

Annex: Laws Prohibiting or Used to Punish Same-Sex Conduct and Gender Expression in the Middle East and North Africa

Algeria

Article 338 of the Penal Code punishes anyone guilty of a homosexual act with imprisonment of up to two years and a fine of up to 2,000 Algerian dinars (US\$18).²²⁶

Under **article 333**, an “outrage to public decency” is punishable by imprisonment of two months to two years and a fine of 500 to 2,000 Algerian dinars (US\$4-18). However, when such act involves “an act against nature with an individual of the same sex,” the penalty is imprisonment for six months to three years and a fine of 1,000 to 10,000 Algerian dinars (US\$9-90).²²⁷

Bahrain

Same-sex conduct between adults over 21 years has not been criminalized since the repeal of the 1955 British-imposed Penal Code in 1976. **Article 347** punishes, with a prison sentence of unspecified length, “anyone who assaults a person who is more than fourteen years but less than twenty-one years, with his consent,” presumably a reference to same-sex conduct.²²⁸

²²⁶ Article 338 also states that if one of the participants is a minor under eighteen years old, the penalty for the adult may be raised to three years imprisonment and a fine of 10,000 Algerian dinars. No such law punishes sexual relations between partners of different sexes if one is under 18 years old. Code Pénal (promulgué par l’Ordinance n° 66-156 du 18 Safar 1386 correspondant au 8 juin 1966), http://www.wipo.int/wipolex/en/text.jsp?file_id=200279.

²²⁷ Article 333 bis also outlaws the distribution of materials that are “contrary to decency,” including writings, drawings, and photos. Human Rights Watch is unaware of any cases in which anyone has been charged under this article for distributing materials related to sexual orientation or gender identity.

²²⁸ Bahrain Penal Code, 1976, https://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf (accessed February 7, 2018). In contrast, sex with a woman under 21 is punished as follows: “A prison sentence for a period not exceeding twenty years shall be the punishment for any person who has sexual intercourse with a female who is more than fourteen years but has not reached the age of sixteen years, with her consent. A prison sentence of no more than 10 years shall be the sentence for any person who has sexual intercourse with a female who is more than sixteen years but less than twenty one years, with her consent.”

As noted in Section I above, alleged homosexual or gender non-conforming acts, such as organizing a “gay party” or cross-dressing, have been prosecuted under vague and undefined penal code provisions against “indecency” and “immorality.” Most media reports on these cases fail to cite the precise penal code provisions under which people have been charged, and Human Rights Watch has not been able to access legal documents in these cases, but charges may include:

- **article 324**, which punishes anyone “who entices a male or a female to commit acts of immorality or prostitution” (the penal code does not provide an exact sentence);
- **article 328**, which punishes anyone who establishes or runs premises for purposes of “immorality or prostitution” with a prison sentence of up to 5 years;
- **article 350**, which outlaws any public “indecent act,” prescribing a prison sentence for a period not exceeding one year or a fine not exceeding 100 Bahraini dinars (US\$ 266).²²⁹

Egypt

Article 9 of the Law 10/1961 on the Combating of Prostitution punishes anyone who “habitually engages in debauchery or prostitution,” or who offers, owns, or manages establishments for the purpose of such activities, with up to three years in prison and a fine up to 300 Egyptian pounds (US\$ 17), while **article 14** of the same law punishes “incitement to debauchery.”²³⁰ Since the late 1990s, law enforcement authorities and courts have generally stretched the interpretation of the term to apply to consensual same-sex conduct between men.²³¹

Several Penal Code provisions are also commonly used to criminalize LGBT people and their supporters, including:

²²⁹ Bahrain Penal Code, 1976,
https://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf (accessed November 9, 2017).

²³⁰ Law 10/1961 on the Combating of Prostitution, <http://www.refworld.org/docid/5492d8784.html> (accessed January 25, 2018).

²³¹ Human Rights Watch, *In a Time of Torture*, 2004.

