Hamdi Khalifa, Tunis, October 17, 2017.

309 Ibid

310 OutRight and AFE Interview with Bochra Triki, Chouf, New York, March 17, 2018.

311 OutRight and AFE Skype interview with Najma Kousri Kabidi, Tunisian Association for Democratic Women, November 22, 2017.

312 Ibid

313 An earlier version of the Article stated: "gross indecency committed publicly and intentionally is punishable by an imprisonment of six months and a fine of 200 francs." However, the Article was revised and expanded in 2005, to include three additional sub-articles to explain "gross indecency" and the requirements for issuing charges. These sub-articles address: indecency through gesture or speech (six months imprisonment and a thousand dinars) and sexual harassment (one year imprisonment and three thousand dinars, more if the victim was a child or person with a disability). (See: Islamopedia, "Tunisia: Penal Code", available at: <http://www.islamopediaonline.org/country-profile/tunisia/islam-and-legal-system/penal-code>)

314 Senda Ben Jebara states however that she is aware of one case where an intersex person was able to undergo gender reassignment surgery and change the gender markers on their civil documents. (OutRight and AFE email correspondence with Senda Ben Jebara, Mawjoudin, June 21, 2018)

315 OutRight and AFE interview with Senda Ben Jebara, Mawjoudin, Beirut, September 29, 2017

(b) Social attitudes, violence, and discrimination

Discrimination and violence against individuals with diverse sexual orientations, gender identities, and gender expressions is widespread in Tunisia, particularly outside of the major cities. Kousri Labidi, from Tunisian Association for Democratic Women, noted that harm often originates from the family structure, with LGBTQ people being “vilified and disowned” by their families.³¹⁶ Without family support, LGBTQ youth in particular often face social and financial exclusion.

Triki of Chouf explained that LBQ women face compounded vulnerabilities, as their mobility and independence is especially tied to family structures due to broader gender-based discrimination against women:

Parents and family members often decide if and when women can go out... We are aware of cases where LBQ women have been locked up within the family homes. LBQ women who are able to leave the family unit often face continued harassment from family members and struggle to attain economic independence.³¹⁷

In the public sphere, discriminatory language continues to be adopted by government officials. As examples, the former Minister of Justice Samir Dilou stated in 2012 that homosexuality was a perversion that needed to be medically treated, and former Minister of Public Health Abdellatif Mekki stated in May 2015 that homosexuals “should be punished as the law provides, because this kind of individual behavior is dangerous for society.”³¹⁸ Dilou’s statement was made while he was in office.

Activists suggest that the media continues to refer to LGBTQ people with derogatory language,³¹⁹ and businesses have adopted discriminatory policies. Ben Jebara of Mawjoudin stated that in 2016 shops, restaurants, and internet cafes posted signs which said “no homosexuals allowed.”³²⁰ These actions followed a debate on the television show *El Hiwar Ettounsi*, where an actor, Ahmed Landolsi, described homosexuality as a “sickness.”³²¹ In response, Mawjoudin launched a social media campaign where people across the country posted photos with placards saying “there is homosexuality here,” including at key national landmarks.³²²

Violence against LGBTQ people is also common and often met with inaction from law enforcement agencies. Damj has documented approximately 20 hate crimes annually, including murders, perpetrated against LGBTQ people on the basis of their real or perceived sexual orientation, gender identity, and/or gender expression.³²³ Baabou of Damj described how in recent years, with the exception of one case, anti-LGBTQ violence involving Tunisians have not been treated as hate crimes or duly investigated by government agencies and the police.³²⁴ Based on the anecdotal evidence available, however, it is clear that most cases of violence are likely to go unreported. LGBTQ people remain reluctant to report incidents of discrimination or violence to law enforcement due to the risk of being charged under Article 230 and/or public decency laws.³²⁵

2. The growth of Tunisian LGBTQ activism

Prior to the January 2011 Tunisian revolution, which overthrew long-term President Zine El Abidine Ben Ali, LGBTQ activism in Tunisia was largely underground. Kousri Labidi noted that severe restrictions on freedom of expression

³¹⁶ OutRight and AFE Skype interview with Najma Kousri Kabidi, Tunisian Association for Democratic Women, November 22, 2017.

³¹⁷ OutRight and AFE Interview with Bochra Triki, Chouf, New York, March 17, 2018.

³¹⁸ Amnesty International, “Tunisian official’s rhetoric undermines human rights”, February 24, 2012, available at: <https://www.amnesty.org/en/latest/news/2012/02/tunisian-officials-rhetoric-undermines-human-rights/>; Eric Goldstein, “Dispatches: LGBT Rights Five Years After the Tunisian Uprising”, Human Rights Watch, February 8 2016, available at: <https://www.hrw.org/news/2016/02/08/dispatches-lgbt-rights-five-years-after-tunisian-uprising>

³¹⁹ Badr Baabou and Chedli Dhoubi of Damj note that traditionally the media has used derogatory language to describe LGBTQ people (OutRight and AFE interviews, Tunis, October 16, 2017)

³²⁰ OutRight and AFE interview with Senda Ben Jebara, Mawjoudin Beirut, September 29, 2017

³²¹ France 24, “No homosexuals allowed: Tunis stores put up homophobic signs”, April 26, 2016, available at: <http://observers.france24.com/en/20160426-homosexuals-banned-stores-tunisia-homophobic-signs>

³²² OutRight and AFE interview with Senda Ben Jebara, Mawjoudin Beirut, September 29, 2017

³²³ OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017

³²⁴ Baabou contrasts this with hate crimes against LGBTIQ foreign nationals in Tunisia which have received greater recognition (OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017)

