



ARTICLE 19 Submission to the Independent Expert on Sexual Orientation and Gender Identity

ARTICLE 19 welcomes the opportunity to provide information on sexual orientation and gender identity in relation to the human rights to freedom of expression, association and assembly in advance of the UN Independent Expert's upcoming report to the 56th Session of the Human Rights Council.

The right to freedom of expression encompasses the right to freely express one's sexual orientation or gender identity, as well as the freedom to seek, receive and impart information on issues related to sexual orientation or gender identity. However, the enjoyment of the right of freedom of expression and related rights differs considerably for individuals based on their sexual orientation or gender identity. A person's ability – or inability – to speak freely, participate in public debate, report the news safely and securely, access information, and harness digital technologies is often contingent upon whether or not their sexual orientation and gender identity fits within societal expectations, and whether or not their identity grants them access to power.

Across the world, LGBTQI+ individuals face significant barriers to the exercise of the right to freedom of expression and related rights, such as oppressive laws, physical and verbal violence, censorship, surveillance, stigmatisation, and bans on pride marches and other forms of protest. These are but a few examples of what is an enduring global problem – one that has a tendency to be invisible, or when acknowledged lack long-term meaningful solutions.

This submission is drawn from ARTICLE 19 research into some key issues related to LGBTQI+ individuals' exercise of their right to freedom of expression and provides recommendations to States and other stakeholders. We encourage reading the full research reports for complete information.

Legal Frameworks

This section is drawn from our research [“Traditional Values? Attempts to Censor Sexuality”](#) and [“Digital Crime Scenes”](#), led by researcher Afsaneh Rigot.

Across the globe, ARTICLE 19 has documented a wide range of laws that criminalise LGBTQI+ individuals and their expression or prohibit dissemination of information on sexual orientation and gender identity. These laws are often based on so-called “public morals” or “traditional values”, or use terms such as “morality,” “indecent,” and “debauchery”, which are [tactically broad and vague](#) to lead to wide and unpredictable interpretation. There are also laws with vague connections to sexual behaviours – such as the prohibition of “sodomy” or “sexual acts against nature” – that have been predominately applied to LGBTQI+ communities, as well as sex workers.

The problem with legislation based on “public morals”, “traditional values”, or similar concepts is that these terms are without definition and thus subject to arbitrary interpretation, and that traditional values are diverse and varied rather than universal. Particularly concerning is the failure to recognise that traditional values are often abused by governments to legitimise discrimination against minority groups, to silence dissent, and violate people’s human rights – in particular those of LGBTQI+ people.

“Homosexual Propaganda” Laws

Despite international condemnation, a number of countries retain [legislation prohibiting “homosexual propaganda”](#) on the pretence of protecting minors, public morals, or so-called “traditional values”. These prohibitions on “homosexual propaganda” share in common the provision of administrative or criminal sanctions to ban the dissemination of any information regarding issues related diverse sexual orientations or gender identities. The ambiguity of laws prohibiting “homosexual propaganda” makes their potential reach indeterminable.

In various countries, these laws have been enforced to detain and fine activists holding signs in public that merely declare their sexuality, and to detain people for participating in civil rights marches. The laws limit the diversity of publicly available information on matters relating to sexual

orientation or gender identity and may impact the issues mass media outlets cover, the availability of information in relation to health services and education, and the freedom of individuals to organise inclusive and diverse political, artistic or cultural events.

Of equal concern, and less measurable, is the extent to which these prohibitions, and the homophobic and transphobic rhetoric deployed in favour of their adoption, legitimises discrimination and violence against LGBTQI+ people and other human rights defenders.

The prohibitions on “homosexual propaganda” are often part of broader crackdowns on the right to freedom of expression and one of the numerous ways to restrict the space for civil society to engage in critical debate or any form of human rights advocacy.

