

Digital Crime Scenes:

The Role of Digital Evidence in the Persecution of LGBTQ People in Egypt, Lebanon, and Tunisia

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EXECUTIVE SUMMARY

In 2015, Ahmed¹ and Sameer² went to purchase groceries in the suburbs of Beirut, Lebanon. Local police profiled them based on their appearance, then detained and arrested them on suspicion of homosexual conduct. Police confiscated their phones and searched them for evidence of “immoral” behavior. A nude photo and a photo of Ahmed and Sameer kissing were found. The two men were charged with practicing homosexuality under a law prohibiting “sexual acts against nature” in 2016. While defense lawyers challenged the judgment the sentence was upheld in 2019; both were given large fines. Luckily, they avoided imprisonment.

Ahmed and Sameer are far from alone. Targeting LGBTQ people for policing and imprisonment is not a new practice, but in many countries the use of digital evidence has empowered police to act on charges of homosexuality. Selfies, sexts, dating app chats, and other common forms of communications have become potential tools for prosecution, as these now can be used to provide evidence of claims of so-called “deviant” sexual behavior. This study, the first of its kind, examines how law enforcement in three countries, Egypt, Lebanon, and Tunisia, have adapted technology to aid in the prosecution of queerness. These types of cases are not in any way unique to these countries, however. The author focuses on these three countries because of her knowledge of their laws and her personal connections with the communities within them. Additionally, all three countries have laws that are used to criminalize LGBTQ people, and they all have documented cases of police that rely on digital technologies to prosecute, arrest, or harass members of the queer community.

The following close examination of the prosecutions of queer people with the use of digital evidence yields information that will allow implicated corporate actors to reverse engineer their tools and make changes that facilitate safety of those most impacted.

Key Findings:

Prosecutions of queerness in Lebanon, Egypt, and Tunisia have intensified, and have been carried through from suspicion and arrest, to persecution and imprisonment, further facilitated by increased availability of digital evidence and police searches of digital devices.

Police in Egypt, Lebanon, and Tunisia have integrated technology into the law enforcement campaigns against members of the LGBTQ community. These three countries have morality laws which can be enforced by police; while many morality laws are rarely enforced or are considered of little societal importance, morality laws governing LGBTQ relationships have traditionally been upheld. Persecution of LGBTQ persons for viola-

¹ Pseudonym provided for the individual for their safety and privacy.

² Pseudonym provided for the individual for their safety and privacy.



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tion of morality laws has increased through increased use of technology, but rather than using complex information-gathering tactics or acquiring data from companies, police have combined street-level surveillance, traditional policing methods, and a pattern of searching digital devices for evidence of “deviant” behavior. The report shows that the police’s reliance on digital evidence is a symptom and parallel development to intensified anti-queer policing. In street-level surveillance, police target people who may appear “queer,” especially trans women and feminine gay men, and then gather information on them using traditional policing methods such as stop-and-frisk searches or talking to their neighbors. Entrapment using online dating apps to arrange meet-ups has occurred. Police then search the phones of arrestees, looking for evidence of “queerness,” such as “gay” dating apps (e.g.: Grindr or Horent), incriminating photos in personal photo libraries, or incriminating text in chat logs. In all three countries, key types of digital evidence include a mosaic of text chats, selfies (both nude and clothed), and images or videos of sexual activity. **Notably, 100% of interviews mention evidence taken from WhatsApp chats.** Use of more advanced forensics tools, such as those used to search for hidden data or recover deleted data, was not found. Members of the queer community in Egypt, Lebanon, and Tunisia regularly chose between deleting or retaining their intimate communications with partners. However, even when deletion is chosen, contextual indicators and circumstantial evidence can be used by the prosecution, especially when police were unable to find any explicit content. Innocuous materials (e.g.: a prosecutor using a text which stated “I like you” as evidence) can serve as the basis for charges.

The multiply marginalized are more at risk. Although all queer persons in these countries face risks, those who are multiply marginalized often experience the most violence from police and the criminal justice systems. Queer persons who were viewed as “feminine,” both among trans women and gay men, were more likely be prosecuted than those who presented as more “masculine.” Queer cis women, non-binary people, and trans men face varying and specific challenges societally and legally, resulting in charges being brought against them differently under the three countries’ legal systems. However, they represent a lower number of cases in courts as seen in this report. This does not suggest a lack of targeting by law enforcement, but rather the research of this report showed less evidence of these cases. More research would need to be done on the impacts faced by queer cis women and non-binary people in courts. We see in this report that in Egypt, police used trans and queer sex workers as trial populations for new law enforcement tactics. In Lebanon, similar patterns were seen with queer refugees from Syria were frequently targeted for prosecution.

In Egypt, prosecutions are also charging queer people under cybercrime laws, which suggests a potential broader shift in tactics. The proliferation of digital technology--has predictably spawned cyberlaws which have intensified anti-queer prosecution. Lawyers working in Egypt reported that prosecutions for homosexuality had been shifting from charging under morality laws to also being charged under laws identifying cybercrime, and thus tried in economic courts. The increased use of cyberlaws has intensified anti-queer surveillance, by (a) subjecting anti-queer prosecutions to lower standards of ev-

idence, (b) 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.”³

This research suggests that prosecutions of LGBTQ persons in Egypt using cybercrime laws might be a bellwether for the entire region, and that more study is necessary to understand how this tactical shift will affect queer communities.

Methods:

Through a mixed-methods process, data from 21 interviews was reviewed to acquire and assess deep knowledge held by defense attorneys in Egypt, Lebanon, and Tunisia. Findings were applied to a review of legal documents governing the legal status of LGBTQ persons in these three countries, as well as a review of 29 court file details of LGBTQ prosecutions.

The author, a researcher with six years of involvement in queer activism in the Middle East and North Africa (MENA) region, performed detailed interviews with 20 attorneys who have worked on defending LGBTQ people in Egypt, Lebanon, and Tunisia. These interviews were transcribed, and then coded for key themes. After interviews were complete, 29 redacted case files from legal cases in which prosecution was informed by the defendant’s sexuality were reviewed. Case files were gathered via contacts with local NGOs or in discussion with attorneys who represented LGBTQ defendants: as far as it is known, these cases are representative of broader trends within the region.⁴

Implications and Recommendations:

Queer communities are resilient, but they shouldn’t have to be. For many users, queer dating apps or community gathering places are a significant source of support. Digital technologies allow queer folks to connect with their people, to find love and joy. This explains why users continue to text, sext, or send and keep photos even if they know that these materials might be used to prosecute them later. Many queer communities in MENA have developed ways to stay in contact despite the uses of digital evidence. Despite this, the increased pressures and threats faced by these communities have had adverse impacts including a chilling effect on their freedom of expression and increased impunity for inter-community and societal abuses and violence.

Resilience and ingenuity (in self protection) of queer people has allowed for flourishing

3 El-Dabh, B., 2021. Egypt’s TikTok Crackdown and “Family Values”. [online] TIMEP. Available at: <<https://timep.org/commentary/analysis/egypts-tiktok-crackdown-and-family-values/>> [Accessed 21 December 2021].

4 As well as using secure methods to transfer documents from the local partners to the lead researcher (via secure and encrypted messaging tool and the use of ephemeral messages), all the identifying information, such as names, addresses and other information were removed. In the cases of Egyptian case files that included images, all documents were transferred via secure and encrypted messaging tool and the use of ephemeral messages and only the lead researcher had access to PDF that contained images used as digital evidence in courts. These were maintained on an encrypted drive.

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communities online and off-line, however the burden of security should not be placed on them alone.

This isn't just a MENA problem. Although prosecution of queer people may seem to those in the United States and Europe like a regionally specific problem, the use of these types of evidence against those viewed as “suspect” or “deviant” is common across the world. Many of the tools that would help queer folks protect themselves against government prosecutions could aid other groups in staying safe - whether it be LGBTQ youth dealing with parental surveillance in the United States, LGBTQ folks in Russia or Hungary or Nigeria.

Companies can play an important role in protecting queer users. Of course, fundamental changes to the homophobic laws in question are necessary to truly keep queer people safe. However, because of the use of digital materials as the primary evidence against queer folks as part of prosecutions, small changes to digital platforms could substantially increase the opportunities for defense attorneys and decrease the likelihood of prosecution in the first place. App companies must make the effort to understand their users' environments and experiences; sending security messages is simply not enough. For example, timed/ephemeral messages as a default option, something mentioned by 16 of our 20 lawyer interviewees, would be relatively easy to implement on platforms like Whatsapp.⁵ Likewise, security PINs and in-app password protected camera rolls have the potential to drastically reduce the chances of police finding “incriminating” images. Even some terms of service changes have the potential to limit the effects of digital evidence. This report provides a more detailed list of potential recommendations at the end of the report.

Centering designs around those at the margins will result in better tools. These recommendations, and more broadly, the experiences of queer users in MENA, have the potential to create safer, and more human rights protecting digital technologies for everyone. The burden of protection shouldn't be solely on individuals: UN standards make clear that companies have human rights responsibilities.⁶ As our technologies expand in use and importance, recognition of human rights responsibilities is critical. Businesses have an obligation to provide proactive protective, security, and safety measures to their users.⁷

Design from the Margins⁸ is a justice and human rights-centered methodology for how

5 As of the finalisation of this report, WhatsApp has implemented this change based on an a prior briefing from this research report and the app based recommendations: The Verge 2021, WhatsApp now lets you set all chats to disappear by default. Porter, J. . [online] Available at <https://www.theverge.com/2021/12/6/22820138/whatsapp-disappearing-messages-by-default-24-hours-90-days> [Accessed 05 February 2022], and Belfer Center for Science and International Affairs. 2022. Afsaneh Rigot. [online] Available at: <https://www.belfercenter.org/publication/dont-call-us-edge-cases-designing-margins>. [Accessed 05 February 2022]

6 For example, the UN Guiding Principles on Business and Human Rights Ohchr.org. 2021. [online] Available at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [Accessed 22 December 2021].

7 The framework established in the UN Guiding Principles on Business and Human Rights (UNGPs) provides a valuable starting point and a minimum baseline for understanding the human rights responsibilities of business enterprises in the ICT sector. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/095/12/PDF/G1609512.pdf?OpenElement>

8 Belfer Center for Science and International Affairs. 2021. Afsaneh Rigot. [online] Available at: <https://www.belfercenter.org/person/afsaneh-rigot> [Accessed 21 December 2021].

we design our technologies and it is at the core of the recommendations of this report. By understanding who is most impacted by social, political and legal frameworks, we can also understand who would be most likely to be a victim of the weaponization of certain technologies. By centering those most impacted, and building from their essential needs, safe and justice-oriented products are created. Using this metric based on the protection of those most marginalized we create better tech for all.

Importantly, the recommendations in this report are based on the wants and ideas of defense lawyers in these cases who are in prime position to see what changes to technology can lead to less reliance on digital evidence in the prosecutions of queer people.

INTRODUCTION

In 2018 in Tunisia, Ali⁹ went to the police to report a physical assault by their ex-romantic partner. When the police arrived, the line of questioning transitioned from the violent crime committed against Ali to the nature of the sexual relationship between the pair. Police soon abandoned the assault case, and the prosecutor ordered the arrest of the two individuals based on sodomy charges as defined by the Tunisian Penal Code. Pictures taken from the defendants' phones were deemed to be queer, and were used as the basis to charge and sentence them to prison. The initial cause of contact with the police, the assault, was overlooked in order to prosecute the perceived crime of queerness.

In 2015 in Lebanon, a couple were driving to purchase groceries in the suburbs of Beirut when they were profiled and detained at a stop-and-search by police. They were arrested and their devices searched in the police station where one nude photo and a photo of the two kissing was found. Even though one person was a Syrian passport holder and the other a US passport holder, a prison sentence was imposed. While defense lawyers have challenged this judgement, they faced a maximum sentence of up to 1 year in prison each. In 2019 the appeal court upheld the charges for crimes of queerness however the pair avoided imprisonment and were given large fines.

These are two of the 29 cases reviewed for this research into the role digital evidence can play in the prosecution of queer people in Egypt, Lebanon, and Tunisia. The similarities in theme are clear: contact with law enforcement leads to exposure of sensitive digital data, and this data is then used to criminalize individuals. The greatest concentration of cases (12) are from Egypt, in which trends of policing queer people using digital evidence may be indicative of similar policing trends within the MENA region. In Egypt, policing trends show indication that informants or police officers target queer persons using websites and dating apps, lure them into conversations and sexting, and then meeting up and arresting them. Following arrest, the text, photos, and other related data that was obtained during the conversation process is used to charge them with debauchery and/or related morality or criminality charges.

The need to explore how policing queerness is tied to data requires deeper exploration of case histories than what the official court records provide. Court files contain official documentation of the process, and an outside observer will form judgements based solely on review of the files. Other data, such as how sexuality of the defendants was assessed to determine queerness, is rarely included in the official record. A deeper exploration of police practices is required to determine how sexuality as a crime is identified and prosecuted, and how resulting policing methods become institutionalized in courts. To achieve this, 20 lawyers and one case worker who have been actively

⁹ Pseudonym provided for the individual for their safety and privacy.



working on cases involving policing and queerness in Egypt, Lebanon, and Tunisia were interviewed. These interviews provide corroborating insight into how queer persons are first affected by the policing process, followed by what happens to them as they pass through criminal and/or financial courts.

By using these methods, it can be shown that while police and prosecutor tactics in Egypt, Lebanon, and Tunisia have historically been leveraged against queer persons, acquisition of digital evidence taken from personal devices, especially cell phones, has become their preferred strategy. **Personal digital data is framed as hard evidence of queerness, even in instances in which the associ-**

ations with queerness are circumstantial. Additionally, it can be shown that digital security, better and more secure technology, and digital tool development need to take the precarious legal and civil status of queer persons into account: as these cases are not prosecuted on the basis of large-scale data gathering through the use of sophisticated tools, or through data requests made to private corporations, but are instead prosecuted using data taken from personal devices, this indicates that the tactics are more manual and based on traditional policing methods. These manual and traditional tactics historically affect marginalized groups the most. The design process for personal digital tools and devices must take into account that these can be used in very different contexts than intended, up to and including being weaponized against those who use them.

This report can also be used to show that tactics used to identify and prosecute LGBTQ persons in the MENA region are evolving. For example, it was found that methods successfully used in Egypt have been adapted for use in Tunisia. It was also found that there has been a shift of legal frameworks in Egypt that allow for further dependence on digital evidence as a successful tool for prosecuting defendants based on gender and sexual identity.

As queerness in Egypt, Lebanon, and Tunisia can be easily criminalized via digital evidence, it is also necessary to examine the circumstances in which the narrative of queerness is identified, perceived, and prosecuted in each country's respective criminal justice systems. The transphobic and homophobic patriarchal lenses of homophobic police, prosecutors, and judges, combined with willingness to bypass procedural rules, results in systems which favor prosecution and high sentencing of queer people. When queerness is suspected, privacy and other civil liberty issues are frequently waived in respect to accessing data such as texts, videos, photos, Facebook profiles, WhatsApp chats, along with other, newer apps. **For the purposes of prosecution, intimate connections among queer persons have become the scene of the crime.**

Finally, this research was conducted in some of the most turbulent historic times in the region, as well as the world. Due to the impact of COVID 19, the impact of the colossal

economic and political crisis in Lebanon, and ongoing political upheaval in Tunisia, it is highly likely that additional transformation of civil society will soon occur. Historically, LGBTQ persons have always been at increased risk during periods of civil unrest, and current conditions may indicate heightened risk for queer persons living in the MENA region. They will benefit from understanding current policing tactics and the use of the technology in forming the basis of criminal and civil prosecution. It is also possible that increased awareness of current policing tactics can help app and digital device developers recognize how their products are playing a significant role in the prosecution of queerness, and motivate these developers to build tools in such ways that they help members of LGBTQ communities communicate while minimizing or eliminating existing risk factors.

WHAT DEFINITION OF “DIGITAL EVIDENCE” GUIDES THIS RESEARCH?

This research project was guided by a definition of digital evidence coined by Stephan Mason in 2008. Mason’s definition of digital evidence is “data that is created, manipulated, stored or communicated by any device, computer or computer system or transmitted over a communication system, that is relevant to the proceeding.”¹⁰ A minor alteration to this definition was necessary, as the concept of relevancy is both subjective and is more dependent on context and interpretation of individual law enforcement officials than standard legal doctrine. Additionally, as the research for this report can be used to show that digital evidence is applied to different aspects of the proceedings, whether or not it is relevant or has been legally obtained, this indicates that digital evidence is “designed to tie together people and events in time and space to establish causality for crimes or civil wrongs.”¹¹ Thus, for the purposes of this report, the definition of “digital evidence” is:

“Digital evidence is data that is created, manipulated, stored, or communicated by any device, computer, or computer system, or transmitted over a communication system, that is used in the proceeding”

10 S. Mason, British Institute of International and Comparative Law, ‘International Electronic Evidence’ (2008) https://humanrights.berkeley.edu/sites/default/files/publications/digital-evidence_-_investigatory-protocols-salzburg-working-paper.pdf (accessed October 29 2021)

11 J.j. Sloan, ‘There’s no code of ethics to govern digital forensics – and we need one’, The Conversation [website], <https://theconversation.com/theres-no-code-of-ethics-to-govern-digital-forensics-and-we-need-one-45755> (accessed October 29 2021)

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The vibrance and resilience of queer communities ensure that we continue to fight for better futures and more just worlds. This report wouldn't have been possible without the strength and continued advocacy of our communities and our unwillingness to be erased. This is a droplet in the ocean of work that precedes it and will continue to come after it.

I am eternally thankful to the excellent lawyers who work tirelessly to defend in these cases that cannot go unseen. This report would not exist without their expertise, many of whom are part of the communities they help to protect. Although all of the lawyers and experts interviewed for this report remain anonymous for security purposes, I'd like to thank the organizations that helped corroborate the findings and identify the necessary experts, as well as organizations that provided important legal knowledge. ***I am grateful to Isaac, one of the first Egyptian lawyers interviewed and one of the longest serving. He played a significant role in the current legal defense strategies supporting queer people in Egypt. Isaac sadly passed away in 2019. The movement remains grateful to him.***

I am also grateful to the organizations and NGOs who provided invaluable support and advice for this report, including: [Bedayaa](#) in Egypt for their legal pro bono team's expertise as well as their support in gathering case files and identifying the main lawyers involved; [Legal Agenda](#) in Lebanon for their many legal experts, many of whom provided detailed knowledge for this report, especially Youmna Makhoul; [Helem](#) in Lebanon for their connections and internal expertise; Ali Bousselmi and [Mawjoudin](#) in Tunisia for their continuous support, connections, and content verification.

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in providing a space for this report to exist: Kendra Albert's rigorous editing as well as the drafting of the executive summary brought extra substance to the report, as well as their general support throughout the process; Mason Kortz's kind wisdom brought about essential initial structure to the report and, Chris Bavitz, the PI of the research, provided vital backing for the research. I'd like to also send humble thanks to the clinic's student researchers who supported in reviewing the plethora of documents and transcripts as well as conducting international legal analysis for core concepts of the report, they are: Jess Hui, Sarah Rutherford, Jessica Zhao, Lauren Fukumoto, and Velo Vincent Van Houden.

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And to many others I can't name... Thank you.

M E T H O D O L O G Y

This report is based on interviews and casefile reviews conducted in Egypt, Lebanon, and Tunisia. This research has been designed to provide an effective analysis of prosecution strategies and digital evidence used in the prosecution of LGBTQ persons in these three countries. It broadly seeks to answer three main questions:

1. What pieces of digital evidence acquired from personal technological tools—such as dating apps and messaging apps—are most frequently applied, and lead to final sentencing of, LGBTQ persons when prosecuted under laws criminalizing same-sex relations in Lebanon, Tunisia, and Egypt?
2. How, and in what aspects, of the prosecution process is digital evidence used against LGBTQ persons in these countries?
3. Can mitigation methods or strategies be derived from the experiences of attorneys representing LGBTQ persons which can be applied to increase the safety of LGBTQ persons in these countries?

STEP ONE: QUALITATIVE INTERVIEWS

An initial desktop review of related literature was done to improve familiarity with the issues, as well as to establish the existing scope of information. Following this literature review, 21 interviews were conducted. A qualitative case study methodology was used to acquire and analyze the data. Due to restricted access to interview subjects (geographically, due to high risks as well as political barriers), it was not possible to interview the prosecuting teams or the majority of those involved in court proceedings in Egypt, Lebanon, and Tunisia. However, cross-referencing and corroborating experiences based on the expertise and experiences of the interview subjects, combined with case file reviews, can provide insight into how law enforcement and prosecuting teams operate. Findings are not intended to be universally generalizable, but may be applied to broaden the existing information on the risks and challenges faced by LGBTQ persons in the MENA region, especially in the legal system.

Based on the initial review of the literature, prior research experiences, and consultation with in-country experts, two pre-existing assumptions were used to guide the interview process. These were, “in the prosecution process, digital evidence gathered from mobile devices, such as photos and chat logs are vital in getting a guilty sentence based on gender and sexual identity” and “courts and prosecutors are digitising their prosecution processes against queer people.”

For the interview phase, a convenience sample of 20 attorneys/lawyers and 1 case worker were recruited, all of whom have worked on LGBTQ issues as a prominent aspect of their professional careers. None reported LGBTQ cases to be their primary speciality.

Distribution is: 7 lawyers in Egypt; 7 lawyers in Lebanon; and 6 lawyers and 1 case worker in Tunisia. It is important to note that few lawyers and legal professionals work on LGBTQ cases in these countries, likely due to the stigma, risks, and lack of funding associated with representing such cases. Selection of interview participants was performed via recommendations from local LGBTQ NGOs and civil rights experts, who recommended these lawyers/attorneys due to their previous work on cases with queer persons who have been prosecuted based on their gender and sexual identities.

Semi-structured interviews with the 21 participants were conducted between March 2020 and November 2020. Design of the interview questions was informed by consultations of in-country experts, as well as the researcher's 6 years of involvement and research. After the design of the interview questions was approved, recorded consent was acquired from all participants as per IRB policies. Based on the confidentiality requirements of the IRB, the planning of the project, and potential risks for participants, the subjects were assigned coded pseudonyms throughout the report. Though anonymity was not a priority for many of the interviewees, it was determined that there might be risks associated with participation. Risks differ in nature and potential severity by country; it was determined the highest risk is for participants in Egypt, and the lowest in Lebanon. The interviews were recorded and were transcribed manually through a trusted consultant: manual transcription was selected as the preferred method of transcription, as auto-transcription tools lack the technical capacity to accurately transcribe content from sources with non-western accents. Data was stored and secured using IRB-approved security¹² methods. Many of the interviews were conducted through interpreters, and quotes derived from such interviews are based on interpreted content. Some variance was expected; clarifying follow-up questions were asked in instances of confusion or uncertainty. Once the transcripts were finalized, the data was used to form a manual coding process which is reflected in the structure of the report.

STEP TWO: CASE FILE ANALYSIS

A case file analysis of 29 case file summaries of court files which focused on the prosecution of queer persons in Egypt, Lebanon, and Tunisia was conducted. Case files were selected based on whether the trial process and prosecution were predicated by the defendant's sexuality. Relevant cases were pre-selected by participating local experts in accordance with the selection criteria provided by the lead researcher of this paper. Each case was qualitatively analyzed with the support of local case workers in each country, and/or the representing lawyers in the cases. These cases were made available via local NGOs, or via the representing lawyers who provided secure and ethical support during analysis. All cases were fully anonymized: although full access to all files could not be provided due to confidentiality requirements, necessary content was anonymized by personnel authorized to handle the materials, and was then provided to the

12 https://cpb-us-e1.wpmucdn.com/websites.harvard.edu/dist/6/18/files/2020/07/HRDSP-Approved-2020.07.15_2021.pdf

researcher. With the restrictions imposed by privacy concerns, COVID, and subsequent temporary closure of courts, it took nearly 1 year to acquire the 29 case files.

RESEARCH ETHICS

This project has been, and remains subject to, review and assessment conducted by the Harvard University Institutional Review Board under the supervision of its Principal Investigator, Christopher Bavitz, Clinical Professor of Law and Managing Director, Cyber-law Clinic at the Berkman Klein Center for Internet and Society at Harvard University.

While the research process has been conducted in accordance with all required ethical standards, these ethics were not considered a goal, but rather were considered guiding principles which governed the study from start to finish: from the initial design of research tools, through the conduction of the analysis, the writing process, and the publication of the study, the IRB's ethical standards were always taken into account.

Although it is assumed that all persons associated with the study have been anonymized, additional efforts have been made, and will be continued, to protect their privacy throughout the research. All participants in the research interviews were asked to provide informed consent, and were also informed of their right to withdraw from the study at any stage.