- **article 178**, which punishes anyone who trades or distributes materials, including photographs, that violate “public morals” with imprisonment for up to two years and a fine up to 10,000 Egyptian pounds (US \$566).²³²
- **article 269 bis**, which punishes anyone who is found to incite passersby with “signals or words to commit indecency” with imprisonment for up to one month and heightened penalties for repeat offenders.²³³
- **article 278** punishes whoever publicly commits “a scandalous act against shame” with detention for up to one year or a fine not exceeding 300 Egyptian pounds (US \$17).²³⁴

Iraq

Iraq does not criminalize consensual adult homosexual intercourse.

Paragraph 401 of the Code holds that any person who commits an “immodest act” in public can be put in prison for up to six months, a vague provision that could be used to target sexual and gender minorities, although such cases have not been documented.²³⁵

In addition, other provisions restrict the freedoms of expression, association, and assembly relating to unpopular issues, which can impact human rights defenders working on LGBT rights. **Paragraph 210** prohibits the dissemination of any information or idea that “disturbs the public peace,” while **paragraphs 403** and **404** penalize any “obscene or indecent publication or speech.”²³⁶ In one case, Kurdish Regional Government prosecutors used paragraph 403 to sentence a doctor to six months imprisonment for publishing an article on health issues impacting men who have sex with men. He was later pardoned.²³⁷

²³² Ibid., p. 137. An English translation of the penal code is available here: https://www.unodc.org/res/cld/document/criminal_code_of_egypt_english_html/Egypt_Criminal_Code_English.pdf, p. 76 (accessed February 13, 2018).

²³³ Ibid., p. 139.

²³⁴ Ibid., p. 140.

²³⁵ Iraq Penal Code, no. 111 of 1969, para. 401. An English translation of the penal code is available here: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=57206&p_country=IRQ&p_count=232&p_classification=01.04&p_classcount=5 (accessed March 19, 2018).

²³⁶ Ibid., paras. 403 and 404.

²³⁷ Reporters San Frontieres, “Kurdish President Pardons Doctor who Was Jailed for Writing about Homosexuality,” December 8, 2008, <https://rsf.org/en/news/kurdish-president-pardons-doctor-who-was-jailed-writing-about-homosexuality>, accessed November 9, 2017.

Jordan

Consensual adult homosexual intercourse in Jordan has been decriminalized since 1951.

The penal code includes vague “morality” provisions that could be used abusively to target same-sex conduct.²³⁸ Article 319 punishes selling, displaying, advertising, or taking part in a business that distributes any “any obscene printed or written matter, or any obscene picture, photograph, model, or any other object tending to corrupt morals” with three months’ imprisonment or a fine not exceeding 50 Jordanian dinars (US \$70), and article 320 punishes anyone who commits an “indecent act” in public with imprisonment for no more than six months or with a fine of no more than 50 Jordanian dinars (US \$70).²³⁹

Kuwait

Article 193 of Kuwait’s Penal Code punishes same-sex relations between men with up to seven years in prison.²⁴⁰

In 2007, Kuwait’s National Assembly voted to amend article 198 of the Code. A previously generic public decency law now stipulates that anyone “imitating the opposite sex in any way” faces one year in prison, a 1,000 Kuwaiti dinar fine (US \$3322), or both.²⁴¹

²³⁸ Khalid Abdel-Hadi of My.Kali told Human Rights Watch that he was aware of occasional incidents in which police harassed LGBT people on the basis of these laws, but did not ultimately charge them. Abdel-Hadi also said the laws may inhibit balanced media coverage of LGBT issues. Email from Khalid Abdel-Hadi to Human Rights Watch, December 6, 2017; Khalid Abdel-Hadi, “Report: Digital Threats and Opportunities for LGBT Activists in Jordan,” Medium, March 9, 2017, <https://medium.com/my-kali-magazine/report-digital-threats-and-opportunities-for-lgbt-activists-in-jordan-ef60672dcac1>, full report available at <https://drive.google.com/file/d/oB-C8GvtQEpB3UTdHcoZzUzR2MoFTTExFbVNLQkxkQVBDMTco/view> (accessed December 18, 2017).