The bans on “homosexual propaganda” fail the three-part test for restrictions to the right to freedom of expression – they must be provided for by law, pursue a legitimate aim, and be necessary and proportionate to that aim. This is because:

- **The bans fail the test of legality:** The provisions of various regulations that ban “homosexual propaganda” are neither sufficiently clear to enable individuals to regulate their conduct in conformity with the law.
- **The bans do not pursue legitimate aims:** While the protection of public morals is often invoked as an aim, diverse sexual orientations and gender identities are part of the human condition, and the silencing of LGBTQI+ people cannot be framed as an issue of morality. International human rights law is clear that no “legitimate aim” for limiting the protection of human rights may be invoked to justify discriminatory practices.
- **The bans are not necessary or proportionate:** Since prohibitions on “homosexual propaganda” do not in fact pursue any legitimate aim and are clearly discriminatory in nature, it is clear that there is no case for the necessity of these provisions in a democratic society or any question regarding the possible proportionality of the penalties imposed as a consequence of their enforcement.

In 2013, **Russia** made any “propaganda for homosexuality among minors” an offence. The terms “homosexual propaganda” and “among minors” are not clearly defined in the legislation. In 2022, this was extended to include a wider array of information related to sexual orientation and gender identity, including gender transition, and extended the ban to all age groups rather than just minors. Since its inception, [this law has been systemically used to silence LGBTQI+ people](#) and hinder the activity of LGBTQI+ civil society. At the same time, Russian authorities supported by pro-state media

instrumentally use these laws and the protection of “traditional family values” to reinforce harmful stereotypes and incite hostility against LGBTQI+ people.

Cybercrime Laws

ARTICLE 19 has documented an increase in [the use of cybercrime laws to persecute LGBTQI+ people](#), particularly in Middle East and North Africa, largely due to the proliferation of digital technology and a growing reliance on digital evidence for prosecution.

We have found that in **Egypt**, prosecutions for homosexuality had been shifting from charging under morality laws to prosecutions under cybercrime laws. These prosecutions of LGBTQI+ persons are based specifically on Article 76 of the Telecommunication Regulation Law, which criminalises the “misuse of telecommunications”, and Article 25 of the Cybercrime Law, which criminalizes the use of technology to “infringe on any family principles or values in Egyptian society”.

The increased use of cybercrime laws has intensified surveillance against LGBTQI+ persons, by subjecting prosecutions to lower standards of evidence and by imposing higher penalties. This is significant as current Egyptian anti-cybercrime laws are enforced by authorities who have more significant and sophisticated surveillance tools. Similarly, it is easier to prosecute queer people under cybercrime laws because the underlying charges do not require proof of sexual activity, but instead are defined by infringement of “any family principles or values in Egyptian society.”

In **Tunisia**, our research shows the same trend. Of especial note is the use of the Article 86 of the Telecommunications Code against LGBTQI+ people which stipulates that “Anyone who intends to offend or disturb others using telecommunications networks shall be sentenced to imprisonment for a period between one year and two years, and a fine from one hundred and up to one thousand dinars”. Interviewees point out that the law may be applied at a larger scope, as the Telecommunications Code can be used to grant increased legal authority in searches of digital devices.

Recommendations:

- States should repeal or refrain from adopting any laws that discriminate based on sexual orientation or gender identity, including any laws aimed at prohibiting so-called “homosexual propaganda” or the dissemination of information on sexual orientation and gender identity;
- States should ensure that any individuals convicted of “homosexual propaganda” offences have their convictions quashed and removed from their records, be refunded any fines that they have paid, and be afforded adequate redress for the violation of their human rights;

- States should ensure that cybercrime laws meet international standards on the right to freedom of expression and the principles of legality, necessity and proportionality, and are not used to discriminate based on sexual orientation or gender identity;
- States should enact or strengthen anti-discrimination legislation which covers sexual orientation and gender identity as protected characteristics;
- States should commit to promoting and protecting the right to freedom of expression rights of all people on the basis of equal treatment and non-discrimination, regardless of sexual orientation or gender identity; and,
- States should fulfill their responsibility to take sustained and systematic action to modify or eliminate stereotypes and negative, harmful and discriminatory practices against LGBTQI+ people justified by traditional values.