QUOTE AND CASE REFERENCES IN THE REPORT

Each interview participant has been assigned a coded reference to be used in lieu of their official names and titles. Similarly, case file references have also been ordered using coded references. The tables below provide the details for both interview participants and case file references.

LAWYER INTERVIEW QUOTES CODES

Lawyer Code	Interview Date	Country
EL1	March 2020	Egypt
EL2	April and October 2020	Egypt
EL3	April 2020	Egypt
EL4	May 2020	Egypt
EL5	May 2020	Egypt
EL6	June 2020	Egypt
LL1	May 2020	Egypt

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Lawyer Code	Interview Date	Country
LL2	June 2020	Lebanon
LL3	June 2020	Lebanon
LL4	June 2020	Lebanon
LL5	September 2020	Lebanon
LL6	October 2020	Lebanon
LL7	November 2020	Lebanon
TL1	April 2020	Tunisia
TL2	August 2020	Tunisia
TL3	August 2020	Tunisia
TL4	August 2020	Tunisia
TL5	September 2020	Tunisia
TL6	September 2020	Tunisia
TL7	October 2020	Tunisia

CASE FILE CODES

Case Code	Case No.	Country	Arrest Date	Other Charges	First Degree Charge & Date	Second Degree Charge & Date
Case T1	Case 1	Tunisia	2017		Dismissed - 2017	N/A
Case T2	Case 2	Tunisia	2017		1 year – Aug 2017	N/A
Case T3	Case 3	Tunisia	2019		6 months – June 2019	N/A
Case T4	Case 4	Tunisia	2018		6 months – March 2018	N/A
Case T5	Case 5	Tunisia	2017	Violence charges art. 218 Penal code	Victims: 2 months Perpetrator: 1 year – March 2018	N/A

Case Code	Case No.	Country	Arrest Date	Other Charges	First Degree Charge & Date	Second Degree Charge & Date
Case T6	Case 6	Tunisia	2015		1 year – December 2015	1 months – March 2016
Case T7	Case 7	Tunisia	2019		8 months – April 2019	N/A
Case T8	Case 9	Tunisia	2016		1 year – September 2016	4 months – December 2016
Case T9	Case 9	Tunisia	2017	Rape Charges	Dismissed – May 2017	N/A
Case E1	Case 1	Egypt	2017		2 years – September 2018	6 months – October 2017
Case E2	Case 2	Egypt	2019		1 year – March 2019	3 months – March 2019
Case E3	Case 3	Egypt	2017		1 year – October 2017	6 months – November 2017
Case E4	Case 4	Egypt	2017		3 years – October 2017	N/A
Case E5	Case 5	Egypt	2018		1 year – October 2018	3 months – October 2018
Case E6	Case 6	Egypt	2017		1 year – August 2017	Acquitted – September 2017
Case E7	Case 7	Egypt	2019		Acquitted – December 2019	N/A
Case E8	Case 8	Egypt	2020		1 year – January 2020	3 months – February 2020
Case E9	Case 9	Egypt	2020		Acquitted – September 2020	Acquitted – November 2020
Case E10	Case 10	Egypt	2019		Acquitted – October 2019	N/A

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Case Code	Case No.	Country	Arrest Date	Other Charges	First Degree Charge & Date	Second Degree Charge & Date
Case E11	Case 11	Egypt	2016		3 years – November 2016	Acquitted – February 2017
Case E12	Case 12	Egypt	2016		3 years – April 2016	1 years – May 2016
Case L1	Case 1	Lebanon	2015		Fine of 200,000 LL – April 2016	Upheld – November 2019
Case L2	Case 2	Lebanon	2014	Drug Charges (no details on file)	2 months and Fine of 400,000 LL October 2016	Overturned – January 2018
Case L3	Case 3	Lebanon	2016	Military Clothing (no details on file)	Pending	N/A
Case L4	Case 4	Lebanon	2017	Drug Charges (no details on file)	Dismissed – April 2017	N/A
Case L5	Case 5	Lebanon	2011		Fine of 500,000 LL – November 2011	N/A
Case L6	Case 6	Lebanon	2011		Fine of 200,000 LL – October 2011	N/A
Case L7	Case 7	Lebanon	2012	Fraud (no details on file)	Fine of 500,000 LL – November 2013	N/A
Case L8	Case 8	Lebanon	2012		Dismissed – November 2012	N/A



BRIEF COUNTRY CONTEXTS: A TURBULENT TIME

This research was conducted during a turbulent period which affected both the MENA region and broader global societal structures. The interview phase commenced just as the COVID 19 pandemic broke. In Egypt, Lebanon and Tunisia, the pandemic exacerbated pre-existing political and economic problems. In January 2021, amid interviews for this report, protests erupted across Tunisia.¹³ Ignited by worsening economic conditions, the COVID-19 pandemic, police brutality, and the killing of a protestor.¹⁴ These protests later included the targeting of LGBTQ protestors by police unions in particular.¹⁵ This led to an ongoing political crisis, resulting in Tunisian President Kais Saied taking over all executive powers, dismissing the government, and freezing parliament.¹⁶

In Egypt, among the pandemic crisis and increased arrested of activists and researchers,¹⁷ a dramatic shift in processing of LGBTQ cases in more technical courts commenced, bringing further risks and barriers to those affected by it.¹⁸

In Lebanon, the crisis has been combined with unprecedented political and economic crises. Lebanon, which is still recovering from a 15-year civil war that ended in 1990, has faced significant economic pressures since late 2019 which might soon result in economic collapse.¹⁹ In times of economic pressure, those who are at the greatest disadvantages are most likely to suffer exacerbated stress caused by these pressures. To exacerbate the situation, in August 2020, a devastating explosion occurred in the main port of Beirut. The explosion killed more than 200 people and left a large swath of the capital in shambles, was deemed a preventable accident, and only added to the desperation felt by the Lebanese.²⁰ The outcome of these multiple crises has been major societal upheaval,²¹ coupled with increased aggression towards members of the Lebanese

13 Human Rights Watch. 2021. Tunisia: Police Arrest, Use Violence Against LGBTI Activists. [online] Available at: <<https://www.hrw.org/news/2021/02/23/tunisia-police-arrest-use-violence-against-lgbti-activists#>> [Accessed 29 October 2021].

14 Human Rights Watch. 2021. Tunisia: Police Use Violent Tactics to Quash Protests. [online] Available at: <<https://www.hrw.org/news/2021/02/05/tunisia-police-use-violent-tactics-quash-protests>> [Accessed 21 December 2021].

15 Ebel, F., 2021. Tunisian police are using drones and Facebook to doxx protesters fighting for gay rights - Coda Story. [online] Coda Story. Available at: <<https://www.codastory.com/authoritarian-tech/anti-lgbt-crackdown-in-tunisia/>> [Accessed 30 October 2021].

16 [Tunisian President Kais Saied](#) took over all executive powers, dismissed the government and froze parliament, and Tunisia is still waiting for the appointment of a new prime minister and a road map out of the country's triple political, economic and health crisis.

17 Noralla, N., 2021. Egyptian researchers must choose between forced exile and arrest. [online] openDemocracy. Available at: <<https://www.opendemocracy.net/en/north-africa-west-asia/egyptian-researchers-must-choose-between-forced-exile-and-arrest/>> [Accessed 30 October 2021].

18 Rigo, A., 2021. Egypt's Dangerous New Strategy for Criminalizing Queerness. [online] Slate Magazine. Available at: <<https://slate.com/technology/2020/12/egypt-lgbtq-crime-economic-courts.html>> [Accessed 30 October 2021].

19 Hubberd, B., 2021. Collapse: Inside Lebanon's Worst Economic Meltdown in More Than a Century. [online] Nytimes.com. Available at: <<https://www.nytimes.com/2021/08/04/world/lebanon-crisis.html>> [Accessed 30 October 2021].

20 Hubberd, B., 2021. Collapse: Inside Lebanon's Worst Economic Meltdown in More Than a Century. [online] Nytimes.com. Available at: <<https://www.nytimes.com/2021/08/04/world/lebanon-crisis.html>> [Accessed 30 October 2021].

21 <https://apnews.com/article/financial-markets-financial-crisis-beirut-lebanon-652a3e7321ae878ec3385594bfbda5bf>

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queer community. Human Rights Watch notes that the “Lebanese authorities’ corruption and failure to address the massive political and economic crises the country is facing” has led to “the country’s most drastic deterioration of rights in decades”.²² Civilian protests were met with a rapid and unbalanced response in which “security forces—including the army, the anti-riot police, and the parliamentary police—used excessive and at times lethal force against mostly peaceful protesters.”²³ Lebanese LGBTQ protestors have addressed these circumstances and argued that gender and sexuality-based rights cannot be gained without broader restructuring and changes to “class and sectarian allegiances, patriarchal dominance, and social inequality”.²⁴

As each crisis continues, it is unclear how prosecution processes which were observed and then recorded in this report will be affected. Many of those experts and lawyers consulted suggest that it is very unlikely that the processes through which police and law enforcement assess cases in general will change. However, the focus on individual groups, such as queer people, is likely to change due to the shifts in societal, economic, and political pressures. In places like Lebanon, reduced capacity and resources to process cases may result in an increase in unlawful and illegal evidence-gathering methods, and prosecutors will use this evidence to speed up legal proceedings. It is not yet clear that this outcome will occur: what is clear is that the current conditions are likely to exacerbate existing pressures on those with the least state protections in each country.

This report cannot serve as a prediction of how these crises will progress, nor can it serve as a record of what LGBTQ persons in Egypt, Lebanon and Tunisia will experience during encounters with law enforcement in the immediate future. However, it can be used as a case study of how digital evidence has been, and might continue, to be used against marginalized identities in the legal system.

EGYPT

Of the three countries used as the subjects of this report, **Egypt continues to have the more prolific and coordinated targeting operations of LGBTQ persons.** The Egyptian legal framework has allowed for the prosecution of LGBTQ individuals for decades.²⁵ An excellent example of this is the infamous “Queen Boat” case, conducted in May of 2001. A police raid on Cairo discotheque resulted in the immediate arrest of 30 people on LGBTQ-related charges, and follow-up arrests of another 22 persons associated with the detainees. These 52 persons were arrested and

22 Human Rights Watch. 2021. Lebanon: Sharp Decline in Human Rights. [online] Available at: <<https://www.hrw.org/news/2021/01/13/lebanon-sharp-decline-human-rights>> [Accessed 30 October 2021].

23 Human Rights Watch. 2021. Lebanon: Sharp Decline in Human Rights. [online] Available at: <<https://www.hrw.org/news/2021/01/13/lebanon-sharp-decline-human-rights>> [Accessed 30 October 2021].

24 Younes, R., 2021. The Trouble With the ‘LGBT Community’. [online] Human Rights Watch. Available at: <<https://www.hrw.org/news/2021/07/28/trouble-lgbt-community>> [Accessed 30 October 2021].

25 Long, S., 2004. IN A TIME OF TORTURE - The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct. [ebook] Human Rights Watch, p.13. Available at: <<https://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf>> [Accessed 30 October 2021].

tried under debauchery laws.²⁶ The subsequent trials received press coverage that was highly charged with homophobia, and intensified pressure and intimidation of the Egyptian LGBTQ community. Harassment of LGBTQ individuals in Egypt by law enforcement, particularly of gay men and trans individuals, had occurred before the Queen Boat case. However, harassment had rarely led to official prosecution.²⁷ Following the events of the Queen Boat case, queer persons in Egypt were more regularly targeted by law enforcement for the purposes of prosecution. This was in large part due to timing, as the availability of communications technologies in Egypt increased around the same time as this case occurred. While the internet first arrived in Egypt in 1993, with a user base of only around 2000 persons,²⁸ by January 1, 2002, a loudly trumpeted era of “free” Internet access had begun in which all Egyptians with access could participate in online activities.²⁹ As a direct result of the Queen Boat case and other forms of police harassment, Egyptian LGBTQ persons turned to virtual platforms to connect in the relative anonymity of cyberspace. Some used personal ad pages (“personals”) to find and establish contact with other queer people, while others used the introduction of instant-messaging apps to communicate.³⁰

Yet even as LGBTQ persons in Egypt shifted to online communications, so did the scope of law enforcement operations targeting the LGBTQ community. Human Rights Watch reported the first known case of online arrest through online entrapment occurred even before the Queen Boat Case, in January 2001.³¹ The second was reported by the Egyptian tabloid *Al-Naba’*, which announced the arrest of two men who had responded to online personal ads in March 2001.³²

Entrapment of Egyptian LGBTQ persons using technology continued from 2001 onward, but there was a noticeable uptick in such cases around 2014 and 2015. This was in part due to the introduction of the “morality police,” where in 2013, Egypt launched the Committee for the Promotion of Virtue and the Prevention of Vice (morality police) with the aim to implement Islamic Sharia law “without resorting to violence.”³³ In 2015, the LGBTQ community reported that law enforcement was actively engaged in the monitoring of LGBTQ apps and community websites. Another infamous example of morality policing was the arrest of 11 individuals in Giza’s Agouza neighbourhood in September of

26 Long, S., 2004. IN A TIME OF TORTURE - The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct. [ebook] Human Rights Watch, p.2. Available at: <<https://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf>> [Accessed 30 October 2021].

27 Long, S., 2004. IN A TIME OF TORTURE - The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct. [ebook] Human Rights Watch, p.6. Available at: <<https://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf>> [Accessed 30 October 2021].

28 Michael Pastore, “Egypt Approaching Half Million Online,” *Cyberatlas*, July 7, 1999, at http://cyberatlas.internet.com/big_picture/geographics/article/0,5911_150651,00.html

29 Long, S., 2004. IN A TIME OF TORTURE - The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct. [ebook] Human Rights Watch, p.74. Available at: <<https://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf>> [Accessed 30 October 2021].

30 Long, S., 2004. IN A TIME OF TORTURE - The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct. [ebook] Human Rights Watch, p.74 and 75. Available at: <<https://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf>> [Accessed 30 October 2021].

31 Ibid

32 Ibid

33 Mada Masr. 2016. 11 sentenced to 3-12 years in prison for homosexuality. [online] Available at: <<http://www.madamasr.com/en/2016/04/29/feature/politics/11-sentenced-to-3-12-years-in-prison-for-homosexuality/>> [Accessed 30 October 2021].

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2015, for “practicing, inciting and publicizing immoral practices.”³⁴ They were sentenced to 3 to 12 years imprisonment. According to the Egyptian Initiative for Personal Rights, one of the accused was initially entrapped via a dating application (seemingly Grindr). This led to the arrest of him and 8 other individuals, prior to the police moving on to raid a second address where the remaining 3 persons were arrested.³⁵ This occurred even after Grindr released a statement in 2014 which warned users that Egyptian police may be using the application to entrap individuals, and encouraged users to take additional steps to protect their identities.³⁶

Under the presidency of Abdel Fattah el-Sisi, there had been heightened surveillance and penalization of LGBTQ people, specifically gay and bisexual men and transgender women. While increases in the overall number of cases can be observed, it is not known specifically how many cases which fit into this general category have occurred from when Sisi took office in 2014 through the present day. Following Sisi’s administration’s guidance, the Ministry of Interior introduced new campaigns to target LGBTQ communities. Between 2000 and 2013 there were an average of 14 arrests per year for criminalized activities directly associated with a defendant’s LGBTQ status. From late 2013 to 2017, the yearly average increased to 66;³⁷ 2017 saw one of the biggest single crack-downs on the community, with 75 arrests after a rainbow flag was waved at a concert.³⁸ The Egyptian Initiative for Personal Rights estimates the minimum number of arrests in this category from years 2013 to 2017 is 232,³⁹ but it is important to note that the complexity of cases, how people are arrested or charged, and the overwhelming workload on local NGOs active in providing aid, has made it impossible to gather a fully accurate number of all the cases and arrests in the country.

The aforementioned case in which 75 members of the Egyptian LGBTQ community were arrested for raising a rainbow flag during a rock concert in Cairo in 2017 is frequently used to show the extremes to which the Egyptian morality policy will go. This case has been referred to as “the Rainbow Incident,”⁴⁰ and while raising a flag is not technically illegal under the law, the display of the flag resulted in widespread public

34 “الوطن”. 2021. “جناح العجوزة” تقصى بحبس 11 شخصا من 3 لـ 12 عاما بتهمة “المثلية” [online] Available at: <<http://www.elwatannews.com/news/details/1126646>> [Accessed 3

35 Mada Masr. 2016. 11 sentenced to 3-12 years in prison for homosexuality. [online] Available at: <<http://www.madamasr.com/en/2016/04/29/feature/politics/11-sentenced-to-3-12-years-in-prison-for-homosexuality/>> [Accessed 30 October 2021].

36 Paton, C., 2014. Grindr urges LGBT community to hide their identities as Egypt. [online] The Independent. Available at: <<http://www.independent.co.uk/news/world/africa/grindr-urges-lgbt-community-to-hide-their-identities-as-egypt-persecutes-nations-gay-community-9757652.html>> [Accessed 30 October 2021].

37 Egyptian Initiative For Personal Rights. 2017. The Trap: Punishing Sexual Difference in Egypt. [online] Available at: <https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf>, [Accessed 30 October 2021].

38 Walsh, D., 2020. Arrested for Waving Rainbow Flag, a Gay Egyptian Takes Her Life (Published 2020). [online] New York Times. Available at: <<https://www.nytimes.com/2020/06/15/world/middleeast/egypt-gay-suicide-sarah-hegazi.html>> [Accessed 30 October 2021].

39 Egyptian Initiative For Personal Rights. 2017. The Trap: Punishing Sexual Difference in Egypt. [online] Available at: <https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf>, p. 9 [Accessed 30 October 2021].

40 Megeed, K., 2021. Seven Arrested for Raising Rainbow Flag During Mashrou Leila Concert | Egyptian Streets. [online] Egyptian Streets. Available at: <<https://egyptianstreets.com/2017/09/26/seven-arrested-for-raising-rainbow-flag-during-mashrou-leila-concert/>> [Accessed 30 October 2021].

outcry. Then-General Attorney Nabil Ahmed Sadak commissioned the Supreme State Security Prosecution, to investigate the incident.⁴¹ The Supreme State Security Prosecution is a prosecution body established to only investigate the most dangerous crimes against the Egyptian State. This led to parliamentary action: several MPs drafted three new bills in parliament to clearly criminalise homosexuality;⁴² the most significant proposal of the three contained articles that would punish homosexuality with the minimum of one year and maximum of three years for first-time offenders and for the repeated offenders⁴³ five years.

Data from NGOs can be used to show that the scope of the problem is broader than the number of arrests can show. Bedayaa, a pro-LGBTQ NGO active in Egypt and Sudan, has reported and worked on 65 court cases and 92 arrests in Egypt in 2019,⁴⁴ and 21 cases in 2020 at the time of data collection in that same year.⁴⁵ Arrests have not stopped during the COVID-19 lockdowns, though they have slowed down temporarily due to restrictions and reduced movement. Cario 52, a legal research NGO, outlines a history and evolution of “cyber informants” in the early 2000s which were used to identify and arrest sex workers, and these tactics were applied more broadly to the queer community.⁴⁶

LEBANON

In respect to the status of LGBTQ persons, the social, cultural, and political landscape in Lebanon is both complex and sectarian. Several religious institutions that reject LGBTQ people hold enormous power,⁴⁷ even while Lebanon itself is frequently portrayed as a queer-friendly oasis within the MENA region in spite of ongoing reports of repression.⁴⁸ In 2013, the Lebanese National Center for Psychiatry declassified homosexuality as a mental disorder.⁴⁹ And in recent years there have been a handful of court rulings

41 مصراوي. كوم. 2017. النائب العام يكلف نيابة أمن الدولة بالتحقيق في واقعة رفع أعلام المثليين بالتجمع الخامس [online] Available at: <<https://tinyurl.com/usc7ya6>> [Accessed 30 October 2021]. (Arabic content)

42 The Library of Congress. 2017. Egypt: Draft Law Criminalizes Homosexuality. [online] Available at: <<https://www.loc.gov/item/global-legal-monitor/2017-11-01/egypt-draft-law-criminalizes-homosexuality/>> [Accessed 30 October 2021].

43 The Library of Congress. 2017. Egypt: Draft Law Criminalizes Homosexuality. [online] Available at: <<https://www.loc.gov/item/global-legal-monitor/2017-11-01/egypt-draft-law-criminalizes-homosexuality/>> [Accessed 30 October 2021].

44 Rights Africa – Equal Rights, One Voice!. 2020. Repression in Egypt: 92 LGBTQ+ arrests last year. [online] Available at: <<https://rightsafrika.com/2020/03/08/repression-in-egypt-92-lgbtq-arrests-last-year/>> [Accessed 30 October 2021].

45 Bedayaa, Legal Aid Annual Review 2020 (privately provided to author)

46 Noralla, N., 2021. ElKarakhana: History of Sex Working in Modern Egypt between Legalization and Criminalization - cairo52. [online] Cairo52. Available at: <<https://cairo52.com/2020/11/05/elkarakhana-eng/>> [Accessed 30 October 2021].

47 Harb, A., 2021. How Lebanon's Protests Have Created a Surprising Space for LGBT Rights. [online] Time. Available at: <<https://time.com/5726465/lgbt-issues-lebanon-protests/>> [Accessed 30 October 2021].

48 Dabbous, R., 2019. The obstacle to Gay rights in Lebanon: homophobia or westphobia?. [online] openDemocracy. Available at: <<https://www.opendemocracy.net/en/north-africa-west-asia/obstacle-gay-rights-lebanon-homophobia-or-westphobia/>> [Accessed 30 October 2021].

49 Zohny, H., 2021. Homosexuality not a disease, says Lebanese Psychiatric Society. [online] Available at: <<http://blogs.nature.com/houseofwisdom/2013/08/homosexuality-not-a-disease-says-lebanese-psychiatric-society.html>> [Accessed 30 October 2021].

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that have restricted the interpretation of these laws against Lebanese LGBTQ people.⁵⁰ While prosecution of queer people in Lebanon is ongoing, it is also heavily dependent on context, especially in respect to the context provided by the defendant's gender identity, social-economic background, and nationality. Compared to many countries in the region, Lebanon has a more visible LGBTQ community, with active civil participation allowed for LGBTQ persons, as well as social and commercial spaces accepting of LGBTQ people.⁵¹ Civil organizations are allowed to promote the rights of LGBTQ people, and also provide a number of services, including health care and legal support.

However, Lebanon still criminalizes homosexuality in accordance with Article 534 of the Penal Code, a law that dates back to the late days of the colonial French Mandate when France controlled the country from its modern founding in 1920 until 1943.⁵² According to public attitudes report conducted in 2015, 85.1% considered homosexuality to be a danger to the institution of the family.⁵³ Political opinion and pressure from religious groups continues to have significant impact on the status of Lebanese LGBTQ persons. For example, in 2018, a gender and sexuality conference which had been held annually in Lebanon since 2013 had to be moved outside the country following General Security's attempt to shut the conference down.⁵⁴ General Security also indefinitely denied⁵⁵ non-Lebanese LGBTQ activists who attended the 2018 conference permission to re-enter the country.⁵⁶ Police and security forces still punish those perceived to be gay or trans. Reports of apps, specifically LGBTQ-oriented apps, being used by police to entrap and arrest users for acting against the law.⁵⁷ Reports of LGBTQ people who are stopped at checkpoints,⁵⁸ who have their phones checked by police for items such as the LGBTQ-oriented apps, or are arrested, beaten, and/or humiliated based on the contents

50 The Legal Agenda, 2016. Lebanese Article 534 Struck Down: Homosexuality No Longer "Contrary to Nature" [online] Available at: <http://legal-agenda.com/en/article.php?id=775&lang=en>. [Accessed 30 October 2021]. and Human Rights Watch. 2018. Lebanon: Same-Sex Relations Not Illegal. [online] Available at: <https://www.hrw.org/news/2018/07/19/lebanon-same-sex-relations-not-illegal> [Accessed 30 October 2021].

51 Human Rights Watch. 2020. Lebanon's LGBT People Reclaim Their Power. [online] Available at: <https://www.hrw.org/news/2020/05/07/lebanons-lgbt-people-reclaim-their-power> [Accessed 30 October 2021].

52 Harb, A., 2021. How Lebanon's Protests Have Created a Surprising Space for LGBT Rights. [online] Time. Available at: <https://time.com/5726465/lgbt-issues-lebanon-protests/> [Accessed 30 October 2021].

53 Arab Foundation for Equality, 2015. As long as they stay away: Exploring Lebanese Attitudes Towards Sexualities and Gender Identities [online] Available at: <http://afemena.org/wp-content/uploads/2015/12/Report-high-resolution.pdf> Accessed 30 October 2021]

54 Human Rights Watch. 2019. Lebanon: No Justification for LGBT Crackdown. [online] Available at: <https://www.hrw.org/news/2019/02/11/lebanon-no-justification-lgbt-crackdown> [Accessed 30 October 2021].