²³⁹ Penal Code of Jordan (no. 16 of 1960), <http://www.wipo.int/edocs/lexdocs/laws/ar/jo/joo64ar.pdf>. (Arabic); English translation from Jordan’s National Commission to Prevent Human Trafficking available at http://www.ahtnc.org.jo/sites/default/files/penal_code.pdf (accessed February 12, 2018).

²⁴⁰ Law No. 16 of 1960 promulgating the Penal Code, http://gulfmigration.eu/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20Obligations/2.1%20Penal%20Law_AR.pdf (in Arabic), art. 193

²⁴¹ Ibid. art. 198; Human Rights Watch, *They Hunt Us Down for Fun*, 2012

Lebanon

Article 534 of Lebanon's penal code punishes "any sexual intercourse contrary to the order of nature" with up to one year in prison, a provision that has been used frequently to prosecute people suspected of homosexuality.²⁴²

However, in four cases in the last 10 years, courts have ruled that this article cannot be used to prosecute consensual sex between people of the same sex.²⁴³ In the first such case, in 2007, a judge challenged the language of the law itself:

Man is part of nature and one [of] its elements... no one can say that any act of his acts or behavior is contradicting nature even if the act is criminal or offending simply because these are the rules of nature. If the sky is raining during summertime or if we have hot weather during winter or if a tree is giving unusual fruits, all these can be according to and in harmony with nature and are part of its rules themselves.²⁴⁴

Though the rulings do not have legal precedent, the Lebanese organization Legal Agenda argues that they are helping to deconstruct article 534 among the judiciary and the public and may eventually contribute to a decision to strike down the article.²⁴⁵

²⁴² Lebanon Penal Code 1943 https://www.unodc.org/res/cld/document/lebanon-penal-code_html/Lebanon_Penal_Code_1943.pdf

²⁴³ For a discussion of the first three such judgments, see Lama Karame, "Lebanese Article 534 Struck Down: Homosexuality No Longer 'Contrary to Nature,'" Legal Agenda, July 11, 2016, <http://legal-agenda.com/en/article.php?id=3149> (accessed February 12, 2018). A fourth judgment was delivered in 2017. Graeme Reid, "Lebanon Edges Closer to Decriminalizing Same-sex Conduct," February 2, 2017, <https://www.hrw.org/news/2017/02/02/lebanon-edges-closer-decriminalizing-same-sex-conduct>.

²⁴⁴ International Commission of Jurists (ICJ), Sexual Orientation, Gender Identity, and Justice: A Comparative Law Casebook (Geneva: ICJ, 2011), p. 43.

²⁴⁵ Lama Karame, "Lebanese Article 534 Struck Down: Homosexuality No Longer 'Contrary to Nature,'" Legal Agenda, July 11, 2016, <http://legal-agenda.com/en/article.php?id=3149> (accessed February 12, 2018).

Libya

Libya's penal code outlaws all sexual activity outside of marriage, thus criminalizing same-sex activities. Under **Article 407(4)**, "If anyone has sexual intercourse with a person with that person's consent, both he and his partner shall be punished by imprisonment for a period not exceeding five years." **Article 408(4)** mandates that anyone who commits an "indecent act" with a person with that person's consent will be punished with his partner with imprisonment of an unspecified term.²⁴⁶

Libya's penal code include provisions that can be used to limit public expression for LGBT people. **Article 421** punishes "indecent acts" in public space with detention of up to one year and a fine of up to 50 Libyan dinars (US \$37), and the same penalty for distribution or sale of "indecent letters, pictures, or other articles."²⁴⁷

Mauritania

Article 308 of Mauritania's penal code criminalizes same-sex conduct for both sexes. Any "indecent act or act against nature" between adult Muslim men is subject to a sentence of "death by public stoning." Such acts between adult Muslim women are punishable by three months to two years in prison and a fine ranging from 5,000 to 60,000 ouguiya (US \$142-1702).²⁴⁸

Morocco

Article 489 of the penal code prohibits "lewd or unnatural acts with an individual of the same sex" and punishes such acts with imprisonment of up to three years and a fine of up to 1,000 dirhams (US \$109).

²⁴⁶ Libya Penal Code of 1953. An English version published by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) is available here: <http://security-legislation.ly/node/33464> (accessed February 13, 2018).