³²⁵ Ibid

and association meant, “there was no place to be outspoken.”³²⁶

LGBTQ rights work before this time was often conducted under the umbrella of the feminist movement or through sexual health programming. Organizations such as the Tunisian Association for Democratic Women and the Tunisian Organization for the Fight Against STDs and AIDS played key roles. From the 1990s onward, The Tunisian Association for Democratic Women advocated for the decriminalization of homosexuality to government agencies and within UN forums. However, the Association’s work was met with resistance from both within civil society and the broader public. Civil society specifically thought it was best for the Association to pursue an agenda around civil and political rights. Kousri Labidi explained that campaigning for decriminalization contributed to negative perceptions of the Association. “You are already a feminist within a hostile environment... initially you are treated as a bad woman who does not want a husband, then you also are viewed as the cliché lesbian feminist,” the activist said.³²⁷

Damj, Tunisia’s first LGBTQ organization, was founded in 2002 and provided an informal shelter for the community, known as “apartment dix neuf.” The shelter was crucial to providing protection to the LGBTQ community, particularly during heightened periods of arrests. However, the shelter and members of the organization were subject to repeated threats from government agents and had to relocate on multiple occasions.³²⁸

The overthrow of Ben-Ali proved to be a turning point in the growth of civil society, including LGBTQ activism. LGBTQ activists were active in the protests, graffiti campaigns, and neighborhood watches during the revolution.³²⁹ Chedli Dhouibi from Damj explained the role of LGBTQ activists in the revolution. “We were already activists at the time and did not want people to look back and say that [LGBTQ activism] came after the revolution,” Dhouibi

explained. “We wanted proof that we were involved.”³³⁰

Since the revolution, several new membership-based organizations that work on LGBTQ advocacy have emerged. These include Mawjoudin (We Exist) and Chouf, a feminist organization working on issues related to LGBTQ women. The organizations cited have been able to register with the Tunisian government, often using the terms “sexual and gender minorities” in their applications. However, none of the organizations specified their work around LGBTQ people in their applications. In the case of Mawjoudin, Senda Ben Jebara suggested that any reference to LGBTQ in their application for registration might have led to rejection, as the government would automatically associate their work with Western colonial impositions.³³¹ One activist who worked on their organization’s registration stated that this was a conscious decision: “The wording on the application was vague, but our work is targeted.”³³²

A key milestone in LGBTQ activism came in January 2016 with the launch of the Civil Collective for Individual Liberties, which consists of over 35 civil society organizations. Notably, Mawjoudin, Chouf, Damj, and the Tunisian Association for Democratic Women are all part of the Collective, which also includes the Tunisian Human Rights League, the oldest human rights organization in the country, as well as international organizations such as EuroMed Rights. LGBTQ rights, specifically the abolition of Article 230, are key matters on the Collective’s agenda.

Ramy Khouili, who was the Maghreb Coordinator for Euromed Rights at the time the Collective was formed, suggested that the Collective has numerous benefits for the organizations working on LGBTQ rights including security, credibility, and visibility, through strength in numbers:

If the LGBTQ groups talk alone, people are less likely to listen... [The Collective]

³²⁶ OutRight and AFE Skype interview with Najma Kousri Labidi, Tunisian Association for Democratic Women, November 22, 2017

³²⁷ Ibid

³²⁸ OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017

³²⁹ OutRight and AFE Interview with Hamdi Khalifa, Tunis, October 17, 2017

³³⁰ OutRight and AFE Interview with Chedli Dhouibi, Damj Beirut, October 1, 2017

³³¹ Outright and AFE Interview with Senda Ben Jebara, Mawjoudin Beirut, October 16, 2017.

³³² OutRight and AFE Interview with LGBTQ activist [name withheld], Tunis, October 17, 2017.

offers them security, as they were not exposed alone by speaking about LGBTQ rights. Now there are also experienced activists who are able to influence public opinion speaking with them.³³³

Khouili explained that the LGBTQ groups have also had a positive impact on more experienced organizations and activists, in what he described as an “exchange of knowledge between generations of activists.”³³⁴

Since 2017, Chouf, Mawjoudin, and Damj have also formed a specific LGBTQ coalition to better coordinate their efforts. Alessia Ubaldini of Chouf noted that the three organizations have a “common vision” and the coalition allows them to complement each other’s work, share resources, and increase members’ access to services of other organizations.³³⁵

3. Key areas of progress

(a) Shifting public opinion in high profile cases

The response of Tunisian civil society to two high-profile cases involving individuals charged under Article 230 has been instrumental to the shift in public discourse around homosexuality and specifically the use of forced anal examinations as evidence for convictions. The accused in two cases, commonly referred to as the cases of “Marwen”³³⁶ and the “Kairouan 6,” received reduced sentences on appeal in light of sustained advocacy campaigns and considerable public pressure. However, while progress has been achieved, Article 230 and associated laws continue to be applied against LGBTQ people, as do forced anal examinations as part of so-called evidence in convictions.

The Case of “Marwen”

In September 2015, Marwen, a 22-year-old student, was summoned by police in Hammam Sousse as a witness in a murder investigation. His phone number had been found in the telephone of a man who had been murdered the week before. Marwen’s lawyer stated that he confessed to engaging in sexual relations

with the man who was murdered, as the police threatened to bring a murder charge against him. He was required to undergo a forced anal examination conducted by a forensic medical doctor at the Sahloul Hospital in Sousse. The prosecutor of the Sousse First Instance Tribunal then charged Marwen with “homosexual acts” under Article 230 of the penal code.