55 Human Rights Watch. 2018. Lebanon: Entry Ban Follows Gender, Sexuality Conference. [online] Available at: <https://www.hrw.org/news/2019/08/27/lebanon-entry-ban-follows-gender-sexuality-conference> [Accessed 30 October 2021].

56 Younes, R., 2021. "If Not Now, When?". [online] Human Rights Watch. Available at: <https://www.hrw.org/video-photos/interactive/2020/05/07/if-not-now-when-queer-and-trans-people-reclaim-their-power> [Accessed 30 October 2021].

57 Culzac, N., 2014. Egyptian police 'using social media apps' to trap gay people. [online] The Independent. Available at: <http://www.independent.co.uk/news/world/africa/egypts-police-using-social-media-and-apps-like-grindr-to-trap-gay-people-9738515.html> [Accessed 30 October 2021]. and Folsom, J., 2021. Lebanese Police Use WhatsApp To Target Gay Men - Towleroad Gay News. [online] Towleroad Gay News. Available at: <https://www.towleroad.com/2014/08/lebanese-police-use-whatsapp-to-target-gay-men/> [Accessed 30 October 2021]. These reports are also backed by user testimonies from this ARTICLE 19 research led by the author of this report.

58 Hudgins, S., 2016. Slate's Use of Your Data. [online] Slate Magazine. Available at: http://www.slate.com/blogs/outward/2016/05/31/lebanon_still_uses_colonial_era_laws_to_persecute_lgbtq_citizens.html [Accessed 30 October 2021].

of their phones, continue.⁵⁹

Notwithstanding recent judicial decisions favourable to LGBTQ equality,⁶⁰ Lebanon's legal framework still discriminates against LGBTQ people by enabling police harassment, along with raids, arrests, and detentions, with several alleged cases of torture occurring while the defendant is in custody. While gay men and trans women are the main targets of Article 534, queer women have also been targeted, and are additionally subject to harassment, rape and other forms of sexual violence at the hands of non-state actors and family members.⁶¹ For example, a popular queer-friendly nightclub called The Ghost was raided by Dekwane municipality police in April of 2013. The raid was requested by Dekwane's mayor, Antoine Shakhtoura. Two men and a trans woman were arrested and taken to the municipality headquarters, seemingly on the basis of their appearance and not due to any alleged criminal activities. At the station, they were forced to remove their clothes for what Shakhtoura claimed to be a verification of their gender identity.⁶² The Ghost nightclub was then sealed without notice or legal basis by the municipality under allegations of promoting homosexuality, drugs, and prostitution. A police report was pinned to the door, revealing the names and alleged crimes those detained had apparently committed, even though no further action had been taken to investigate or charge these individuals.⁶³

Parts of the queer community do not suffer the same targeting that others do more routinely. This of course has been part of the reason why to many Lebanon is seen as a queer oasis in the region and less emphasis has been placed on the disproportionate effect on queer sex workers, trans people, refugees and lower-income queer people.

59 Human Rights Watch. 2013. Lebanon: Police Torturing Vulnerable People. [online] Available at: <<https://www.hrw.org/news/2013/06/26/lebanon-police-torturing-vulnerable-people>> [Accessed 30 October 2021].

60 See: Batroun individual penal judge, ruling issued on December 2, 2009, "Landmark Decision in Batroun District: Homosexual relations are not against nature" accessible at <http://www.helem.net/?q=node/54>; Jdeide individual penal judge, issued on January 28, 2014, Youmna Makhoulf, "Redefining sexual intercourse contrary to nature: a legal step in the right direction", Legal Agenda, March 10, 2014. This court ruling has not been appealed by the public prosecution; Jdeide individual penal judge, issued on May 5, 2016, accessible at <https://legal-agenda.com/%d9%82%d8%b1%d8%a7%d8%b1%d9%8c-%d9%82%d8%b6%d8%a7%d8%a6%d9%8a%d9%91%d9%8c-%d8%ab%d8%a7%d9%84%d8%ab-%d9%8a%d8%b1%d9%81%d8%b6-%d8%aa%d8%ac%d8%b1%d9%8a%d9%85%d9%87%d8%a7-%d9%81%d9%8a-%d9%84%d8%a8%d9%86/>; Jdeide individual penal judge, January 26, 2017 accessible at: <http://legal-agenda.com/uploads/%D9%82%D8%B1%D8%A7%D8%B1%20%D9%85%D8%AD%D9%83%D9%85%D8%A9%20%D8%A7%D9%84%D9%85%D8%AA%D9%86.pdf> On the 12th of July 2018, the Mount Lebanon Court of Appeal rejected the appeal filed by the public prosecution; Mount-Lebanon Court of appeal, July 12, 2018, accessible at: <http://legal-agenda.com/uploads/%D8%A7%D9%84%D8%AD%D9%83%D9%85%202018.pdf>; Emily Lewis, "Military prosecutor refuses to file homosexuality charges despite pressure", January 29, 2020 accessible at <https://www.dailystar.com.lb/News/Lebanon-News/2020/Jan-29/500190-military-prosecutor-refuses-to-file-homosexuality-charges-despite-pressure.ashx>.

61 See e.g. The Gender and Sexuality Resource Center at the Arab Foundation for Freedoms and Equality, "The LGBT Community in Lebanon: Cases of Human Rights Violations", The Gender and Sexuality Resource Center at the Arab Foundation for Freedoms and Equality, 2016 Sogie Monitor Annual Report; or Apps, arrests and abuse in Egypt, Lebanon and Iran, op.cit port; available at: <http://afemena.org/wp-content/uploads/2017/04/SOGIE-ANNUAL-REPORT.pdf>

62 Ayoub, J., 2013. Lebanese Police Arrest Four During Gay Club Raid. [online] Global Voices. Available at: <<https://globalvoices.org/2013/05/08/lebanon-scandal-breaks-out-over-homophobic-raid-in-dekwaneh/>> [Accessed 30 October 2021].

63 Littauer, D., 2013. Cops arrest, beat and strip gay clubbers. [online] Gay Star News. Available at: <<https://www.gaystarnews.com/article/cops-arrest-beat-and-strip-gay-clubbers240413/#gs.LsqiAC4>> [Accessed 30 October 2021].

One interviewee made a remarkable statement when they pointed out that *“what is really important to know [...] that really persecution of the LGBT individuals in Lebanon is very selective [...] it’s really a class and privilege issue [...] persecution depends on so many factors other than just being LGBT.”*⁶⁴

As the relationship between LGBTQ persons and the police in Lebanon depends on context, the status of queer refugees seeking shelter in Lebanon is of significant interest to civil rights advocates. The status of LGBTQ refugees,⁶⁵ While Lebanese LGBTQ persons enjoy some limited protections, refugees who are also members of the LGBTQ community face increased discrimination due their nationality, and are more likely to face punishments than their Lebanese counterparts. This has been observed in the findings of this report to be more implemented in practice as opposed to it being part of the regulatory framework.

In October 2019, the uprising across Lebanon centered the existence of queer rights firmly within the intersectional and the anti-sectarian movements.⁶⁶ Members of the LGBTQ community were mobilized in those protests calling for economic justice, addressing the environment, and demanding improvements to the national infrastructure and inadequate government services.⁶⁷ When it comes to those who are arrested or targeted, the police and prosecutors employ similar tactics as their other regional peers. The current devastating economic crisis will undeniably change cases, policing and courts function, if solely due to decreased lack of resources and oversight.

TUNISIA

Although the queer movement in Tunisia is frequently framed as beginning during the revolution of 2011, the Tunisian LGBTQ community has been actively organizing since 2008. Prior to the revolution, arrests and persecution of queer people occurred, and a wave of arrests LGBTQ Tunisians in 2008 served to motivate the community to organize.⁶⁸ It is not fully known how many arrests occurred at this time: Article 230 of the main Penal Code is formally used to charge members of the Tunisian LGBTQ community using an anti-sodomy frame, but the arrests in 2008 were made under adjacent Penal Code articles instead of Article 230.⁶⁹ Doing so obscured the nature of the charges, as the data gathering of most LGBTQ arrests is associated with Article 230. This has made it difficult to gather data on why defendants were charged or prosecuted.⁷⁰ Data collec-

64 LL5

65 Human Rights Watch. 2016. Lebanon: Syrian Refugee’s Account of Torture. [online] Available at: <<https://www.hrw.org/news/2016/12/21/lebanon-syrian-refugees-account-torture>> [Accessed 30 October 2021].

66 Saleh, M., 2020. Queers for the Revolution: Scenes from the Heart of the Lebanese Revolution. [online] My Kali. Available at: <<https://www.mykalimag.com/en/2020/04/03/18772/>> [Accessed 30 October 2021].

67 Harb, A., 2021. How Lebanon’s Protests Have Created a Surprising Space for LGBT Rights. [online] Time. Available at: <<https://time.com/5726465/lgbt-issues-lebanon-protests/>> [Accessed 30 October 2021].

68 Khoulili, R. and Levine-Spound, D., 2019. Article 230: A History of Criminalization of Homosexuality in Tunisia. [ebook] Available at: <<https://article230.com/wp-content/uploads/2019/07/Livre-Article-230-Eng-WEB.pdf>> [Accessed 21 December 2021].

69 Which are public indecency (Article 226), and violation of public morality (Article 226 bis) <https://legislation-securite.tn/ar/law/43760>

70 Khoulili, R. and Levine-Spound, D., 2019. Article 230: A History of Criminalization of Homosexuality in Tunisia. [ebook] Available at: <<https://article230.com/wp-content/uploads/2019/07/Livre-Article-230-Eng-WEB.pdf>> [Accessed 21 December 2021].

tion was also made more complex as queer movements in Tunisia were only beginning to exist in a formalized capacity, and there were few resources available to identify or respond to such cases.⁷¹

Following the 2011 Tunisian revolution, formalization of LGBTQ organizations has helped increase stability within the local queer community. By 2015, four organizations working explicitly on LGBTQ rights in Tunisia were operational. As the movement grew in Tunisia, it acquired more visibility and became more established in the legal, social, and political settings. Efforts to minimize the impact of Article 230 on the queer community also gained momentum at the time.

Post-revolution Tunisia had become known for having one of the most robust and diverse civil society sectors in the MENA region; the country's new Constitution was ratified in 2014 and has been widely hailed as the most progressive in the Arab world.⁷² The Constitution provided new opportunities for organizations promoting the rights of LGBTQ people to be registered, and thus officially recognized as service providers for the LGBTQ community. However, progress has been slow regarding the elimination of laws prosecuting queer people. Further delays in establishing the Constitution court led to continued use of archaic laws to limit personal sexual freedoms. In 2017, former president Beji Caied Essebsi created the Individual Freedoms and Equality Committee (COLIBE) to look into different violations of equality and individual liberties in Tunisian governmental systems.⁷³ A report published in June of 2018 urged the Tunisian state government to eliminate all legal charges against homosexuality and therefore abrogating Article 230; and if this recommendation was to be rejected, to reduce the 3-year imprisonment to a small fee and to completely abolish anal testing.. To date, there continues to be documented use of the anal test and the use of Article 230 continues.

Organisations have successfully coordinated campaigns to counter hatred against LGBTQ persons, while also holding rallies and events to support personal rights of freedom of expression. This includes, for example, LGBTQ art exhibitions and festivals,⁷⁴ and activities to mark the International Day Against Homophobia and Transphobia.⁷⁵ LGBTQ organisations have also led boycotts of businesses and venues—including cafes, bars and restaurants—that have openly discriminated against LGBTQ people,⁷⁶ while also encouraging other venues to openly welcome LGBTQ customers.

In spite of these positive changes, efforts to improve the socio-cultural, legal, and political status of the LGBTQ community in Tunisia have been met with resistance from law

71 Ibid

72 Ibid

73 (www.dw.com), D., 2021. Tunisia: Gay rights, inheritance reforms put country on edge | DW | 15.08.2018. [online] DW.COM. Available at: <<https://www.dw.com/en/tunisia-gay-rights-inheritance-reforms-put-country-on-edge/a-45082954>> [Accessed 21 December 2021].

74 "Chouf Minorities is formed in Tunisia", Global Network of Sex Work Projects; available at: <http://www.nswp.org/es/node/2652>

75 "IDAHOT 2017 country page: Tunisia", IDAHOT, 2017; available at: <http://dayagainsthomophobia.org/idahot-2017-country-page-tunisia/>

76 "'No homosexuals allowed' Tunis stores put up homophobic signs", The France 24 Observers, 26 April 2016; available <https://observers.france24.com/en/20160426-homosexuals-banned-stores-tunisia-homophobic-signs>

enforcement. The case of the “Kairouan Six” took place in 2015.⁷⁷ Six university students were meeting in a private residence, and reports led to a raid of the residence and arrests based on their appearances.⁷⁸ Not only did the six students receive the highest prison term possible with three-year sentences, but they were banished from their city of Kairouan.⁷⁹ While the high-profile case of the Kairouan Six did improve the media coverage of how members of the LGBTQ community were treated by law enforcement in Tunisia, it can be used to show that acceptance of the queer community was still slow in coming. Indeed, from 2015 on, the number of assaults against LGBTQ persons by law enforcement has increased.⁸⁰

Increasing the visibility of LGBTQ people in Tunisia has resulted in increased public backlash against the community. Criminalisation of LGBTQ persons continues, including reports of torture of LGBTQ people in custody.⁸¹ The provisions of the Penal Code still allow for targeting of persons on the basis of their gender expression, regardless of the presence of evidence of a prohibited act. Prosecutions and arrests based on gender and sexual identity are common, but official statistics on prosecutions, trials, and arrests are scarce.⁸² As Victor Madrigal-Borloz, the UN Independent Expert on sexual orientation and gender identity, stated in June 2021 “I have been informed of the resistance within the National Institute of Statistics to the idea of producing data in this regard. [...] virtually all pieces of data or information documenting the realities and challenges experienced by LGBT people are gathered and systematized by civil society organizations.”⁸³

In addition to targeting individual members of the LGBTQ community, some LGBTQ organisations have also been targeted by law enforcement. Shams, an organisation vocal in calling for the repeal of Article 230, was initially recognised as an official organization but then had its registration suspended in December of 2015 for 30 days following a complaint from the Government’s Secretary General.⁸⁴ In the past few years, numerous other methods to reduce or shut down Sham’s activities have occurred, including court hearing and even a clampdown on their radio station.⁸⁵

77 Khouili and Levine-Spound 2019

78 Amnesty International. 2021. Tunisia: Sentencing of six men for same-sex relations highlights state’s entrenched homophobia. [online] Available at: <<https://www.amnesty.org/en/latest/news/2015/12/tunisia-sentencing-of-six-men-for-same-sex-relations-highlights-states-entrenched-homophobia/>> [Accessed 21 December 2021].

79 Ibid

80 Ohchr.org. 2021. OHCHR | Preliminary observations on the visit to Tunisia by the Independent expert on protection against violence and discrimination based on sexual orientation and gender identity. [online] Available at: <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27174&LangID=E>> [Accessed 21 December 2021]. (This observation is also based on the interviews and the reviewed case files that cover this period)

81 Human Rights Watch. 2021. Tunisia: Police Arrest, Use Violence Against LGBTI Activists. [online] Available at: <<https://www.hrw.org/news/2021/02/23/tunisia-police-arrest-use-violence-against-lgbti-activists#>> [Accessed 29 October 2021].

82 Ohchr.org. 2021.

83 Ohchr.org. 2021.

84 Tunis First Instance Court, Civil Chamber, 29 December 2015, decision n°62869.

85 “Tunisia’s first LGBTQ radio station keeps playing despite threats”, Reuters, 27 December 2017.; available at: <https://www.reuters.com/article/us-tunisia-gay-radio/tunisias-first-lgbtq-radio-station-keeps-playing-despite-threats-idUSKBN1EL1HB>

STATISTICS ON PROSECUTION IN LEBANON AND TUNISIA

In their current disordered states, statistics relating to arrests and court cases in Lebanon and Tunisia are more difficult to acquire than those from Egypt. One of the purposes of this report was to gather a broader idea of the number of cases relating to persons in the local LGBTQ communities.⁸⁶ In Lebanon, the NGO's Helem's shadow report to the UN Human Rights Commission reported 315 arrests between 2012 and 2016 which were related to the LGBTQ community. In 2018 alone, they monitored 35 arrests and trials, 27 of which involved trans women and involved 8 gay men, 5 of whom were military personnel.⁸⁷ In Tunisia, data compiled by Tunisian NGO Shams and activists led by Mounir Baatour found that there were at least 67 prosecutions under Article 230 in 2017.⁸⁸ Baatour's organizations found that this had increased to nearly double by 2019, when 120 people were arrested on charges related to LGBTQ issues.⁸⁹

However, fully accurate up-to-date data on the number of arrests and court cases based on LGBTQ-related charges is difficult to collect. The issue of decentralized data between governates and the facts that *"the ministry of justice does not have specific data on the LGBT specific cases in all of the country, they have mostly like data on how many cases there are in all of the country but not specific or certain things"*⁹⁰ means there are no accurate statistics. On average, the interviewees mention working on 7-10 cases each year. Interviewees in Tunisia estimate a total of 40 -100 court cases on 230 charges per year based on their experiences, with the highest number of cases in Sousse. The numbers and the trajectory taken by these cases have changed throughout the years, and this has also affected statistical accuracy. For example, one interviewee noted that, *"Article 230 wasn't used as much before [...] before the revolution, LGBT revolution in Tunisia, was something unspoken of and most of the time even if they arrested someone who was gay they would find any other article to use rather than Article 230 to kind of preserve their 'dignity or privacy'."* They continued by noting that current case scenarios are very different, as *"it's very new that it's being used this much and now there are around a hundred cases per year [under Article 230]."*⁹¹ These conditions lead to increasing numbers of court cases: the NGO Shams reported that in May of 2021, statistics from Tunisia's Ministry of Justice had been released which showed that 1225 people

86 Helem- Lebanese Protection for LGBTQ Individuals, 2017. Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon. [ebook] OHCHR. Available at: <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBN/INT_CCPR_ICO_LBN_27152_E.pdf> [Accessed 21 December 2021].

87 Amnesty International. 2021. Fifteen years of LGBTI community activism in Lebanon: A story of existence and oppression. [online] Available at: <<https://www.amnesty.org/en/latest/news/2019/05/lgbti-community-activism-in-lebanon-a-story-of-existence-and-oppression/>> [Accessed 22 December 2021].

88 Khoulili and Levine-Spound 2019

89 New Lines Magazine. 2021. A Place for LGBTQ Rights in the Arab World?. [online] Available at: <<https://newlinesmag.com/reportage/a-place-for-lgbtq-rights-in-the-arab-world/>> [Accessed 22 December 2021].

90 TL6

91 TL2

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had been jailed due to their sexual and gender identities since 2011, thus providing official statistics on these cases.⁹² The decade of official statistics is seemingly half that of the Tunisia interviewees' self-reporting of approximately 230 court cases per year.

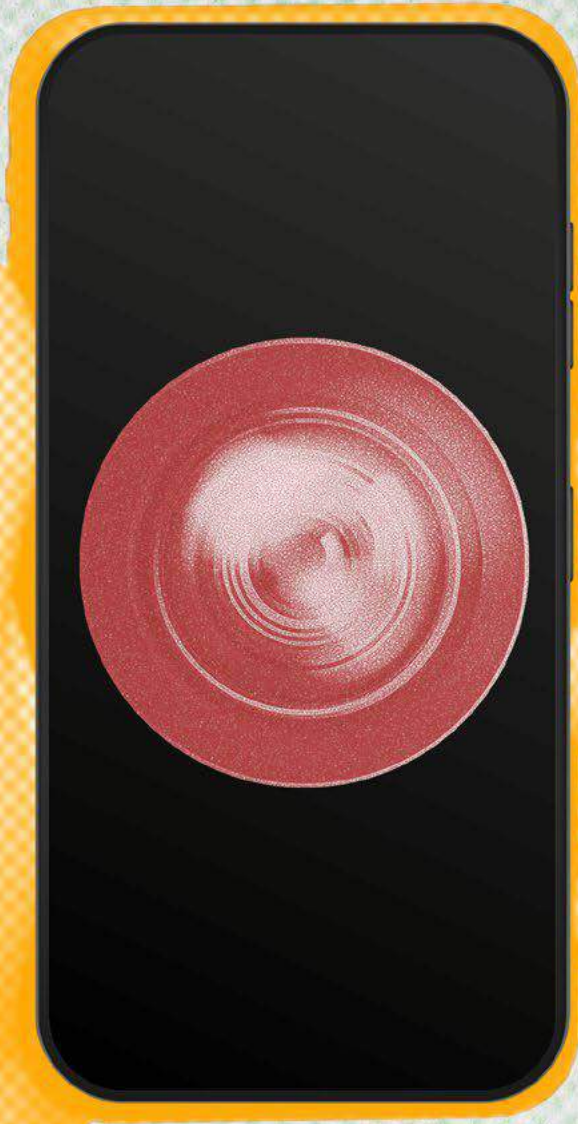
In Lebanon, interviewees highlight many of these same issues, commenting how *"it's not like a system, it's not like you do have a special server for this and immediately get your exact data."*⁹³ They emphasize how many LGBTQ cases often come in connected to parallel cases, meaning that lawyers who specialize in LGBTQ issues may not hear about them. On average, interviewees mention they have personally worked on 5 -10 cases each year; however, these numbers are considered low estimates due to the limited scope of official reporting on case statistics. Interviewees have stated that they perceive an overall increase in the number of cases, even if they are not directly involved with them. *"I do have an idea about this there was some sort of motion in the past five years," one interviewee noted. "It went from 10 cases five years ago to 50 cases last year or the year before that. Forty...fifty cases, something like."*⁹⁴ Finally, not only are official statistics difficult to find and confirm, the nature of official data reporting in Tunisia and Lebanon is a time-consuming process due to bureaucracies and slow processing procedures. It took 6 months to gather Tunisian case file summaries and over one year to get access to the Lebanese case file summaries.

92 Facebook.com. 2021. Shams - Pour la dépénalisation de l'homosexualité en Tunisie. [online] Available at: <<https://www.facebook.com/309323135918006/posts/1644375379079435/>> [Accessed 22 December 2021].

93 LL6

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THE FINDINGS

The focus of this research is the use of digital evidence in the prosecution of queer-ness in Egypt, Lebanon and Tunisia. The three countries have been selected due to the author's knowledge of, and networks within, these countries, which allows for deeper access to, and analysis of, materials. Additionally, all three countries have laws that are used to criminalise LGBTQ people, and there are documented cases of police relying on digital technologies to prosecute, arrest, or harass members of the queer community. While these circumstances are not unique to these three countries and it is hoped that the findings can be used to inform those active in local LGBTQ communities, findings cannot be generalized to all countries within the MENA region.

VAGUE LAWS AND STRICT SENTENCES: THE POWER OF DISCRETION AND INTERPRETATION

It has been found that the language of the morality and indecency laws is tactically both broad and vague, allowing police, prosecutors, and courts the liberty to have *carte blanche* to interpret them. This has led to wide and unpredictable interpretation of behaviors within the LGBTQ community as “criminal” or criminalised. In some instances, the degree to which criminalization occurs can render queer existence itself illegal.

Terms like “morality,” “indecency,” and “debauchery” provide power to prosecutors to criminalise queerness and gender nonconformity within institutional and legal settings. There are laws with vague connections to sexual behaviors—such as the prohibition of “sodomy” (Tunisia) or “sexual acts against nature” (Lebanon)—that have been predominately applied to queer communities, as well as sex workers of all sexualities and gender identities. In all three countries, these laws are routinely justified with the observation that they can be used against heterosexual people and sexual acts, but in practice this is rarely if ever observed, except in application to sex workers. Though sex work was not the focus of this research, among the cases reviewed, queer and trans sex workers received the brunt of the charges and penalties.

To counter the exploitation of vagueness for the purpose of persecution, it is important to verify and analyze the exact laws used. Prior work has shown that the framework of laws used to prosecute queerness goes beyond the few familiar, prominently discussed laws used to prosecute the queer community⁹⁵ (e.g.: Article 230 in Tunisia). In practice, a complex interplay of laws is applied, and these vary depending on who is targeted, as well as the mechanisms used (e.g. based on physical on-street surveillance or through digital evidence). The cases have reached different stages of prosecution: in Lebanon

95 ARTICLE 19. 2021. Apps, arrests and abuse in Egypt, Lebanon and Iran - ARTICLE 19. [online] Available at: <<https://www.article19.org/apps-arrests-abuse-egypt-lebanon-iran/>> [Accessed 22 December 2021].

and Egypt, though not yet in Tunisia, these cases have reached the highest criminal and civil courts. The findings can be used to show an expanding prosecution of the most private and intimate aspects of identity, where law enforcement is targeting and prosecuting intent rather than behavior, and insinuation of queerness as opposed to evidence. In effect, a vast majority of convictions made for the perceived crime of queer identity are not justified by evidence, but are nevertheless upheld.

