

Human Rights Watch Submission to the UN Special Rapporteur on Violence against Women Thematic Report on Rape as a Grave and Systematic Human Rights Violation and Gender-based Violence against Women

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Introduction

Human Rights Watch is an independent non-governmental organization dedicated to protecting and defending human rights around the world, including those related to women's rights, the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people and other marginalized groups such as children, prisoners, displaced persons, ethnic and racial minorities, persons living with disabilities, and migrant and domestic workers. Our work on women's rights has focused on reproductive rights, obstetric fistula and maternal health care, labour rights, the impact of conflict and crisis on women and girls, girls' education, and violence against women and girls, among other issues.¹

Human Rights Watch has conducted extensive research and documented incidents of rape and other forms of sexual violence in several countries such as Burma², Kenya³, Lebanon⁴, Central African Republic⁵, South Africa⁶, Somalia⁷ and South Sudan.⁸

Human Rights Watch welcomes the opportunity to make a submission to the report of the Special Rapporteur on Violence Against Women (SRVAW) noting that the report will address states' responsibility to criminalize and prosecute rape as a grave and systematic human rights violation. This submission will

¹ HRW Women's Rights Division <https://www.hrw.org/topic/womens-rights>

² "All of My Body Was Pain"

Sexual Violence against Rohingya Women and Girls in Burma https://www.hrw.org/sites/default/files/report_pdf/burma1117_web_1.pdf

³ "They Were Men in Uniform"

Sexual Violence against Women and Girls in Kenya's 2017 Elections <https://www.hrw.org/report/2017/12/14/they-were-men-uniform/sexual-violence-against-women-and-girls-kenyas-2017>

⁴ Unequal and Unprotected

Women's Rights under Lebanese Personal Status Laws <https://www.hrw.org/report/2015/01/19/unequal-and-unprotected/womens-rights-under-lebanese-personal-status-laws>

⁵ "They Said We Are Their Slaves"

Sexual Violence by Armed Groups in the Central African Republic <https://www.hrw.org/report/2017/10/05/they-said-we-are-their-slaves/sexual-violence-armed-groups-central-african>

⁶ Why Sex Work Should be Decriminalised in South Africa <https://www.hrw.org/report/2019/08/07/why-sex-work-should-be-decriminalised-south-africa>

⁷ "The Power These Men Have Over Us"

Sexual Exploitation and Abuse by African Union Forces in Somalia <https://www.hrw.org/report/2014/09/08/power-these-men-have-over-us/sexual-exploitation-and-abuse-african-union-forces>

⁸ "They Burned it All"

Destruction of Villages, Killings, and Sexual Violence in Unity State South Sudan <https://www.hrw.org/report/2015/07/22/they-burned-it-all/destruction-villages-killings-and-sexual-violence-unity-state>

focus on states obligations to legislate, prevent, investigate, and prosecute sexual and other violence against lesbians and transgender people.

This submission includes two case studies, namely South Africa and Lebanon, to indicate the particular vulnerabilities of women based on sexual orientation and gender identity based on our in-depth research on violence against lesbians and transgender people in these two countries. It also draws on HRW's extensive research and advocacy on women's rights to live lives free from violence and discrimination, the rights of LGBTI people, and on international human rights law.

This submission focuses on the legislative framework governing sexual offences as well as barriers to accessing justice in the Republic of South Africa and Lebanon, in light of States' obligations to adhere to the due diligence standard: to prevent, investigate and prosecute sexual violence perpetrated against lesbians and transgender people. The focus on lesbians and transgender people is premised on several general recommendations of the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), including general recommendation no. 28 on core obligations of states parties⁹, no. 33 on women's access to justice¹⁰, no. 35 on gender-based violence against women¹¹ and no. 36 on the right of girls and women to education.¹² These recommendations affirm that discrimination against women is inextricably linked to other factors, including being lesbian, bisexual, transgender or intersex.