Marwen was a member of Damj and communicated to the organization via his lawyer, consenting to public advocacy around his case. Members of Damj proceeded to relay the story to media outlets. Badr Baabou of Damj stated that Marwen was the first “human face to the statistics” surrounding Article 230, and the media was quick to pick up the story.³³⁷ Damj sought to humanize Marwen in coverage, emphasizing that he was a responsible 22-year-old student. They also chose to focus on the forced anal exam as a breach of privacy and a form of torture, rather than delving into Marwen’s sexual orientation. Arguably, these factors contributed to public sympathy around the case.

Baabou, who was conducting fieldwork in the interior of Tunisia during the time, recalled public perceptions of the case:

Not just human rights activists, but the mainstream public was shocked. People thought it was inhumane and did not make sense. Why does the state want to breach the privacy of people? What are they are looking for? Maybe he is homosexual, maybe not. Maybe tomorrow they can do it to me. It was shocking and humiliating.³³⁸

Khouili reiterated that the focus on forced anal examinations was critical to shaping public opinion. “For people who were not LGBTQ-friendly, the fact that someone was going through an anal examination was shocking,” the activist said.³³⁹

In addition to a media campaign, Damj also utilized other avenues of advocacy. They

333 OutRight and AFE Interview with Ramy Khouili, Tunis, October 14, 2017

334 Ibid

335 OutRight and AFE Interview with Alessia Ubaldini, Chouf, Tunis, October 14, 2017

336 Pseudonym

337 OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017

338 Ibid.

339 OutRight and AFE Interview with Ramy Khouili, Tunis, October 14, 2017

enlisted the support of Tunisia's oldest human rights organization, the Tunisian Human Rights League, which until this point had remained largely silent on LGBTQ rights. Baabou explained that Damj called on the League to condemn Marwen's arrest, and their actions "went beyond expectations."³⁴⁰ The League issued a statement, which condemned Marwen's detention, called for his immediate release, urged authorities to stop the use of anal examinations, and called for Article 230 to be repealed.³⁴¹

The advocacy and media campaign led to responses from political parties and the Tunisian executive. Senda Ben Jebara of Mawjoudin notes that it was the first time leading political parties, Al Massar and Al Kotb, made statements condemning arrests under the Article 230.³⁴² She further states that the General Secretary of the Al Massar party spoke against anal examinations on national television, terming it as an inhumane practice.³⁴³ The sustained campaign also led to the Tunisian Minister of Justice voicing rare public opposition from a government figure to Article 230. He stated, "My problem is Article 230... Nothing can justify infringement on private life," and he called for Article 230 to be repealed.³⁴⁴ However, he was dismissed shortly after issuing this statement, over "differences" with the President.³⁴⁵

Damj also sought to engage with the highest levels of government, sending a letter calling for Marwen's release to the President of Tunisia, which was delivered in-person through a visiting Member of the European Parliament.³⁴⁶ Although they did not receive an official response, Marwen was released from detention shortly afterward in December 2015. On appeal, his sentence was reduced to two months from the initial sentence of one-year imprisonment.

Baabou considers Marwen's case to be particularly significant to Tunisian LGBTQ activism, conceptually dividing the movement into two phases, "before Marwen and after Marwen."³⁴⁷

The "Kairouan 6" case

In December 2015, six young men aged 18-19 were arrested in the religious city of Kairouan from their residence and charged under Article 230 of the penal code. One youth was also charged under Article 266, relating to public decency for videos found on his laptop. The youths were subject to anal examinations as part of the investigation and sentenced to three years imprisonment each. The prosecution primarily relied on evidence allegedly gathered from the anal examinations.

Baabou noted that given the Kairouan 6 case came shortly after the case of Marwen, civil society had "a ready mechanism" in place to respond through partnerships between organizations and the media.³⁴⁸ The campaign launched by civil society drew attention to the age of the accused and the use of forced anal examinations. In terms of shaping public opinion, the case helped refute arguments that the case of Marwen was an exception. After a sustained campaign, the accused were released on appeal in January 2016, serving considerably less time than the initial three-year sentence.

Khouili noted that the two successive cases of Marwen and the Kairouan 6 gave impetus to the formation of the Civil Collective for Individual Liberties. The Collective as noted in Section 2 has helped provide security, credibility, and visibility to LGBTQ organizations in Tunisia.

Leveraging shifting public opinion

LGBTQ organizations utilized the shift in public opinion in the cases to advocate to the National Council of the Medical Order on forced anal testing. In April 2017, the National Council of the Medical Order in Tunisia issued a statement

³⁴⁰ OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017

³⁴¹ *ibid*

³⁴² OutRight and AFE email correspondence with Senda Ben Jebara, Mawjoudin, June 21, 2018

³⁴³ *ibid*

³⁴⁴ Middle East Eye, "Tunisian justice minister sacked over 'differences'", October 20, 2015, available at: <http://www.middleeasteye.net/news/tunisian-justice-minister-sacked-over-differences-709556089>

³⁴⁵ *ibid*

³⁴⁶ OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017

³⁴⁷ *ibid*

³⁴⁸ *ibid*

calling for doctors to cease conducting forced anal and genital examinations.³⁴⁹ While the statement is a significant step, Baabou stated that the recommendation falls short of calling for an outright halt to anal testing, as it is qualified by focusing on the “forced” nature of the procedure.³⁵⁰ He noted that in the majority of the cases, those charged under Article 230 often feel compelled to undergo anal examinations, so the question of true consent does not arise.

(b) Engagement with UN mechanisms

Senda Ben Jebara of Mawjoudin suggested that it is challenging for LGBTQ organizations to engage in dialogue with the Tunisian Executive and Members of Parliament on LGBTQ rights. “They will often say, ‘Now is not the right time to speak,’” she said.³⁵¹ Bochra Triki of Chouf reiterated this point, suggesting that even if officials may be sympathetic in private, “they do not want to take a public stance.”³⁵² In response, activists have identified UN mechanisms as an avenue for activists to engage with their governments.

