



“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

This is a joint report that was prepared by Helem and Arab Foundation for
Freedoms and Equality (AFE) to be presented as the Universal Periodic
Report.

Executive Summary:

The revision of human rights records of Lebanon through the Universal Periodic Review mechanism concluded by the Human Rights Council plenary session on 10th of November 2010, during which, Lebanon received 123 recommendations in total, accepted 69 of them and rejected 40, and put 14 for consideration until March 2011 where 6 were only accepted.

Lebanon does not formally and officially discriminate between men and women with regard to the right to health and health care, national health policies and programs are supposed to be gender-sensitive, and gender considerations are to be included at all levels of health care and delivery, that includes sexual and reproductive health

The problem however remains with the definition of the Lebanese government of sex and relationships: sex and relationships are between two married heterosexual couples with the intention of reproducing, consent is not a prerequisite since Lebanon does not recognize marital rape, the summary below will give an overview of how the Lebanese government deals with relationships outside the strict definition mentioned above

Homosexuality

Recommendation 82.21 Decriminalize homosexuality and ensure non-discrimination on the basis of sexual orientation and gender identity (Norway), Not approved by Lebanon: (not approved)

Lebanon still holds article 534 of the penal code in practice, which condemns “unnatural intercourse” by up to one year of imprisonment. The use of this article creates a legal premise for prosecution of LGBT-identifying individuals and people with non-normative sexual orientations. In surface-value, the article directly targets men who have sex with men and transwomen since both of these body types are erroneously viewed as bodies that unnatural intercourse (imagined as anal penetrative sexual intercourse) can be visually inscribed through changes in body parts - and more specifically the anus. To this manner, practices that date back to early 19th century French forensic medicine such as the anal examinations have been recalled into practice. Many men and transwomen have been subjected to anal examinations in order to ascertain a pseudo-scientific evidence to confirm their involvement in same-sex intercourse and convict them with article 534 (more information on this matter is included in the section below).

Aside from the extension of article 534 to validate and justify inhumane methods to prosecute gay men, it also creates a larger premise to condone structural harassment of

all LGBT-identifying individuals and deny them basic rights to safety and state protection from violence (economic, social, etc...). LGB men and women and trans* persons can not refer to the police/judicial body for protection against harassment, violence, arbitrary termination of employment or any form of discriminatory denial of services or rights. In cases that did refer to these bodies, they were subjected to further harassment by the police and their complaint was not followed. In one case in 2013, two women in the northern region of Lebanon were ordered by the police to refrain from residing in the city for indecency after they were being blackmailed to be outed by an anonymous individual. There have been several landmark changes in recent years against article 534 and the practices of the state against LGBT-identifying individuals. Article 534 was denied application in two cases;

The first case was in Batroun, by Judge Mounir Sleiman in 2009. In his verdict, Sleiman stated: *“consensual same-sex relations were not “unnatural,” and therefore shouldn’t be subjected to legal penalty.”*

In the second case, Judge Naji El Dahdah, of Jdeide Court, Beirut, took the decision from Batroun a step forward in his ruling dated January 28, 2014, when he rejected a case against a transgender woman convicted with article 534.

“Gender identity is not only defined by the legal papers; the evolution of the person and his/her perception of his/her gender should be taken into consideration.”

Despite these two rulings, police persecution of LGBT people did not stop, 20 people were arrested since the last ruling. Future cases involving prosecution under article 534 do not have to follow suite after these two rulings since judicial body in Lebanon does not use the concept of a precedence.

Torture

Recommendation 80.15 Criminalize all forms of torture and ill- treatment (Netherlands); Expeditiously amend its Penal Code to criminalize all forms of torture and ill- treatment and ensure that all allegations for such violations are credibly and promptly investigated and those responsible are brought to justice in accordance to international fair trial standards (Slovakia); Amend the Penal Code to criminalize all forms of torture and Cruel, Inhuman or Degrading Treatment comprised in the Convention against Torture (Belgium); (approved)

81.4: Take all necessary measures to stop acts of torture and Cruel, Inhuman or Degrading Treatment (Belgium);

81.5. Accelerate the establishment of an independent national mechanism to visit prisons (France);

Lebanon claims that the recommendations above are already implemented or in the process of implementation, however torture is repeatedly reported at police stations, especially against gay men:

Anal examination:

In 2012, 36 men believed to be engaging in gay sex were arrested. A doctor at the morality police station –Hbeish – conducted invasive anal examinations to ascertain whether they had been having “unnatural” intercourse, following pressure from civil society, Dr. Sharaf Abu Sharaf, head of the Lebanese physicians’ association, announced that these practices violate the Lebanese law and medical ethics, and that any doctor conducting these tests would face disciplinary measures.

The ministry of interior issued circular asking police stations not to conduct these tests. However despite these two reactions, general attorneys are still ordering anal examination and policemen often use it as a way to intimidate men suspected to be homosexual. In 2014 general attorney Randa Yakazan ordered the police to conduct anal testing on the five men in order to “prove” their homosexuality, no disciplinary measures were taken against the violators.

Torture and blackmail:

More than 15 cases of physical violence were documented by Helem organization in the last year mostly by policemen or inmates against arrested Syrian gay men, though the police denies any orders of torture were given to the policemen, no investigation was called for and no disciplinary measure were taken against the perpetrators.

Most of the arrested gay men in 2014 had their phone confiscated by policemen in order to blackmail their contacts, LGBT organizations in Lebanon reported these incident with no official response from the ministry of interior. It is worth to note that it is only permissible for the police to access personal data on a person’s phone after obtaining the proper permission from the public prosecutor. In all of these cases, no such order was given or any such permission asked for.