Violence against Lesbians and Transgender Persons in South Africa

In April 2009, the body of Eudy Simelane, a young woman who lived openly as a lesbian and former star of South Africa's national female football team was found in a park in Kwa Thema, a township on the outskirts of Johannesburg. She had been gang-raped and brutally beaten before being stabbed 25 times. Following a trial, two of Simelane's four attackers were convicted of murder, rape and robbery. Thato Mphithi and Themba Mvubu were the first men in South Africa to be convicted of 'corrective' rape despite there being over 30 reported cases in the decade before Simelane's murder. Upon leaving the court, Mvubu—who was sentenced to life imprisonment—stated that he “was not sorry” for his crimes.¹³

Eudy's case was not the first nor the last reported case of “corrective rape” of black lesbians in South Africa, but as a well-known figure her brutal rape and murder generated considerable attention to an enduring problem.¹⁴ In another case, more than ten years later, on March 5, 2020 in Lotus River, a suburb of Cape Town, a 25-year old lesbian was brutally gang-raped by three young men to supposedly “correct her of her sexual orientation”.¹⁵ According to media reports two of the suspects, aged 14 and 17 were arrested, while the third is still on the run.¹⁶ South Africa's Constitution as well as legislative and policy frameworks seek to ensure the protection of all people from violence perpetrated by state and non-state

⁹ CEDAW/C/GC/28 paras 18 and 31

¹⁰ CEDAW/C/GC/33 paras 8 and 49

¹¹ CEDAW/C/GC/35 paras 12 and 29(c)(i)

¹² CEDAW/C/GC/36 para 45, 46(i) and 66

¹³ <https://www.sahistory.org.za/people/eudy-simelane>

¹⁴ Corrective rape is a widely reported phenomenon in which men rape people they presume or know to be lesbians in order to “convert” them to heterosexuality. See 2011 Human Rights Watch report, “We'll Show You You're a Woman” Violence and Discrimination against Black Lesbians and Transgender Men in South Africa <https://www.hrw.org/report/2011/12/05/well-show-you-youre-woman/violence-and-discrimination-against-black-lesbians-and>

¹⁵ Cape Town Pride condemns 'corrective' rape of lesbian <https://www.mambaonline.com/2020/03/05/cape-town-pride-condemns-corrective-rape-of-lesbian/>

¹⁶ *ibid*

actors, including lesbian, gay, bisexual and transgender people. Yet, in a context where gender-based violence is high, black lesbians and transgender men and women are particularly vulnerable to sexual violence due to their sexual orientation or gender identity.¹⁷ As noted in the 2016 report of the UNSRVAW following her official visit to South Africa, “despite an explicit prohibition of discrimination based on sexual orientation in the Constitution, lesbian women and other sexual minorities are very vulnerable to extreme forms of violence purportedly aimed at “correcting” their bodies, including the so-called “corrective rape” often accompanied by a particularly heinous murder.”¹⁸

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32, 2007¹⁹ (Sexual Offences Act) contains a gender-neutral definition of rape and compelled rape with the following provisions:

Rape: Any person ('A') who unlawfully and intentionally commits an act of sexual penetration with a complainant ('B'), without the consent of B, is guilty of the offence of rape. **Compelled rape:** Any person ('A') who unlawfully and intentionally compels a third person ('C'), without the consent of C, to commit an act of sexual penetration with a complainant ('B'), without the consent of B, is guilty of the offence of compelled rape.²⁰

In addition to criminalization of rape and compelled rape, the Sexual Offences Act criminalizes all non-consensual sexual activity, including sexual assault, compelled sexual assault and marital rape. It also expands the definition of rape to include all forms of non-consensual sexual penetration. It provides for various services to be made available to victims of sexual offences, including free post-exposure prophylaxis for HIV and establishes a National Register for Sex Offenders containing particulars of persons convicted of any sexual offence against a child or a person with a mental disability.

In December 2011, Human Rights Watch published a report documenting sexual violence and discrimination against black lesbians and transgender men and women in South Africa.²¹ Key recommendations in the report included calls to the Department of Justice and Constitutional Development (DoJ&CD) to work with the National Prosecution Authority (NPA) to address barriers to prosecuting cases of sexual and physical violence, including on the grounds of sexual orientation and gender identity and for the South African Police Service (SAPS) to collect data on physical and sexual violence and disaggregate the data by motive to track incidents of homophobic and transphobic violence.²²