While Tunisian LGBTQ activists have primarily engaged with the Universal Periodic Review process, developments at the UNGA suggest that there is scope for greater engagement there. Along with Lebanon, Tunisia was among two Arabic-speaking Member States from the MENA region which did not vote during the November 2016 vote on an amendment aiming to block the mandate of the Independent Expert on SOGI before the Third Committee.³⁵³ Given that the vote before the Third Committee was closely scrutinized and Tunisia was present at the vote, Tunisia’s position can be viewed as a break from the regional consensus articulated through the formal OIC and Africa Group positions.³⁵⁴ As another sign of Tunisia breaking away from regional consensus, during

discussions surrounding the Agreed Conclusions of the 2018 Committee on the Status of Women, the Tunisian delegation expressed support for sexual and reproductive rights.³⁵⁵

In relation to the Universal Periodic Review process, Tunisian LGBTQ organizations, along with 11 co-signatories from broader civil society, submitted an LGBTQ-specific shadow report prior to Tunisia’s May 2017 Universal Periodic Review session. The report documented the unconstitutionality of Article 230; key cases of the law’s application; and legal and ethical concerns relating to forced anal testing.³⁵⁶ The report was launched in Tunis in front of an audience of 300 people and was accompanied by a sustained advocacy campaign. Members of the coalition worked closely with the embassies of Tunisia’s key economic partners, advocating for them to make recommendations relating to LGBTQ rights during the Universal Periodic Review session.³⁵⁷

The shadow report, which was the first to focus specifically on LGBTQ rights and, importantly, the campaign surrounding these rights, was arguably a success. During Tunisia’s previous Universal Periodic Review session in 2012, there were just three recommendations relating to Article 230 and the use of anal testing, none of which were accepted. However, in the 2017 session, there were 22 recommendations made in total, with Tunisia accepting two recommendations based on protection from discrimination and violence; and the cessation of forced anal examinations.³⁵⁸

Also of significance, the Tunisian Minister of Justice addressed discrimination on the basis of sexual orientation and the use of anal examinations in his closing remarks, a rarity for a member of the Tunisian executive:

349 Human Rights Watch, “Tunisia: Doctors Oppose ‘Anal Test’ for Homosexuality”, April 12, 2017, available at: <https://www.hrw.org/news/2017/04/12/tunisia-doctors-oppose-anal-test-homosexuality>

350 OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017

351 OutRight and AFE Interview with Senda Ben Jebara, Mawjoudin Beirut, October 16, 2017.

352 OutRight and AFE Interview with Bochra Triki, Chouf, New York, March 17, 2018.

353 OutRight, International Service for Human Rights, ILGA, and ARC International, “Defending the Independent Expert on Protection against Violence based on Sexual Orientation and Gender Identity at the 71st Session of the United Nations General Assembly”, October 27, 2016, available at: https://www.outrightinternational.org/sites/default/files/OutRightGAA4_V5_LR.pdf, 5.

354 OutRight, International Service for Human Rights, ILGA, and ARC International, “Defending the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity at the 71st Session of the United Nations General Assembly”, available at: https://www.outrightinternational.org/sites/default/files/OutRightGAA4_V5_LR.pdf, p. 23, 61

355 UN Web TV, (Part I) Commission on the Status of Women (CSW62 2018), 23 March, 2018, available at: <http://webtv.un.org/search/part-1-commission-on-the-status-of-women-csw62-2018/5757583581001/?term=commission%20on%20the%20status%20of%20women&sort=date>

356 Tunisian LGBTQ Coalition, UPR Shadow Report, available at: <https://www.damj.co/wp-content/uploads/2014/09/Rapport-UPR-LGBTQI-Tunisie.pdf>

357 OutRight and AFE Interview with Ramy Khouili, Tunis, October 14, 2017

358 ILGA, 27th UPR Working Group Sessions, SOGIESC Recommendations (May 1 - May 12, 2017), available at: https://ilga.org/downloads/27TH_UPR_WORKING_GROUP_SESSIONS_SOGIESC_RECOMMENDATIONS.pdf, 63

\Concerning discrimination on the basis of sexual orientation under the constitution, all forms of discrimination, hatred, and incitement to hatred is unconstitutional and any person, of any sexual orientation has full rights as access to education and all other rights. Any aggression against any persons, on the basis of her or his sexual orientation is criminalized and is prosecutable. Under [A]rticle 230 of the Penal Code which dates back to 2013, the President of the Republic issued a law to guarantee fundamental rights in accordance to the constitution and called for the opening of a dialogue on [A]rticle 230. As for this article, it is important to say that consent is important, I am talking about medical examinations, are contingent on the consent of the person concerned and in the presence of a medical expert.³⁵⁹

However, the remarks and the acceptance of recommendations should be viewed with caution. Notably, one of the recommendations and the Minister's closing remarks refer to "consent" or the "forced" nature of anal examinations. This arguably leaves room for the interpretation that examinations could be lawful if there is consent.

Since Tunisia's 2017 Universal Periodic Review session, LGBTQ activists have noted that forced anal examinations continue to take place.³⁶⁰ Triki, however, explained that the accepted recommendations and statement by the Minister of Justice are a tool for activists in such cases. "We now hold [government agencies and law enforcement officials] accountable to their words at the UN," the activist said.³⁶¹

(c) Progress for LGBTQ women

Legal progress

Advocacy around forced anal examinations, engagement with UN mechanisms, and the high-profile cases have primarily involved or focused on GBQ men. Patriarchal structures and stigma related to women's sexuality and the transgender community has contributed to this.

