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## General situation of LGBTI people

The situation for LGBTI persons in the MENA-region (Middle East and North Africa) differs depending on where in the region they live, as different countries have different legal situations, languages, religions and cultures. Same-sex sexual acts are however criminalised in most of the countries in the region, and few countries recognise the rights of transgender persons. Further, gender non-conforming persons are often arrested or prosecuted, either for cross-dressing or “indecent behaviour”, which a number of countries criminalise, or accused for same-sex sexual activity.

The Swedish Development Cooperation in MENA region mainly concerns regional and sub-regional efforts, but subsequent to the democratic changes support has also been channelled directly to initiatives in Egypt, Libya, Tunisia, Yemen and Syria. Palestine and Iraq are also specifically targeted, but have separate country strategies. This brief will discuss the situation and strategies regionally, with a few examples to contextualise the differences between the countries.

LGBTI people across the MENA region face discrimination and violence because of their sexual orientation and gender identity, and are unable to access the same rights and services as other citizens of their countries. The general acceptance of non-conforming sexuality or gender identity is low. LGBTI people face “*a complex cultural system that controls people’s bodies and sexualities*” (Human Rights Watch). Women in many countries have far more limited freedom to move, meet, live out sexuality and organise compared to men. LGBTI persons of all genders have in common that they challenge gender norms, and this challenge is a threat both to social norms and to governmental laws. Human Rights Watch notes in a report 2009 “*Women who defy those norms and men who escape them are equally at risk. It is worth remembering that the law under which Egyptian men are tried for same-sex conduct was originally a law targeting women in prostitution.*”

In a few places, like Lebanon and Morocco, sexual orientation and gender identity issues have begun to enter the agenda in some mainstream human rights movements and there are studies that depict a growing awareness and support by media. This development was also seen in Egypt, but the recent development in Egypt with narrowed space for civil society organisations that receive foreign funding is going to make it harder for them to act.

In hostile societies, LGBTI persons are at higher risk of violence (due to their non-conforming sexuality and gender expressions) from families, society and government. Violence against lesbians and transmen is connected to the oppression of women and violence against women while violence against men and transwomen also have a connection to violence and stigmatisation of sex workers, as noted in the case of the legal situation in Egypt. In some specific countries in the region, the violence is extraordinary high. In Iraq, the documented violence against LGBTI people is enormous. There were over 600 estimated murders of LGBTI people in Iraq between 2005 and 2009. Also, in Kurdish territory of Iraq violence and discrimination against lesbian women and transpersons is documented. Countries like Iran, Saudi-Arabia and Yemen have documented cases of performed death sentences of LGBTI persons.

## Legal and human rights instruments

Same-sex sexual acts are criminalised in most of the countries in the region and only a few countries recognise the rights of transgender persons, while transgender and other gender-non conforming persons often are arrested accused for engaging in same-sex acts. Also, a number of countries have legislation that criminalises cross-dressing or “indecent behaviour”.

Legislation is often justified by references to Islam, but notably, there are other Muslim countries in the world where homosexuality is not criminalised (Countries in the Balkans, Africa, and Asia) as well as countries in the MENA region, like Turkey and Jordan. Some of the

countries that criminalise homosexual sex, like Egypt, Morocco, Algeria, do that under secular laws with fines and prison terms; laws that mostly have colonial origins. Human Rights Watch notes that “*secular, authoritarian regimes, facing down demands to democratise from leftist movements as well as Islamic dissidents, seem as likely to carry out crackdowns on sexuality as religiously-based ones, if not more so.*”

For example, Lebanon and Tunisia and Egypt are three countries with different legal and social contexts, which thus need different entry points for addressing the situation for LGBTI persons.