²⁴⁷ Ibid.

²⁴⁸ Journal Officiel de la République Islamique de Mauritanie, no. 608-609, Ordonnance 83-162 du 09 juillet 1983 portant institution d'un Code Pénal, <http://www.refworld.org/pdfid/491c1ffc2.pdf> (accessed December 18, 2017), art. 308, 306.

Article 483 punishes “public indecency” with imprisonment for up to two years and a fine of up to 500 dirhams (US \$54).²⁴⁹

Oman

Oman promulgated a new penal code in January 2018.²⁵⁰ The new penal code, for the first time, criminalizes non-normative gender expression. **Article 266** provides for a prison sentence of one month to one year, a fine of 100 to 300 riyals (US \$260-780), or both for any man who “appears dressed in women’s clothing.”

While the previous penal code punished same-sex relations only if they led to a “public scandal,”²⁵¹ **article 261** of the new penal code punishes any consensual sexual intercourse between men with six months to three years in prison. **Article 262** more closely echoes the language of the previous penal code, providing for six months to three years in prison for any sexual act between people of the same sex if a spouse or guardian files a complaint.

Articles 253-256 criminalize “debauchery,” which is undefined, while **articles 265, 267 and 268** prohibit “shameful acts” and the publication or transmission of “words, images or programs contrary to the public order or morals.”

Oman also punishes all sex outside of marriage with six months to three years in prison, under **article 259** of the penal code.

Under the previous penal code, article 33 described “homosexual and lesbian intercourses” as a “disgracing crime,” and article 48 provided for the expulsion of a

²⁴⁹ Code pénal (promulgué par Dahir n° 1-59-413 du 26 novembre 1962 (28 jounada II 1382), http://www.wipo.int/wipolex/en/text.jsp?file_id=190447 (accessed February 19, 2018).

²⁵⁰ Oman Penal Code, 2018, <http://qanoon.om/p/2018/rd2018007/> (accessed March 2, 2018).

²⁵¹ Royal Decree N. 7/74. Relevant portions of the penal code in English, are available at <http://www.fiu.gov.om/files/english/Omani%20Penal%20Code/Royal%20Decree%20No.%207-74-1.pdf>, and <http://www.fiu.gov.om/files/english/Omani%20Penal%20Code/Royal%20Decree%20No.%207-74-4.pdf> (accessed November 9, 2017).

foreigner “if his offence is disgracing.”²⁵² The new penal code does not address the expulsion of foreigners for this offence.²⁵³

Palestine

Gaza and the West Bank have different Penal Codes. In Gaza, the British Mandate Criminal Code Ordinance, No. 74 of 1936 is in force. **Article 152(2)** of the Code criminalizes “carnal knowledge against the order of nature” with a penalty of up to 10 years.²⁵⁴

In the West Bank, the Jordanian Penal Code of 1951 is in force. It does not prohibit sexual acts between persons of the same sex.²⁵⁵

Qatar

Qatar’s 1971 Penal Code penalized “sexual acts against nature” with up to 5 years in prison.²⁵⁶ That provision was removed when the law was modified in 2004. Under **article 296** of the new law, “[l]eading, instigating or seducing a male anyhow for sodomy or dissipation” and “[i]nducing or seducing a male or a female anyhow to commit illegal or immoral actions” is punishable by up to three years.²⁵⁷ It is unclear whether this law is intended to prohibit all same-sex acts between men, and whether only one partner is considered legally liable.

²⁵² Ibid.

²⁵³ Royal Decree N. 7/74. Relevant portions of the penal code in English, are available at <http://www.fiu.gov.om/files/english/Omani%20Penal%20Code/Royal%20Decree%20No.%207-74-1.pdf>, and <http://www.fiu.gov.om/files/english/Omani%20Penal%20Code/Royal%20Decree%20No.%207-74-4.pdf> (accessed November 9, 2017).

²⁵⁴ Penal Code (74) 1936 – Gaza, https://www.nevo.co.il/law_html/law21/PG-e-0633.pdf (accessed November 9, 2017).