Legal progress for LBQ women has often taken shape through broader gender equality reforms. These include a historic law passed in July 2017 to combat violence against women. The law includes a broad definition of violence, recognizing economic, sexual, political, and psychological violence in addition to physical violence.³⁶² Further, the law ends impunity for perpetrators of violence by amending provisions in the penal code, such as Article 227, which pardoned a perpetrator of sexual acts with a minor if he married the victim.³⁶³

Triki recognized that law as a step in the right direction, but has some reservations about its implementation:

On paper, it is good because it gives women the opportunity to reclaim their rights if they are victims of violence. However, police need to be aware and sensitized to the law....We hope the law can be used by LBQ women, but there is still the concern that women seeking redress could be charged under Article 230, or will not receive police assistance.³⁶⁴

Triki also emphasized that the law will not apply to transgender women, in light of stigma and the fact that there are no procedures to change gender markers on documentation.³⁶⁵

In another important development, Tunisian feminist and LGBTQ organizations are advocating for a change in inheritance law, which currently entitles men to receive double the inheritance of women. In a sign of some

³⁵⁹ Ibid, 64.

³⁶⁰ OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017

³⁶¹ OutRight and AFE Interview with Bochra Triki, Chouf, New York, March 17, 2018

³⁶² Euromed Rights, "Shortcomings of Tunisia's Law on Violence against Women", November 22, 2017, available at: <https://euromedrights.org/publication/shortcomings-tunisia-law-violence-women/>

³⁶³ Ibid

³⁶⁴ OutRight and AFE Interview with Bochra Triki, Chouf, New York, March 17, 2018

³⁶⁵ Ibid

progress, a special commission appointed by the Tunisian president, Commission des libertés individuelles et de l'égalité, proposed a law ensuring inheritance equality between men and women.³⁶⁶ However, the commission also “left room for a provision that would allow those who oppose the rule to divide their wealth as they see fit.”³⁶⁷

Community-building

Beyond legal progress, organizations such as Chouf and the Tunisian Association for Democratic Women have been instrumental in creating space, providing services, and community-building for LBQ women. As an example, the Tunisian Association for Democratic Women currently operates a center, which provides legal and psychosocial services to women who have been subject to gender-based violence.

Alessia Ubaldini explained that Chouf was created in response to the lack of space for marginalized women in Tunisia, including LBQ women:

There was a need for such space within our society—for everyone from women who have children outside of marriage to LBQ women. By building a community, we are strengthening connections between women with shared experiences and promoting visibility of women.”³⁶⁸

As an example of a successful initiative, Ubaldini referred to self-defense classes, which Chouf has been running since 2015, which are open to all women. “Beyond the training itself, it is also space for women to engage in dialogue about their experiences,” the activist said.³⁶⁹

(d) Activism and the arts

Activists have used art as a medium to promote engagement of broader Tunisian society, sections of which may not have otherwise been aware or receptive to LGBTQ issues.

Ben Jebara explained, “We are trying to fight not only in the courts but through art.”³⁷⁰ She cited an example of a social media campaign Mawjoudin launched in 2015 in collaboration with artists, politicians and film professionals, who held placards in support of LGBTQ rights and against the use of Article 230.³⁷¹ Ben Jebara expressed that the campaign was one of the organizations key successes, with Tunisian media outlets continuing to publish images from the campaign.³⁷²

Chouf has been organizing Chouftouhonna, a feminist art festival in Tunis, since 2015. The festival, which is open to the public, has been expanding yearly; the latest edition attracted the work of approximately 130 artists from around the world. Many exhibits address LGBTQ themes; as an example, Ubaldini cited an art exhibition created by Tunisian activists against Article 230, which was displayed in Tunis’ medina. The location of the latest edition of the festival was particular symbolic, as it was

held at the National Theatre of Tunisia, which is administered by the government. As Ubaldini stated, “The space we chose is the state.”³⁷³



From Chouftouhonna Feminist Art Festival

The festival is volunteer-run, and many volunteers begin with a limited knowledge of feminism or LGBTQ rights. Ubaldini noted that Chouf has rarely received negative feedback from the broader public. “We create dialogue, strength, and visibility through the festival,” the activist said. “Art is something which is accessible to the public.”³⁷⁴

³⁶⁶ Lamine Ghanmi, “Tunisian commission puts forward bold human rights blueprint”, *The Arab Weekly*, June 24, 2018, available at: <https://the arabweekly.com/tunisian-commission-puts-forward-bold-human-rights-blueprint>

³⁶⁷ Ibid

³⁶⁸ OutRight and AFE Interview with Alessia Ubaldini, Chouf, Tunis, October 14, 2017

³⁶⁹ Ibid

³⁷⁰ OutRight and AFE Interview with Senda Ben Jebara, Mawjoudin, Beirut, October 16, 2017

³⁷¹ Ibid

³⁷² Ibid

³⁷³ OutRight and AFE Interview with Alessia Ubaldini, Chouf, Tunis, October 14, 2017

³⁷⁴ Ibid



More recently, Mawjoudin launched a queer film festival in January 2018. The festival showed 12 films in Tunis, including Tunisian and regional productions.³⁷⁵

4. Ongoing challenges and opportunities

Despite the significant advances made in securing the rights of LGBTQ people, particularly since the Tunisian revolution, activists have identified ongoing concerns that will shape future work.