Same-sex sexual acts Legal	Same-sex sexual Illegal	Legal Status unclear	Death penalty for same-sex sexual acts	“Indecent behaviour” or cross dressing criminalised	Provides or recognise sex re-assignment
Bahrain (1976) <sup>*</sup> Israel (1988), Jordan (1951) West Bank ( <i>Palestine</i> ) (1951)	Algeria, Gaza ( <i>Palestine</i> ), Iran, Kuwait (male), Libya, Morocco, Oman, Qatar (male), Saudi Arabia, Syria, Tunisia, United Arab Emirates, Yemen	Egypt, Iraq <sup>†</sup> , Lebanon	Iran, Saudi Arabia, United Arab Emirate, Yemen	Algeria, Bahrain, Iran, Iraq, Kuwait, Lebanon, Libya, Saudi-Arabia, United Arab Emirate, Yemen	Iran <sup>‡</sup> , Israel, Kuwait.

Reference: ILGA, 2014

<sup>\*</sup> The legal status of homosexual acts is according to [some resources](#) unclear in Bahrain. “Activities deemed to be immoral” (Article 345 of Bahrain Penal Code). Convictions and persecution of LGBTI persons (also targeting trans-gender persons) are registered in Bahrain, like in other Gulf States.

<sup>†</sup> Comment of Iraq in ILGA:s report : “In the case of Iraq, /---/ it appears the State is unwilling or unable to intervene in areas of the country where militias (non-State actors) target LGBTI people for persecution, including enacting a death penalty.

<sup>‡</sup> Several organisations report that many persons undergo sex reassignment in order to avoid prosecution for being homosexual and Iran has been criticised for state-imposed medical interventions as an example of torture. For example, see Justice 4 Iran’s report (2012) [“Denying Identities, Maiming Bodies: Human Rights Violations against Individuals of Diverse Sexual Orientations and Gender Identities in the Islamic Republic of Iran”](#)

In *Tunisia* - the starting point of the "Arabic spring" in December 2010 – the revolution opened up hope for change also for LGBTI persons. There has since been a democratisation process, with elections in 2011 and 2014, adoption of a constitution that guarantees rights for women. Despite this, the development in favour of rights for LGBTI persons has not been as progressive. Same-sex sexual acts are still criminalised in the penal code, though reported not to be in practice. In 2012, the Minister for Human Rights rejected the recommendation of the UN Human Rights Committee for Tunisia to decriminalise same-sex sexual acts, stating that the concept of "sexual orientation is specific to the west" and is overridden by Tunisian law, which "clearly describes Tunisia as an Arab Muslim country" (ignoring the fact that the criminalisation laws are colonial from 1913). There is not yet legislation against discrimination or in support of medical or legal sex reassignment for transgender persons. The political party with the most seats in the Constituent Assembly, the Ennahda Movement, has stated that it would decriminalise homosexuality if it were elected to lead the country.

*In Lebanon* – there have been some successful rulings and changes in the media climate towards a somewhat positive attitude to LGBTI rights. While LGBTI persons in Lebanon still face many challenges, the legal situation as well as social acceptance is better than in most countries in the region. Sexuality in Lebanon is regulated through a complex system of laws inherited from the French colonial time and religious laws dealing with family matters (there are 15 religious codes recognised by the state). However, the most publicly debated regulation is Article 534 of the Lebanese Penal Code, which criminalises "unnatural sex". This vague term could imply every sexual practice that does not involve "procreative sex" within heterosexual marriage.

In 2014, as well as in 2009, a judge ruled that homosexuality is not against nature, invalidating the Article 534 that previously had been used to prosecute same-sex sexual acts. That followed the decision by Lebanese Psychiatric Society (LPS) in 2013 to declassify homosexuality as a mental disorder. Despite the successful rulings, there is still uncertainty in

terms of interpretation of the law on "crimes against nature". The presence of the penal code still threatens the Lebanese LGBTI community, and can be used against individuals and organisations. Decriminalisation is a very important step in enhancing the rights of LGBTI persons.