MAIN LAWS AND PROCEDURES OBSERVED:⁹⁶

TUNISIA

In Tunisia, the principle laws used against LGBTQ people are drawn from the Penal Code (1913). The most prominent of these is Article 230, which criminalizes sodomy and homosexuality. Other key criminal provisions include those related to sex work and public indecency. Charges are deployed strategically during the process of prosecution, often with lesser and more vague laws used for an initial arrest. The use of lesser laws for the initial arrest may later be used to provide pretext for in-depth investigation which may result in the imposition of lengthier sentences. *When they can't use 230, they use [another law] ... The goal for them is the punishment, you know. There is no not guilty. There is always, 'You are guilty. We must find the article.'*⁹⁷

Though much of the Tunisian Penal Code has been extensively amended, Article 230 has remained untouched since its adoption in 1913 under French colonial rule. Importantly, Article 230 has two versions, in both French and Arabic. The French version of the law does not reference gender. It states that, “sodomy, if it does not fall into any of the cases specified in the previous articles, is punishable by three years in prison.”⁹⁸ The authoritative Arabic version explicitly calls out sex between women and sex between men. It replaces “sodomy” with *Liwat* (masculine homosexuality) and *El Mousahaka* (female homosexuality).⁹⁹ Both *Liwat* and *El Mousahaka* constitute criminal offenses punishable by up to three years in prison.¹⁰⁰ The result of this change is particularly significant because the Arabic version is used as the authoritative text, and that the offending perceived criminal act is homosexuality rather than penetration.¹⁰¹

Findings from the interviews can be used to show that Article 230 is heavily used against those who the authorities deem to have engaged in “*Liwat*,” or simply assumed

⁹⁶ For additional elements of the procedure, there is a more in depth discussion below in the Gathering Digital Evidence section.

⁹⁷ TL5

⁹⁸ Tunisian Penal Code, art. 230, <https://legislation-securite.tn/ar/law/43760> [Arabic] and <https://article230.com/en/article-320-eng/>

⁹⁹ Khoulili, R. and Levine-Spound, D., 2021. Article 320 ENG - Article 230. [online] Article 230. Available at: <<https://article230.com/en/article-320-eng/>> [Accessed 22 December 2021].

¹⁰⁰ Khoulili, R. and Levine-Spound, D., p. 26, 2021. Article 320 ENG - Article 230. [online] Article 230. Available at: <<https://article230.com/en/article-320-eng/>> [Accessed 22 December 2021].

¹⁰¹ Ibid

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to be queer and therefore to have engaged in anal sex. *“Its application has been [...], especially after 2011 [Tunisian Revolution] has been only applied to men, not to [cis] women.”*¹⁰² Here, it should be noted that the authorities, including judges, prosecutors, and police, rarely if ever categorized trans women as women. In addition to being denied human rights and civil liberties, trans women are some of the most targeted persons under Article 230.

In targeting queer men and trans people, authorities have also relied upon slippage from the act of sodomy to the state of being that is Liwat. By doing so, proof of a physical act is not required for conviction, but rather a conviction can be achieved via forced confessions or digital evidence (what is deemed digital evidence of a crime of queerness in these contexts is expanded on further in the report). As one interviewee put it, *“[the] expression “sodomy” is very vague; [...] either [the authorities] say that there is an intent to do those acts and to promote these acts in the area where they are or they just mention that apparently they are [gay].”* Another specified that Article 230, *“has been applied whenever police suspect that you are homosexual based on your outfit, based on your maybe how you talk, how you are behaving.”*

The interviews can be used to show that in practice, all applications of Article 230 are understood to require a physical act, but this act is not necessarily penetration: *“they need to be caught in action for them to be directly arrested.”*¹⁰³ For this reason, **LGBTQ people are not arrested under Article 230 but rather may be charged with it later, after evidence can be gathered.** Initial arrests are made based on justification provided by other laws, and charges strengthened by application of Article 230 (more on this below).

Two common charges for the initial arrest are public indecency (Article 226),¹⁰⁴ and violation of public morality (Article 226 bis).¹⁰⁵ These laws are vague as their terms have been left undefined by legislators. It is believed that the lack of clarification is intentional, as police and prosecutors can bend these laws according to circumstances. Local authorities frequently strengthen these initial charges by adding criminal offenses directly related to sex work. While the highest penalties are imposed on LGBTQ sex workers, laws criminalizing sex work are frequently employed against LGBTQ people, even where no money is changing hands. As one source noted, *“Article 231 is used mostly for women and it’s about sex work... [and in] addition to that there is Article 232 which is basically about the intermediary in sex work [and] Article 234, which is basically for public decency and the morals.”*¹⁰⁶ In some instances, a single charge may be used as a

102 TL3

103 TL2

104 Article 226 of the Penal Code: “the arrest of up to 6 months and 48 dinars for anyone who is recognized guilty of public indecency”.

105 Article 226bis: “Anyone who will exhibit a violation of morality publicly or public decency through gesture, word or intentionally bother someone in a way that violates decency will be punished by 6 months of imprisonment and 1000 dinars penalty”.

106 TL6

pretext for arrest, but as previously noted, trans women tend to receive harsher treatment. *“For example, when you find a trans [person] in the public area with their clothes ... they consider that as offending morals and [an example of] public indecency. And if that person had a sexual relationship with another person, the Article 230 [charge] is also applicable.”*¹⁰⁷

Police employ digital evidence to stack an Article 230 charge on top of one or more of these other charges. In many cases, as mentioned by all the interviewees in both Tunisia and Lebanon, the police don’t build a case in advance, but rather do so during the proceedings against, or investigations of, an individual. Following arrest, they take the opportunity to conduct device searches and questioning related to an individual’s gender identity or sexuality. If digital evidence or a confession can be obtained, an Article 230 count can be added to the case, which can then lead to simultaneous charges in court. One researcher described this process as *“an element of trial and error, or mix and match, of seeing which article can create a sentence/lead to an arrest: it’s about getting a verdict not about assessing the validity of a ‘crime’”* and that *“When they can’t use [Article] 230, they use [Article] 226. [...] The goal for them is the punishment, you know. There is no not-guilty. There is always, ‘You are guilty. We must [just] find the article.’”*[TL5]¹⁰⁸ This practice of cherry-picking different articles with the end goal of a guilty verdict at trial is a process which appears to guide police decision-making from the moment they target a LGBTQ person for arrest. Alternatively, some members of Tunisian law enforcement have applied a technique where, in advance of an arrest, “they actually build something so then when [queer people] are arrested for something else they have proof” for an Article 230 charge. Police build their advance cases by monitoring queer people on apps and tools, slowly compiling a file of the needed digital evidence. [see below sections on “App and social media entrapment, monitoring and fake profiles, network identification” and “Police stations and parallel cases/charges]

107

108 TL5

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Out of the case files obtained dated between 2015 and 2019, 9 out of 9 included Article 230 charges, 3 out of 9 included Article 226 charges, 1 with Article 266 charge and one with a supplementary criminal assault charge attached from a parallel prosecution. Six of these cases were initiated based on reports to the police by individuals, and three of them were based on parallel charges: whereas only one continued with the supplementary charge, the rest maintained the Article 230 charges but were acquitted on the other charges (e.g.: assault charges).

There are reasons to believe that Tunisian law enforcement may be broadening the scope of laws used to validate the initial arrest. In January of 2021, in the midst of interviews for this report, protests erupted across Tunisia¹⁰⁹ which were ignited by worsening economic conditions, the COVID-19 pandemic, police brutality, and the death of a protestor.¹¹⁰ The authorities' response has included targeting of LGBTQ activists and protestors. The NGO Human Rights Watch documented arrests under charges of "assaulting a

public official," punishable by up to 10 years, as well as "insulting a police officer" and "committing an immoral act in public," both punishable by up to six months in prison.¹¹¹ Although current documentation does not yet suggest that these charges have been coupled with Article 230 or other sexuality related charges, documentation by HRW outlines illegal searches of arrestees' devices. The patterns of investigation in this current report suggest that there is a high probability that such charges may be added as the investigations proceed.

Within the last decade, Tunisia adopted a new constitution with strong privacy provisions that should invalidate the use of Article 230, along with other laws which criminalize LGBTQ identity. However, this would require interpretation, enforcement, and a declaration of unconstitutionality of laws through a constitutional court. As one lawyer noted, "*The constitutional court was supposed to be ready by 2015, which is one year after the adopting the new constitution; however, we are still waiting.*"¹¹² Advocates hold out little hope for the court's timely establishment and have been shifting strategies, now making the case that the laws are unconstitutional in the courts when charges are brought.¹¹³ The lawyer stated that "*the constitutional court... could take forever, so what [we] are doing especially now with this current case... [is to] say that this is anti-constitutional, and should not even be used.*"¹¹⁴

109 Human Rights Watch. 2021. Tunisia: Police Arrest, Use Violence Against LGBTI Activists. [online] Available at: <<https://www.hrw.org/news/2021/02/23/tunisia-police-arrest-use-violence-against-lgbti-activists>> [Accessed 22 December 2021].

110 Human Rights Watch. 2021. Tunisia: Police Use Violent Tactics to Quash Protests. [online] Available at: <<https://www.hrw.org/news/2021/02/05/tunisia-police-use-violent-tactics-quash-protests>> [Accessed 22 December 2021].

111 Human Rights Watch. 2021. Tunisia: Police Arrest, Use Violence Against LGBTI Activists. [online] Available at: <<https://www.hrw.org/news/2021/02/23/tunisia-police-arrest-use-violence-against-lgbti-activists>> [Accessed 22 December 2021].

112 TL2

113 Of course, without a constitutional court, a judge cannot bring the issue to the constitutional court (unless they reject it on preliminary/admissibility grounds). It seems to suggest that these are symbolic unconstitutionality claims by these deference lawyers.

114 TL2

TUNISIA: BREAKDOWN OF CHARGES IN CASE FILES

Case No.	Penal code art. 230	Penal code art. 226	Penal code art. 226 bis	Other charges	Frist degree charge	Second degree charge
Case 1	✓				Dismissed	N/A
Case 2	✓	✓			1 year	N/A
Case 3	✓	✓			6 months	N/A
Case 4	✓				6 months	N/A
Case 5	✓	✓		Violance charges art. 218 penal code	Victims: 2 months perpetrator: 1 year	N/A
Case 6	✓		✓		1 year	1 month
Case 7	✓	✓			8 months	N/A
Case 8	✓				1 year	4 months
Case 9					Dismissed	N/A

OBSERVED PROGRESSION OF CASES

TUNISIA IS A CIVIL LAW REPUBLIC

If the case is only a misdemeanor (i.e. not attached to a felony charge such as a drugs charge)



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If the case is combined with a felony charge:



[It is noteworthy to mention here an overall observation from the interviewees about the Tunisian criminal system. There is often a push for appeals in each case, and the prosecution and court are aware of those who enforce higher charges in the initial hearing. “Things go a little bit better [at appeals] because in general that’s the philosophy of Tunisian justice. Even in the first instance courts in Tunisia have the conviction that the appeal will change the sentence... I mean it will... but I mean for example if it is three years or two years in the first instance court, it will be like... eight months or nine months in the appeals.”¹¹⁵ The cases are held in closed courtrooms. In the interviews the prevailing reason for this placement on LGBTQ cases is the morality tinge of the cases: the courts do not want to expose the general public to these cases that are seen as “immoral” and “indecent”.

EGYPT

The Egyptian framework for the prosecution of LGBTQ people is a juxtaposition: of the three countries studied, Egypt has the most all-encompassing legal framework established for purposes of prosecuting members of the LGBTQ community, and yet the Egyptian government has denied having laws and legal strategies to prosecute LGBTQ individuals.¹¹⁶ In Egypt, the criminalisation of queerness is framed as a campaign against sex work. Broadly interpreted laws and extensive judicial support have allowed for continuous and targeted prosecution of LGBTQ individuals, as well as those suspected of engaging in gender nonconformist behaviors.¹¹⁷ Colonial-era criminal laws have been retained, but have been reframed and further evolved in recent years, creating a catch-all framework which is used in prosecution.

The primary law used to prosecute queer people is Law No. 10/1961 on Combating of Prostitution, which repeatedly uses the phrase “debauchery or prostitution” to describe perceived criminal behavior. Egyptian judges have routinely interpreted the term “de-

¹¹⁵ TL4

¹¹⁶ Long, S., 2004. IN A TIME OF TORTURE - The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct. [ebook] Human Rights Watch,. Available at: <<https://www.hrw.org/report/2004/02/29/time-torture/assault-justice-egypts-crackdown-homosexual-conduct>> [Accessed 30 October 2021].

¹¹⁷ Sexuality, Development and Non-Conformist Desire in the Arab World: Case of Lebanon and Egypt -

bauchery” in this statute—in Arabic, *fujur* (الفجور)—to be a synonym for homosexuality, or, more generally, queerness.¹¹⁸ As one interviewee put it, “*The prostitution law was made for fighting sex workers, including men and women... The Egyptian government translates this legislation [to apply only to] male ‘sex workers’*”¹¹⁹. Under Egypt’s current laws, the legal position on female same-sex practices is unclear, and interviews for this report did not reveal any known prosecutions of these case examples. It should be noted that authorities generally refuse to recognize trans people’s gender identity, instead treating them according to the sex assigned at birth, meaning that trans women are routinely prosecuted as gay men.¹²⁰ Moreover, in practice men deemed heterosexual are not prosecuted: “*There may not be many cases of heterosexual men being accused of debauchery although, the [...] elements we talked about would be broad enough to cover [it],*” one interviewee noted, and also pointed out that straight men “are not even under the radar” when law enforcement strives to identify persons engaged in debauchery.¹²¹

Currently in Egypt, the main provision used to prosecute those deemed as LGBTQ is Article 9(c) of *Law No. 10/1961, on the Combating of Prostitution*. It provides for up to three years in prison and/or fines for anyone who “habitually engages in debauchery or prostitution.” The statute does not offer a definition for debauchery. As noted, Egyptian courts typically equate debauchery with same-sex practice among men. This is based on prior decisions of the Court of Cassation which established the definition of debauchery as “a man offering himself sexually to other men.”¹²² Lower courts have adopted this definition without scrutiny or additional further analysis.

The statute also fails to offer any definition of “habitually,” leaving interpretation to the courts.¹²³¹²⁴ The Court of Cassation subsequently required that, to meet the element of habituality, the accused must have engaged in “indiscriminate” sexual acts for three years preceding arrest, in addition to the incident that triggered the arrest.¹²⁵ Judges in Misdemeanors and Appeal courts have relied on this precedent to acquit defendants from debauchery charges or reduce their sentences. However, the requirement of habituality has also failed to protect many LGBTQ defendants, as even when the threshold of three years’ activity can be shown, the definition of “indiscriminate” is left to the discretion of the presiding judge and is often interpreted so broadly as to be meaningless.

118 Long, S., 2004. IN A TIME OF TORTURE - The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct. [ebook] Human Rights Watch,. Available at: <<https://www.hrw.org/report/2004/02/29/time-torture/assault-justice-egypts-crackdown-homosexual-conduct>> [Accessed 30 October 2021]. Text of law available here: https://eipr.org/sites/default/files/reports/pdf/law_no.10-1961_.pdf

119 EL3

120 Trans women who have had gender affirming surgery and whose IDs are updated may encounter different treatment; more research is required to fully substantiate this finding.

121 TL6

122 Long, S., 2004. IN A TIME OF TORTURE - The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct. [ebook] Human Rights Watch,. Available at: <<https://www.hrw.org/report/2004/02/29/time-torture/assault-justice-egypts-crackdown-homosexual-conduct>> [Accessed 30 October 2021].

123 Sexuality, Development and Non-conforming Desire in the Arab World: The Case of Lebanon and Egypt

124 There is some insight into the limits of discretion on the notion of “habituality” based on prominent definitions of these offences as laid out throughout different judgements of the Egyptian Court of Cassation. On this, EIPR’s analysis shows that: EIPR page 37

125 Ibid

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An interviewee outlined one judge's approach:

“He started to give a very textual interpretation of the law ‘Debauchery means male prostitution as it was established through the language and was explained in fact in certain decisions. And the material element of the crime is when you participate in any sexual conduct ... ‘It doesn’t have to live up to any particular action, it just has to qualify as sexual conduct that has been committed repeatedly in different scenarios, ... and the repetitiveness of the action or on top of that sexual conduct with different third parties, that in and of itself qualifies as debauchery.’”¹²⁶

The interviewee continued, *“Our argument [in response to the judge] was that yes, we know these are the elements but these elements are not clear.”*¹²⁷ Due to the repetitiveness and qualified nature of the definition offered, the interviewee found the judge's proffered definition “very vague.”¹²⁸ Indeed, courts have demonstrated willingness to convict even where the ev-

idence directly undermines the characterization of the acts as “indiscriminate” as laid out in the courts of cassation.¹²⁹ In practice, the presence of only one sexual partner, coupled with lack of sexual activity in return for monetary payment, have not been considered sufficient grounds to deem that the element of habituality was not present. Rather than viewing “habituality” as an element the prosecution needs to prove, judges instead seem to be considering evidence of monetary return or multiple partners as extraneous confirmation of what the prosecution has otherwise insinuated.

All 12 case files obtained for Egypt include use of digital evidence. 10 out of 12 were entrapment cases and the two remaining are based on hotel reports. All 12 have been sentenced according to Law 10/1961, Articles 9(c), 14, 15, and 16. Articles 15 and 16 are procedural elements used to establish parameters for criminal sentencing. The interviewees correlated the observation that when any form of digital evidence is present, Article 14 is applied as an additional charge to ensure the sentences are finalized.

126 TL6

127 TL6

128 TL6

129 Challenge no.1658/Y39, Session 18 January, 1970, Decision no.27 as laid out in Abdel Hamid, D., 2017. The Trap: Punishing sexual difference in Egypt. pg 38 [ebook] Al Qahirah: Egyptian Initiative for Personal Rights. Available at: <https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf> [Accessed 22 December 2021].

LGBTQ people in Egypt are also prosecuted under other provisions of Law No. 10/1961, another aspect of the Combating of Prostitution framework, including for accessory crimes like incitement to or publicizing of debauchery. Article (1)(a) provides for prison terms of up to three years and/or fines for *“Whoever incites a person, be they male or female, to engage in debauchery or in prostitution, or assists in this or facilitates it,”* and Article 14 provides similar penalties for publicizing or drawing attention to debauchery.

Police and prosecuting teams work together to ensure a conviction is assured under at least one of the laws. Interviewees have observed the charges being stacked on top of a successful Article 9(c) prosecution: *“So even though they find all the evidence, they also give him the charge of inciting debauchery and also advertising for debauchery online. And the court can decide to sentence each charge with the maximum of 3 years.”*¹³⁰.

When the crime of habitually engaging in debauchery under Article 9(c) cannot be proven from evidence on the defendant’s conduct, the court relies on digital evidence.¹³¹ In these cases, the charge will be of the crime of incitement to debauchery, or in colloquial terms, seduction.¹³² An interviewee noted that the *“‘practicing habitual debauchery’ charge is easier to dispose of in front of the judge, [because it] is harder to prove [...] But if you are arrested with digital evidence like dating apps, or screenshots from the phone, or the phone number and so on, it is very easy for them to get you for promoting and advertising debauchery [Article 14].”*¹³³ In most of these cases, incitement or seduction is believed to be evidenced through something as simple as an image sent by the accused to an under-cover policeman or informant in a private chat room or text thread. This has led to multiple convictions based on online conversation on dating apps or social media platforms.¹³⁴ To further compound these concerns, LGBTQ cases are being transferred to the Economic Courts of Egypt, adding further cybercrimes to the ‘crimes of sexuality’. This point will be elaborated upon later in this review.

130 EL1 - it is not clear how ne bis in idem applies in these cases.

131 This is based on analysis and consultation from the Egyptian Initiative for Personal Rights, provided to the lead researcher and ARTICLE 19 in 2018

132 which according to section (a) of Article (14) which states that it is punishable by the same penalties of Article (1)

133 EL6

134 In effect these articles prohibit any engagement in soliciting, or providing facilities for “debauchery and prostitution.” The law also explicitly fails to mention commerciality, leaving this law broad enough allowing police and prosecutors engage it to prosecute and target LGBTQ individuals in Egypt and even their supporters and generally commercial as well as non-commercial sex between consenting adult men, those deemed as “male” by prosecutors and trans women. This means, contrary to most laws against sex work, Egypt’s law does not require a transaction of money as evidence of “prostitution”, leaving it open to broad interpretation.

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EGYPT: BREAKDOWN OF CHARGES IN CASE FILES

Case No.	Debauchery Law art.9c	Debauchery Law art.14	Debauchery Law art.15	Debauchery Law art.16	Frist degree charge	Second degree charge
Case 1	✓	✓	✓	✓	2 years	6 months
Case 2	✓	✓	✓	✓	1 year	3 months
Case 3	✓	✓	✓	✓	1 year	4 months
Case 4	✓	✓	✓	✓	3 year	N/A
Case 5	✓	✓	✓	✓	1 year	3 months
Case 6	✓	✓	✓	✓	1 year	N/A
Case 7	✓	✓	✓	✓	Acquitted	N/A
Case 8	✓	✓	✓	✓	1 year	3 months
Case 9	✓	✓	✓	✓	Acquitted	N/A
Case 10	✓	✓	✓	✓	Acquitted	N/A
Case 11	✓	✓	✓	✓	3 year	Acquitted
Case 12	✓	✓	✓	✓	3 year	1 year

OBSERVED PROGRESSION OF CASES

EGYPT WORKS UNDER A CIVIL LAW SYSTEM

General misdemeanor cases under Debauchery Laws



In Economic Courts under Cybercrime and Telecommunication Laws

In these cases, after arrest, they are first seen in the regular criminal courts which can decide if these cases fall under the mandate of the economic courts:



LEBANON

The Lebanese Penal Code¹³⁵ does not directly criminalize acts or behaviors with direct reference to homosexuality or to gender identity. However, through the moralising interpretation of vague statutory language in laws that are remnants of the French colonial era, Lebanon functionally criminalizes homosexuality. Under the section on “Offences Against Morals and Public Morality,” Article 534 of the Penal Code can impose punishments for “*sexual intercourse contrary to nature*”¹³⁶ with up to one year imprisonment. The standard interpretation of this term by law enforcement and the criminal courts has been all same-sex relations,¹³⁷ as well as all anal sex.¹³⁸

In Lebanon, interviewees suggest that this law is predominately and perhaps exclusively used against the queer community. One source noted that, “*Article 534 of Leba-*

135 Ministry of Justice - Libya Information and Documentation Centre. 2021. Lebanese Penal Code (Arabic). [online] Available at: <<http://itcadell.gov.ly/wp-content/uploads/2015/12/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA.pdf>> [Accessed 24 December 2021].

136 Ministry of Justice - Libya Information and Documentation Centre. 2021. Lebanese Penal Code (Arabic). [online] Available at: <<http://itcadell.gov.ly/wp-content/uploads/2015/12/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA.pdf>> [Accessed 24 December 2021].

137 Mount Lebanon Criminal Court, decision number 665/2006, dated 16th November 2006 published in Cassandre, electronic database; Beirut Criminal Court, decision number 45/2010, dated 2nd February 2010 published in Cassandre, electronic database; Criminal Cassation Court, decision number 62/2011, dated 27th January, 2011; published in Cassandre, electronic database.

138 Nizar Saghih and Wahid Al Farchichi, “Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia”, a study published in 2010 by the LGBT organization Helem.

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nese Penal Code doesn't really mention the term homosexuality...but it's only employed against for homosexuals."¹³⁹ In most of the cases observed by both interviewees and in the review of case reports, charges under Article 534 were brought against individuals only after they encountered authorities, and often after phone searches revealed relevant digital evidence.

In Lebanon, as in Egypt and Tunisia, it appears that laws are mixed and matched to increase the likelihood of conviction, since by its own terminology Article 534 requires that a violation be caught in the act. The discovery and application of digital evidence is then used to integrate other laws, as *"if there is no [...] sexual act [...] they might prosecute [the person] based on another article...for example under the laws relating to public morals for the pictures."*¹⁴⁰ Here, the interviewee refers to Article 209 of the Penal Code, which criminalizes sharing "indecent" files. Other laws employed include public indecency and infringing public morality under Articles 531, 532, and 533 of the Penal Code, and involvement in or facilitation of sex work under Articles 523, 526, and 527 of the Penal Code¹⁴¹ (please note, the case files obtained are of only 534 cases and as such these supplementary articles have not been observed in them).

The case files for Lebanon are quite varied in the nature of charges as well as time span: 5 out of 8 are based on parallel prosecutions that began with other offenses, to which Article 534 charges were added; 2 out of 8 resulted from street profiling arrests; and one was from a report to the police.