Gender

80.22. Adopt the draft law on protection of women from domestic violence as soon as possible, and ensure its effective implementation (Norway); Pass legislation, namely the Family Violence Bill, to strengthen reporting on, and investigations of, incidents of family violence and increase protections for victims (Australia);

80.23. Adopt and implement the bill for the protection of women against domestic violence, mentioned in its national report, in order to criminalize domestic violence, and implement concrete measures to punish the aggressors (Mexico);

Lebanon did indeed pass a law against domestic violence after pressure from civil society media and several protests organized in Beirut, however this law remains incomplete since it did not recognize marital rape, women’s rights organization denounced a distortion of the law originally prepared by civil society.

Additionally, lesbian women are criminalized under article 534 and other articles related to public indecency, therefore lesbian women victim of rape or violence do not report these violations fearing persecution from the police.

80.24. Develop a comprehensive policy at the national level, consistent with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, with the view to achieving gender equality and to combat gender violence (Spain);

80.25. Strengthen its efforts to eliminate discrimination against women in law and practice (Norway);

Despite approving these two recommendations, the Lebanese law is far from ensuring equality between men and women especially in issues related to sexual and bodily rights, major laws discriminating against women's bodily rights are:

Marriage laws

Civil marriage in Lebanon is still not recognized, confessional laws regulate the personal status. The Lebanese law recognizes 18 confessions and grants the authority to religious courts. Therefore the personal status law depends on these various religion laws and not on a civil law. All 18 confessions give more right to men than women.

Penal code

Article 487- 488 (adultery): Women who have committed adultery can be imprisoned for three months to two years for having consensual sex with someone other than their husband. Her partner receives the same punishment if he is married, and a lesser sentence of one month to a year if he is unmarried. Women who commit "adultery" with someone from the same sex are criminalized under article 534.

Article 503-506 (rape): Define rape as forced sexual act committed by anyone, other than the husband, those articles legalize marital rape.

Article 522: Allows a rapist to escape his punishment if he offers to marry the victim

Articles 539-546: Criminalize abortion except very few exception related to woman's health. Most abortions are taking place in private clinics illegally and very often without respecting medical norms

Freedom of Expression

81.9. Continue to guarantee freedom of expression creating additional conditions for its fulfillment (Armenia);

Lebanon is not respecting this engagement; Helem the first LGBT organization in the Arab world is still not officially registered hence the Lebanese government is not acknowledging the right of LGBT individuals to organize and ask for their rights.

Moreover movies and magazine with sexuality related material are often censored by the general security, according to “March organization” (an organization working against censorship): 14 movies were censored partially or completely in 2014, five theatre play, one art exhibition and two bloggers were questioned by the police.

Access to Healthcare

81.11. Continue its policies and programs to improve the efficiency and quality of basic social services such as health and education for its citizens

According to a study conducted by Marsa and Rand Corporation, Homophobia and social stigma remain the main obstacles to access to health care for individuals with alternative sexuality. While the national aids program integrated “decriminalization of homosexuality” in the national strategy, no practical steps were taken in order to affect national policies and general perception of vulnerable population, the national aids program has been mostly focusing on direct service provision.

Recommendations:

Homosexuality:

- Abolish article 534 and discontinue its use to prosecute LGBT-identifying individuals
- Ensure the rights of people to self determination as guaranteed by the International Law. In this direction, Lebanon has to ensure protection of individuals from harassment, prosecution and any form of violence.
- Establish anti-discrimination laws to protect LGBT-identifying individuals from violations to their social, person and economic rights.
- Acquit all ongoing trials related to article 534 and clear all criminal records that were convicted with article 534 previously.

Torture and Blackmail:

- Enforce the illegality of coercive medical examinations on detainees and prisoners, more specifically;
 - Refrain from using anal examinations or even intimidating detainees or prisoners with their use.
 - Refrain from using hymen (virginity) tests on women and understand that any consent that might be given is not valid and is coerced by social and structural factors around honour and fear of negative repercussion on the woman.

- The police and the judicial body must refrain from demanding access to a person's personal phone data to extract evidence related to their sexual orientation, gender identity or any other matter related to their sexual and bodily rights.
- Refrain from using physical or verbal violence against detainees and prisoners.
- Separate the processes of complaint against police brutality and violations from the internal security forces and incorporate them into a separate and objective body, for example the judiciary body.
- Lebanon needs to update the definition of torture and maltreatment in the penal code to be inline with the definitions outlined in the Convention Against Torture (CAT).
- Amend article 49 of the criminal procedure law and ensure the right of detainees to consult a lawyer while they are detained and have his/her lawyer present during investigation.

Gender

- Acknowledge non-consensual sexual intercourse among married couple as marital rape.
- Abolish article 522 of the penal code to ensure that perpetrators of rape do not find a legal loophole from prosecution by offering to marry their victims.
- Acknowledge the rights of women to abortion services as part of their bodily rights.
- Separate post-abortion health care and related services to ensure that women can access needed health care and mitigate any possible health risk following an abortion procedure that might be detrimental to their health.

Freedom of Expression:

- Ensure that groups organizing around sexual and bodily rights are acknowledged by the state as part of the growing civil society and refrain from implementing direct and indirect penalties on them to erase their formation and work.

Access to health:

- Incorporate health policies for trans* persons by:
 - Include hormonal therapy medications and sex-reassignment surgeries as part of the health services that can be subsidized by the national health security plans.
 - Ensure the right of trans* persons to self-determination on their own bodies and allow them to pursue the process of changing their sex and name on their identity papers without necessitating a complete and irreversible sex-reassignment.
- Introduce laws that protect individuals from discriminatory behaviours and denial of medical care based on any aspect of their lived identities (race, sexual orientation, gender identity, nationality and so on) and holds physicians responsible for misconduct in any such incidents.