*In Egypt* – the situation has for a long time been hard for LGBTI persons. Despite some relief during the Arabic Spring, the situation has again worsened. According to the Pew Global Attitudes Report from 2007, 95% of Egyptians see homosexuality as objectionable. In the early 2000s, Egyptian authorities were arresting many LGBTI persons, and Human Rights Watch estimated in early 2004 that at least 179 gay and bisexual men had been on trial since 2001. The LGBTI organisation Bedaaya reports that during Muslim brotherhood regime, the gender based violence was remarkable high. According to Bedaaya's survey in 2012, 80% of persons of the LGBTI community who participated in the survey experienced violence because of their sexual orientation and gender identity. After the military regime took over the country in June 2013, Bedaaya has documented systematic mass arrests of homosexual persons. Since October 2013, at least 118 individuals mainly gay men and transgender women have been arrested and been charged with imprisonment between 2-12 years. The arrests followed illegal raids by police in private apartments, and resulted in several cases of physical, verbal and sexual abuse. Transgender women have been sent to male prisons.

*Conflict areas* - like Syria and Iraq might exclude active work of LGBTI organisations, but studies from other conflict or catastrophe areas show that LGBTI persons suffer from discrimination and are exposed to double vulnerability in e.g. refugee camps. LGBTI awareness from donors and help organisations can reduce discrimination against LGBTI persons during and post conflict.

### **Sexual and reproductive health and rights, HIV/AIDS and Gender Based Violence**

In the MENA region, the HIV epidemic has been on the rise since 2001. Although the overall HIV prevalence in the region is still low, according to UNDP in 2012, the rise in new infections has put MENA

among the top regions in the world with the fastest growing HIV epidemic. Due to stigma and discrimination as well as criminalisation of sex between men, men who have sex with men, MSM, are a high at risk group. Criminal laws can severely impact the ability of MSM to access services, the ability of clinics to offer services tailored to the needs of MSM, and the ability of MSM to participate openly in national planning processes that dictate funding and programs.

Available epidemiological data from UNAIDS and UNDP shows that MSM in Arab countries bear a disproportionate burden of HIV infection and are 50 to 130 times more likely to be exposed to HIV than the general population. It is also observed that there is not enough reliable data on HIV epidemics in the region. In Egypt, it is estimated that 6% of men who have sex with men are living with HIV, in Morocco 5.6% (in Agadir), Libya 3.8%, Lebanon 3.6% and Tunisia 13%.

As mentioned above, the violence against LGBTI persons is extraordinary high in some countries, especially against persons with female gender expressions.

### **Civil society organisations and institutions active in LGBTI work**

LGBTI activists organise themselves in various forms in the region, depending on the level of hostility from the government. In more repressive states and districts, informal or underground groups may avert public attention. In more progressive settings, such as Lebanon, openly LGBTI organisations are operational. However, this activism in favour of LGBTI rights co-exists with very conservative movements. Sudden changes in court rules and media coverage reflect this ambivalent situation and underline the need of a continuous effort by “activists”.

The newly launched online resource centre, [The Gender and Sexuality Resource Center \(GSRC\)](#) aims at becoming an information hub that brings together activists and academics, and addresses the knowledge gaps and creates an alternative site of production in Arabic. Few other resources on SRHR and LGBTI are published in Arabic.

In a country like Tunisia, with a quite progressive climate for civil rights organisations, there are still not any larger LGBTI organisations, though the web magazine [“Gayday”](#) was launched in 2011, “dedicated to the LGBTI community in the Maghreb, MENA region” but published by Tunisians. There are a few open LGBTI organisations in Palestine, Algeria, Tunisia and Nile Valley, but mostly organisations in the region work for LGBTI rights secretly.

Human Right Watch notes that civil society is under severe attack in most of the countries in the region. *“Human rights organisations suffer especially from harassment, bureaucratic restrictions, surveillance, and arrests. Governments are quick to use any pretext to discredit them before the broader public—making it doubly risky to take up divisive or difficult issues.”* At the same time, one of the most important tools when it comes to LGBTI rights is the support by inclusive Human Rights Organisations. There is a higher chance of progress, when LGBTI rights are included and addressed as human rights issues in various areas.