Certain laws are used to specifically target trans individuals. Article 521 of the Penal Code establishes perceived gender nonconformity as a punishable offense, as *"Every man who dresses up as a woman and enters a women-only designated place or a place that is forbidden for him to enter, is punishable by imprisonment up to 6 months."*

¹⁴²One interviewee noted, *"We've also had at least one case ... where trans people were also targeted with the article that punishes men who wear women's clothes in order to enter places that are restricted for women: [this is Article] 521."*¹⁴³

While there are commonalities in Lebanese laws used to punish persons in the LGBTQ community with those found in Egypt and Tunisia, Lebanon may be an outlier for penalties imposed. The interviewees suggest that with a good lawyer, most cases that result in conviction will only receive a fine: *"Now, I mean in many cases if you have a lawyer present, the judge will not condemn a person to imprisonment; they will reduce sentenc-*

139 LL6

140 LL5

141 Ministry of Justice - Libya Information and Documentation Centre. 2021. Lebanese Penal Code (Arabic). [online] Available at: <http://itcadel.gov.ly/wp-content/uploads/2015/12/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA.pdf> [Accessed 24 December 2021].

142 Ahmed Saleh and Adriana Qubaia, "Transwomen's Navigation of Arrest and Detention in Beirut: a Case Study", Civil Society Knowledge Center, Lebanon Support, 2015-01-15

143 LL3

ing to a fine.”¹⁴⁴ Additionally, many interviewees noted the success some defense attorneys have had in pushing for judgements that reject the application of Article 534 to ordinary same-sex sexual acts.¹⁴⁵ However, the predominant trend of addressing LGBTQ persons and criminalizing them for their sexuality remains similar. One interviewee said that “the majority of judges are still considering that the article applies,” and went on to clarify how this standard was the result of entrenched norms: “[...] what you need to understand is that for many years nobody actually fought against this interpretation of the article as applicable to same biological sex relationships”¹⁴⁶

An example of this is found in Case L1, in which the two defendants (one of Syrian descent) challenged the application of Article 534. The appeals judge did not take on a progressive stance, and doubled down, suggesting that Article 534 criminalized not only sexual acts but all those engaged in “homosexual relationships.” Part of the decision is provided in a translation by the defense counsel:

*“The court does approve the first degree court and stated as below:
By referring to the facts set out above and the file papers, the victim has committed sexual intercourse contrary to nature, which requires ratification of the appealed judgment regarding the conviction of the defendant, and since the Lebanese legislature criminalized the unnatural relations in Article 534 penalties and requires that the homosexual relationship be considered a relationship contrary to nature according to the accepted standards in the Lebanese society, when the text exists it demands to be followed not neglected. Consequently, based on this, it is necessary to say that it is impermissible to present the legitimacy of human rights and the necessity of preserving equality between individuals in society and their personal freedom, the provisions of which are inconsistent with the text of Article 534, penalties in force, and there is no way to decriminalize homosexual relationships contrary to nature except by amending the mentioned article in a manner consistent with the rules the legal framework that stems from the international agreements that the Lebanese state is bound by”¹⁴⁷*

The two individuals in this case were sentenced after 2 years to a substantial fine without a prison sentence, thanks to the diligent work of the defense team.

144 LL4

145 See: Batroun individual penal judge, ruling issued on December 2, 2009, “Landmark Decision in Batroun District: Homosexual relations are not against nature” accessible at <http://www.helem.net/?q=node/54>; Jdeide individual penal judge, issued on January 28, 2014, Youmna Makhoulf, “Redefining sexual intercourse contrary to nature: a legal step in the right direction”, Legal Agenda, March 10, 2014. This court ruling has not been appealed by the public prosecution; Jdeide individual penal judge, issued on May 5, 2016, accessible at <https://legal-agenda.com/%d9%82%d8%b1%d8%a7%d8%b1%d9%8c-%d9%82%d8%b6%d8%a7%d8%a6%d9%8a%d9%91%d9%8c-%d8%ab%d8%a7%d9%84%d8%ab-%d9%8a%d8%b1%d9%81%d8%b6-%d8%aa%d8%ac%d8%b1%d9%8a%d9%85%d9%87%d8%a7-%d9%81%d9%8a-%d9%84%d8%a8%d9%86/>; Jdeide individual penal judge, January 26, 2017 accessible at: <http://legal-agenda.com/uploads/%D9%82%D8%B1%D8%A7%D8%B1%20%D9%85%D8%AD%D9%83%D9%85%D8%A9%20%D8%A7%D9%84%D9%85%D8%AA%D9%86.pdf> On the 12th of July 2018, the Mount Lebanon Court of Appeal rejected the appeal filed by the public prosecution; Mount-Lebanon Court of appeal, July 12, 2018, accessible at: <http://legal-agenda.com/uploads/%D8%A7%D9%84%D8%AD%D9%83%D9%85%202018.pdf> ; Emily Lewis, “Military prosecutor refuses to file homosexuality charges despite alleged pressure”, January 29, 2020 accessible at <https://www.dailystar.com.lb/News/Lebanon-News/2020/Jan-29/500190-military-prosecutor-refuses-to-file-homosexuality-charges-despite-pressure.ashx>.

146 LL4

147 Case L1

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LEBANON: BREAKDOWN OF CHARGES IN CASE FILES

Case No.	Penal code art. 534	Other Charges	Frist degree charge	Second degree charge
Case 1	✓		Fine of 200,000 LL	Upheld
Case 2	✓		2 months and 400,000 LL	Overtured
Case 3	✓		Pending	Pending
Case 4	✓		3 year	N/A
Case 5	✓		1 year	3 months
Case 6	✓		1 year	N/A
Case 7	✓		Acquitted	N/A
Case 8	✓		1 year	3 months

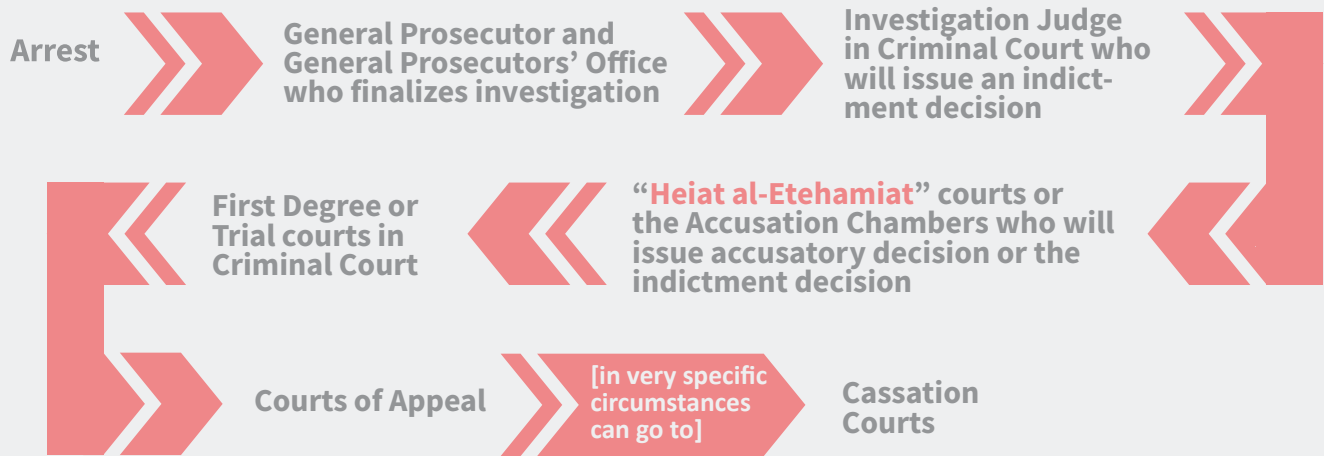
OBSERVED PROGRESSION OF CASES

LEBANON WORKS UNDER A CIVIL LAW SYSTEM

If the case is only a misdemeanor (i.e. not attached to a felony charge such as a drugs charge)



If the case is combined with a felony charge:





MODES OF TARGETING

There are various ways in which queer people are identified as possible targets for prosecution, from street arrests and called-in tips to the use of informants or opportunistic investigations that commence when someone has another interaction with law enforcement, such as reporting a crime or encountering a checkpoint. Putting aside entrapment by police that actually occurs on apps or social media, the majority of these modes of targeting are not in and of themselves digital, but they have been transformed by the use of digital evidence in the persecution of LGBTQ people after devices are accessed. Now that potential targets who have been identified carry their correspondence, photo albums, and social contacts around in the form of smartphones and tablets, police can quickly gather materials and then use it to intimidate the accused and to begin to build their case.

WHO IS MOST AT RISK?

For this report, the interviewees were asked about their understanding of who is most at risk of arrest and prosecution and most targeted by the legal system in these cases. Almost unanimously, all of the interviews mentioned trans women and gay men as the most targeted in these cases. Most pointed to how individuals who are routinely targeted based on profiling are those deemed as trans women and gay cis men, and noted how these persons are perceived in public can result in ‘Street-Level Physical Surveillance,’¹⁴⁸ or stop-and-searches based on perceived “femininity,” and/or “effeminate”

¹⁴⁸ See below for more details

characteristics. The use of anal exams as proof of sexual penetration and affirmation of sodomy charges is also a consideration for trans women and gay men; anal exams are not used on cis women, and thus some of the framework used in these prosecutions would not apply to them.

In Lebanon, trans refugees and those from low-income backgrounds are disproportionately at risk. One interviewee noted that, *“Trans women are definitely most targeted. But it’s also trans women from low-income groups. For example, trans women who were sex workers or dancers are more targeted than a trans women...”*¹⁴⁹ With queer cis men, the Lebanese prosecution targets mostly those from refugee backgrounds. *“They are all vulnerable, but Syrian gay men more than Lebanese gay men, or Iraqi gay men more than Lebanese gay men.”*¹⁵⁰ This is in part linked to financial status of the person under suspicion of being queer, where:

*“Classism is one of the biggest elements of discrimination in Lebanon. So rich queer is not the same as a poor queer. They’re not treated so similarly by the criminal system. So that is the discrimination based on sexual orientation and gender identity is for sure linked with profile and everything and linked with mistreatment and police stations, insults.”*¹⁵¹

In this vein, in Lebanon, street-level physical surveillance does not impact all socioeconomic classes equally. Queer persons in Lebanon who have wealth, status, and Lebanese citizenship are less likely to be at risk.

*“Profiling [...] mainly affects the most disadvantaged among the queer community. A lot of the rich queers in Lebanon will never face prosecution [because] they have their own bars, their own beaches, where they’re able to have some kind of semi public space where they are protected, but this is not this case for disadvantaged queer communities.”*¹⁵²

The same pattern is seen in Tunisia, where interviewees have defined trans women are at greatest risk. One interviewee had conducted a base-line assessment of this for the summer of 2020, and stated, *“If we just based on the past three months of summer from the investigation, the early investigation, data investigation until actually getting to the courts the biggest population that has been targeted recently is trans people.”*¹⁵³ Queer cis men in Tunisia are also at risk if they fail to fit into heteronormative conceptions of masculinity. *“Most targeted... gay men, trans women, etc. Well for me it’s all the LGBTQ*

149 LL5

150 LL6

151 LL3

152 LL3

153 TL7

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community but especially gays and trans persons due to their apparent effeminacy.”¹⁵⁴ Police use visual identifiers for this, where judgement of effeminacy is because of the “outfit, or based on how they speak, how they behave”¹⁵⁵ However, of the three countries, Tunisia is the only country in which cases against cis women were mentioned. One interviewer wrote that “most of the cases are actually gay men, like once in a while or twice a case of women —well like cases of two women— but most of the time it has always been gay men who are more persecuted.”¹⁵⁶ Another interviewee observed that there has been an increase in the targeting of cisgendered queer women in the country, and mentions one instance in particular, where “on August 5th, 2019, there was a big arrest and [lesbian] women were arrested. [...] a group of women [were] beaten by the police and they took their identification cards but then the lawyers intervened and they let them go.”¹⁵⁷

In Egypt, the interviewees found that when it came to courts, based on their knowledge, “there was no cases against queer [cis] women under this law.”¹⁵⁸ Furthermore, “there are no laws against lesbian [cis] women, even if they’re in the same place or same house as there’s no legal basis to it. The only people are homosexual men.”¹⁵⁹ The Egyptian interviewees affirmed that the most targeted persons in the LGBTQ community are trans people and queer cis men, and sentencing is always harsh due to the, “pictures and them looking like a woman and so on, the anal examination, and of course the provocative pictures that they usually attach with the police report”¹⁶⁰

In all three countries, another reason for which trans women are often highly at risk in these situations are the issues of documents and ID cards not being updated to match their gender identity. This discrepancy can lead to further harassment, and put the trans woman at greater risk of arrest. Those with updated IDs and papers to match their gender identity experience lowered risks, according to the interviewees.

In the interviews from lawyers working in Egypt and Lebanon, it was noted that a large portion of the queer sex workers are trans women. Trans women sex workers are not only most targeted but also face the highest number of charges, and the most severe types of charges. This is regardless of whether the element of sex work is proven. Disproportionate barriers and challenges placed against trans women (who are often arrested for merely existing) is also followed by the highest amount of targeting and prosecutions. Trans women often get prostitution charged regardless of whether they were engaged with sex work or not. One interviewee said of one client that she was:

“just walking on the street. She’s trans women and she was really just walking

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*on the street. [...] She got pulled over for prostitution suspicious and they started asking her about her private life and why she's trans and they tried to go into her phone and stuff like that. And then they charged her with [Article] 534."*¹⁶¹

This woman was acquitted due to the challenges of this lawyer. *"But, this is to tell you that usually trans women get arrested because they are suspected by the police force that they are practicing prostitution, even though the police force do not have any element for arresting the person or even having the suspicion that this person is practicing prostitution."*¹⁶²

Queer cis women, non-binary people, and trans men face varying and specific challenges societally and legally, resulting in charges being brought against them differently under the three countries' legal systems. It is important to note that these responses are only regarding these types of arrests and the experiences of these persons as they proceed through the courts. This is not covered in depth in this report and might be flagged as an area of concern for future research.

Finally, refugee status was mentioned earlier as a possible point of vulnerability for members of the LGBTQ community. This is of greatest concern in Lebanon, in which refugees from Syrian, Palestine, and Iraq are often subjected to unbalanced or unfair treatment when they come into contact with law enforcement. According to UNRWA sources, there are currently an estimated 450,000 Palestinian refugees, 10,000 Iraqi refugees and 991,917 Syrian refugees.¹⁶³ (Other sources estimate that there are more than 500,000 unregistered Syrian refugees in Lebanon¹⁶⁴). The Refugees in Town project has observed that refugee status in Lebanon is precarious, as:

*"Lebanon is not a signatory to the 1951 UN Refugee Convention nor its 1967 Protocol, and it has no legislation to govern its response to the specific needs of refugees and asylum-seekers. Refugees who enter the country without prior permission or who exceed their visas are considered illegal residents and are fined or imprisoned for long periods of time and then deported. In the absence of permission to stay and wait for a long-term solution, refugees face major hardships, including the inability to work, which in turn means that they cannot meet their families' basic needs."*¹⁶⁵

These factors play roles in the targeting, impact, sentencings and processes in these

161 LL4

162 LL4

163 Full stats and analysis: Refugees in Towns. 2021. Beirut — Refugees in Towns. [online] Available at: <<https://www.refugeesin-towns.org/beirut>> [Accessed 22 December 2021].

164 For example: Diego Escalona Patural, P., 2021. Syrian Refugees in Lebanon: Impact and Recommendations. [online] Carnegie Middle East Center. Available at: <<https://carnegie-mec.org/2013/06/25/syrian-refugees-in-lebanon-impact-and-recommendations-event-4136>> [Accessed 22 December 2021].

165 Ibid

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prosecutions. If refugees are arrested on the basis of Article 534, or other charges centered in gender conformity or morality, the arrest might negatively impact their status and rights in Lebanon. One lawyer observed that, *“in the case of the refugees is that once they are charged with Article 534, if they get resettlement in many cases there is a decision from the General Security to forbid them from entering the Lebanese territory.”*

¹⁶⁶ The interviewees outline cases of individuals facing this issue there even if they have not been charged or sentenced, they have faced hefty entry bans of up to 50 years. *“When you are also a refugee you have a double vulnerability. You have vulnerability as a member of the LGBT community and you have vulnerability as a refugee.”*¹⁶⁷

CYBER LAWS

Due to increased reliance on digital evidence as a component of prosecution, there is a corresponding increase in the use of cyber laws to persecute queerness. Among the three countries, Egypt is the most accustomed to using cyber laws in cases involving LGBTQ persons and groups, and infrastructure to support the use of cyber laws for these purposes is in place. In Tunisia, there are some instances of cyber-related laws being used. In Lebanon, no such cases have yet been observed; however, laws have been adopted which provide the state with search powers that may become relevant in policing sexuality in general, and the sexuality of LGBTQ persons in particular.

The shift towards digitizing prosecutions in Egypt

The shift to digitisation of queer prosecutions is, essentially, a process which stems from the digitisation of queer lives. The move to cyberspace for purposes of both communication and data storage is commonplace for persons living in Egypt regardless of sexuality, but digitization has allowed law enforcement access to a broader range of readily accessible personal information. While this research was underway, there was a pronounced increase in the use of cyber laws in the type of cases being studied. Specifically, Article 76 of the Telecommunication Regulation Law, which criminalizes the “misuse of telecommunications,”¹⁶⁸ and Article 25 of the cybercrime law, which criminalizes the use of technology to “infringe on any family principles or values in Egyptian society.”¹⁶⁹

The interviews for this project commenced around February of 2020; beginning in March of that year, interviewees in Egypt and local experts in the topic of legal rights for LGBTQ persons noted that a number of cases, predominately of sex workers, were

166 LL4

167 LL4 - this can of course also occur with other criminal charges

168 Article19.org. 2021. [online] Available at: <<https://www.article19.org/data/files/medialibrary/37966/Egypt-telecoms-report--English.pdf>> [Accessed 22 December 2021]. (In this English translation it is translated as “illegitimate means to conduct telecommunication correspondence” <http://hrlibrary.umn.edu/research/Egypt/Egypt%20Telecommunication%20Regulation%20Law.pdf> yet holds the same interpretation)

169 Cyrilla.org. 2021. Law No. 175 of 2018 on Anti-Cybercrimes and Information Technology Crimes • Page 2 • CYRILLA: Global Digital Rights Law. [online] Available at: <<https://cyrilla.org/en/document/eonsr41300kx0jqeipsvbcso?page=2>> [Accessed 22 December 2021].

being transferred to that country's Economic Courts.¹⁷⁰ This confirmed a central premise of this report: there is an increasing reliance in the prosecution of queer people on digital evidence and documentation. As online communities grow and data can be extracted from these communities, concomitant changes in policing and prosecution strategies occur in turn. However, as the case files taken from Egypt available for this research contain some evidence of the shift to the Economic Courts, but does not take into account the overall significance of the shift, it is anticipated that more investigation will need to be done to document these new prosecution methods. In the scope of the current research, evidence that has been collected on the relationship of Egypt's Economic Courts does indicate that there are strong connections between financial laws and cyber crime laws. These shall be detailed in this section.

When the Egyptian Economic Courts were created in 2008, they were endowed with jurisdiction over financial laws, including the 2003 Telecommunication Regulation Law; in 2019, jurisdiction over Egypt's 2018 Anti-Cyber and Information Technology Crimes Law (known as the "cybercrime law")¹⁷¹ was added by decree.¹⁷² With this addition, the economic courts began exercising influence over public life by policing online "morality" and reinforcing digital surveillance. Advocates for the queer community predicted this law would be weaponized against them, with one interviewee noting that: *"cybercrime legislation authorities have the tools and ability to watch the internet; they can search and haunt the gays through dating apps like Grindr, WhosHere, and even on Facebook."*¹⁷³ Another said in respect to cybercrime legislation that, *"I think that [this] new security approach, or policing approach, is going to sort of erase the previous approach that was used in Egypt against LGBT groups."*¹⁷⁴ These predictions have been observed in practice, as seen in the recent TikTok cases¹⁷⁵ in which six social media influencers were charged with crimes against "public morals."

Early on, it seemed that prosecutions of LGTBQ people mainly remained in the Egyptian misdemeanor courts or were transferred back and forth from various misdemeanor courts to the Economic Courts. One lawyer observed:

170 Rigot, A., 2021. Egypt's Dangerous New Strategy for Criminalizing Queerness. [online] Slate Magazine. Available at: <<https://slate.com/technology/2020/12/egypt-lgbtq-crime-economic-courts.html>> [Accessed 22 December 2021].

171 Ibid

172 اليوم السابع. 2021. ننشر نص قانون المحاكم الاقتصادية بعد تصديق الرئيس ونشره بالجريدة الرسمية - اليوم السابع [online] Available at: <<https://www.youm7.com/story/2019/8/13/%D9%86%D9%86%D8%B4%D8%B1-%D9%86%D8%B5-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85-%D8%A7%D9%84%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF%D9%8A%D8%A9-%D8%A8%D8%B9%D8%AF-%D8%AA%D8%B5%D8%AF%D9%8A%D9%82-%D8%A7%D9%84%D8%B1%D8%A6%D9%8A%D8%B3-%D9%88%D9%86%D8%B4%D8%B1%D9%87-%D8%A8%D8%A7%D9%84%D8%AC%D8%B1%D9%8A%D8%AF%D8%A9/4374050>> [Accessed 22 December 2021].

173 EL3

174 EL4

175 SMEX. 2021. The TikTok Case: A New Platform to Oppress Women in Egypt. [online] Available at: <<https://smex.org/the-tiktok-case-a-new-platform-to-oppress-women-in-egypt/>> [Accessed 22 December 2021].

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*"I think [the] courts didn't want to handle such cases.... So at the beginning case files shifted back and forth. [It] was settled from top... [not] actually through clear procedure or a clear justification. I think it was just to build up a new system of Internet surveillance and it happened to cover LGBT cases. Dating in general, not only in in the gay community, but dating in general is more online right now. This is just like they were caught in the crossfire. It wasn't structured to address LGBT cases."*¹⁷⁶

By September of 2020, a significant percentage of LGBTQ cases involving digital evidence were being transferred to the economic courts. Transfers were generally accomplished through the addition of charges under Article 76 of the Telecommunication Regulation Law, criminalizing the "misuse of telecommunications,"¹⁷⁷ and Article 25 of the cybercrime law, criminalizing the use of technology to "infringe on any family principles or values in Egyptian society."¹⁷⁸ **This shift enabled police and prosecutors to optimize their use of digital evidence in the pursuit of more stringent sentences.** Based on the comments of the lawyer interviewed, it is possible to bring debauchery and prostitution law charges before the Economic court and therefore combined charges. An interviewee provided the necessary background to understand why the state's strategy evolved:

*"So the story begins back when they would arrest people from the dating apps or chat rooms and the evidence that they would usually use are screenshots of the conversations, the screenshots of the accounts and so on. They noticed that they often lost these cases and the accused would get acquitted often simply because according to the debauchery law, you have to add a sense of publicity into a conversation, but this conversation happens between two people in private. [...] The law says that the invitation needs to be public while the entire dating apps' mechanism is established on the whole private conversation between two people."*¹⁷⁹

Yet this process also creates vulnerabilities for the prosecution. Even as law enforcement found that moving cases through the misdemeanor courts could circumnavigate defense strategies, the defense teams found success in challenging these cases on their lack of legal substance, resulting in reduced sentences or in gaining acquittals. In the case files reviewed for this report, 5 defense teams achieved acquittals at some point

176 EL4

177 Article19.org. 2021. [online] Available at: <<https://www.article19.org/data/files/medialibrary/37966/Egypt-telecoms-report--English.pdf>> [Accessed 22 December 2021]. (In this English translation it is translated as "illegitimate means to conduct telecommunication correspondence" <http://hrlibrary.umn.edu/research/Egypt/Egypt%20Telecommunication%20Regulation%20Law.pdf> yet holds the same interpretation)

178 Cyrilla.org. 2021. Law No. 175 of 2018 on Anti-Cybercrimes and Information Technology Crimes • Page 2 • CYRILLA: Global Digital Rights Law. [online] Available at: <<https://cyrilla.org/en/document/eonsr41300kx0jqeipsvbcso?page=2>> [Accessed 22 December 2021].

179 EL2

in the proceedings; 4 out of 5 of these cases were challenged on procedural issues addressing police evidence-gathering methods and questions of evidentiary authenticity. One judicial acquittal was based on the lack of elements of the crimes as proscribed by the law and by Courts of Cassation precedence. Interviewees' experiences indicate that lawyers are increasingly aware of legal holes in the prosecutor's case, especially in respect to missing elements of the crimes, which occur when the prosecution shifts between courts to maximize data evidence.

