

LEBANON

shadow report

Report submitted to the Committee against Torture in the context of the initial review of Lebanon

“ The LGBTI community in Lebanon”

Proud Lebanon

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Proud Lebanon is a non-profit, non-religious, non-political, non-partisan civil society that aims to promote sustainable social & economic development in Lebanon and the region and is working to achieve protection, empowerment and equality of marginalized groups through community service activities.

Proud Lebanon started its activities in August 2013 and is registered since April 2014 as a non-profit civil society.

Proud Lebanon aims to empower people who suffer from discrimination. We are dedicated to promote tolerance in Lebanon and the region, where people are effectively empowered and to ensure the well-being of individuals.

The LGBT people in Lebanon are part of vulnerable communities, victims of unpunished discriminations from private individuals, or public institutions and public officers. Reasons of such treatment can be associated with the social stigma and prejudices about them which are the result of the Lebanese mentality (presupposing an illness, a contrariety to religious principles, or even a resemblance to “devil worshipers”[1]), supported and reinforced by article 534 of the Lebanese Penal Code which interpretation criminalizes them[2]. By its existence, such a legal text hardens the acceptance of this community and the democratization path of Lebanon because, prior to recognizing and admitting LGBT rights of marriage, adoption and other civil rights equal to those recognized to other citizens (as what has happened in Europe, USA and many other countries), the first and most fundamental step would be to “decriminalize” them. The battle is then dual.

Aside from article 534 which by itself constitutes a discrimination towards a category of individuals, LGBT people face de facto two types of discrimination: First, social harassment and inability to resort to law enforcement officers or courts to file complaints and ask for protection because it results to a denunciation of their sexual orientation or gender identity, and therefore their criminalization. And second, harassment by public law enforcement officers themselves, their discriminatory treatment towards LGBTs, and violation of basic human rights and basic legal principles related to investigative and criminal procedures. Examples are many.

A joint report prepared by Helem and Arab Foundation for Freedoms and Equality (AFE) points out that LGBTs can't refer to public bodies in case of arbitrary termination of employment or any form of discriminatory denial of services or rights, because of resulting harassments; and in cases that did refer to these bodies 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.[3] . In another case, a homosexual man, after inviting to his room a newly met person, was blackmailed for money by the latter who threatened to denounce his homosexuality to public authorities claiming to have a strong “wasta”[4].

LGBTs could then be easily dragged into helpless situations, robbed and blackmailed with the threat of denouncing their behavior, knowing that they wouldn't file complaints because any investigation would “disclose” them.

Another report published by *Helem* highlights a case from 2009 in which a woman reported her son to the police for suspected “homosexuality” because he was “acting like a woman.” This was enough for the public prosecutor to arrest and interrogate the young man and force him to submit to an anal examination[5]. A similar case was outlined by Human Rights Watch: “*Walid, 24, told Human Rights Watch that his mother told the police to arrest him and detain him for a night at the police station in order to “scare” him out of being gay, a request he says the police complied with.*”[6]

These incidents reveal an illegal process of initiating investigations, interrogating and arresting people based only on their appearances and mannerisms, with no other tangible and material evidence of a “sexual intercourse”, which is itself criminalized by article 534, and not the appearance or look.

“Police often arrest individuals arbitrarily and without evidence on the grounds of what the police themselves describe to be “suspicious behavior.” Police may even arrest individuals on the grounds of specific appearances ascribed to members of these groups—for example, because someone “looks gay” or “looks suspicious”.”[7] As if one was to be interrogated or arrested on the sole basis that “he looks like he has committed a crime”. Examples are many: two men arrested in a car in Dbayeh- no intercourse nor flirting being discovered *in flagrante*- and brought into interrogation and detention on the sole basis of being in a parked car at night[8]; a transgender arrested at Raouche at night while making conversation with a man after being approached and demanded ID by an officer who, noticing that the appearance does not correspond to the gender indicated on the identity card, and informed by the person herself that she was a transgender, considered it was enough to bring her to the Ramleh Bayda police station to initiate investigations, and have her undressed for an identity check, even though there is no text that criminalizes the difference of sex appearance with the gender mentioned on the ID[9]; A similar arbitrary interrogation was reported by two men arrested and investigated for hash use, when the investigation took a turning point after the officers discovered on their phones a conversation between both of them calling each other “Habibi”, which was sufficient to initiate an investigation about their eventual homosexuality, accompanied with torture in order to get their confessions, in addition to names of homosexuals in Lebanon[10].