(a) Collecting data on violence and discrimination against LGBTQ people

There is currently a dearth of data documenting the level of violence and discrimination against LGBTQ people in Tunisia. While Damj has

documented approximately 20 hate crimes annually against LGBTQ people, they note that there is likely to be significant underreporting. A lack of information is particularly evident in relation to LGBTQ women and people in rural areas.

Baabou said that the lack of data on violence and discrimination has often been used as an excuse for inaction by law enforcement officials and government agencies.³⁷⁶ Thus, while the Minister of Justice noted during the 2017 Universal Periodic Review session that people with diverse sexual orientations are protected under Tunisian law, this is not necessarily the case in practice.

As a response, the Tunisian LGBTQ Coalition launched a report in May 2018, which documents experiences of violence amongst 300 LGBTQ people in Tunisia.³⁷⁷ Amongst the study's findings are that 51.8% of people surveyed were subject to insults in public on the basis of their presumed sexual orientation and/or gender identity; 32.3% of those surveyed faced violence from within the family due to their presumed sexual orientation and/or gender identity; and 13% of those surveyed faced sexual harassment from police officers.³⁷⁸ Activists hope that the data can be used to challenge inaction from law enforcement and government agencies. They note however that further documentation needs to be conducted in rural areas, as the study's sample mostly consisted of urban Tunisians.

When questioned specifically on the lack of information relating to how Tunisian law impacts LGBTQ women, Triki from Chouf suggested that the Freedom of Information law passed in 2016 could potentially be utilized by organizations. However, she suggested that requesting data is likely to be fraught with challenges. "Technically with the 2016 law, any person can ask for access to the data archives," she said. "However, the archives are not organized and officials may not give a clear answer—a yes or a no."³⁷⁹ She suggested that organizations are more likely to be successful with the Freedom of Information law when working in unison through the Civil Collective for Individual Liberties.³⁸⁰

³⁷⁵ Mawjoudin Queer Film Festival, available at: <http://queerfilmfestival.mawjoudin.org/en/home/>

³⁷⁶ OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017.

³⁷⁷ Mawjoudin, Damj and Chouf, "Study on Violence against LGBT individuals" May 2018, available at: <http://sxpolitics.org/wp-content/uploads/2018/05/Rapport-Violence.pdf>

³⁷⁸ Ibid

³⁷⁹ Outright and AFE Interview with Bochra Triki, Chouf, New York, March 17, 2018

³⁸⁰ Ibid

(b) Repealing Article 230 and other discriminatory laws

Article 230, and other articles of the Penal Code used to target LGBTQ people, conflict with provisions of the Tunisian Constitution, which was adopted in 2014. Article 21 of the Constitution specifically states:

All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination. The state guarantees freedoms and individual and collective rights to all citizens, and provides all citizens the conditions for a dignified life.³⁸¹

Article 230 (and the corresponding articles) also contravenes the right to privacy protected by Article 24 of the Constitution.³⁸²

Notably, the Tunisian Constitution also calls for the creation of a Constitutional Court, which is now three years overdue. The Court would offer an avenue for challenging the constitutionality of Article 230 and related articles. LGBTQ Activists are currently engaged in dialogue with potential candidates for the Court's bench.³⁸³ Ramy Khouili noted, however, that the success of any case before the Court would depend on membership of the bench. "The Constitution is very progressive but you can read it in 100 ways, depending the judges appointed in the court," Khouili said.³⁸⁴

Another potential avenue to challenging laws that target LGBTQ people is collaboration with the Commission des libertés individuelles et de l'égalité, which was created by the Tunisian President in August 2017 to guarantee individual rights and gender equality. The Commission released a report in June 2018, which recommended for Article 230 to be repealed, or as an alternative, to replace the three year prison sentence with a cash fine.³⁸⁵ The report

notes: "[t]he state and society have nothing to do with the sexual life amongst adults ... sexual orientations and choices of individuals are essential to private life."³⁸⁶ Activists recognize that the recommendations are a tool that can be used to lobby legislators.

(c) Accountability on forced anal examinations

Despite accepting two Universal Periodic Review recommendations relating to anal tests, the procedure is still used as a form of evidence for prosecutions under Article 230. Tunisia's acceptance of the recommendations seems to be qualified to "forced" anal exams, which brings up the question of true consent. Organizations and activists have identified continued advocacy with government agencies and the police to ensure an outright ban on anal testing.³⁸⁷ Further, Baabou stressed the importance of the National Council of the Medical Order taking a step further from the last statement it issued which doctors to cease conducting forced anal examinations.³⁸⁸ It is essential that the Council calls for doctors to cease using the procedure entirely.

(d) Establishing an LGBTQ shelter

As noted earlier, violence and discrimination within the family unit continues to impact LGBTQ Tunisians. Without family support, many LGBTQ Tunisians face homelessness. There is currently at least one women's shelter in Tunis that is known to be accepting of LBQ women.³⁸⁹ Bochra Triki noted, however, that LBQ women might encounter difficulties from residents in other shelters, even if the organizations running the shelters are welcoming. She is also unsure of the ease with which members of the transgender community can access shelters. In light of gaps in existing services, Triki stated that shelter is often offered on an informal basis within the homes of members of the LGBTQ community. She recognized the need for an LGBTQ-specific shelter in Tunisia,

381 Constitute Project "Tunisian Constitution - 2014", available at https://www.constituteproject.org/constitution/Tunisia_2014.pdf

382 Tunisian LGBTQ Coalition, "UPR Report", September 2014, available at: <https://www.damj.co/wp-content/uploads/2014/09/Rapport-UPR-LGBTQ-Tunisie.pdf>