Moving to the Economic Court, however, closes many of these legal holes. For example, multiple interviewees noted that as offenses under the cybercrime law did not require the aforementioned public element, prosecution in the Economic Court would become the prevailing trend. One interviewee noted that after *"police officers took note and started writing that the person violated the cybercrime law in the police report as well. And when that happens, ... it's much easier for the prosecutor to send it to the economic court because ... he is more guaranteed to get a sentence that he wants from the economic courts more than the regular court."*¹⁸⁰ Thus, if the debauchery law charges fail, charges filed in the Economic Court based on cyberlaw or telecommunications law may still succeed in guaranteeing a sentence. These procedures also play into an ongoing theme of this research, in which **sex worker cases are often used to test the viability of new laws and/or new law enforcement procedures, with one interviewee noting that, "if you really need to follow the rhythm, you will need to see the sex working cases. It's like there are more sex working cases in [the Economic] Court than like debauchery ones."**¹⁸¹ The only exception is for cases that do not contain digital evidence, such as cases of queer people, including sex workers, arrested on the streets. These remain in the regular felony courts:

*"Of course there are cases outside the dating applications that go to the regular courts. But [I] don't think any cases that have been caught by the applications are going outside of the economic court. This is easiest for the police, because they are just sitting in their office doing nothing and they are just talking on their phone and then they do the arrest"*¹⁸²

Even as the Economic Court is evolving as a core prosecution pillar of the Egyptian authorities in policing online "morality," the LGBTQ/sex worker cases stand out as anomalies, as these are cases based on private activities by private actors and are not committed in public domains. Some older instances of prosecution of Egyptian LGBTQ persons originated in public posts and it has therefore been argued that these posts meet the public criteria of morality laws: one example of this is queer sex workers advertising their

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services on Backpage. In other cases, such as the infamous Tiktok cases where women were arrested for posting Tiktok dances,¹⁸³ charges levied under cybercrime laws are based on public social media posts. However, in the newer cases and interviews studied under this report, there has been no indication that people are charged or even arrested based on their public posts or activity, although there are limited external reports of this (e.g.: the Rainbow Flag cases in which the public display of a rainbow flag is framed as a violation of morality laws).¹⁸⁴

The impact of increased recourse to the economic courts is significant. It brings with it increases in the number of charges and in the severity of sentences, which present additional barriers for defense teams. As one interviewee noted,

“Right now if you are a defense lawyer and you are going to represent a person in that kind of case, you don’t get only that debauchery law articles, you also get the two articles that I mentioned before [under the cyber law and telecommunications law] and the three charges that I mentioned before [under the debauchery laws¹⁸⁵]....So instead of spending five minutes on practice and habitual debauchery now we have to try and defend the accused for five charges.”¹⁸⁶

Lawyers working on these cases outline the complexity that comes with the breadth and vagueness of the cybercrime charges. There is consensus that the most dangerous of the laws is Article 25 of the cybercrimes law:

“[this law] doesn’t have any elements to it. Every crime has an element, like the elements that are understood, elements that are clear, not only for the lawyer but for the person because if you want to criminalize something you need to make it clear for the individual so they wouldn’t commit the crime, but an article like violating family values and social traditions and so on, it’s so vague and so flexible and open to interpretation that no individual will have an understanding of it to prevent doing that crime. And this is an issue even for the defendant because how do you defend something that doesn’t have an interpretation?”¹⁸⁷

The lack of specificity in these laws amounts to a delegation of authority from the legislature to the courts, and affords the courts and prosecutors tabula rasa to avoid pro-defendant precedent on debauchery laws put before the Court of Cession. The same

183 SMEX. 2021. The TikTok Case: A New Platform to Oppress Women in Egypt. [online] Available at: <<https://smex.org/the-tiktok-case-a-new-platform-to-oppress-women-in-egypt/>> [Accessed 22 December 2021].

and Global Freedom of Expression. 2021. The Case of the Egyptian TikTok Influencers - Global Freedom of Expression. [online] Available at: <<https://globalfreedomofexpression.columbia.edu/cases/the-tiktok-girls-case/>> [Accessed 22 December 2021].

184 ARTICLE 19. 2021. Egypt: Crackdown on LGBTQI people and their supporters must stop - ARTICLE 19. [online] Available at: <<https://www.article19.org/resources/egypt-crackdown-on-lgbtqi-people-and-their-supporters-must-stop/>> [Accessed 22 December 2021].

185 Article Number 9-C that includes practicing habitual debauchery; article 14 that includes promoting and advertising for debauchery and prostitution; and article 1 that [criminalizes] inciting debauchery

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187 EL2

interviewee noted that: *“This [goes] back to the fact that the lawmaker did not define this crime and they left it entirely in the face of the judicial authority and the prosecutor and the court to decide what crime is it and what elements it should be.”*¹⁸⁸ . Another interviewee observed something similar, stating:

*“If you ask someone what family values means, it’s different from one place to another. A person who is living in the UK is different from someone who is living in a rural family. The fact is, in my opinion, [Article 25 of the cybercrime law] can be open to interpretation and that is against the constitution, that you would punish someone based on that article that does not define what the crime is, with jail you would take away a person’s freedom for committing a crime that does not have an interpretation.”*¹⁸⁹

This interviewee also found that the move toward digital evidence and cybercrimes makes a “very big difference” to the outcome of cases. In particular, the interviewee observed that there is “a very big jump” on the severity of sentences, as the cybercrime law provides higher fines and longer prison terms:

*“If we look at the Law No 10/1961 we’ll see that article number 9-c that is related to practice and habitual debauchery says that the person is to be punished for a minimum of 3 months and the maximum of 3 years or a fine does not go over 300 Egyptian pounds and probation of the same time that person receives. The new law, Law No. 175, Article 25 [of the cybercrime law], the punishment is at least 6 months—here we see a 3-month increase in the jail time punishment—and the fine does not go lower than 50 thousand Egyptian pounds and maximum of 100 [thousand] Egyptian pounds...”*¹⁹⁰

Furthermore, the overall structure of these laws is not just defined by longer prison terms, but by the overall lack of options for punishment except for those of prison terms, where *“under the new law there is no probation, so it is just jail time.”*¹⁹¹

In terms of defending these cases, the interviewees reviewed for this report have indicated that acquittals are only won in instances where the police or prosecution makes procedural errors. This is significant in that it is increasingly unlikely that defendants will be able to prove their innocence; without a procedural error, the question will be the length of sentence and under which law:

*“in Economic Court, ... if your arrest is correct, and the prosecutor did the case correctly, and the court did the case correctly, **you will get a sentence**. And even if you manage to escape being sentenced under the debauchery and prostitution*

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law you certainly get sentenced for the new cybercrime law with this vague article of social and family values.”¹⁹²

The situation continues to evolve. In September of 2021, the Egyptian government released the executive list for the cybercrime law.¹⁹³ Prior to this, lawyers had been able to point to the lack of definitions and established procedures as part of their defense. One interviewee characterized this as *“a loophole that [he] tries to work in these kinds of cases.”*¹⁹⁴ However, the executive list now codifies a broad range of chargeable digital offenses. It also provides the courts with power to bring in technical experts to certify digital evidence. In the misdemeanor courts, challenging unverified and potentially erroneous evidence-gathering procedures was a viable defense strategy. This will be very difficult now for defense lawyers. One interviewee stated that the court brings in a *“specialized cyber person.”*¹⁹⁵ The credibility of the evidence thus assured, defense lawyers are unable to challenge the case based on shoddy procedures.

Three of the case files (from 2016, 2017, and 2019 cases) resulted in acquittals as defense teams were able to convince the presiding judges that there were authenticity issues in the digital evidence gathered by informers and investigators. It was argued that there were different levels of mishandling or misrepresenting the evidence, demonstrating that the police, prosecutors, and these courts in general still have limited understanding of the technologies used. In this segment from the (unofficial) translation from a 2019 case, the court is direct about this: *“The court does not find the story provided by the police plausible, as the elements seems shaky at best and the court does not find the evidences provided to be enough for a sentence [...]”*¹⁹⁶. By bringing the case before the Economic Court, however, sophisticated evidence-gathering and expert evidence presentation by technical experts might undermine established defense strategies. Finally, lawyers active in representing members of the Egyptian LGBTQ community have observed that digitized evidence being used to “prove” something so intangible as an individual’s sexuality is not isolated to Egypt. One interviewee noted that issues in Egypt are likely to emerge throughout the region, and these will have repercussions for LGBTQ persons in both their private and public lives.

“Definitely, that’s something in the region and not in Egypt... there is a need to have surveillance over the internet... Therefore, it’s not a surprise at all that you would have cybercrime laws starting to come into the picture or starting to emerge all together in the region. Saudi Arabia, Bahrain, Jordan, Tunisia and Lebanon: that’s almost like within the two or

192 EL2

193 cairo52. 2021. اللائحة التنفيذية للقانون رقم 175 لعام 2018 بشأن بشأن مكافحة جرائم تقنية المعلومات - cairo52. [online] Available at: <<https://cairo52.com/ar/%D8%A7%D9%84%D9%84%D8%A7%D8%A6%D8%AD%D8%A9-%D8%A7%D9%84%D8%AA%D9%86%D9%81%D9%8A%D8%B0%D9%8A%D8%A9-%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%B1%D9%82%D9%85-175-%D9%84%D8%B9%D8%A7%D9%85-2018-%D8%A8/>> [Accessed 22 December 2021].

194 EL6

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three years that the cybercrime laws started to rise up, they all came to the picture together and they all even used sometimes the very same provisions without using different language. So, there is a very obvious concern about expressions that are developed over the internet. Especially after having a very tight grip over the public space. [When] there is no breathing space for physical appearance in public, people go to virtual [spaces], right? So, authorities ... see there is a need for developing criminal laws that would provide such a role.”¹⁹⁷

Cyber laws in Tunisia and in Lebanon

In Tunisia, the interviewees report multiple similarities to events described in Egypt. Of especial note is the use of the Telecommunications Code against LGBTQ people, as Article 86 of the Telecommunications Code 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.”*¹⁹⁸ 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. Here, Article 230 of the Penal Code is of greatest significance, as it has already been used in the other Penal Codes used against the LGBTQ community along with Articles 226 and 226b. One interviewee noted,

“in practice and according to the code of digital laws ... [law enforcement and prosecutors] go through the private life, digital accounts of people and [...] use that as evidence to basically criminalize them. [Then] according to public decency and good manners [laws] ... you can actually prosecute someone for public decency or good manners. So, it is mostly what it’s used for and also as well it could be used eventually for Article 230 as well.”¹⁹⁹

While gathering data for this report, no documentation of the direct use of Tunisia’s Communications Law used in conjunction with Article 230 was identified, but its use to supplement adjacent laws was observed: public indecency (Article 226)²⁰⁰, and violation of public morality (Article 226 bis)²⁰¹. One of the interviewees pointed out how Telecommunications Code laws are currently reserved for surveilling journalists and other such cases that hold more political sensitivity, while the LGBTQ cases are mainly confined to

197 EL4

198 Regulation of online content Tunisia. Internet Legislation Atlas. (n.d.). Retrieved February 4, 2022, from <https://internetlegislationatlas.org/#/countries/Tunisia/frameworks/content-regulation>

199 TL2

200 Article 226 of the Penal Code: “the arrest of up to 6 months and 48 dinars for anyone who is recognized guilty of public indecency”.

201 Article 226bis: “Anyone who will exhibit a violation of morality publicly or public decency through gesture, word or intentionally bother someone in a way that violates decency will be punished by 6 months of imprisonment and 1000 dinars penalty”.

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penal laws and procedures. As has already occurred in Egypt, extending the applications of Articles 230 of the Penal Code and 86 of the Telecommunications Code would likely result in corresponding increases on the reliance of digital evidence in prosecutions, as well as increasing resources allocation to technological evidence. However, there have been instances in which extensions of the Communications Law have been applied to suppress the rights of LGBTQ persons. For example, one interviewee noted that, *“One case of using [this] law: a person from an LGBTIQ+ organization went to report a police officer and instead got beaten up. He posted a video explaining what happened in social media which led the police officer mentioned in his video to accuse him of “attacking the police through an online post”*.²⁰²

In Lebanon, no evidence could be found of the use of cybercrime laws used to prosecute LGBTQ persons or organizations. There has, however, been an introduction of laws that further define the uses of digital evidence in criminal and civil cases, with the No. 81 “Relating to Electronic Transactions and Personal Data” law of 2018. There is a more in depth discussion of this below in the Gathering Digital Evidence section. As this is still a new law with limited implementation, interviewees are still working to engage with the law and assess its implications for their clients. As one interviewee stated:

*“We didn’t have anything related to cyber criminality until like legislation from a larger perspective. We didn’t have anything until 2018 where there was a law on electronic proceedings that was adopted and about cyber crime and criminality. It’s a very young law and still not being put into effect ...still not made it through and the public administration. But what you need to know is that even before there was a cyber-criminal bureau that was created for investigation regarding cyber crimes. And investigators there go through Facebook and sometimes they go through the phone records and everything even though they don’t have a legislative act that would Permit to go through all of the digital documents and recordings and everything. You actually have an old law that is related to phone conversations. So it’s only like conversations on the phone. And this law says that police forces cannot put hearing devices or intercept conversation calls or messages if there is not a decision, a motivated decision, from the instruction judge.”*²⁰³

Thus, while there are no distinct cyber crime laws or articles used to prosecute individuals in Lebanon, there are procedures and legal frameworks that are newly relevant to the acquisition and use of digital evidence, as well as the emergence and application of the authority vested in the new Cyber Crimes Bureau. In relation to why the 2018 E-transactions law itself has not yet been fully implemented, one of the interviewees explained the rationale for hesitancy: *“We haven’t yet seen its full implementation, and that’s for several reasons,”* they said, as:

“The first [reason] is that the law is horrible, it’s based on a very old draft and

202 TL1

203 LL4

*Parliament didn't really look into all the technological advances that have happened. So it doesn't provide enough guarantees, if you want, when it comes to digital evidence and it doesn't always provide a good process on the use of digital evidence in criminal cases. It has a lot of gaps. [The second reason] is that our understanding that parliament did a bad job, but also our understanding is that a lot of judges are not well aware of the legal changes that were introduced by the law."*²⁰⁴

At the time of writing, provisions from surveillance or cyberlaw are not used to prosecute individuals in either Tunisia or Lebanon. None of the 29 cases reviewed contain cyberlaw-related charges. In Lebanon, the only provisions used are from the Penal Code; however, digital evidence is used in some cases. As one interviewee put it, "We don't have specific cyber laws actually in Lebanon but we [do] use cyber evidences."²⁰⁵ It is as yet unknown how or why civil law, cyber law, and criminal law might interplay within the prosecutorial process, but it is apparent that this interplay does occur and does have significant outcomes for defendants.

IMPUNITY FOR VIOLATIONS OF PROCEDURAL GUARANTEES

PROCEDURAL REQUIREMENTS

EGYPT

Egypt has procedural guarantees to ensure accuracy of process, but there are sufficient exceptions, in both law and in practice, to render them largely useless for LGBTQ defendants. An interviewee summarized:

*"Article 57 of the Constitution²⁰⁶ is in place now for the Republic of Egypt. Conversations, whether through mail or digital lines, are private and should not be reviewed by someone unless there is a legal cause for it [...] Article 95 from the criminal procedure law that says that only an investigation judge has the right to see and review these conversations and letters and payments and so on that have been apprehended on the person. The person should be present during this kind of investigation."*²⁰⁷

204 LL3

205 LL1

206 Right to private life: Constituteproject.org. 2021. [online] Available at: <https://www.constituteproject.org/constitution/Egypt_2014.pdf> [Accessed 22 December 2021].

207 EL6

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However, there are no guarantees that these stated protections will be followed, especially by the police, who: *“break every right that [queer people] have under the law and they break every right that [queer people] have under the Constitution of the Arab Republic of Egypt has provided to that person under its articles.”*²⁰⁸ In terms of legal justification, no cause was demonstrated for the device searches documented in many of the reviewed Egyptian case files. Interviewees confirmed this is typical, although they disagreed about the general prevalence of arrest warrants:

*“So there is no legal background to the search or the evidence that is collected [...] the entire search and arrest is illegal because there is no search warrant and there is no arrest warrant and so on.”*²⁰⁹

*“The majority of cases - 90% or 95% - would have only an arrest warrant. And an arrest warrant does not justify a search.”*²¹⁰

Any remaining procedural elements around warrants also have no impact, however, because of how the levels of law enforcement are able to collaborate to render it irrelevant. “Instead of taking only the police evidence,” the Public Prosecutor performs a second search of the device. *“When the Public Prosecutor searches the phone they are correcting the wrong that was done by the police because then the Public Prosecutor has the right under the law to [conduct the] search.”*²¹¹ And as a result *“they still use it in the courts. The Public Prosecutor does not agree to remove it”*²¹² if there is no evidence of a warrant for the initial police search.

The Egyptian Criminal Procedure Law—in particular Article 30—allows police officers to detain or arrest individuals without a prior warrant from the Public Prosecutor Office in cases of *flagrante delicto*. The interviews and prior consultations with NGOs, such as Bedayaa,²¹³ provided evidence that police officers will fabricate “*flagrante delicto*” scenarios when writing their reports to ensure the lawfulness of the arrest procedures. These include accusations that the defendant had been trying to “seduce men” on public streets with suspicious acts and signals. However, none of the case files in this report documented such arrests.

Higher thresholds for procedural accuracy apply to a search and arrest on private property, but the police can bypass them by fabricating stories of the arrests as having taken place on the street. Due to the evidentiary threshold, this doesn’t always work in law enforcement’s favor. For example, in 2020, an individual was arrested after being identified through Grindr. The defendant was acquitted at trial when his attorneys produced proof that he was arrested in his home.

208 EL3

209 EL2

210 EL1

211 EL2

212 EL1

213 These are on-going conversations team relevant team since 2019

“The guy ... got acquitted because he was arrested from his home but in the police report they wrote that he was arrested from street to justify the lack of an arrest warrant. Luckily for him there was a camera that captured that he was taken out of his home not from the street. And based on that the court didn’t even look at the charges and dismissed the case because of the procedural mistakes but the prosecutor actually appealed and they have an appeal session this week.”²¹⁴

TUNISIA

Tunisia has several laws that should, in theory, provide procedural guarantees.²¹⁵ Article 199 of the Code of Criminal Procedure (CCP) states that *“any acts or decisions contrary to the ... fundamental rules of procedure and the legitimate interest of the defense, are void.”*²¹⁶ Equally, Article 155²¹⁷ of the CCP serves to render illegally gathered reports and confessions “null and void.” However, as confirmed by interviewees, as well as in the findings of a report by Human Right Watch,²¹⁸ it is rare for judges to enforce these provisions. In the 9 Tunisian case files reviewed for this report, all included breaches of both Articles 199 and 155, and in none of these cases did the ruling reflect that the judge had invalidated evidence on that basis.

When the interviewees were asked about warrants in Tunisia, the answer came in unison: *“Impossible, impossible, impossible. Not even once. [It] has never happened in an LGBTQ case that they actually waited to get a warrant to have access to this information.”*²¹⁹ Given that a lack of warrants is a notable and repeated instance in all interviews and case files, it could be posited that the overall unrest in Tunisia²²⁰ might be a reason for this intentional oversight, or the state of emergency laws in place since 2015²²¹ might have had an impact. Regardless of cause or causes, following standard legal procedures in Tunisia, as with other national security powers in Lebanon and Egypt, is neither needed nor necessary for police to conduct searches.

214 EL2

215 Human Rights Watch. 2021. You Say You Want a Lawyer?. [online] Available at: <<https://www.hrw.org/report/2018/06/01/you-say-you-want-lawyer/tunisia-new-law-detention-paper-and-practice>> [Accessed 22 December 2021].

216 Ibid

217 “the police report has probative force only so long as it is regular in form and its author acting in the exercise of his functions and reports according to his mandate about what he saw or heard personally. The confessions and statements of the accused or the statements of witnesses, if it is established that they were obtained under torture or coercion, shall be deemed null and void.”

218 Ibid

219 TL7

220 Amara, T. and McDowall, A., 2021. Tunisian democracy in turmoil after president sacks government. [online] Reuters. Available at: <<https://www.reuters.com/world/middle-east/tunisian-democracy-crisis-after-president-ousts-government-2021-07-26/>> [Accessed 22 December 2021].

221 Aljazeera.com. 2021. Tunisia extends five-year-old state of emergency by six months. [online] Available at: <<https://www.aljazeera.com/news/2020/12/26/tunisia-extends-five-year-state-of-emergency>> [Accessed 22 December 2021].

LEBANON

In Lebanon, the Criminal Procedure Code remains “vague on purpose”²²² where it often only requires a Court’s mandate through a phone call from the prosecutor (importantly this is not a search warrant). For device searches, law No. 81 Relating to Electronic Transactions and Personal Data²²³²²⁴ of 2018 (commonly called the Electronic Transactions or E-Transactions law) lowered rights and standards around warrants. It was explained by one of the practitioners:

“What happened with the E-transaction law is that it actually provided how the phone searches can be done. But it lowers the level of protection. It allowed prosecutors to enable search of any portable electronic device, verbally. No written decision, no limitation in terms of type of crime and no limitation in terms of necessity.”²²⁵

In Lebanon, device searches do not require judicial warrants in a classical sense: under this E-transaction law, the Public Prosecutor has the power to seize and search “*hardware, software, data, applications, IT traces and the like*”²²⁶ following the limited procedural protections under the CPA,²²⁷ The Electronic Transactions law significantly lowered protection of privacy rights.²²⁸ Constraints on resources, among police and prosecution departments have increased illegality in procedures. Due to a lack of prosecutors, Lebanon’s court system doesn’t “*have prosecutors [stationed] in the precincts ... So, they only get what the officers are telling them on the phone. They don’t even have the file under their eyes.*”²²⁹. The significance of this under-staffing is that “*law enforcement [can] do what they want. And [defense counsel has] very little supervision*”²³⁰ over what officers and investigators do.

However, it was found that police often bypass even these lax requirements, and prosecutors work hand-in-hand with police to limit the consequences of failure to follow procedures. As procedural challenges are the main way acquittal or decreased sentenc-

222 LL2

223 Cyrilla.org. 2021. [online] Available at: <<https://cyrilla.org/api/files/1588765194459b2ei80i27m.pdf>> [Accessed 22 December 2021].

224 In September 2018, the Lebanese parliament passed The Electronic Transactions and Personal Data law explicitly regulating the protection of personal data : Privacy International. 2021. State of Privacy Lebanon. [online] Available at: <<https://privacyinternational.org/state-privacy/1081/state-privacy-lebanon>> [Accessed 22 December 2021].

225 LL3

226 Article 121 of the ETPDL.

227 Article 123 of the ETPDL

228 According to Privacy International and Smex, “the Articles in the E-Transaction law are riddled with vague and open-ended provisions. Article 87, which sets out the general right to data collection, presents no clearly defined rationale behind permitted data collection. Instead, Article 94 defines specific instances that do not meet the criteria of needing a license for data processing. The law also fails to define key issues such as consent, and regulation and enforcement for the conduct of data processing officers. “The State of Privacy in Lebanon”, Privacy International and Smex, January 27, 2019 accessible at <https://privacyinternational.org/state-privacy/1081/state-privacy-lebanon#dataprotection>

229 LL4

230 LL3

es are won in cases levied against Lebanese LGBTQ persons, it is unlikely that such outcomes will occur when officers can frame the case as they please. As one interviewee stated, *“The court mandate can come from the prosecutor via a simple telephone call. So what usually happens is that police officers actually arrest the person, search them and then they get a posthumous warrant”* after the fact.²³¹

As the procedural requirements themselves are vague and rarely enforced, leaving the accused unaware of their rights, officers and prosecutors leverage other loopholes to push LGBTQ cases through the court. *“The thing is the way the criminal procedure code is written it’s vague on purpose. ... It allows police officers to basically search and arrest people [under] what would be considered a ‘witnessed crime,’ without necessarily defining what the witnessed crime is.”*²³² Police may also intimidate or threaten individuals, including through the use of force to compel consent to a search.²³³ *“They use [searches of digital evidence] in an illegal way. They usually use it to blackmail the person investigated, so he can give them information so they don’t have to go back to the DA [for a warrant].”*²³⁴ The interviewees noted that there is outreach and advocacy being done by Lebanese LGBTQ organizations—especially Legal Agenda—to bring awareness about peoples’ rights to ask for warrants before being searched, although they said more needs to be done. At present, there seems to be an understanding between the police and prosecutors: *“Usually the district attorney lets the police officers do their work, sometimes even if it’s not totally legal. They let them be if they can gather evidence.”*²³⁵

Legitimacy of searches, as well as organized protests held against illegal searches, have been long standing problems in Lebanon. There have been important strides in Lebanon to gain protections against illegal searches. Before the passage of the Electronic Transactions law was a lengthy debate in courts about whether phone searches fell under Article 1 of the Telecommunication Interception Act of 1999 (TIA). Such phone searches would have been prohibited²³⁶ unless the crime for which the suspect was being investigated was sufficiently serious and the first investigative judge issued a written order.²³⁷ However, even during this period, most courts rejected this standing as being too subjective and not in keeping with established evidence procurement standards.