In March 2011, the DoJ&CD established a National Task Team (NTT) on Gender and Sexual Orientation Based Violence perpetrated against LGBTI persons comprised of Chapter 9 institutions (South African Human Rights Commission and the Commission on Gender Equality) and civil society organisations tasked with developing a National Intervention Strategy (2014–2017) to address the issue of “corrective rape”

¹⁷ In South Africa, women call for #TotalShutdown of gender-based violence <https://www.unwomen.org/en/news/stories/2018/8/news-in-south-africa-women-call-for-totalshutdown-of-gender-based-violence>

¹⁸ A/HRC/32/42/Add.2 Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa para 33

¹⁹ Criminal Law (Sexual Offences and Related Matters) Amendment Act 32, 2007 <https://www.justice.gov.za/legislation/acts/2007-032.pdf>

²⁰ Chapter 2, Sexual Offences Act <https://www.justice.gov.za/legislation/acts/2007-032.pdf>

²¹ Human Rights Watch report, “We’ll Show You You’re a Woman”

Violence and Discrimination against Black Lesbians and Transgender Men in South Africa <https://www.hrw.org/report/2011/12/05/well-show-you-youre-woman/violence-and-discrimination-against-black-lesbians-and>

²² Ibid Recommendations

and other forms of violence against LGBTI persons.²³ In 2013, the Working Group of the NTT established the Rapid Response Team (RRT) comprising the DoJ&CD, NPA, SAPS, and other representatives from civil society organisations to urgently deal with pending and reported cases on hate crimes perpetrated against LGBTI persons. On June 18, 2015, the RTT published the following update regarding cases that resulted in successful convictions:²⁴

- Zukiswa Gaca, an 18-year old female from the Western Cape was raped. The perpetrator was sentenced to **ten years in prison** with a suspended four-year sentence.
- LC Molefe from Ermelo in Mpumalanga was raped. The perpetrators were sentenced to **six years in prison**.
- Ntabiseng Welemina Mofokeng from Balfour in Mpumalanga was raped by her neighbor. He was sentenced to **15 years in prison**.
- Disebo Gift Makau from Tshing in Ventersdorp was murdered and raped. The perpetrator was sentenced into **two life sentences and 15 years in prison**.
- Thembelihle Sokhela from Sgodi in Daveyton was raped and murdered. The perpetrator was sentenced **22 years in prison**.

In a February 2020 report, Iranti, a Johannesburg-based media-advocacy organisation which advocates for the rights of LGBTI+ persons, cited unpublished data from the NTT that lists 14 rape cases reported across six provinces.²⁵ Due to Covid-19 lockdown measures in South Africa, Human Rights Watch was not able to obtain the latest quantitative data from the NTT of rape cases currently under investigation and those that have been successfully prosecuted.

Barriers to access to justice

Notwithstanding the tremendous efforts of the DoJ&CD and all the members of the NTT, including civil society organisations, Human Rights Watch remains deeply concerned about high levels of violence against women including the persistence of sexual violence perpetrated against lesbians and transgender people and limitations in the criminal justice system to respond appropriately, swiftly and effectively.

A 2013 report by the Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters (MATTSO), states that LGBTI people face considerable barriers in reporting sexual violence, including discrimination on the basis of sexual orientation and gender identity in the South African criminal justice system, and stigma in communities.²⁶ Low conviction rates generally, shame and stigma attached to sexual violence, fear of secondary victimization by state authorities, and lack of faith in the criminal justice system are some of the challenges young black lesbians and transgender individuals face. The 2011 Human Rights Watch report extensively documents the negative experiences with police, that in turn

²³ The National Task Team (NTT) on Gender and Sexual Orientation-Based Violence was established by the Department of Justice and Constitutional Development (DOJ & CD) in March 2011 to address human rights concerns and violations amongst Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons.

²⁴ <https://www.nationallgbttaskteam.co.za/news/the-rapid-response-team-work>

²⁵ Data Collection and Reporting on Violence Perpetrated Against LGBTQI Persons in Botswana, Kenya, Malawi, South Africa and Uganda available at: <http://www.iranti.org.za/2020/03/23/press-release-iranti-launches-five-country-study-on-violence-against-queer-persons/>

²⁶ Report on the Re-establishment of Sexual Offences Courts Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters <https://www.justice.gov.za/reportfiles/other/2013-sxo-courts-report-aug2013.pdf>

creates an overwhelming lack of trust in law enforcement and the criminal justice system.²⁷ The MATTSO report emphasizes that “limited policing and barriers to accessing the legal system exacerbate vulnerability and notes the challenge in assessing the magnitude of the problem because statistical information related to LGBTI victims of sexual offences are not captured by information management systems.”²⁸ The MATTSO report further notes that poor, young black lesbians living in townships in South Africa are specifically targeted for “corrective rape” perpetrated by heterosexual men.