Protest

This section is drawn from our flagship research report “[Time to Defend Protest for All](#)”.

ARTICLE 19’s research shows that the consequences of cracking down on protest are not felt equally by all people. Power imbalances mean that the impact is far worse for LGBTQI+ persons and other individuals and groups who already face discrimination in society. For people who have been systematically disadvantaged or underrepresented, including LGBTQI+ groups, mobilising collectively is often one of the only mechanisms left to raise concerns and be heard. When authorities restrict the right to protest, they take away this vital channel for a deeper, more inclusive democracy and further oppress these groups.

Our research shows that the way governments respond to protest is not dissociated from broader societal inequalities, first reflecting and eventually increasing the levels of discrimination and exclusion that are driving people to mobilise and demand change. Politicians and the police often portray LGBTQI+ protests as a disruption and a threat. In doing this, authorities and the media dehumanise people, undermine people’s causes, and delegitimise them as actors, placing them at greater risk of violent responses by state actors and private individuals.

At times, LGBTQI+ people have their right to protest denied altogether. Where they do assemble protest, we have seen LGBTQI+ people face a wide range of human rights violations, including homophobic and transphobic verbal abuse, the excessive use of force, and arbitrary detention, sometimes followed by humiliating or degrading treatment at some police stations. This has a chilling

effect, directly or indirectly dissuading individuals from exercising their rights as the result of policies and authorities' actions or a threat of actions.

In **Poland**, there have been serious threats to LGBTQI+ people and their right to freedom of assembly in recent years. On 7 August 2020, a spontaneous protest against the pre-trial detention of non-binary activist 'Margot' Szutowicz was part of a broader civil society's response to an ongoing, state-led smear and hate campaign against LGBTQI+ people in the country.

During the 7 August 2020 protest 48 persons, including those who did not actively participate in the protest, and even some passers-by going grocery shopping, were detained by the police. In the Commissioner for Human Rights report, based on interviews with 33 out of 48 detained persons, there is evidence that the treatment of detainees at some police stations amounted to degrading treatment and, in some cases, to inhuman treatment. In the case of a transgender woman, the personal examination was conducted by a male officer despite stating her gender, as confirmed by an eyewitness. She also claimed that she was misgendered and contemptuously referred to as 'it'.

Those detained in connection with the 7 August 2020 protest reported being denied access to lawyers. The legal representatives present at some police stations in Warsaw and the vicinity reported problems with contacting their clients.

Through our research, some interviewees who had participated in or monitored the 7 August 2020 protest reported that the police particularly targeted those who wore or carried LGBTQI+ emblems, such as badges or flags in rainbow colours, or whose appearance, such as coloured hair or androgynous appearance, made them stand out from the crowd.

The interviewees also reported that the police brutally searched them, threw them or other protest participants to the ground, handcuffed them, and that there were instances of kneeling and throwing detainees into police cars "like sacks of potatoes". One of the most extreme examples of police brutality was the intervention against a non-binary person, who recounted that they smashed their head and lost consciousness when officers intervened. Moreover, some officers were verbally abusive to detainees, making homophobic and transphobic comments, as confirmed by an eyewitness.

In **Tunisia**, LGBTQI+ groups who have attended protests on a range of social and economic issues, including corruption and police violence and protesting against a bill that would significantly limit criminal liability for the use of force by security forces, have reported facing insults and verbal abuse by the police. Most of the people interviewed in our research reported receiving comments which often were related to their appearance, clothing, and whether they carried any symbols or the pride

flag. A number of protestors also report being threatened with violence and rape. The majority reported being stopped at the protests' access barriers and being verbally abused by police officers.

In some reports, the police also incited other groups passing by to join in the abuse. Almost every LGBTQI+ person interviewed reported being called homophobic slurs by police officers both during and outside of protests.