383 OutRight and AFE Interview with Senda Ben Jebara, Mawjoudin, Beirut, 16 October 2017

384 OutRight and AFE Interview with Ramy Khouili, Tunis, October 14, 2017

385 Tim Fitzsimons, "Tunisian presidential committee recommends decriminalizing homosexuality", NBC News, June 15, 2018, available at: <https://www.nbcnews.com/feature/nbc-out/tunisian-presidential-committee-recommends-decriminalizing-homosexuality-n883726>

386 Ibid

387 OutRight and AFE Interview with Ramy Khouili, Tunis, October 14, 2017

388 OutRight and AFE Interview with Badr Baabou, Damj, Tunis, October 16, 2017

389 OutRight and AFE Interview with Bochra Triki, Chouf, New York, March 17, 2018

but noted establishing such a shelter is likely to pose challenges. “More than funding, it is about security,” she said. “How do we ensure the shelter is safe without making it too visible?”³⁹⁰

³⁹⁰ OutRight and AFE Interview with Bochra Triki, Chouf, New York, March 17, 2018

Conclusion: Strategies for progress

While there are clear distinctions in the legal and social contexts, histories of activism, challenges and areas of progress impacting LGBTQ people in Jordan, Lebanon, Morocco and Tunisia, there is also common ground. This is reflected particularly in the experiences of violence and discrimination facing LGBTQ people and the approaches and tools which activists have used in response. In recognition of this, the following section aims to outline common strategies adopted by activists to achieve progress.

Regional solidarity

Activists have become increasingly aware of shared experiences through regional initiatives such as AFE's Social Change Program, a year-long capacity-building program, and the annual NEDWA conference, which brings together over 30 activists from Arabic-speaking States in the MENA region.

As an activist from Lebanon explains the impact of states in relation to the Social Change Program:

“This is where I met people from the region for the first time. You cannot believe the friendships and network we have formed - and the awareness of how intersecting our struggles are. There are people who remind you of the reasons why you are doing the work you do.”³⁹¹

The regional network initiated by AFE has been key to raising the voices of local LGBTQ activists, as reflected through joint statements³⁹² and the exchange of information and strategies. The network has also served as a conduit between national activists and international organizations, including funders. Further, the network has also been key in ensuring the safety of activists at risk. Many activists spoke of experiences where the regional network provided them with access to office space and resources when security concerns prevented

them from engaging in advocacy from their home countries.

Coalition-building and intersectional work

Forming national coalitions and intersectional work, particularly with feminist and women's rights organizations, has provided LGBTQ activists with increased visibility and security.

In January 2016, the Civil Collective for Individual Liberties, which consists of over 35 civil society organizations, including LGBTQ organizations, was formed in Tunisia. In 2017, Tunisian organizations working on LGBTQ advocacy also created a separate LGBTQ coalition to ensure the complementarity of their work. A key success of the coalition, in collaboration with partners was the submission of a civil society shadow report focusing on LGBTQ people prior to Tunisia's May 2017 Universal Periodic Review session [documented below under Engagement with UN Mechanisms.]

Lebanese organizations that work on LGBTQ advocacy or provide services to LGBTQ people, have been working together on an informal basis for years. They are currently in the process of forming a coalition, with several activists expressing hope that it will offer the benefits of the Tunisian Collective. Lebanese activists have also identified greater scope to collaborate with feminist organizations and organizations working with migrant workers.

Collaboration in Jordan is complex as activists have been unable to form LGBTQ organizations in the face of government resistance. Further, activists have expressed security concerns as a potential risk, which stifles joint initiatives. In the face of these challenges, the Jordanian LGBTQ community has nonetheless formed an informal network, which bring together artists, healthcare providers and activists. The network has been key to understanding risks impacting the community, and for building security initiatives.

In Morocco, the majority of organizations working with LGBTQ people have been unable to formally register due to government restrictions. Despite this context, organizations

³⁹¹ OutRight and AFE interview with LGBTQ activist [name and location withheld], March 22, 2018.

³⁹² See for example Statement: Human rights and freedom of expression in Egypt – trapped between security services and the media, 26 October 2017, available at: <http://afemena.org/2017/10/03/statement-human-rights-and-freedom-of-expression-in-egypt-trapped-between-security-services-and-the-media/>

have been able to work together on specific initiatives and mobilize broader civil society particularly in response to cases of violence and arrests of LGBTQ people. As an example, in several strategic cases, organizations have been able to obtain legal representation for LGBTQ people through working with feminist and human rights organizations.

Documenting arrests and cases of violence and discrimination

Activists in all four countries recognized the need to document arrests and cases of violence and discrimination against LGBTQ people. The lack of formal data collection has been manipulated by State Governments to deny that laws have been used to target LGBTQ people, and that violence and discrimination is ongoing.

In Lebanon, Helem's Community Centre has allowed it to remain connected with the LGBTQ community, many of whom seek legal support and other services. As a result, the organization is well positioned to conduct documentation, as reflected in its evidence-based approach in UN advocacy. The Tunisian LGBTQ Coalition recently completed a national inquiry into violence against LGBTQ people, which they plan to use in advocacy initiatives to government agencies. In Morocco, where it has been challenging for organizations to build membership bases, organizations have sought to rely on government statistics on arrests and the use of mobile applications to document violence against women and LGBTQ people. In Jordan, activists identified the lack of reliable data collection surrounding LGBTQ people as a major concern. Given that information is largely obtained through personal networks, activists have explained that they plan to share more information to gain further knowledge of the implications of laws, violence and discrimination.