In this regard we draw the attention of the UNSRVAV to a 2018 report published by the Gender Health and Justice Research Unit, University of Cape Town titled *Access to Justice for Lesbian, Gay, Bisexual and Transgender Survivors of Sexual Offences in South Africa*.²⁹ The report outlines several obstacles to successful investigation and prosecution of sexual violence cases. These include non-reporting due to fear and safety concerns as well as a lack of faith in the criminal justice system. In addition, the report noted lack of knowledge within the criminal justice system on how to establish, investigate and prosecute hate-motivated rape cases based on sexual orientation or gender identity.

Human Rights Watch urges the South African Department of Justice and Constitutional Development to continue to support the efforts of the NTT and RRT and ensure that disaggregated data is publicly available. The National Task Team, in collaboration with non-government organizations should also continue to implement national training programs for all role-players in the criminal justice system, including police, legal professionals, members of the judiciary and public service providers in order to educate them on the rights and needs of all survivors of sexual violence, including lesbians and transgender people. The South African government is urged to enact legislation that recognizes that acts of sexual violence, including rape may be motivated in whole or in part by prejudice or hatred regarding an aspect of the victim’s identity, such as their real or perceived sexual orientation, and when that is the case that it is an aggravating factor.³⁰

Legal Framework in Lebanon

The Lebanese Penal Code does not explicitly define sexual violence, meaning it has not adopted the definition of sexual violence provided in the Rome Statute,³¹ and does not otherwise explicitly define sexual violence. But rape outside of marriage is a criminal offence with a minimum punishment of imprisonment of five years.³²

Article 503 of the Lebanese Penal Code defines the crime of rape as “forced sexual intercourse [against someone] who is not his wife by violence or threat.”³³ Article 506 stipulates that anyone

²⁷ Supra n 21 p 46 – 54

²⁸ Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters (MATTSO) established by the Minister of Justice and Constitutional Development <https://www.justice.gov.za/reportfiles/other/2013-sxo-courts-report-aug2013.pdf>

²⁹ Müller, Alex; Meer, Talia. (2018). Access to Justice for Lesbian, Gay, Bisexual and Transgender Survivors of Sexual Offences in South Africa: A research report. Cape Town: Gender Health and Justice Research Unit available at: http://www.ghjr.uct.ac.za/sites/default/files/image_tool/images/242/report_images/1%20ICOP%20LGBT%20Doc%20PDF.pdf

³⁰ Clause 3 of the Bill <https://www.justice.gov.za/legislation/hcbill/B9-2018-HateCrimesBill.pdf>

³¹ The United Nations Development Programme (UNDP), United Nations Population Fund and UN Women (2018). Gender-Related Laws, Policies and Practices in Lebanon. Available at: https://civilsocietycentre.org/sites/default/files/resources/gender_justice_in_lebanon_final_report_eng.pdf

³² Lebanon’s Penal Code (1943): https://sherloc.unodc.org/cld/document/lbn/1943/lebanon_penal_code.html

³³ Ibid.

*who abuses his authority or official position to force sexual intercourse with a minor aged between 15 and 18 years old shall be punished by up to 15 years of imprisonment.*³⁴

The definition of rape is narrow and limited: it is gender specific, covering women only, and explicitly excludes marital rape. The 2014 law on domestic violence which established important protection measures and related policing and court reforms, defines domestic violence narrowly and fails to specifically criminalize marital rape.³⁵ Legislators instead introduced a crime of threats or violence by a spouse to claim a “marital right to intercourse”, but it did not criminalize the non-consensual violation of physical integrity itself. The penalties for this are covered under articles 554-559 of the penal code, which provide for as little as a fine of 10,000-50,000 Lebanese pound (US\$6.66-\$33) or a maximum of six months in prison if the victim required 10 days maximum of rest to recover, compared with at least five years for rape under article 503.³⁶ It also introduced in law the notion of a “marital right to intercourse” which could lead to sexual abuse in marriage with impunity.