Recommendations:

- States should protect and promote the right to protest for all people, including LGBTQI+ persons;
- States should refrain from and officially and publicly condemn excessive use of force, arbitrary detention, legal harassment, and other human rights violations against LGBTQI+ protesters, making clear that they are prohibited and will not be tolerated under any circumstances;
- States should abolish any mandatory notification regime, and ensure that the failure to notify the authorities of the intention to assemble is not used as a justification for considering participation in a protest unlawful;
- States should refrain from issuing statements or speeches that are stigmatising and/or discriminatory towards LGBTQI+ individuals engaging in protest, and take steps to prevent others from doing so, or hold to account those that do;
- States should ensure that police and other security services policing protests or performing other law enforcement duties at protests do not use excessive force and comply fully with the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and that such bodies issue clear orders to their forces that any use of force must be strictly necessary and proportionate to the situation faced and that use of unnecessary or excessive force will be punished;
- States should ensure that any allegations of excessive use of force by law enforcement agents in the course of protests are promptly, thoroughly, and impartially investigated, that the results of these investigations are made public without delay, and that suspected perpetrators are brought to justice in fair trials; and,
- States should immediately cease the arrest and detention of LGBTQI+ individuals solely on the basis of their exercise of the right to protest.

Human Rights and Digital Technologies

Surveillance of Digital Platforms and Dating apps

This section is drawn from our research in reports titled “[Apps, Arrests and Abuse in Egypt, Lebanon and Iran](#)” and “[Digital Crime Scenes](#)”, led by researcher Afsaneh Rigot.

Social media platforms and dating apps have empowered LGBTQI+ people and provided them with an avenue to exercise their right to freedom of expression. Across the globe, LGBTQI+ people rely on these apps to communicate, meet, or hook-up and fall in love.

Despite the benefits of these platforms, some traditional threats facing LGBTQI+ have simply been replicated or even intensified through digital technology. In our research in Middle East and North Africa, ARTICLE 19 has found that the authorities and non-state actors are using these platforms to monitor, entrap, threaten and prosecute LGBTQI+ communities. The authorities are increasingly relying on communications and other data generated through these digital platforms to provide evidence of so-called “deviant” sexual behaviour and to prosecute them under various laws, mostly under broad and vague morality and indecency laws, but increasingly cybersecurity laws, as mentioned above. This repression is having severe consequences for LGBTQI+ groups’ exercise of their rights to freedom of expression and freedom of peaceful assembly and association, limiting safe opportunities for connecting, socialising, organising, and meeting in public spaces.

The targeting of LGBTQI+ groups in the Middle East and North Africa reached a climax in September 2017 when more than 70 people were arrested due to perceptions of their gender and sexual identities in **Egypt** after the rainbow flag was flown during a concert. At least 16 were convicted with sentences ranging from six months to six years in prison. Many of these arrests happened via entrapment through LGBTQI+ dating apps. However, our research has shown this is just one egregious example that reflects broader trends.

Our research has shown fake accounts are being used by state and non-state actors to lure individuals into face-to-face meetings, entrap them, and subject them to arrest or cruel and degrading treatment, or blackmail them for money or sexual services. This is a well-documented operation by Egyptian police that the users are recounting. But, this is also a tactic that is sporadically used in **Iran** and **Lebanon**, yet gets little mention.

The infiltration of group chats on mainstream social platforms and messaging apps endanger the entire chat group, and can allow access to extensive lists of contacts. This increases risk within the community, and creates risk of contact with both partners and family members.

Accounts of cases also describe the presence of the app itself as a danger for users – i.e. the recognisable logo of the app followed by the contents of the app. The existence of an app logo itself on their mobiles has been held as sufficient grounds for arrest or prosecution after users have been stopped and searched, or their houses raided. The presence of the app logo on their picture has also led to users being targeted, arrested, harassed, and blackmailed, providing grounds for prosecution on the basis of their activities on the app. This issue has been mentioned predominately by users whose picture with the app logo was screenshotted without their knowledge, and used against them for harassment and/or blackmail, especially when stopped at army check-points in Lebanon.

