

# Algeria: Mass convictions for homosexuality

*Arbitrary arrests; police raid alleged 'gay wedding'.*

HRW (15.10.2020) – <https://bit.ly/3dMEFpl> – An Algerian court on September 3, 2020 sentenced 2 men to prison terms and 42 others to suspended terms after mass arrests at what the police alleged was a “gay wedding,” Human Rights Watch said today. The authorities should void the charges and release them immediately.

On July 24, 2020, police raided a private residence and arrested the 44 – 9 women and 35 men, most of them university students – in el-Kharoub, a district in Constantine Province, northeastern Algeria, after neighbors complained. An Algerian lawyer involved in the case told Human Rights Watch that the court used police reports describing the decorations, flowers, and sweets indicative of a wedding celebration, and the men’s supposedly gay appearance, as evidence of guilt.

“Algerian authorities’ attack on personal freedoms is nothing new, but arresting dozens of students based on their perceived sexual orientation is a flagrant infringement on their basic rights,” said Rasha Younes, lesbian, gay, bisexual, and transgender (LGBT) rights researcher at Human Rights Watch. “They should immediately release from prison the two men who would be free today were it not for Algeria’s regressive anti-homosexuality laws.”

The court convicted the 44 of “same-sex relations,” “public indecency,” and “subjecting others to harm by breaking Covid-19-related quarantine measures.” Two men were sentenced to three years in prison and a fine, and the others to a one-year suspended sentence.

These convictions contradict the right to privacy under international human rights law. This right is also reflected in Algeria’s constitution, which provides for the protection of a person’s “honor” and private life, including the privacy of their home, communication, and correspondence. The convictions of the 44 for “same-sex relations” indicate that Algerian authorities are discriminating against them based on their perceived sexual orientation and gender expression, Human Rights Watch said. The appeal of their convictions has not yet been scheduled.

In Algeria, same-sex relations are punishable under article 338 of the penal code by up to two years in prison. Additionally, article 333 increases the penalty for public indecency to six months to three years in prison and a fine if it involves “acts against nature with a member of the same sex,” whether between men or women.

Arrests for “moral” offenses that involve consensual adult activities in private settings violate international human rights law, including the right to privacy, nondiscrimination, and bodily autonomy protected under the International Covenant on Civil and Political Rights (ICCPR), to which Algeria is a state party. Algeria has ratified the African Charter on Human and People’s Rights (ACHPR), which affirms the rights to nondiscrimination, and has joined the African Court on Human and Peoples’ Rights. However, Algerian law does not extend

antidiscrimination protections to discrimination based on sexual orientation or gender identity.

Additionally, Algeria has a law that prohibits the registration of organizations in Algeria whose aims are deemed inconsistent with "public morals," and that imposes criminal penalties for members of unregistered organizations. This law poses risks to those who want to form or become active in LGBT groups, as well as to human rights organizations that otherwise might support such activities. According to a 2019 analysis by the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), laws regulating nongovernmental organizations in Algeria make it virtually impossible for organizations working on issues of sexual orientation and gender identity to legally register.

In light of the Covid-19 pandemic and the risk of outbreaks in detention sites, Human Rights Watch recommended that governments refrain from custodial arrests for minor offenses that do not involve the infliction or threat of infliction of serious bodily injury or sexual assault or a known likelihood of physical harm. Officials should also release anyone held pretrial, unless they pose a specific and known risk of harm to others that cannot be managed through measures other than detention.

Since March, Algerian authorities have imposed a ban on all social gatherings to slow the spread of Covid-19. Breaking quarantine and social distancing measures to attend a social gathering does not justify arbitrary arrests and prolonged pretrial detention, Human Rights Watch said.

“While people in Algeria continue to demand their basic rights to protest, the authorities are dedicating their time and resources to crack down on students and stockpile discriminatory charges against them,” Younes said. “Instead of policing its citizens’ private lives, the Algerian government should carry out reforms, including decriminalizing same-sex conduct.”

*Photo: An Algerian demonstrator holds the Algerian national flag as he stage a protest against the government in Algiers, Algeria, Friday, Nov.29, 2019. © 2019 AP Photo/Toufik Doudou*

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## **Anti-LGBT persecution in El Salvador, Guatemala, Honduras**

*US barriers to asylum block path to safety.*

HRW (07.10.2020) – <https://bit.ly/33Urfc> – The governments of El Salvador, Guatemala, and Honduras have failed to effectively address violence and entrenched discrimination against lesbian, gay, bisexual, and transgender (LGBT) people, leading many to seek asylum in the United States, Human Rights Watch said in a report released today. Yet policies by the administration of US President Donald Trump have made it almost impossible for them to obtain asylum.