²⁵⁵ Penal Code of Jordan (no. 16 of 1960), <http://www.wipo.int/edocs/lexdocs/laws/ar/jo/joo64ar.pdf> (in Arabic) (accessed February 19, 2018).

²⁵⁶ The Penal Code of Qatar issued by Law No. 14 of 1971, <http://www.almeezan.qa/LawArticles.aspx?LawArticleID=34068&LawId=2505&language=ar> (in Arabic) (accessed February 19, 2018).

²⁵⁷ Law No. 11 of 2004 Issuing the Penal Code 11 / 2004, <http://portal.www.gov.qa/wps/wcm/connect/8abaea8046be1deaae97ef70b3652ad8/Penal+Code.pdf?MOD=AJPRES&useDefaultText=o&useDefaultDesc=o> (accessed February 19, 2018).

Under sharia, which applies only to Muslims in Qatar,²⁵⁸ any sexual act by a married person outside of marriage is punishable by death, while sexual acts by non-married persons are punishable by flogging.²⁵⁹ As far as Human Rights Watch is aware, these provisions have never been used to punish consensual same-sex conduct.

Saudi Arabia

Saudi Arabia has no codified Penal Code and, thus, no written laws concerning sexual orientation or gender identity. Nevertheless, judges use principles of uncodified Islamic law to sanction people suspected of committing homosexual or other “immoral” acts.

If such activity occurs online, judges and prosecutors utilize vague provisions of the cyber crime law that criminalize online activity that impinges on “public order, religious values, public morals, and privacy.” In 2015, an appeals court upheld a sentence of three years in prison and 100,000 Saudi riyals (US \$26,667) against a Saudi man for using social media “in order to practice homosexuality.” The ruling relied in part on the cyber crime law.²⁶⁰

Sudan

Article 148 of the Sudanese penal code punishes “sodomy”—defined as an act in which a man “inserts his penis or its equivalent into a woman's or a man's anus or permitted another man to insert his penis or its equivalent in his anus”—with flogging of one hundred lashes and five years imprisonment. The same penalty applies on a second offence; on the third offense, the punishment is death or life imprisonment.²⁶¹

²⁵⁸ See article 1(1) of the Penal Code, op. cit.

²⁵⁹ “Hadd,” Oxford Islamic Studies Online, <http://www.oxfordislamicstudies.com/article/opr/t125/e757> (accessed February 20, 2018).

²⁶⁰ (”) ريال ألف 100 وغرامة سنوات 3 شاذ بسجن الحكم تويد الشرقية استئناف“ (“Eastern Appeals Court’ Upholds a Ruling of 3 Years in Prison for a Gay Man and a Fine of 100,000 Riyals”), Sabq Online Newspaper, February 16, 2015, <https://sabq.org/KEygde> (accessed November 26, 2017).

²⁶¹ The Penal Code 1991, English translation available at: https://www.ecoi.net/en/file/local/1219135/1329_1202725629_sb106-sud-criminalact1991.pdf (accessed February 13, 2018).

Under **article 151**, any “act of gross indecency” or other “sexual act which does not amount to Zina or Sodomy” is punishable by forty lashes, along with imprisonment for a term not exceeding one year, or an unspecified fine.²⁶²

Sudanese law also may inhibit freedom of expression for LGBT people, including gender expression. **Article 152** states that whoever “does in a public place an indecent act or an act contrary to public morals or wears an obscene outfit or contrary to public morals or causing an annoyance to public feelings” will be punished with up to 40 lashes, a fine, or both. It specifies that an act is considered contrary to public morals “if it is regarded as such according to the standard of the person's religion or the custom of the country where the act takes place.” Under **article 153**, making, possessing, or circulating “materials contrary to public morals” is subject to up to one month in prison or 40 lashes, as well as a fine, while running any “exhibition, theatre, cinema or public place” where such materials are exhibited or presented is punished by up to sixty lashes, up to three years in prison, or with both.²⁶³

Syria

Article 520 of the Syrian Penal Code of 1949 prohibits “unnatural sexual intercourse.” It is punishable by imprisonment by up to three years. **Article 517** of the Code punishes crimes “against public decency” that are carried out in public with imprisonment of three months to three years.”²⁶⁴

Tunisia

Article 230 of Tunisia’s penal code punishes both female and male homosexual acts with up to three years in prison. While the French version of the penal code only uses the term

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ [القانون الجنائي الصادر بالمرسوم التشريعي رقم ١٤٨/١٩٤٩] The Syrian Penal Code – Legislative Decree No. 148 of 1949], http://www.wipo.int/wipolex/en/text.jsp?file_id=243237.