Although all LGBTQI+ users have been surveilled through their use of these technologies, some members of the community who face multiple and intersecting forms of discrimination are more likely to be targeted and prosecuted, including queer persons who were viewed as “feminine” (both among trans women and gay men) as well as queer sex workers and asylum seekers and refugees.

Due to these platforms’ unique ability to connect, empower, and provide an avenue for expression, as well as to build personal relationships, our research has shown that LGBTQI+ users will continue to use them even where it directly risks their safety or privacy. While the authorities must immediately cease their surveillance of LGBTQI+ persons, it is also the responsibility of providers to protect the users of their products by implementing prevention and mitigation strategies, as well as making proactive efforts to support users in staying safe. Human rights and security principles must be applied to design and operations. This is especially the case when apps are functioning in countries with higher risks for LGBTQI+ users.

Recommendations:

- States should cease the surveillance to target persons due to their sexual orientation or gender identity, and ensure that any surveillance meets the principles of legality, necessity and proportionality;
- Digital platforms should ensure human rights due diligence throughout their operations and implement effective prevention and mitigation strategies to support the safety and security of LGBTQI+ persons, in line with the UN Guiding Principles on Business and Human Rights;
- Digital platforms should ensure transparency in the implementation of international human rights standards, including publishing efforts to address human rights impacts, especially to relevant stakeholders; and,

- Digital platforms should consider the design and operation of features within specific national contexts and with consideration to specific groups and demographics of users, particularly when their function relates to distinct at-risk groups.

Website Blocking and Filtering

This section is drawn from our policy paper “[Freedom of Expression Unfiltered](#)” and report “[Don’t Provoke, Don’t Challenge](#)” [The Censorship and Self-Censorship of the LGBT Community in Kazakhstan](#)”.

Many countries now increasingly rely on blocking of entire websites, domains, IP addresses, protocols or services, as well as filtering certain types of LGBTQI+-related content deemed inappropriate or unlawful. This censorship restricts the flow of information from and about LGBTQI+ people, preventing them from expressing themselves and denying them opportunities to assert other fundamental rights – such as the right to education and the right to health. It also violates the rights of all people to openly discuss issues relating to sexual orientation and gender identity, and prevents them accessing information on a wide range of related concerns.

Filtering is commonly associated with the use of technology that blocks pages by reference to certain characteristics, such as traffic patterns, protocols or keywords, or on the basis of their perceived connection to content deemed inappropriate or unlawful. Blocking, by contrast, usually refers to preventing access to specific websites, domains, IP addresses, protocols or services included on a blacklist.

For example, in **Kazakhstan**, our research has shown [regular blocking of LGBTQI+ websites and forums](#) with a lack of transparency, with transgender interviewees noting particular challenges in accessing information on issues relating to gender identity. Three transgender interviewees noted that it had taken them almost six months to find a platform where they could search and exchange information on this topic.

The blocking of websites with LGBTQI+ content has been [seen in various other countries](#), including **Indonesia, Malaysia, Iran, Russia, Saudi Arabia**, and the **United Arab Emirates (UAE)**.

In our view, [blocking and filtering is not only ineffective but unlawful](#) under international human rights law, unless narrowly targeted and compliant with the principles of legitimacy, necessity and proportionality. Fundamentally, blocking and filtering measures fail to address the offline root causes of the problems that these measures are claimed to address.

Under international human rights standards, the blocking or filtering of content should be ordered by a court or other independent adjudicatory bodies. However, in some countries, it is ordered by government departments or other public agencies. There is also a lack of transparency, with orders also taking place through informal channels. Filtering can occur as a result of legislation that imposes direct obligations on ISPs, social media platforms, and other service providers to block or filter certain types of content. Failure to comply with these obligations is usually punished by sanctions ranging from withdrawal of a license to provide telecommunications services to imprisonment.

Recommendations:

- States should cease blocking or filtering websites with LGBTQI+-related content and ensure any measure to block or filter online content meets the principles of legality, necessity and proportionality, and only be ordered by an independent and impartial court or adjudicatory body.