The 138-page report, “‘Every Day I Live in Fear’: Violence and Discrimination against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States,”

documents violence experienced by LGBT people in the three Northern Central American countries collectively known as the Northern Triangle, including at the hands of gangs, law enforcement officials, and their own families. Human Rights Watch found that Northern Triangle governments fail to adequately protect LGBT people against violence and discrimination, and that they face major obstacles if they attempt to seek asylum in the United States.

“LGBT people in the Northern Triangle face high levels of violence that their own governments appear unable or unwilling to address,” said Neela Ghoshal, senior LGBT rights researcher at Human Rights Watch. “For some LGBT people in the region, seeking asylum in the United States is the only hope of safety, but the Trump administration has blocked them at every turn.”

Human Rights Watch interviewed 116 LGBT people from the three countries. Some described violence by family members, leading them to flee home as young as at age 8. Others described bullying and discrimination that drove them out of school. Many said family rejection and discrimination led to economic marginalization, particularly for trans women, and poverty was likely to increase the risk of violence.

LGBT people sometimes face violence and discrimination from the very law enforcement agents charged with keeping them safe. Carlos G., a gay refugee who traveled to the United States from Honduras in 2018, said that gang members there shot him, telling him: “Today you’re going to die, faggot.” He was afraid to report the incident to the police, who had previously harassed him for being gay and demanded sexual favors. Carlitos B., a non-binary person from Guatemala, fled

after their brother assaulted and threatened to rape them. When Carlitos reported to the police, they laughed at Carlitos's gender expression.

Pricila P., a trans woman from El Salvador, said police forced her off a bus and beat her. "One of the police officers grabbed my testicles and squeezed," she said. "He said, 'You're realizing you're a man because you feel pain.' He said that I would become a man by force." She fled to the United States in 2019, after gang members assaulted her, abducted her gay friend, and warned her that she would be next.

Both Honduras and El Salvador have passed hate crimes legislation in the last 10 years, but neither country has convicted anyone on hate crimes charges. In a landmark ruling in July 2020, a court in El Salvador convicted three police officers of murdering Camila Díaz, a trans woman who had been deported in 2018 after attempting to seek protection in the United States, but a judge dismissed hate crimes charges against them.

None of the three countries has comprehensive civil law protections against discrimination, Human Rights Watch said. While Honduras outlaws employment discrimination on the grounds of sexual orientation and gender identity, activists said they know of no cases in which the law had been enforced. In Guatemala, a pending Life and Family Protection Bill could be used to justify discriminatory denial of services on "freedom of conscience" grounds.

Given the persecution that many LGBT people face in the

Northern Triangle, the US government should rigorously protect their ability to safely enter the United States and apply for asylum. Instead, the US government has increasingly closed doors to them with a series of policies that restrict access to asylum and that narrowly interpret the refugee definition in ways that exclude LGBT people from protections they previously enjoyed.

In March 2020, the US government entirely closed its land borders to asylum seekers based on the pretext of Covid-19, leaving them to suffer persecution in their home countries or be stranded in Mexico. In June, the US Departments of Justice and Homeland Security proposed a major regulatory change to the US asylum system that would severely restrict LGBT people's ability to be granted asylum by barring asylum on the basis of "gender." In September, the Justice Department issued yet another regulation that puts asylum even further beyond their reach, tightening time limits on asylum applications and allowing immigration judges to introduce their own evidence into asylum cases, even if such evidence reflects biases such as anti-LGBT prejudice.

These policies followed other severe measures the Trump administration has taken to prevent asylum seekers from ever reaching the United States and to limit their access to asylum if they do, including family separation; prolonged detention; the "Remain in Mexico" program; an expedited asylum review process allowing for little or no contact with lawyers; an attempt to bar asylum seekers who transited through third countries before arriving at the US border; and a policy of transferring Salvadoran and Honduran asylum seekers to Guatemala, where they lack effective protection. Among the asylum seekers affected by all these measures are LGBT people, who may be particularly at risk of violence and discrimination

in northern Mexico.

“The governments of El Salvador, Guatemala, and Honduras need to stem rampant anti-LGBT violence and ensure that laws and policies protect LGBT people from persecution, including by police,” Ghoshal said. “As long as LGBT people continue to experience threats to their lives and safety based on their identity in their countries of origin, the US should welcome them with open arms, rather than slamming the door on them.”