To promote meaningful participation and empowerment of LGBTI persons, the LGBTI community generally needs:

- Representative and democratic organisations with sufficient strategic and management capacity
- Legitimacy, e.g. by participation in public dialogues, lobbying and sensitisation advocacy work with states and religious groups without fear of persecution, ability to articulate and address immediate rights violations of LGBTI people,
- Ability to monitor government in terms of development and implementation of legislation and policy (like UPR processes and through other legal frameworks),
- Systems to speedily and efficiently mount defence, protection and emergency responses for human rights defenders who defend the human rights of LGBTI people.

However, the needs and strategies of the LGBTI movement differ from country to country. All support should be provided in full cooperation and agreement with local activists. To avoid accusations of “western

agenda” as well as for the safety of LGBTI persons, this is of utmost importance.

### **What Sweden can do at the regional level – eight questions to discuss**

In line with the Swedish priorities for the MENA region with focus on democracy and human rights, there are opportunities to include LGBTI rights. There are enormous obstacles for LGBTI people to take part in the democratic processes, through which human rights and individual freedoms can be realised. Regional level programmes have great potential to support movements that are oppressed in their respective countries, to raise issues that are difficult at the national level and to encourage regional action on Human Rights and in the UN system. Initiatives focusing on gender equality and gender based violence could also serve as entry points. The following could be discussed:

- Could Sweden do more to keep updated on the situation of LGBTI persons in the region? Every year ILGA produces a global report “State Sponsored Homophobia”, which provides updates from each country which can be useful. Contacts with the local LGBTI movement give first-hand information.
- Could Sweden do more to support LGBTI activists and persons through monitoring of and participation in trials and offering safe meeting places to organisations at risk? Safe meeting places have been offered by for example Swedish Embassies in the Western Balkans.
- Could Sweden do more to systematically influence regional mechanisms that have the potential to engage with sexual orientation and gender identity issues (SOGI)? E.g. by raising LGBTI rights in dialogue with regional human rights organisations and institutions and supporting the capacity development of the National Human Rights Institutions (NRHI) to enhance their understanding and work to protect and promote the human rights of LGBTI people. This could for example entail a specific regional monitoring assignment.
- Could Sweden do more to enhance the capacity of regional LGBTI actors and activists by supporting regional networking and capacity development of Human Rights and LGBT organisations to encourage synergies and experience exchange? E.g. through ITP courses or similar networking opportunities.
- Could Sweden do more to support embassies and consulates in the region to develop their capacity and interest to address LGBTI rights within country level strategies and portfolios? E.g. inviting RFSL and regional LGBTI organisations to dialogue meetings (LGBTI-certification). This has been tried at the Swedish Embassy in Uganda.
- Could Sweden do more to include SOGI issues and LGBTI rights in on-going regional level programmes and in negotiations of new programmes? E.g. legal reforms, capacity building of the judiciary, anti-corruption, police training/correctional services, gender based violence, human rights and cultural programmes?
- Could Sweden do more to raise issues related to LGBTI rights in humanitarian and conflict situations? E.g. asking for information on specific violations and protection measures.
- Could Sweden do more to include LGBTI organisations in social, cultural and professional events and encourage embassies and consulates to do the same? The Swedish Embassy in Vietnam is a good example, where cultural events were used to open up an arena for the LGBTI organisations.

For further advice on dialogue regarding LGBT issues, download the [Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#). More specific advice and support measures, as well as contact information to mentioned groups, can also be provided through ILGA or RFSL. Also refer to the [EU tools](#) and guidelines in the reference list.



## Tool kits

“*Speaking out*” *toolkit*, designed to train HIV workers catering for LGBTI clients. Available in English, French and Arabic version available from the Arab Foundation of Freedom and Equality (AFE),

The [Toolkit for training police officers on tackling LGBTI-phobic crime](#) by ILGA Europe is the result of a consultation process organised by ILGA-Europe together with member organisations and police forces that have already worked in partnership with LGBTI associations

EU news, tools and guidelines: [http://eeas.europa.eu/human\\_rights/lgbt/index\\_en.htm](http://eeas.europa.eu/human_rights/lgbt/index_en.htm)

The EU Guidelines (2013): [Guidelines for supporting LGBTI persons' human rights](#).

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The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, guidance notes have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.