The “*Hammam Al-Agha*” incident on August 9th, 2014 during which the Morals Protection Bureau of the Lebanese police raided the Turkish bathhouse in Beirut and arrested all the employees and the customers at the scene in addition to the owner reveals this illegal process of initiating investigations in addition to other legal infringements that will be treated.

“Investigations into the *Hammam al-Agha* case began with a routine investigation by the General Directorate of General Security (hereafter General Security) into the case of a foreigner who had lost his identification documents. The report mentions the following reasons for initiating investigations:

“[the foreigner’s] behavior, as well as his discourse, was found to be uneven. The [officer] heading the [security] branch was informed of this, and ordered us to take [the foreigner’s] statement and search the mobile phone in his possession. The phone was found to contain sexual videos of males amongst themselves, as well as exchanges of a sexual nature between [the foreigner] and others, about massages and sexual acts. We then proceeded to take [his] statement.”

(...) The report did not mention what it was about the foreigner’s behavior or speech that indicated the possibility that a crime might have been committed. It was merely considered “uneven”, as if the investigators simply “didn’t like his look”. [11]

Moreover, the investigation itself with this foreigner, the statement and mobile phone search were launched without the prosecutor’s prior authorization, in violation of Articles 40 and 47 of the Lebanese Code of Criminal Procedure which require the judicial police to obtain a mandate from the Public Prosecution in order to search individuals and investigate crimes that are not discovered *in flagrante*.

Other numerous legal infringements were to happen during and after this raid, whether with:

First, the arrest warrants issued by the public prosecutor against all customers present on the scene, despite the fact that they were charged with crimes punishable by prison sentences of under a year, which is a violation of articles 46 and 107 of the Code of Criminal Procedure which require the occurrence of a misdemeanor *in flagrante* punishable by a prison sentence of over a year, in order to issue an arrest warrant, these two conditions not being fulfilled[12];

Second, the detentions: "After being detained for periods of time ranging between four and ten days, all those arrested were released by the Single Criminal Judge in Beirut. With the exception of the owner, bail for their release was set at amounts ranging between LL 100,000 [US\$66] and LL 300,000 [US\$200]. The decision to impose bail on the arrested Lebanese customers, and to release four of them more than five days after their arrest, constitutes a violation of Article 113 of the Code of Criminal Procedure. The latter requires the automatic release of those arrested without bail five days after their arrest, if they are Lebanese and if the misdemeanor they are charged with is punishable by a prison sentence of under two years, and if they have no prior convictions." [13]

Third, the confiscation and search of phones of arrested people, a common process adopted by law enforcement officers, but which "actually constitutes a violation of Law 140/1999 which prohibits any kind of wiretapping, surveillance, interception or disclosure of exchanges made through any means of communication (such as mobile phones or email), except by a written and justified court order issued by an investigating judge" [14];

Fourth, the HIV tests conducted on arrested people. Besides the fact of these tests being completely irrelevant to investigations, they were conducted without the consent of those arrested and by a Morals Protection Bureau investigator, not by a physician, in violation of articles 32 and 42 of code of Criminal Procedure which requires the appointment of a physician to examine those arrested if they request it, and in violation of their privacy and of the confidentiality of information regarding their health;

The "Hammam Al agha" investigations were accompanied and followed by torture, which is unfortunately very usual, even conventional, especially regarding vulnerable individuals. Reports by Human rights organizations have documented common torture techniques such the use of "Falaqa"(beating the victim with sticks, batons, or whips on the soles of the feet), "al-farrouj" ("the chicken", under which the victim's hands are tied behind their back while the soles of his feet are beaten),"al-watwat" ("the bat", making the victim walk on all fours until she reaches the entrance of the room while kicking her from behind)[15]. In cases of LGBTs, torture is practiced in order to- and not only - get confessions from the victims about their sexual orientation, who they are having sex with, and even how, a dual violation of the right of physical integrity and the right of privacy.

People arrested after the raid of "Hammam AL-Agha" reported that they were not interrogated on the first day of their arrest, or even on the second, but that the first two days were set aside for terrorizing them, in order to make them confess to "engaging in sodomy". The interrogations even focused on how they have sex, and on finding out who

among them plays the “active” role and who plays the “passive” one[16] , informations that are legally speaking useless and irrelevant for the proof or the qualification of the crime, since the only intercourse between homosexuals is sufficient for officers and courts to consider them criminals. The modalities and scenarios of this intercourse could have no legal pertinence or repercussions, which reflects this common and rooted abuse of power in public institutions and law-enforcement officers in Lebanon.