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## **Domestic violence law signals hope for Kuwait’s women**

*Government should implement legislation, address gaps in protection for victims.*

By Rothna Begum

HRW (29.09.2020) – <https://bit.ly/3nnWZtq> – This month, after years of activism, Kuwaiti women’s rights activists won a new law establishing protections against domestic violence. The need for this law was underscored on September 9 when Fatima al-Ajmi, aged 35 and pregnant, was shot repeatedly and killed, reportedly by a family member for marrying a man outside of her family’s community. Her killer had reportedly threatened her before.



In 2019, I spoke to nine women in Kuwait who described facing abuse from family members and husbands. They said they were either scared to go to the police or were turned away when they did. One hundred and fifty-five countries have legal protections against domestic violence, but until now, Kuwait had no explicit law setting out protection measures against domestic violence, or even shelters they could go to. Some laws, like article 153 in Kuwait's Penal Code, even provide men with reduced sentences for killings of women found in the act of adultery.

On September 20, Kuwait began catching up to the global norm and issued a new Law on Protection from Domestic Violence, after the National Assembly passed it on August 19. The law creates a national committee – with representatives from different ministries and civil society – to draw up policies to combat and protect women from domestic violence. The committee will also submit recommendations to amend or repeal laws that contradict the new domestic violence law. The new legislation also establishes shelters and a hotline to receive domestic violence complaints, provides counseling and legal assistance for victims, and allows for emergency protection orders (restraining orders) to prevent abusers from contacting their victim.

However, the new law has serious gaps. While it provides penalties for violating protection orders, it does not set out penalties for domestic violence as a crime on its own. It also does not include former partners or people engaged in relationships outside of wedlock, including those engaged to be married or in unofficial marriages.

As the tragic killing of Fatima al-Ajmi has shown, these long-

awaited protections are crucial. Kuwait's real test will be ensuring implementation of its new law, filling remaining protection gaps, and emphasizing prevention, including by repealing discriminatory laws that leave women exposed to deadly violence.

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## **Indonesia: Investigate police raid on 'gay party'**

*Authorities exploiting pornography law to target LGBT people.*

HRW (07.09.2020) – <https://bit.ly/3ih5WBR> – The Indonesian government should urgently investigate a police raid on a private gathering of 56 men in Jakarta that highlights the threat to the rights of lesbian, gay, bisexual, and transgender (LGBT) people in the country, Human Rights Watch said today. On August 29, 2020, police forcibly broke up a party at a hotel, arresting nine men and charging them with the crime of “facilitating obscene acts” and under the pornography law, which discriminates against LGBT people.

The charges violate the rights to privacy, association, and equal protection of the law and should immediately be dropped.

“This latest raid fits into a disturbing pattern of Indonesian authorities using the pornography law as a weapon to target LGBT people,” said Kyle Knight, senior LGBT rights researcher at Human Rights Watch. “The government has been inciting

hostility toward LGBT people for several years, and there is no accountability for abuses such as police raids on private spaces.”

Article 296 of Indonesia’s criminal code makes it a crime for someone to make “an occupation or a habit of intentionally causing or facilitating any obscene act by others.” The maximum penalty is 16 months in prison.

The Jakarta raid is part of a years-long pattern of authorities unlawfully apprehending LGBT people in private spaces. Indonesia’s central government has never criminalized same-sex behavior, but no national laws specifically protect LGBT people against discrimination. An uptick in anti-LGBT rhetoric and attacks since 2016 has resulted in the application of discriminatory clauses in the pornography law to target LGBT people for arrest and prosecution.

Indonesia’s 2008 Law on Pornography prohibits the “creation, dissemination or broadcasting of pornography containing deviant sexual intercourse,” which it defines to include: sex with corpses, sex with animals, oral sex, anal sex, lesbian sex, and male homosexual sex. Article 36 of the Pornography Law, which criminalizes facilitating obscene acts for a commercial purpose, has a maximum penalty of 10 years in prison.

A group of activists, including LGBT organizations, attempted to challenge the law in the Constitutional Court in 2009, but the court declined to review it.

While historically the law was not used to target LGBT people specifically, in recent years police have used it as a pretext for arbitrary raids and arrests, and courts have found gay men in private gatherings guilty under the law.

In September 2017, a court in Surabaya found seven men who had been arrested during a police raid on a gay party in April of that year guilty under the pornography law and sentenced them to between 18 months and 30 months in prison.

In October 2017, Jakarta police raided a club popular with gay men, arresting 58 people. Police released most of them the same day but detained five employees of the club – four men and a woman – and threatened to charge them with violating the pornography law. They were subsequently released without charge.

On December 15, 2017, the North Jakarta District Court sentenced 10 men to between two and three years in prison for violating the pornography law. Police had apprehended the 10, along with 131 others, during a raid on the Atlantis Gym, a sauna frequented by gay men in Jakarta, in May 2017. The 10 were convicted based on allegations that they were naked at the time of the raid, citing the law's prohibition on performances that involve stripping.