The penal code, under articles 507-510 and beyond, refers to violent acts of “indecenty.”³⁷ For instance, article 507 imposes a penalty of imprisonment for a period not less than four years for anyone who forces another person, through violence or threats, to commit or endure an “indecent act.” The minimum sentence is six years if the victim is under the age of 15.³⁸ However, “indecenty” is ill-defined, and it should instead be replaced with specific reference to sexual assault that is not penetrative rape.³⁹

Articles 509, 510, 519, and 520 prohibit lewd or obscene acts against minors. Article 524 provides that anyone who seduces a woman or a girl under the age of 21, even with consent, to gratify the sexual needs of others, will be punished by imprisonment for a minimum term of one year and a fine.⁴⁰

In a positive development, parliament repealed article 522 of the criminal code in 2017, which had allowed rapists to escape prosecution by marrying their victim.⁴¹ However, it left a loophole for cases concerning sex with children ages 15-17 and seducing a virgin girl into having sex with the promise of marriage.

Violence against Lesbians and Transgender Persons in Lebanon

In 2019, Human Rights Watch published a report documenting the systemic discrimination that transgender women face in Lebanon, in which it detailed crimes of sexual violence against them committed with impunity.⁴²

Suha, a 24-year-old transgender woman from the Lebanese north, told Human Rights Watch:

³⁴ Ibid.

³⁵ Human Rights Watch (2014). Lebanon: Domestic Violence Law Good, but Incomplete. Available at:

<https://www.hrw.org/news/2014/04/03/lebanon-domestic-violence-law-good-incomplete>

³⁶ Human Rights Watch (2016). Lebanon: Reform Rape Laws. <https://www.hrw.org/news/2016/12/19/lebanon-reform-rape-laws>

³⁷ Lebanon's Penal Code (1943): https://sherloc.unodc.org/cld/document/lbn/1943/lebanon_penal_code.html

³⁸ Ibid.

³⁹ Human Rights Watch (2016). Lebanon: Reform Rape Laws. Available at: <https://www.hrw.org/news/2016/12/19/lebanon-reform-rape-laws>

⁴⁰ Ibid.

⁴¹ Human Rights Watch (2018). Lebanon: 5 Steps to Improve Women's Rights. Available at: <https://www.hrw.org/news/2018/03/08/lebanon-5-steps-improve-womens-rights>

⁴² Human Rights Watch (2019). “Don't Punish Me for Who I Am”: Systemic Discrimination Against Transgender Women in Lebanon. Available at: <https://www.hrw.org/report/2019/09/03/dont-punish-me-who-i-am/systemic-discrimination-against-transgender-women-lebanon#3a465f>

The mayor of my town sexually harassed me; lieutenants sexually harassed me. I was kidnapped in 2011 by a man in the street in my neighborhood. Apparently, he had been watching me and he knew about me. He pulled me into a car in the street and took me to an apartment and tied me to a chair. He raped me until I passed out. I tried to report it [to the police station in Akkar], but they told me I'm sick and a liar. They said I'm schizophrenic.⁴³

Suha's case is not unique. In a context where gender-based violence is pervasive,⁴⁴ transgender women, as well as lesbians and transgender men, are particularly vulnerable to sexual violence due to their sexual orientation or gender identity.

In Lebanon, the combination of social and economic marginalization, laws that criminalize homosexual conduct (article 534 of the Penal Code)⁴⁵ and sex work (article 523),⁴⁶ vague "morality" laws (articles 531, 532, 533, and 526),⁴⁷ and the absence of legislation protecting against discrimination, or reliable complaint systems, are formidable barriers that impede lesbian, bisexual, and transgender people's ability and willingness to report sexual violence to the police.⁴⁸ This creates an environment in which state and non-state actors can abuse them with impunity.