231 LL2

232 LL2

233 Schwartz, A., 2021. So-called “Consent Searches” Harm Our Digital Rights. [online] Electronic Frontier Foundation. Available at: <<https://www EFF.org/deeplinks/2021/01/so-called-consent-searches-harm-our-digital-rights>> [Accessed 22 December 2021].

234 LL1

235 LL1

236 Article 1 states that “the right to secrecy of communications, both internal and external, wired or wireless (landlines and mobile of all types including mobile telephone, fax, electronic mails) is guaranteed and protected by law and cannot be subjected to any forms of tapping, surveillance, interception or violation except in the cases determined by this act” - see also Smex, “State of privacy Lebanon”, January, 2018 accessible at https://smex.org/wp-content/uploads/2018/02/State_of_Privacy_01_18.pdf?utm_source=Social+Media+Exchange+%28SMEX%29+Newsletter&utm_campaign=8e716d5397-EMAIL_CAMPAIGN_2018_02_22&utm_medium=email&utm_term=0_de3253d538-8e716d5397-77182847.

237 Ghida Frangieh, “A dissident opinion issued by the judge Rabih Maalouf: searching phones requires a decision issued by the investigating judge”, Legal Agenda, May 4, 2019 accessible at <https://legal-agenda.com/%D9%85%D8%AE%D8%A7%D9%84%D9%81%D8%A9-%D9%84%D9%84%D9%82%D8%A7%D8%B6%D9%8A-%D8%B1%D8%A8%D9%8A%D8%B9-%D9%85%D8%B9%D9%84%D9%88%D9%81-%D8%AA%D9%81%D8%AA%D9%8A%D8%B4-%D8%A7%D9%84%D9%87%D9%88%D8%A7%D8%AA/>

More recently, following pressure from both the bar association and the committee of lawyers for the defense of protesters since the beginning of the protests on October 17, 2019, the Public Prosecutor at the Lebanese Court of Cassation issued a document²³⁸ with instructions for the judicial police to respect rights of detainees, and to refrain from gathering personal information and data from the suspected individuals' mobile phones without a judicial order²³⁹ issued by the relevant public prosecutor.²⁴⁰ In addition, in October of 2020, the Lebanese parliament approved the amendment of Article 47 of the CPA that, among other rights, requires the presence of a lawyer during the interrogation of detainees by the judicial police.²⁴¹

If implemented properly, the presence of lawyers could dramatically reduce the amount of digital and non-digital evidence gathered illegally, especially in circumstances when the defendant is under duress. None of the interviewees interviewed up until May of 2021 had seen evidence of change on these fronts. While it is still early days of the amendment to Article 47, one interviewee investigated its impact on evidence-gathering: during the second part of their interview (spread over 2 days), the interviewee clarified that *"Article 47 in the Lebanese Procédure Pénale is [...] still not being applied. [...] It hasn't been implemented yet. [...] A lot of judges and prosecutors are against it because they are saying that a lawyer will be playing a big role in driving the investigation [...] So a lawyer can manipulate the police, and manipulate everybody and then try to hide evidence."*²⁴² It can be argued that efforts made to combat police abuse of power are difficult to enforce when there is little to no supervision of investigations, and when police and courts align to condemn accused individuals on the basis of their identity alone.

JUSTIFICATIONS FOR THE LACK OF ENFORCEMENT

There is a significant lack of accountability governing arrest and prosecution in Tunisia, Egypt, and Lebanon, and protections, if any, afforded to LGBTQ defendants. A number of factors influence outcome, such as: authorities' perceptions of their cultural roles; political clout of arrestees/defendants; and resource constraints. A repeated theme in the data from the interviews was how untouchable the police are, with their placement as the "protectors of society."²⁴³ This role was most often reported in interviews from lawyers active in Tunisia and Lebanon. For example, in asking how courts react to illegally gathered digital evidence and confessions, one Tunisian lawyer said that the *"work of police for the court is like holy one. Yes, it's true. It's the reality."*²⁴⁴ This creates conditions in which police decision-making and behaviors are rarely questioned; another Tunisian lawyer noted that *"the investigation of the police [is seen as being] true and it's*

238 on the 3rd of December, 2019 No. 104/s/2019

239 As stated in Article 47 of the Penal Procedures Code

240 Ghida Frangieh, "Lebanese Uprising Enshrines Defense Rights for Detainees", November 30, 2020, accessible at: <https://english.legal-agenda.com/lebanese-uprising-enshrines-defense-rights-for-detainees/>

241 Legal Agenda, Facebook post, October 2020, accessible at: <https://www.facebook.com/LegalAgenda/photos/pcb.4840252502659146/4840252052659191/?type=3&theater>.

242 LL6

243 TL5

244 TL5

not questionable.”²⁴⁵ .

In all three countries, a dichotomy is set up between the accused and the justice system: on one side, the defendants are framed as subverting morality, and on the other side, the police and the courts are framed as the appointed protectors of morality. A Tunisian lawyer remarked how, *“The judges don’t go with us [...] It’s because the police and the judge are in the same team ‘protecting morals, protecting our society.’”*²⁴⁶ In Lebanon, another interviewee stated that:

*“General Security considers themselves as the protectors of the moral order in the country even though they do not have such powers by the law or the constitution or anything... They actually try to frame everything that does not go into their concept of morality in terms of pedophilia or in terms of psychological issues that would explain why a person would not go into that heteronormative view of relationships.”*²⁴⁷

This moral framework sets higher priority on punishment and penance than on fair trials: given the stakes, all procedures and evidence collection methods are seen as acceptable. One Egyptian interviewee said: *“In most of the cases the court and the judge and the prosecutor do not really care about the legality [...] they view these people as sinners and [think that] they deserve the punishment that will be enforced upon them.”*²⁴⁸ Another interviewee said that in Tunisia, *“judges consider that if they will let the accused person go because the procedures were not respected then it will be an impunity ... They consider that this person should go to prison ... Even if procedures were not respected or abused this person is still a homosexual and is still a criminal.”*²⁴⁹

A common theme in interviews was the significant powers of the police and how they can bring these to bear at will. In Lebanon, even as other institutions have become more progressive, the police have retained strong influence. Even while reform-minded judges have been appointed, this hasn’t changed things. *“It is very difficult in front of ruling judges to raise the question of the legality of the investigation and the proceedings that are done by the police force. And that it’s usually very rare that the judge takes this into consideration.”*²⁵⁰ . In Tunisia, the 2011 revolution did not restrict the powers of the police or bring any accountability, and the police seem to have maintained Ben Ali-era strategies and tactics. As one lawyer put it, *“the police had power before the revolution so they didn’t change [...] They are still ‘old.’ They live on the 13th of January, not on the 14th, the day of revolution.”*²⁵¹²⁵² Part of the impunity enjoyed by the police

245 TL2

246 TL5

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248 EL3

249 TL4

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251 In reference to the official date of the Tunisian revolution

252 TL5

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in Tunisia has also been linked to their powerful unions.²⁵³ Police unions in Tunisia have helped shield those police officers who engage in abusive and violent tactics, including for charges of torture.²⁵⁴

Finally, another reason for the disregard for proper procedure is the desire for a rapid resolution with a minimum investment of resources. Although it's not official policy, one lawyer in Egypt noted that prosecutors do try to *"make these kinds of cases go as quickly as they can."*²⁵⁵ Especially in Tunisia and Egypt, this is linked to the perception of immorality as a crime that needs immediate response and management, as it is believed that courts want these cases done and dealt with and out of their purview. In Lebanon, these prosecutions are rarely speedy, but there is a perceived interest in minimizing cost. As one lawyer noted, *"they don't really invest a lot of resources in terms of the way they conduct the investigation. There is no real forensic analysis; there is no expert around when it comes to digital evidence"*²⁵⁶. The interviewee went on to explain that in their experience, courts would understand that in the absence of the resources to do expert analysis, the resort to extreme measures, such as torture, to get a confession and sentence was justified.²⁵⁷

GATHERING DIGITAL EVIDENCE

As digital evidence is central to the prosecution of LGBTQ people in Egypt, Tunisia, and Lebanon, illegal access to devices is central to the gathering of that evidence. All 21 interviews, across all three jurisdictions, confirmed this. Similarly, such searches are observable in 26 out of 29 case files: in these cases, digital evidence formed the backbone of the subsequent prosecution.

Digital devices have become a setting for criminal activities in queer cases, as photos and messages become evidence. *"Sexting," a Lebanese interviewee told us, "is something that always triggers these kinds of prosecutions."*²⁵⁸ The combination of interviews and studies of case files provides unique insight into the collection of digital evidence. Defense attorneys lack access to police, investigator, and prosecutor practice manuals, but they know intimately the experiences of their clients who underwent investigation and prosecution. The case files provide insight into the authorities' processes, particularly in respect to what evidence is presented and how the courts react. All cases reflected very basic policing methods in the management of digital evidence, rather than advanced digital forensic evidence management.

Notably, interviewees agreed that currently police and prosecutors predominantly rely

253 Ebel, F., 2021. Tunisian police are using drones and Facebook to doxx protesters fighting for gay rights - Coda Story. [online] Coda Story. Available at: <<https://www.codastory.com/authoritarian-tech/anti-lgbt-crackdown-in-tunisia/>> [Accessed 22 December 2021].

254 Grewal, S., 2018. Time to Rein In Tunisia's Police Unions. [ebook] Product on Middle East Democracy. Available at: <https://scholar.princeton.edu/sites/default/files/grewal/files/grewal_final_180329.pdf> [Accessed 22 December 2021].

255 EL6

256 LL4

257 The interviewee asked to not directly quote this note

258 LL3

on digital evidence from phones, rather than laptops or other devices. It is likely that this is because arrestees often have phones on their person when stopped; as phones have become the locus of individual personal communications, these devices generally contain sufficient material to be used as evidence against its user. A Lebanese interviewee found that: *“Everybody uses their mobile phones, everybody has photos, everybody has apps, dating apps, whatever, and everybody uses WhatsApp, the [Facebook] Messenger, other forms, you know there’s hundreds of them... so when somebody is caught the first thing, they do is to confiscate their phones and then to go through it.”*²⁵⁹

Coercive Tactics

The coercive methods used to access devices are in line with the adhoc, illegal, and low-tech methods used by authorities throughout the persecution of queer people, where the aim is to pursue a conviction by any means, not to conduct a genuine investigation or ensure a fair trial. Most people cannot refuse the demands of the police in these situations. This is echoed in interviews across the jurisdictions studied, due to the power dynamics and the strain and fear involved in being in a police station within legal structures that criminalize your being. One interviewee explained,

*“[Police and prosecutors] intimidate you to get your password if you have [one], and they are going to tell you, ‘Listen, either you give us your password or we are going to give it to a specialist anyway and he’s going to open it for us. And in case we find anything we’re going to make it even harder for you.’ So they use these intimidation verbs and words and you know, they’re going to [be] tough on you.”*²⁶⁰

When such intimidation is successful, the resulting search can be framed as consensual.²⁶¹ *“A lot of people [agree to the search] because they are afraid or under pressure, even being tortured”*²⁶² and thus give consent. This is subsequently hard to challenge in court because the *“answer would simply be ‘but you gave the passcode so you agreed’.”*²⁶³ In the instances when someone refuses to cooperate, police can sometimes use workarounds. For example, if a person does not provide their password, on some phones the *“phone can be opened with his facial recognition. They just point it at his face, or try to use his finger to open it and so on.”*²⁶⁴ Other coercive tactics may have more commonly

259 LL6

260 LL6

261 Schwartz 2021

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included physical violence, but in Tunisia interviews confirmed that with recent changes to legal rights of detainees, certain methods of torture have been curtailed. *“Now with 2016 law, it’s the law number 5 of 2016²⁶⁵, they cannot violate the person. They cannot hit him. But... before the [involvement] of the lawyer... they confiscate the phone.... You cannot reject it. And in that time, they enter by force into the phone ...”²⁶⁶*

A repercussion of such coercive techniques by police is that victims may internalize the threats. When prosecuted, they may be reluctant to challenge the authorities’ conduct as part of their defense, seeing it as only deepening their involvement in a process that may threaten their livelihood and relationships. Due to the mounting risks, many victims will avoid further interactions with the police or law enforcement, meaning that they may decide to withdraw accusations of police abuses.

Straightforward Search Techniques

Investigatory methods used to search through digital evidence are surprisingly traditional in scope and application.²⁶⁷ Digital evidence is gathered through traditional policing and investigation tactics: patrols, informants, interrogations, forced device checks, and so on. These methods are more than sufficient (indeed, efficient) ways of making these types of arrests. One Lebanese interviewee captured the general tone in saying, *“To my knowledge, they use like the basic, the very, very basic tools just looking through the phone [...] I mean I haven’t seen them use any complicated or complex software.”²⁶⁸* . Sophisticated data analysis techniques are rarely available, or even necessary. In Lebanon, persons detailed under “[Article] 534 cases find themselves in regular police stations where law enforcement are not specifically trained on certain things, not even our technology. However, most of them are also referred to the vice bureau.”²⁶⁹ One Tunisian interviewee exclaimed, *“No, they are not that clever in technology. Thank God.”²⁷⁰* However, this may be changing in Egypt as this report comes to press (see following section on “Technical Evidence from Other Sources”). At the time of publication, it remains unclear whether authorities in Egypt are currently using Cellebrite, which is software that extracts data from mobile devices and generates a report about the extraction²⁷¹, and is sold to law enforcement agencies globally²⁷², a similar brand of software, or whether officers and prosecutors are just manually looking through the phones.

265 Human Rights Watch 2021

266 TL5

267 The use of basic policing methods will not be a surprise to those familiar with criminal law and procedure and prosecutions of peoples with marginalized identities. This is however an important point for those involved in technology, human rights, and ethics discussions who have predominantly seen the weaponization of sophisticated surveillance tech by law enforcement agencies around the world.

268 LL5

269 LL3

270 TL3

271 Pfefferkorn, R., 2021. I Have a Lot to Say About Signal’s Cellebrite Hack. [online] Cyberlaw.stanford.edu. Available at: <<http://cyberlaw.stanford.edu/blog/2021/05/i-have-lot-say-about-signal%E2%80%99s-cellebrite-hack>> [Accessed 22 December 2021].

272 Accessnow.org. 2021. [online] Available at: <https://www.accessnow.org/cms/assets/uploads/2021/07/CSO_Open-Letter_on_Cellebrite.pdf> [Accessed 22 December 2021].

After gaining access through coercion or other methods, investigators are free to take their time to make a case. Interviewees from Tunisia found that this gives police and prosecutors a tactical advantage, as *“They go through ... phones, through the conversations, through their profiles, and check all the conversations, all the content, video and photos and use these as proof,”*²⁷³ and *“They actually start building a case on that. [This] sometimes gets them incriminated because sometimes they can find an irrefutable proof and there’s nothing that can be done at this point.”*²⁷⁴ For this, officers and prosecutors need to identify the information relevant to building a successful case. **A phone of any individual can have hundreds of chats, numerous apps, thousands of photos:** *“if they are sure that this person is homosexual and they don’t find any proof or any applications, special [queer] applications, they try to search in every social platform, you know to find and extract some proof.”*²⁷⁵ They focus in on certain applications: Facebook, WhatsApp, queer dating apps and the phone’s own photo galleries and text message archives. *“They [search for] sexting in specific.”*²⁷⁶ Web browsing and search history may also be checked, with an emphasis on finding pornography.

To locate the most useful content for evidentiary purposes, authorities use the search features on apps such as dating applications, messenger, and chat-based applications. Searches are performed on keywords associated with how the crimes are framed. Framing can include names of the individuals involved, sexually explicit language, and words associated with queerness. In Egypt, a country with a heavy emphasis on prosecuting sex work, police and law enforcement also search for words which reference money. This is obviously not an automated method and the exact keywords are left to the imagination of the investigating party. Word searches can be alternated with looking at the other media, like videos or photos. For example, one interviewee explains that *“on WhatsApp – they search for the names – and the photos go to the gallery and then go to the conversation to find it.”*²⁷⁷ It is an easy process for police, leaving one interviewee to remark that, *“It’s in fact so simple for them because they really don’t literally give a fuck”*

²⁷⁸ about compliance with proper procedures. **“It’s not about hacking into phones or like taking something secretly, no. They have all the time, all the necessary time to take the person’s phone, go through all of it, take whatever they need from it, they have**

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full access to it, and they can use whichever they want in their report basically”²⁷⁹ While police and prosecutors will ultimately need to verify the validity of the evidence to the court, one lawyer explained a common way around this: *“They show the digital evidence for example photos, and they make the apprehended [person] sign and approve of them.”*²⁸⁰ This provides an impression of validity to the search process.

If two or more people are being charged together, the investigatory methods shift. One lawyer from Lebanon noted that, *“if they arrest two people together, they will search for the names. Sometimes the photos from WhatsApp are downloaded into our photo gallery, you know, so they go to the photos and they find some, for example photos together of kisses or something like this and they go to the conversation to find it.”*²⁸¹ This process is neither complicated nor relies on sophisticated data analysis tools, nor is this process automated.

Some interviewees suggested that more advanced digital search methods are used. Six of the lawyers interviewed suspected that investigators had some forensic or technical capacity to access phones and crack passcodes, even where the accused had not provided access. It is described as the police having *“some tools that we don’t know about [...] Even if you don’t give your password they enter the phone so they have their manner, they have their tools.”*²⁸² Another interviewee in Egypt refers to specific assigned personnel who are enlisted if all other methods of forcing access to digital devices fail: *“But if this all fails then it’s up to the expert, he’s the one responsible for opening it. How does he open it exactly, this is like not very... it’s out of the court records.”*²⁸³ One interviewee suggested these tools existed, but were rarely employed in this context: *“In Egypt they don’t act like the FBI. It’s easier than that. They just interrogate sources, [they force] people to open the mobile. They have the tools, but they use that for important cases”* like political ones.²⁸⁴ However, interviewees could not be certain about the precise nature of advanced digital search technology, or even when this technology was in use. It is not clear if what they are describing is technology such as Cellebrite, which can extract data from mobile devices and generates a report about the extraction,²⁸⁵ or similar software. This is an area which requires further research: without more information about the tools available to law enforcement officers to perform digital device searches, it is hard to know what authorities are using to extract data or force access to devices.

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Prevalence of Device Searches

In Lebanon, advocacy groups such as Legal Agenda²⁸⁶ have been working and pushing for higher standards of privacy protection for detainees and interviewees. Legal Agenda noted that there have been some successes in challenging illegal searches by police. As one representative framed it:

“It’s a violation of privacy... this is where you start prosecuting people based on their identity and not based on any evidence of criminal activity, whatever we think of Article 534. You know, I can be queer, I can be gay, I can be a lesbian, I can be trans, this is not a sufficient reason to go into my phone.”²⁸⁷

Device searches remain de rigeur in Lebanon. *“Phone searches are semi-automatic when it comes to queer people, with or without the prosecutor’s order”²⁸⁸* More often, perhaps, without this order, *“because usually if it’s not a huge crime, a cybercrime or something, the DA doesn’t give them permission to open the devices.”²⁸⁹* This is reflected in the case files, as 6 out of the 9 reports involve warrantless device searches specifically for queer content.

Even that may not provide the full scope of the problem. According to one interviewee, *“They open the device and check what’s inside of it and it’s always off record ... because they did it illegally.”²⁹⁰* Interviews also confirmed the disproportionate use of illegal searches with more vulnerable groups such as refugees, as, *“foreigners are specifically targeted and mostly Syrians... they allow themselves to invade the privacy of Syrians simply because they’re more vulnerable and from that they discover conversations or photos.”²⁹¹*

Similarly in Tunisia, accused persons have de jure rights. *“And you know that those things are protected by the personal data laws. And it’s illegal to search phones so... the person who is arrested has the right to remain silent and has a right to not give his phone in order to be searched.”²⁹²* In reality, however, *“They take the phone by force. Especially in Tunisia... we are Facebook people... They force them to open their Facebook and they look at it and see all the conversations and all your private life, [as if] it’s their life.”²⁹³* Such misconduct by public officials is especially common in LGBTQ cases.²⁹⁴ 8 out of the 9 Tunisian cases reviewed had illegal searches, through which evidence was

286 Legal Agenda. 2021. The Legal Agenda | المفكرة القانونية. [online] Available at: <<https://english.legal-agenda.com/>> [Accessed 22 December 2021].

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293 TL5

294 “Well, legally it’s forbidden to abuse power by confiscating and searching other’s phones without warrants. But in those cases, and especially... it’s a factual exception if you want for charges...”[TL4]

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added to the files. It should be noted, however, that officers often gain permission to engage in searches and acquire evidence after the legal window for warranted searches has closed.

In Egypt, all 12 of the cases reviewed included full and detailed searches of the devices without specific warranted permissions. *“Even if the person consents... like giving [the phone] to the police, and saying ‘it’s okay, search it’, this is still illegal”*²⁹⁵. Another source noted that *“[The police] have to get permission from the public prosecutor or the court”*²⁹⁶ except in the rare circumstances where the flagrancy exception applies.

Length of time gathering evidence

The duration over which digital evidence is gathered in the course of prosecution is another important element of its collection. Tunisia and Egypt demonstrated similar patterns of evidence gathering prior to arrest, connected to the police’s use of monitoring and entrapment, as detailed below in Modes of Targeting. In Lebanon, by contrast, digital evidence was generally gathered only following arrest.

In Tunisia, there was no evidence of a systematic surveillance operation. Once the police *“hear about a person, or they see a person ... it’s kind of vindictive, they follow this person, and they start gathering data on this person basically.”*²⁹⁷ If the first contact is the result of social engineering or the use of a fake profile, then during the data-gathering stage the police will also tailor the digital evidence to their needs. One interviewee found that if *“they are using Grindr or something like that, they are already actually setting up this person. Like before even anything happens, they are doing this so obviously they are gathering proof before; like they are creating basically that “proof.”*²⁹⁸ Data collected through catfishing or ad hoc monitoring can later be put into play, where: *“[Police] just wait for the person to do just one mistake, that would allow them to actually make the step and arrest them; whether it’s a fight, whether they are like out [...] they will find a way to turn it from what they arrested them for into arresting them for homosexuality.”*²⁹⁹

Neither the interviews nor the case files provided precise information on the duration over which this strategy typically plays out. However, the investigation will be shorter where the police are confident that they have what they need to ensure conviction. Then, *“police sometimes intervene at the same time. In other cases, when the police think that they will not find anything, they try to intercept those persons and they take*

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296 2021. Egypt Criminal Procedure Code. [online] Available at: <https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf> [Accessed 24 December 2021].

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*more time, of course.*³⁰⁰

In Egypt, the timeframe within which investigations into LGBTQ persons or communities seem to be quite short in comparison to broader application of undercover sting operations.³⁰¹ A 2017 report by the Egyptian Initiative for Personal Rights³⁰² outlines the range of variation: *“Although the lead-up to the entrapment may last days or weeks, and sometimes months, yet in many cases the prosecution does not issue an arrest warrant for the tracked person, because eventually he is arrested on the street when no crime has been committed”*³⁰³. The interviews and case files reviewed for the current research project support the findings from the Egyptian Initiative for Personal Rights, in that the length of investigations remains contextual but also suggest that many current cases are being investigated *“very fast...with ‘express justice’”*³⁰⁴. It was also noted that:

*“If I [connected with] you today, and we arrange a meeting, and the meeting [would] be tomorrow, and I will arrest you tomorrow. It would take 24 hours. It really depends on how the person responds to the police or informant, what information the person reveals to the person from the number to how fast he responded to the idea of going out and so on. It really depends on the person.”*³⁰⁵

Estimates range from a minimum of two days and a maximum of five days. The speed of this process is not only remarkable when contrasted to other law enforcement processes in Egypt, but might actually be so rapid as to undermine the legitimacy of these processes. One interviewee wrote, *“It is important and essential for justice to take place in a quick way but at the same time it doesn’t mean for the legal system to neglect the rights of the accused and the articles of the law that respect those rights to just go through the queer case quickly.”*³⁰⁶ In Egypt, after a password is obtained, the device remains with the prosecutor, and the password is recorded in the case file. The phone may be provided to prosecutors and judges at all stages of the investigation. As a result, privacy breaches and searches are continuous, and digital evidence may be introduced by different people at different stages of the trial. *“With the evidence they include a note with the password of the mobile. [...] They just put the password for the prosecutor and the judge, and everyone can access it after.”*³⁰⁷

In Lebanon, interviewees reported that evidence-gathering is done post-arrest, and

300 TL4

301 This is a generalisation based on conversations with lawyers and NGO representatives throughout this research and not backed by case comparisons for this report.