In January 2018, police in Cianjur, West Java province, raided a private home where five men had gathered. Citing the pornography law, the police told reporters the men were caught at a "sex party," using condoms and lubricant as evidence.

In a development similar to the application of the pornography law, in January 2020, the mayor of Depok, a city in West Java, ordered police to raid private residences to look for “immoral acts” and “prevent the spread of LGBT.” The National Human Rights Commission (Komnas HAM) condemned the order, saying such rhetoric from public officials increases the risk of persecution of LGBT people.

According to the police report of the recent Jakarta raid, a 31-officer police unit, under Adjunct Police Commissionaire Jerry Raimond Siagian, had apparently been monitoring the private gathering and organized the raid.

Privacy rights are a fundamental protection that underlie everyone’s physical autonomy and identity and include protections for private adult consensual sexual behavior, Human Rights Watch said. The United Nations Human Rights Committee, the independent body of experts that interprets the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is party, has stated, “It is undisputed that adult consensual sexual activity in private is covered by the concept of ‘privacy.’”

Indonesia has been a champion for privacy rights internationally, co-sponsoring a UN Human Rights Council resolution on the right to privacy. In the report on that resolution, the Office of the UN High Commissioner for Human Rights reminded governments that privacy rights (enshrined in ICCPR article 17) should be upheld jointly with the right to nondiscrimination (ICCPR, article 26).

Indonesian police should halt arbitrary raids on private spaces, investigate those that have taken place, and punish those who took part in the raids and those responsible in their chain of command, Human Rights Watch said. President Joko “Jokowi” Widodo, who has voiced support for LGBT Indonesians in the past, should make clear the prohibition against discriminatory behavior by the police.

The Indonesian parliament should also substantially revise the proposed new criminal code to meet international human rights standards. It contains articles that will violate the rights of LGBT people. It has provisions that will punish extramarital sex by up to one year in jail. While this article does not specifically mention same-sex conduct, since same-sex relationships are not legally recognized in Indonesia, this provision effectively criminalizes all same-sex conduct.

“The combination of exploiting the discriminatory pornography law and a lack of accountability for police misconduct has proved to be both dangerous and durable,” Knight said. “So long as the government permits police raids on private gatherings under a discriminatory law, it will fail to curb anti-LGBT harassment and intimidation.”

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## **WORLD: Caster Semenya loses appeal for equal treatment**

*Swiss Court upholds regulations biased against women athletes.*

By Minky Worden

HRW (08.09.2020) – <https://bit.ly/35oVdBK> – The Federal Supreme Court of Switzerland has ruled that sport regulations that violate women's rights cannot be struck down as inconsistent with Swiss public policy, dealing a blow to the rights of all women athletes. The court came to this conclusion despite finding that the regulations in question – which create a regime of discriminatory surveillance and medical interventions on women – violate fundamental human rights of the South African runner Caster Semenya.

The Swiss court was reviewing an appeal by Semenya, who has been targeted for a decade by variations of the regulations, and ruled ineligible to compete. In 2019, the Court of Arbitration for Sport, based in Lausanne, Switzerland, upheld the most recent version of the regulations, which targets a subset of women with variations of their sex characteristics and naturally occurring elevated testosterone levels.

The regulations compel these women to undergo medical interventions or be forced out of competition. Identifying which athletes are impacted by the regulations will be done through subjecting all women athletes' bodies to public scrutiny and requiring those that seem "suspect" to undergo a medical examination. Men athletes are subject to no such surveillance or compelled medical tests.

There is no clear scientific consensus that women with naturally occurring higher-than-typical testosterone have a performance advantage in athletics. For these women athletes,

being compelled to undergo a medical examination can be humiliating and medically unnecessary, as well as disrespectful of their rights.

The regulations target women in running events between 400 meters and 1 mile. Semenya's favored event was the 800 meter race, in which she won the gold medal in the 2016 Rio Olympics.

In a report published earlier this year, the Office of the United Nations High Commissioner for Human Rights recommends immediately revoking eligibility regulations for women athletes like those enforced by World Athletics, track and field's global governing body. The World Medical Association has recommended that physicians around the world should not observe the regulations as they violate medical ethics. The decision from the Federal Supreme Court means that the regulations will remain for now.

"I will continue to fight for the human rights of female athletes, both on the track and off the track, until we can all run free the way we were born," Semenya said in a statement about the Swiss ruling.

In this Olympic year, athletes are looking to the International Olympic Committee to set guidelines to protect women athletes from abusive and invasive surveillance, testing, and bans. Caster's case shows how urgent this is.