Advocacy through the courts

Organizations in Lebanon, Tunisia and Morocco have worked closely with lawyers to ensure that LGBTQ people prosecuted under the law have access to legal representation. In Lebanon, Legal Agenda has been instrumental to producing a model defense for cases under Article 534, while Helem has sought to work closely with the judiciary. In Morocco, activists have engaged

in training initiatives with lawyers, and have expressed plans to develop a model defense for cases under Article 489. In Morocco and Tunisia, activists have initiated public campaigns, sometimes in collaboration with media outlets, around high-profile cases. The campaigns have been key to a gradual shift in discourse around violence and discrimination against LGBTQ people. Activists have suggested that in some cases the campaigns have had implications on verdicts and sentencing and the timeframe of the legal process.

Engagement with UN mechanisms

Activists across all four countries have engaged in advocacy through UN mechanisms or have expressed plans to do so. While advocacy has primarily been conducted through the Universal Periodic Review process and treaty bodies, developments at the Commission on the Status of Women, the Security Council, and the UNGA, suggest that there is greater scope for engagement by LGBTQ activists. This is reflected through the positions of Tunisia and Lebanon to attempts to block the mandate of the Independent Expert on SOGI, which challenged positions of regional blocs, and Jordan's participation and statement during the Arria-formula meeting at the Security Council in relation the targeting of LGBT people by the ISIL. Additionally, the positions of both Lebanon and Tunisia during the Commission on the Status of Women suggest that delegations are willing to break with regional consensus.

In relation to the Universal Periodic Review process, the engagement of Tunisian activists was cited as a model by activists across countries. Tunisian organizations, including LGBTQ coalition members submitted a civil society shadow report focusing on LGBTQ people prior to Tunisia's May 2017 Universal Periodic Review session. The Tunisian delegation accepted two of the recommendations relating to violence, discrimination, and forced anal examinations. Notably, the Tunisian Minister of Justice in his closing remarks claimed that discrimination on the basis of sexual orientation contravened the Tunisian constitution, and cases of violence in this context were prosecutable. While activists recognize that violence, discrimination and the use of anal examinations continue in Tunisia,

they view the statement as a valuable rhetorical tool to help hold the government accountable.

During its last Universal Periodic Review session in 2017, Morocco accepted two recommendations relating to violence and discrimination on the basis of sexual orientation and gender identity/expression, and repealing norms which criminalize and stigmatize on this basis. The recommendations followed advocacy by domestic and international civil society organizations and collectives. LGBTQ organizations plan to build upon such progress in the future.

During its last Universal Periodic Review cycle in 2015, Lebanon received five recommendations related to sexual orientation and gender identity/expression, none of which were accepted. Activists however recognize the significance of the process for holding the government accountable through the use of an evidence based-approach. Helem adopted an evidence-based approach in its 2017 shadow report to the Human Rights Committee, documenting the number of arrests under Article 534, and cases of discrimination and violence. In its Concluding Observations, the Human Rights Committee recognized continued arrests and incidences of violence and discrimination, and called on Lebanon to decriminalize consensual same-sex relations, and protect the rights of LGBTI people.

During its last Universal Periodic Review session in 2015, Jordan did not receive any recommendations, which were specifically related to sexual orientation and gender identity/expression. However, some activists have expressed the potential for further engagement with the Universal Periodic Review process in the future.

Creating space for LBTQ women

There was a general consensus from activists in Lebanon, Morocco and Tunisia that the LGBTQ movement is heavily dominated by GBQ men and has not always been inclusive of LBTQ women. In response LBTQ women activists and organizations have sought to create separate spaces for queer feminist organizing. In all three countries, LBTQ activists have been able

to build alliances with feminist organizations, which existed prior to formal LGBTQ organizing. In Tunisia, the partnership evolved naturally as feminist organizations advocated for LGBTQ rights even prior to the 2011 revolution. In Lebanon, during the International Women's Day March in Beirut in March 2018, members of existing women's rights organizations marched alongside LBTQ activists as a symbolic indication of greater collaboration. In the last 18 months trans activists in Lebanon have also begun initiating separate meetings and agendas through a specific trans committee within Helem. Jordanian activists have reported using art to increase visibility of the voices of LBTQ women and gender non-confirming people. However, they note that having a separate organized community space is a future goal.

Art, Publications and Activism

In all four countries, activists have used art and publications as a means to reach and connect to the broader public who may not otherwise have exposure to LGBTQ people or their issues. As one Lebanese activist states:

"I used to mostly focus on writing articles, but I realized no one would read them. But through art the reach is even beyond the LGBTQ community."³⁹³

In Lebanon and Tunisia, initiatives such as online art portals and the Chouftouhonna feminist art festival have helped complement broader advocacy initiatives. In Morocco, both ASWAT and Akaliyat started off as online magazines. In Jordan, given that organizations are yet to register, and activists have faced risks when they have attempted to organize public events, art and publications remain the primary mode of activism.

As evident from the range of strategies adopted by LGBTQ activists across Jordan, Lebanon, Morocco and Tunisia, advocating for legislative reform is one of multiple strategies adopted. LGBTQ rights in the region need to be supported through a multi-pronged approach based on solidarity and support for local LGBTQ organizations, coalition-building, feminist organizing, and artistic production. Given that activists have learnt from and adopted similar

³⁹³ OutRight and AFE interview with LGBTQ activist [name and location withheld], March 22, 2018.

strategies across the region, there is scope to expand on regional networks. Further, since advocacy through UN mechanisms has been a key tool for communicating with governments, there is greater scope for engagement by international organizations. However, it is clear that both regional and international engagement need to value local expertise and place the priorities of local movements and organizations at the forefront. Despite a range of challenges ahead of them, local activists remained hopeful of building on the progress they have achieved so far. Armed with innovative strategies and a common thread of resilience, they are continuing to challenge violence and discrimination against LGBTQ people.