“sodomy,” the official Arabic version refers to same-sex relations between men (“liouat”) and between women (“Mousahaga”).²⁶⁵

Article 226 bis punishes public indecency or public immorality with six months in prison and a fine of 1,000 Tunisian dinars (US \$416).²⁶⁶

United Arab Emirates

Article 356 of the federal penal code criminalizes all sexual acts outside of heterosexual marriage with a minimum sentence of one year in prison.²⁶⁷

Article 359 punishes “any man who disguises himself in a woman's clothing and enters a place the entry into which is reserved for women” with one year imprisonment, a fine of up to 10,000 dirhams (US \$2,723), or both. In practice, this article is used against transgender women in spaces that are not “reserved for women.”

In addition, article 368 punishes “whoever habitually practices debauchery” with an unspecified prison sentence. Human Rights Watch is unaware of whether this article has been used to punish consensual same-sex conduct.

While the UAE penal code does not expressly criminalize homosexual intercourse, **article 80** of Abu Dhabi's penal code punishes “unnatural” sex acts with up to 14 years in

²⁶⁵ République Tunisienne, Code Pénal, Décret du 9 juillet 1913 (5 châbane 1331), <http://www.refworld.org/docid/3ae6b5590.html> (accessed November 9, 2017) ; Loi n° 2005-46 du 6 juin 2005, portant approbation de la réorganisation de quelques dispositions du code pénal et leur rédaction, http://www.wipo.int/wipolex/en/text.jsp?file_id=201808 (accessed February 13, 2018). The Arabic version of the penal code is available at http://www.legislation.tn/affich-code/Code-p%C3%A9nal_89 (accessed February 19, 2018).

²⁶⁶ Loi n° 2005-46 du 6 juin 2005, portant approbation de la réorganisation de quelques dispositions du code pénal et leur rédaction, http://www.wipo.int/wipolex/en/text.jsp?file_id=201808 (accessed February 13, 2018).

²⁶⁷ Government of Dubai, UAE laws, http://www.dxbpp.gov.ae/Law_Page.aspx?Law_ID=479&Grand_ID=2; (in Arabic), <http://mublegal.com/wp-content/uploads/2014/07/Federal-law-penal-code.pdf>. An English translation of the federal penal code, issued by the Abu Dhabi Justice Department, is available at <https://www.adjd.gov.ae/sites/Authoring/AR/ELibrary%20Books/E-Library/PDFs/Penal%20Code.pdf> (accessed February 12, 2018).

prison.²⁶⁸ Similarly, **article 177** of the penal code of the Emirate of **Dubai** punishes consensual sodomy by imprisonment of up to 10 years.²⁶⁹

Yemen

Yemen's penal code prohibits same-sex relations. **Article 264** punishes anal sex with 100 lashes and, possibly, one year imprisonment if participants are not married. If married, the same article prescribes death by stoning. **Article 268** punishes sex between women with up to three years in prison.

Article 273 and **274** punish any act "indicating a breach of modesty and contrary to etiquette" with up to six months in prison.²⁷⁰

²⁶⁸ Abu Dhabi Penal Code, <https://www.adjd.gov.ae/sites/Authoring/AR/ELibrary%20Books/E-Library/LocalPublications/Local.AbuDhabi.Penal.Code/HTML5/index.html> (accessed November 28, 2017).

²⁶⁹ Dubai Penal Code, <http://qistas.com/legislations/uae/view/3979792> (accessed December 12, 2017).

²⁷⁰ "Republican Decree for Law No 12 for the Year 1994 Concerning Crimes and Penalties," <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf>.