The 2014 domestic violence law makes no provision for same-sex intimate partner violence, and hence provides no guarantee that judiciary members apply the law to lesbian women or transgender individuals experiencing domestic violence, such as sexual abuse, including through provision of protection orders.⁴⁹

Lebanon also has no law criminalizing sexual harassment, including at work, and sexual harassment is neither defined nor prohibited under the Lebanese Labor Code.⁵⁰ Parliamentarians have introduced multiple draft laws on sexual harassment, but parliament has yet to act.

Many women face sexual harassment at work in Lebanon. Human Rights Watch has documented how Syrian refugee women in Lebanon experienced sexual assault, harassment, or attempted sexual exploitation, sometimes repeatedly, by employers, landlords, local faith-based aid distributors, and community members.⁵¹ Human Rights Watch found that residency rules left Syrian refugee women vulnerable to sexual harassment by their employers.⁵² Human Rights Watch has also documented sexual harassment, as a recurring violation that transgender women face in the workplace. In instances when

⁴³ Human Rights Watch interview with Suha, Beirut, November 27, 2018. Human Rights Watch (2019). "Don't Punish Me for Who I Am": Systemic Discrimination Against Transgender Women in Lebanon. Available at: <https://www.hrw.org/report/2019/09/03/dont-punish-me-who-i-am/systemic-discrimination-against-transgender-women-lebanon#3a465f>

⁴⁴ The International Commission of Jurists (ICJ). July 2019. Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies. Available at: <https://www.icj.org/wp-content/uploads/2019/07/Lebanon-Gender-Violence-Publications.pdf>

⁴⁵ Lebanon's Penal Code (1943): https://sherloc.unodc.org/cld/document/lbn/1943/lebanon_penal_code.html

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Human Rights Watch (2019). "Don't Punish Me for Who I Am": Systemic Discrimination Against Transgender Women in Lebanon. Available at: <https://www.hrw.org/report/2019/09/03/dont-punish-me-who-i-am/systemic-discrimination-against-transgender-women-lebanon#3a465f>

⁴⁹ Human Rights Watch (2019). "Don't Punish Me for Who I Am": Systemic Discrimination Against Transgender Women in Lebanon. Available at: <https://www.hrw.org/report/2019/09/03/dont-punish-me-who-i-am/systemic-discrimination-against-transgender-women-lebanon#3a465f>

⁵⁰ Lebanese Labor Law of 1946 (revised in 1996), art. 44, art. 31, <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/39255/64942/F93LBN01.htm#t1c6>

⁵¹ Human Rights Watch (2013). Lebanon: Women Refugees from Syria Harassed, Exploited. Available at: <https://www.hrw.org/news/2013/11/26/lebanon-women-refugees-syria-harassed-exploited>

⁵² Human Rights Watch (2016). "I Just Wanted to be Treated like a Person." Available at: <https://www.hrw.org/report/2016/01/12/i-just-wanted-be-treated-person/how-lebanons-residency-rules-facilitate-abuse>

they are employed, transgender women reported encountering sexual abuse from employers and coworkers. Lacking access to redress, including complaint mechanisms that hold abusers accountable for their discrimination, trans women reported having been forced out of jobs.⁵³

Due to underreporting and the lack of reliable complaints mechanisms, there is no estimate on the number of rape cases reported and prosecuted in Lebanon in recent years. Additionally, there are no official national statistics on the prevalence of sexual violence perpetrated by an intimate partner.⁵⁴ Since perpetrators are rarely held accountable before the law, victims of rape often lack confidence in the authorities to punish offenders, deterring reporting.⁵⁵

According to a 2017 report by Helem, a Beirut-based LGBT rights organization, individuals with non-normative sexual orientation or gender identity and expression can rarely seek legal protection from sexual violence, due to the criminalization of their identities and the fear of persecution.⁵⁶

Lebanon ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997. Lebanon maintains reservations to Article 9(2) (equal rights with respect to nationality of children), Article 16(1)(c), (d), (f), and (g) (equality in marriage and family relations), and Article 29(1) (administration of the Convention and arbitration in the event of a dispute).⁵⁷ In November 2015, the United Nations Committee on the Elimination of Discrimination against Women, during its review of Lebanon's record under CEDAW, called on Lebanon to criminalize marital rape.⁵⁸

Human Rights Watch urges Lebanon to explicitly criminalize marital rape, and clearly define sexual assault as a violation of bodily integrity and sexual autonomy, and rape as a form of sexual assault that is a physical invasion of a sexual nature without consent or under coercive circumstances. A physical invasion would include penetration, however slight, of any part of the body of the victim – or of the rapist by the victim – with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. Lebanon should also repeal the remaining loophole of article 522 of the criminal code, which still allows prosecution and convictions to be dropped where a perpetrator marries their victim in cases concerning sex with children ages 15-17 and seducing a virgin girl into having sex with the promise of marriage.