These practices are moreover condemned by article 401 of the Lebanese Penal Code which punishes *“Anyone who inflicts violent practices not permitted by the law against another person with the intention to extract a confession of a crime or information related to it”*. And Even though Lebanese law prohibits the use of forced confessions to convict people of crimes, 30 former detainees told Human Rights Watch that courts used such confessions to convict them despite their having informed the court that the confessions were obtained by force.[17]

Another example of torture and degrading treatment is the use of anal examinations, which are still practiced despite having no medical value and being condemned by circulars of the Order of physicians and the Ministry of Justice.

Shady, a Syrian refugee reports his nightmare in Rehanieh military police station where he was tortured to confess of his homosexuality so he can be punished for being gay. *“Officers took him into a room and told him to undress. “I will insert this into your anus to determine how many times you’ve had sex,” Shadi said an officer told him. He inserted the rod, causing Shadi to scream out in pain and beg the officer to stop.”*[18] This illegal and inhuman treatment is not only arbitrarily practiced by law-enforcement officers. It is, in certain cases, ordered by judges. In 2014, five men were arrested in the Msaytbeh neighborhood after the police had received a call informing them of “illegal activities” taking place in an apartment, not even a public place! The investigations were followed by a court order to conduct anal tests to “prove” their homosexuality[19]

Other recurrent humiliating treatments are the verbal and psychological violence and abuse, many- if not all- LGBTs arrested reporting being harassed.

After being dragged from Raouche to the station for being a transgender, the latter recounts being photographed by the supervising officer sending videos to his friends saying “we present to you this man...”, being asked to perform oral sex, or forced to sleep tied to a chair in the interrogation room for three days because “If we put him with the men, they’ll impregnate him, and if we put him with the women, he’ll assault them.”[20]

One of the arrested people after the “Hammam Al-Agha raid” recalls one of the investigators saying while torturing him *“I can tell from your touch that you’re a faggot”*[21]

A more inhuman practice reported was the conscious deprivation of a homosexual during his nine month detention from his nervous medications and HIV treatment ! [22]

Other similar incidents covered by the media reveal more on these humiliating and demeaning practices against LGBT individuals[23], one of those flagrant ones being the Ghost incident in Dekwaneh, an arbitrary arrest by municipality officers of homosexuals and transsexuals at a Club, followed by a violent

episode at the station during which they were not only beaten, but also “forced to kiss” and to undress while pictures were taken and sent to journalists.[24]

These discrimination and legal infringements are certainly not only faced by LGBTs, in a country where corruption and human rights violations are commonly accepted, even banalised. Yet the status of LGBTs under Lebanese law makes them more vulnerable to Social and public abuse; that is a precarious status triggered by article 534 of the Lebanese Penal Code.

The existence itself of article 534 is discriminatory and raises violations, whether by its vague formulation punishing “*any sexual intercourse contrary to the order of nature*” without defining and delimiting the order of nature, thus leaving elements of the crime imprecise and giving a large margin of interpretation to the judges, which contradicts fundamental principles of criminal law such as the necessity of definition of the crime, and the strict interpretation by the judge; or whether by its violation of Human Rights and principles enshrined in the Universal Declaration of Human Rights which is incorporated to the Lebanese constitution, in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and other conventions and international treaties ratified by Lebanon, which have priority over article 534 and should be applied by jurisdictions, in accordance with the Lebanese principle of hierarchy of norms stated in article 2 of the Lebanese code of civil procedure :

“The courts shall comply with the principle of the rules of hierarchy. In the event of conflict between the provisions of international treaties and those of ordinary law, the former shall take precedence over the latter. ”

According to all these principles, four Lebanese rulings have dismissed the application of article 534 concerning individuals accused of homosexuality [25], and one ruling has recognized the right of transsexual people to change gender in public records.[26]

Recommendations:

- The Lebanese Parliament should work on repealing the laws criminalizing the LGBTIQ+ persons: Article 534 must be banned in Lebanon, or at least it must be stated that it has nothing to do with homosexuality and transsexuality.
- The Authorities should protect LGBTIQ+ persons from homophobic and transphobic violence including torture, arbitrary detention and other discriminative approaches.
- The Lebanese Authorities should create a reporting mechanism for violations committed against LGBTIQ+ persons, these violations should be documented, monitored in order to assure accountability.
- The Authorities should safeguard freedom of expression: no LGBTIQ+ related content must be banned in movies, or any other artistic scenes.
- Safeguard and allow association and peaceful assembly for all LGBT people

References:

[1] A comparison made by one of the founders of JAD

(Jeunesse Anti Drogue) at a conference organized by this non-profit organization in collaboration with the Beirut Bar Association on February 1st 2017, themed around "Drug use- problems and solutions". I am still trying to understand the pertinence of this statement and its relation to the conference theme, especially to solutions proposed to Drug Use.

[2] Article 534 of the Lebanese Penal Code punishes "any sexual intercourse contrary to the order of nature" with up to one year in prison.

[3] Joint Report by 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.

[4] Interviewed individuals by *Proud Lebanon*, 2016.

[5] Helem, "Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia", 2010, available on <http://www.helem.net/node/188>

[6] Human Rights Watch Report, "It's part of the job", *Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations*, 2013, available on <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations>

[7] Ibid.

[8] Interviewed individuals by *Proud Lebanon*, 2016.

[9] Sarah Wansa, "Detained Transgender in Lebanon: This is What Happened to Me", *Legal Agenda*, 23/2/2016, available on <http://legal-agenda.com/en/article.php?id=3129>

[10] Bechara Maroun, « Liban : Détenu et battu pendant trois semaines pour homosexualité et un test de drogue... négatif », *L'Orient le Jour*, 2/7/2015

[11] Ghida Frangieh, "The Hammam al-Agha Raid: Collective Prosecution in Violation of Individual Rights"

Legal Agenda, 18/9/2014, available on <http://legal-agenda.com/en/article.php?id=3029>

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Human Rights Watch Report, "It's part of the job", *Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations*, see n° 6.; Sarah Wansa, "Torture at Every Stage: The Unofficial Narrative of the Hammam al-Agha Raid", *Legal Agenda*, 12/11/2014, available on <http://legal-agenda.com/en/article.php?id=3043>.

[16] Sarah Wansa, "Torture at Every Stage: The Unofficial Narrative of the Hammam al-Agha Raid", *ibid.*

[17] Human Rights Watch Report, "It's part of the job", *Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations*, see n°6.

[18] Human Rights watch, «Lebanon: Syrian Refugee's account of Torture. Detained, Beaten, Abused on suspicion of being gay», 21/12/2016, available on <https://www.hrw.org/news/2016/12/21/lebanon-syrian-refugees-account-torture>

[19] Georges Azzi, "Lebanon's LGBT community is still suffering abuses", 25/8/2014, available on <https://now.mmedia.me/lb/en/reportsfeatures/561407-more-needs-to-be-done-to-protect-the-rights-of-lebanons-lgbt-community>

[20] Sarah Wansa, "Detained Transgender in Lebanon: This is What Happened to me", see n°9.

[21] Sarah Wansa, "Torture at Every Stage: The Unofficial Narrative of the Hammam al-Agha Raid", n° 15.

[22] Interviewed individuals by *Proud Lebanon*, 2016.

[23] See for example the Ghost Incident in Dekwaneh: Karim Nammour "*Dekwaneh Municipality declares the No Gay Land*", 31/5/2013, Legal Agenda, available in Arabic on : <http://legal-agenda.com/article.php?id=389&lang=ar>;
And the cinema Plaza incident in Beirut: Sima Kotecha, "*Lebanon's gay-friendly reputation challenged by abuses*", 25/11/2013, available on: <http://www.bbc.com/news/world-middle-east-25057067>

[24] See Joe Maalouf's broadcast "*Enta Horr*": Ghost Documentary on 1/5/2013

[25] 1. Ruling by the Single Criminal Judge in Batroun, Mounir Sleiman, on 3/12/2009

2. Ruling by the Single Criminal Judge in Jdeideh-Metn, Nagi Al Dahdah, on 28/1/2014

3. Ruling by the Single Criminal Judge in Jdeideh-Metn, Hicham Al Kontar, on 5/5/2016

4. Ruling by the Single Criminal Judge in Jdeideh-Metn, Rabih Al Maalouf, on 26/1/2017

[26] Ruling by Beirut's civil court of Appeal, Judge Janet Hanna, on 3/9/2015