Human Rights Watch urges Lebanon to repeal article 534 of the Lebanese Penal Code, which criminalizes “sexual intercourse contrary to the order of nature,” and pass comprehensive anti-discrimination

⁵³ Human Rights Watch (2019). “Don’t Punish Me for Who I Am”: Systemic Discrimination Against Transgender Women in Lebanon. Available at: <https://www.hrw.org/report/2019/09/03/dont-punish-me-who-i-am/systemic-discrimination-against-transgender-women-lebanon#3a465f>

⁵⁴ UN Women. Global Database on Violence against Women: Lebanon. Available at: <https://evaw-global-database.unwomen.org/es/countries/asia/lebanon>

⁵⁵ The United Nations Development Programme (UNDP), United Nations Population Fund and UN Women (2018). Gender-Related Laws, Policies and Practices in Lebanon. Available at: https://civilsocietycentre.org/sites/default/files/resources/gender_justice_in_lebanon_final_report_eng.pdf

⁵⁶ Helem (2017). Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon. Available at: https://www.ecoi.net/en/file/local/1398874/1930_1493282102_int-ccpr-ico-lbn-27152-e.pdf

⁵⁷ United Nations Population Fund (UNFPA), Situation Analysis of Gender-Based Violence in Lebanon (2012). Available at: <http://www.unfpa.org.lb/Documents/-1Situation-Analysis-of-GBV-inLebanon.aspx>.

⁵⁸ Lebanon: United Nations Convention on the Elimination of All Forms of Discrimination against Women (2015). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%252FC%252FLBN%252FCO%252F4-5&Lang=en

legislation that prohibits discrimination on the grounds of gender identity and sexual orientation and includes effective measures to identify and address such discrimination and gives victims of discrimination and violence, including sexual violence, an effective remedy. In order to safeguard the right of sexual and gender minorities to report crimes without facing the risk of arrest, Lebanon should ensure that no sexual violence survivor is denied assistance, arrested, or harassed on the basis of their gender identity, their sexual orientation, or their status as a sex worker.

Recommendations

Human Rights Watch respectfully requests the UNSRVAW to include the following recommendations to States in the thematic report to the UN General Assembly:

- States must adopt all necessary measures to prevent, investigate and punish sexual violence perpetrated by both State and non-State actors on the basis of real or perceived sexual orientation or gender identity, and provide reparations to victims, including:
 - Repeal legislation that discriminates against individuals on the basis of their real or perceived sexual orientation or gender identity, and introduce laws and policies that protect people with non-normative sexual orientation or gender identity;
 - Develop reliable, accessible, and non-discriminatory complaints mechanisms through which lesbians and transgender people can report cases of sexual violence, as well as any denial of service, stigma, or discrimination in the health or justice sectors;
 - Ensure that complaints are handled confidentially and swiftly, following a clear procedure, and that lesbian and transgender survivors can submit complaints without fear of reprisals;
 - Issue clear policy directives to ensure that reported cases of violence against lesbians and transgender individuals are effectively and impartially investigated and prosecuted; and
 - Ensure that individuals who discriminate against, abuse, mistreat, or inflict violence on lesbians and transgender people are held accountable, and the penalties imposed are commensurate with the gravity of the crime and harm inflicted.

- States should introduce and proactively strengthen ethical and safe data collection mechanisms that monitor sexual violence against women and disaggregate the data by sexual orientation and gender identity.

- States should ensure that all state agents in all sectors, including health, education, and justice, receive mandatory training on the appropriate protocols and responses in the provision of services to lesbian and transgender survivors of sexual violence, including on the vulnerability of individuals with non-normative sexual orientation or gender identity to sexual violence motivated by prejudice, on secondary victimization, and regarding the specific needs and rights of lesbian and transgender persons.