302 Abdel Hamid, D., 2017. The Trap: Punishing sexual difference in Egypt. [ebook] Al Qahirah: Egyptian Initiative for Personal Rights. Available at: <https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf> [Accessed 22 December 2021].

303 Ibid p12

304 EL6

305 EL6

306 EL6

307 EL1

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law enforcement has no incriminating data on individuals until the point of search. *“It’s not like a very complex investigation, you know,” one lawyer said. “They just get the person and... start their thing.”*³⁰⁸ This connects to the main targeting method in Lebanon, as a LGBTQ person is *“arrested for something else ... so after you arrested and after the confiscation of your phone they come to realize [your sexual orientation]. And then they start applying [Article] 534 on you.”*³⁰⁹ The exceptions are in the limited circumstances of potential mass arrests (e.g.: a raid on a club) which require some prior investigation, and in which a single search might result in the identification of other suspects.

*“It always starts with one person and then from one person they would bring in other queer people. So this is difficult to answer because they are not actively looking for queer people to prosecute them [...] It’s when someone’s arrested or when one is discovered as queer for some reason targeted by the authorities, this is when you see the evidence-gathering starts”*³¹⁰

Use of illegal evidence during investigations

Even when illegally obtained evidence isn’t used at trial, the police routinely use what is found to further their investigations and for other purposes. Digital evidence that is perceived to demonstrate that a person is queer may be used to further intimidate individuals: *“So I think the question is not only about these apps being used to criminalize LGBT individuals but it’s also that they are being used to harass them, to bully them.”*³¹¹

Police purposefully ask humiliating and intrusive questions, often to intimidate detainees as they gather more intelligence on them, and often relate sexuality back to concepts of mental illness or as an outcome of abuse. These processes fit into the narrative of heteronormativity, but there are also reports from interviewees that questioning is intentionally hurtful: *“they are sick [the police], really sick about the questions they ask for them... Once I talked with the judge [about it], the judge told me, ‘He is sick, the policeman, I know’”*.³¹²

Digital evidence can and has been used as a humiliation technique. In the Lebanese case files, homophobic statements are intentionally intimidating. This is not an indicator that purposeful humiliation does not also happen in Tunisia and Egypt, but it was observed and cited in the Lebanese case files, and corroborated by the experience of the Lebanese lawyers. In Tunisia and Egypt, the court file text is more formalistic and procedural, although questions about sexual habits with people of the same sex are

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asked. Intentionally humiliating questions asked are not documented in these files. In each country, interviewees suggested that other individuals who communicated with someone investigated for their LGTBQ identity would also be at risk of arrest, indicating that an arrest of one person in the LGBTQ community might have substantial ripple effects throughout the community as a whole.

“What you need to know is that once they get a hold of one person’s phone, they start going into other people. because they see conversations with other people, so they start requesting the presence of other people too. [...] this is why when we talk about “smart” phones, we always say these devices are used as intelligence for the police forces more than anything else.”³¹³

FABRICATED EVIDENCE

The issue of fabricated, or planted, evidence by Egyptian police and investigators has been an ongoing challenge documented by human rights organizations.³¹⁴ In the context of cases against LGBTQ people, this seems to be an accepted norm in policing and courts. One of the lawyers explained that,

*“they would not push away a case because they [suspected] the evidence was fabricated. [The prosecutor would ask] them for more evidence or something to make it more **sufficient**, and then send it to court... But, they would never throw out a case because they [thought] that the evidence was fabricated. [...] They just care about giving sufficient evidence, and that’s it. They don’t care about anything else. [...] Even if it is fabricated, even if it is 100% looks fabricated they are not going to care about that.”³¹⁵*

In two case files³¹⁶ the court challenged the accuracy of the police reports and in one case³¹⁷ the court did not find the evidence provided by the prosecutor convincing in its link to the individual noting that *“there is no medical report to support the first charge of the accused committing sex with other men or a technical report to support the second charge to provide proof that the accused is the one who published these ads online or even that the sim card inside the phone belongs to the accused”*.

Accounts of fabrications appear to be corroborated by case files. In two court files³¹⁸ the judgment clearly indicates the judges were convinced the prosecution’s evidence

313 LL4

314 Human Rights Watch. 2021. Egypt: Security Forces Abuse, Torture LGBT People. [online] Available at: <<https://www.hrw.org/news/2020/10/01/egypt-security-forces-abuse-torture-lgbt-people>> [Accessed 22 December 2021]. and Human Rights Watch. 2021. Egypt: Security Forces Abuse, Torture LGBT People. [online] Available at: <<https://www.hrw.org/news/2020/10/01/egypt-security-forces-abuse-torture-lgbt-people>> [Accessed 22 December 2021].

315 EL6

316 Case E7 and Case E11

317 Case E10

318 Case E7 and Case E11

was inconsistent and likely untrue. In one case,³¹⁹ brought against an Egyptian doctor, the court agreed that the case could have been created based on an unrelated dispute the doctor had with the police. Of course, there is no documentation of consequences for the police. In Case E7, the prosecutor’s note states: “We received a tip from one of our secret informants stating, that while he was surfing the internet and social media website he found on “Whoshere” website an account titled “XXXX”³²⁰ that contains advertising for debauchery and a man wanting to have sex with other men for money.” This was challenged by the defense on the basis that Whoshere is a geolocation-based app. Accounts can only be viewed within the app and when the user is nearby, and cannot be seen while “surfing the internet and social media”. The judge relied on this argument in acquitting the defendant.

It is unclear if there is more potential for auditability of the validity of such digital evidence and little to suggest that more sophisticated efforts are made in courts to identify fabricated evidence, other than the pleas of defense teams.

STREET-LEVEL PHYSICAL SURVEILLANCE OF QUEER BODIES

Physical surveillance of individuals, localities, and public spaces for “criminal activity” is one of the oldest law enforcement investigative tools.³²¹ Data collected for this report from both interviews and the case studies can be used to show that surveillance is one of the main methods used to identify or arrest LGBTQ people in Egypt, Tunisia, and Lebanon. Here, “street-level physical surveillance”³²² of queer bodies refers to the profiling of individuals by police and enforcement authorities based on their physical appearance and perceived gender and sexual identity. The surveillance of queer bodies has been a highly studied subject³²³ often linking in the methods of monitoring, classification, and control within surveillance structures targeting marginalized groups. The framing of surveillance is important, as law enforcement methodology goes beyond merely stopping people who are judged to be suspicious due to apparently queer bodies. In cases seen in this report, the police are actively looking for queer people on patrols or searches, and then using physical profiling to single out individuals. Lawyers interviewed mention that known hangouts or places of congregation are the places most surveilled.

One of the Tunisian lawyers noted that “they spy... they are in the bars or in places where they know that there are people who go there in order to go on a date or something like that.”³²⁴ The interviewee noted that other commonly surveilled place include those known for “cruising”³²⁵ or touristic areas where queer people from more rural

319 Case E11

320 Redacted for security

321 Unodc.org. 2021. Organized Crime Module 8 Key Issues: Special Investigative Techniques - Physical and Electronic Surveillance. [online] Available at: <<https://www.unodc.org/e4j/en/organized-crime/module-8/key-issues/special-investigative-techniques/physical-and-electronic-surveillance.html>> [Accessed 22 December 2021].

322 A adaptation on the “street-level surveillance” concept introduced by EEF on the use of XXXXX

323 For example Kafer, Gary, and Daniel Grinberg. 2019. Editorial: Queer Surveillance. *Surveillance & Society* 17(5): 592-601. <https://ojs.library.queensu.ca/index.php/surveillance-and-society/index> | ISSN: 1477-7487

324 TL3

325 practice of sex between which is usually anonymously often in often in semi-public indoor spaces (bathrooms, saunas) or

areas or queer tourists may congregate. Importantly, this is done often by plainclothed officers: *“You can’t tell sometimes that they are police, you think they are citizens. So they kind of spy and then whenever you are about to do something; that’s when they come and get you.”*³²⁶

In Lebanon, street-level physical surveillance has played a crucial role in the rates of arrests LGBTQ community. Individuals prosecuted on the basis of Article 534 have been identified and stopped by the judicial police based on their appearance and their *“behavior”* and *“speech”*.³²⁷ In one case from 2011 four individuals were arrested on a popular beach in Beirut for allegedly committing “homosexual acts.” All four of the accused attested that they were taking a “stroll on the beach and were not doing anything indecent but were arrested because of their feminine behavior”. The police had been surveilling that area and identified this group based on their appearance. The prosecution’s case was subsequently built on forced confessions from two of the individuals and a nude photo found on a third’s mobile device, as well as notes about their appearance and clothing.³²⁸

Similar tactics were reported in interviews with Lebanese lawyers. For example, one of the interviewees explained: *“In Lebanon [targeting is] by their looks and the way they behave [...]”*³²⁹. During the search and questioning phases, intimidation and humiliation tactics are often used:

*“When he looks like for example LGBT, they will start asking him ‘You are gay?’ If he said, ‘No,’ they will call his friends and everything and they will collect information about him, they will take his conversations from WhatsApp, his Facebook, and everything. And they will tell him, ‘You should tell us you are homosexual. Just say [that] you will go to the doctor later to get your treatment.’”*³³⁰

While many in Lebanon’s LGBTQ community may be aware of the police’s use of this tactic, the actual encounter is often a shock. An interviewee noted that the stop is *“usually by surprise. Most of the cases are done by... they catch them in the road doing something.”*³³¹ Another interviewee outlined that in Lebanon arrest *“happened to them by luck”*, rather than prior investigation, on or off-line. They continue by stating, *“It’s the way some people dress[...] Of course, for transgender people, trans women, trans men, you know, [it’s] by the looks... they judge them by seeing them and then they start*

outdoors (rest stops, forests). Historically cruising came about as private spaces were (and in these context) are still too risky or identifiable for queer people to meet. <https://getmaude.medium.com/the-origins-of-cruising-ae35c5be65d7>

326 TL3

327 Human Rights Watch, “It’s part of the job: Ill treatment and torture of vulnerable groups in Lebanese police stations”, June 26, 2013 accessible at: Human Rights Watch. 2021. “It’s Part of the Job”. [online] Available at: <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations#_ftn31> [Accessed 22 December 2021].

328 Case L5

329 LL7

330 LL7

331 LL1

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*digging into it.*³³² By “digging into it,” the interviewee meant physical as well as device searches that may reveal “the photos that they have probably with somebody else or the sex chats.”³³³

This method particularly affects trans persons, especially trans women. Often the interviews and case files highlight that appearance and outfits were used as a pretext, with a variety of laws (especially prostitution laws) used in a post hoc manner to justify this targeting: “In the cases that I’ve had regarding trans individuals, the person would be arrested because of the way they dressed and with this with the suspicion of prostitution, even though that would be a no element to push for prostitution charges [...]”³³⁴

Street-level physical surveillance is prevalent in Tunisia, where, “The arrests of LGBT people are always because of their appearance. It’s also because they represent a small community so the way they look usually is very triggering to police officers. So usually they would just randomly pick them.”³³⁵ The Tunisian police patrol and surveil the streets to profile individuals, “arresting people in the streets [when] they look “suspicious” (non-conforming in looks or behavior).”³³⁶ Interviewees underlined the connection between street-level surveillance and officers’ personal biases, as, “the police see someone that they just don’t like basically whether it’s how they are dressed or how they are acting or how they are walking.”³³⁷ This can provide a pretext for searches and arrests that are most often illegal, where officers “just go and intimidate them and basically ask them for their papers and identification, ask them to show them their phones. And obviously someone would be stressed and they would do it.”³³⁸ Access to the devices might then lead to identification of digital evidence of other LGBTQ persons individuals and their broader networks. As in Lebanon, the searches are followed by or coupled with questioning aimed to be intimidating or humiliating:

*“And then sometimes it’s the police himself [...] he kind of provokes you or asks you some intimate questions or embarrassing questions like “Are you a male or female? Why are you dressed up like this? Why do you talk like this?” And if [they do] not answer correctly according to him [...] he can arrest them and say that they insulted him, and that they are homosexual or trans.”*³³⁹

In Tunisia, street-level surveillance most severely impacts the most vulnerable sections of the queer community, specifically trans people, refugees, and sex workers:

“So basically the police know approximately in which areas these sex workers

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work and even patrol [there]” Once an individual is identified “they use their telephones to go through their messages because most of the time sex workers would actually meet clients through messages or apps. They just go through that to confirm whatever they are trying to arrest them for.”³⁴⁰

In these cases, the sex workers often experience a combination of charges for both sex work and queerness. The link between the digital evidence found in these initial searches, and the ultimate charges the individual faces, is in need of more specific study to clarify the extent of the issues involved.

In Egypt, the NGO Bedayaa reported that in 2019, street arrests represented 69.11% of reported cases,³⁴¹ but in 2020 that number fell to 27%, with entrapment cases rising to 47%.³⁴² This is potentially linked to COVID regulations. Interviews confirmed that Egyptian police indeed perform similar street-level physical surveillance, if in combination with other modes of targeting: *“they target gay hot spots, like places where for people usually meet and hang out... They just randomly arrest people based on their looks and then they search their phones and if they find anything on the phone they use it as evidence to build the case further.”³⁴³* Egyptian police may also use a more sophisticated version of street-level targeting, surveilling individuals who frequent specific locations known to be queer and assembling information over time: *“This coffee shop was known to be a gay meeting spot and they did monitor this coffee shop and they monitored a lot of people who would go and sit at this coffee shop.”* However, this interviewee explained that this method *“is very rare.”³⁴⁴*

INFORMANTS

While the street-level physical surveillance method is less common in Egypt, more common is a related mode of targeting: the use of informants who work with the police to provide information on people and known meeting spots for LGBTQ community members. Informants are either paid and/or are members of the community who have been coerced and intimidated into working with the police to avoid outing or other repercussions.

On the basis of information gathered from informants, police select both places and individuals to target.³⁴⁵ Sometimes this is done as a ride-along: *“a secret informant who works with the police and goes out with them on patrol [...] points out people that he*

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341 Bedayaa, Project AnnualReportLegal Aid Project in Egypt 2019 https://mail.article19.org/service/home/~/?auth=co&loc=en_GB&id=175446&part=2

342 Bedayaa, Legal Aid Annual Review 2020 https://mail.article19.org/service/home/~/?auth=co&loc=en_GB&id=193565&part=2

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345 Although it is not expanded upon here, there are of course larger implications of the use of informants in the persecution of marginalized communities, such as stoking fear and lack of trust within already at-risk and persecuted communities, as well as a chilling effect in communications and connections.

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knows are homosexuals.”³⁴⁶ At other times, the police use the information to act independently, as illustrated in investigation notes from a 2018 case file:

“We received a tip from one of our secret informants that a group of homosexual youth is using Ramsis Sq. as a meeting spot for them to meet and conduct sexual relations in exchange for money. A secret taskforce moved to the location and placed a checkpoint to monitor [sic] the area, we noticed a homosexual guy doing suspicious movements and signals to seduce men to commit debauchery with him for money, as we moved in to arrest him. We approached the accused and confronted him, and he confessed that he came to Ramsis square to commit debauchery with men for money.”³⁴⁷

Frequently, informant-based arrests have no legal basis, as Egyptian law only permits officers to conduct an arrest in cases of flagrante delicto. Regardless, case files demonstrate that police officers often use language to indicate the existence of flagrante delicto, often incitement (persuasion or seduction) of debauchery according to section (a) of Article (14) of Law 10/1961 in writing their reports. Interviewees stated this method is used especially if digital evidence is not found on individuals -- police look to arrest and find and frame a case after the arrest: *“[if] they don’t find anything they rely on the informant’s word and the accusation that the individual was doing erotic movements in the streets and trying to seduce the public into practicing debauchery with him.”*³⁴⁸

CHECKPOINTS

In Lebanon, police and army checkpoints are frequent occurrences in everyday life, and can create points of contact between law enforcement and marginalised groups, including Palestinian and Syrian refugees and queer people. Checkpoints are doubly risky so for queer refugees.³⁴⁹ Many migrants and refugees require “stay permits” or residence permits to remain in Lebanon, and they face innumerable bureaucratic hurdles in obtaining them, meaning that many lack legal status.³⁵⁰ This is a common justification both for the establishment of checkpoints as well as for searches of particular individuals. An order to inspect their legal papers becomes an excuse to access their devices. As one lawyer detailed: *“I’ve had a case recently where the guy got arrested at a checkpoint but for another reason. They wanted to go into his phone”* for evidence relating to the alleged crime, and when they did they found he had deleted a lot of messages. This raised additional suspicion, so *“he was transferred [to the police station] and he said that he was a gay and they investigated him. [...] You know, it’s always you get pulled for*

346 EL1

347 Bedayaa 2019

348 EL1

349 2018. Apps, arrests and abuse in Egypt, Lebanon and Iran. [ebook] Article 19. Available at: <https://www.article19.org/wp-content/uploads/2018/02/LGBTQ-Apps-Arrest-and-Abuse-report_22.2.18.pdf> [Accessed 22 December 2021].

350 Human Rights Watch. 2021. Lebanon: Residency Rules Put Syrians at Risk. [online] Available at: <<https://www.hrw.org/news/2016/01/12/lebanon-residency-rules-put-syrians-risk>> [Accessed 22 December 2021].

something and they go through your phone and get to article 534.”³⁵¹

At checkpoints, searches sometimes happen on the spot, as officers and guards choose to “look at people’s phones at the checkpoints before allowing them to pass and [...] arrest some people based on what they can find on the phones”³⁵² Other times, the person is transferred to the police station before the search. In either case, when digital evidence of their LGBTQ identity is found, consequences can include threats or arrest.³⁵³ Checkpoints have played a crucial role in the rates of arrests among queer people, especially trans women.³⁵⁴

Local Lebanese NGOs, such as Helem, have been documenting cases of the persecution of LGBTQ people at checkpoints, and hoping to support their community to protect themselves.³⁵⁵ Their testimonials indicate that at army checkpoints, national security is used as a justification to search individuals and their mobile devices.³⁵⁶ However, as established above in the section entitled, “Impunity for Violations of Procedural Guarantees,” such a pretence is rarely required. Checkpoints are also used during protests and other times of increased tension to intimidate and discourage those who might otherwise exercise their rights to free assembly.³⁵⁷

Two of the cases in Lebanon are based on a checkpoint and a stop-and-search (cases 1 & 5, respectively). Two cases involved profiling based on gender expression (case 5) and nationality (case 1). In both cases, device illegal searches were conducted. Case 1 ended with a 2 year and 7 month sentence in 2019 and (case 5) 500000LL (\$330) in 2011 -- reflecting a long term and ongoing pattern.

One case from 2015 illustrates this situation. A couple took their car to the grocery store. They were stopped at an unplanned intelligence check based on their looks and “behavior”. Upon questioning, their nationalities were identified as Syrian and American, respectively. The combined impact of their sexual identities, gender expression, and their nationalities seem to have been the reason why they were transferred to the police station (although

351 LL4

352 LL3

353 Corroborated information throughout interview conversations with Lebanese lawyers.

354 Hudgins, S., 2021. Why Is Lebanon Still Using Colonial-Era Laws to Persecute LGBTQ Citizens?. [online] Slate Magazine. Available at: <<https://slate.com/human-interest/2016/05/lebanon-still-uses-colonial-era-laws-to-persecute-lgbtq-citizens.html>> [Accessed 22 December 2021].

355 Ibid

356 2018. Apps, arrests and abuse in Egypt, Lebanon and Iran. [ebook] Article 19. Available at: <https://www.article19.org/wp-content/uploads/2018/02/LGBTQ-Apps-Arrest-and-Abuse-report_22.2.18.pdf> [Accessed 22 December 2021].

357 Homs, N., 2021. To the Barricades in Beirut. [online] Foreign Policy. Available at: <<https://foreignpolicy.com/2019/11/12/to-the-barricades-in-beirut/>> [Accessed 22 December 2021]. and Human Rights Watch. 2021. Lebanon: Police Torturing Vulnerable People. [online] Available at: <<https://www.hrw.org/news/2013/06/26/lebanon-police-torturing-vulnerable-people#>> [Accessed 22 December 2021].

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this is not clearly outlined). In the station, the search of their devices revealed a “photo of genitalia ” and another photo of the two “kissing”. This was enough for the prosecution to push for Article 534 charges, and led to a successful conviction. The initial jail sentence was one year and three months; in late 2019, this was increased to two years and seven months.³⁵⁸

In the interviews, this tactic was mentioned, although interviewees suggested that in recent years it has become somewhat less common.³⁵⁹ They highlighted the risks that trans people face, especially when actively in transition, with government issued IDs. As one lawyer noted,

“we tell all the individuals to always have with them a note from psychologist or a psychiatrist to state that they are trans and that they are going through judicial process to get legal recognition of their sex. This usually... facilitates things at checkpoints because at every checkpoint, they have to explain to the army official or to the police guy that they are trans, what does it mean etc, etc, etc, [if] there is a difference between the name on the ID and the appearance of the person.”³⁶⁰

POLICE STATIONS AND OPPORTUNISTIC PROSECUTIONS

A very common path to prosecution for LGBTQ individuals in Lebanon and Tunisia leads through unrelated contact with the authorities, such as reporting a crime or being involved in another case under investigation. When investigators, prosecutors or police get access to the individual’s device and the digital evidence on it, they’re able to start creating a case based on the individual’s sexual or gender identity.

The danger of police stations and that abuses that occur therein are an overarching theme in every interview conducted in Tunisia and Lebanon. Interviewees emphasized that this is one of the main ways individuals are at risk of prosecution based on their gender identity. A Tunisian lawyer said, *“Once you are there you can’t quit, you are condemned even before you go to the court. It’s as if [the police station] was the court.”*³⁶¹ Data from the case files supports such statements. Surprisingly, given the extensive and seemingly arbitrary nature of arrests and prosecutions in Egypt, the research efforts did not find much evidence of the use of this method in that country.

Through interrogations and device searches at police stations and precincts, queer people who interacted with the arrested or questioned individual may be identified. An interviewee indicated that *“[there are] people who were caught and then spoke about other people so the [others] got arrested or [the police found] texts were from them where they were identified, so they went ahead and arrested these people.”³⁶²* A similar

358 Case L1

359 2018. Apps, arrests and abuse in Egypt, Lebanon and Iran. [ebook] Article 19. Available at: <https://www.article19.org/wp-content/uploads/2018/02/LGBTQ-Apps-Arrest-and-Abuse-report_22.2.18.pdf> [Accessed 22 December 2021].

360 LL4

361 TL5

362 LL2

situation was widely reported in 2014, when Lebanese police started arresting individuals based on WhatsApp conversations.³⁶³ An alarming instance proves that this process can happen in even the most serious of contexts, with one Lebanese lawyer noting that *“There are several cases with a homosexual was murdered and in the investigation they would investigate with all their circle of friends and partners and [the friends] would find themselves prosecuted on the basis of [Article] 534 along with the killers or the suspect-killer.”*³⁶⁴

In Lebanon, the typical pattern is for LGBTQ persons to be identified in the course of an investigation into a different crime. The police have an opportunity to conduct device searches that uncover conversations, photos, or videos deemed to be incriminating.³⁶⁵

*“What usually happens is that a person is called in to the precinct for another kind of investigation like something related to drugs [or] prostitution [or] anything else actually and they start[...] searching into the phone or into the computer. They go and find pictures or messages or any kind of interaction and they start the investigation based on that[...] It starts out with something not related to anything LGBT and then when they go into the phones, they start investigating.”*³⁶⁶

This pattern is evident in 5 of the 8 Lebanese case files reviewed, and the Lebanese NGO Helem has also identified this issue and featured it in their advocacy campaigns.³⁶⁷ Helem has found that for queer people, any interaction with the police can potentially lead to Article 534 charges. This is supported by data provided by the interviewees, as many of the lawyers analogized this to the concept of “parallel cases” or “parallel prosecutions.” Parallel prosecutions are defined as “simultaneous or successive investigation or litigation of separate criminal, civil, or administrative proceedings commenced by different agencies, different branches of government, or private litigants arising out of a common set of facts.” although the reason for the first contact with the police and the facts underlying a 534 prosecution are often wholly distinct.³⁶⁸ Still, the charges may be stacked: *“If he is accused for drugs in the same file they put homosexuality [too and] so he will have the two cases in the criminal court.”*³⁶⁹ Possible homosexuality charges may play a role in increasing penalties imposed for any other criminal convictions based on the role it plays in discriminatory perceptions of courts and prosecuting teams. Out of

363 Folsom, J., 2021. Lebanese Police Use WhatsApp To Target Gay Men - Towleroad Gay News. [online] Towleroad Gay News. Available at: <<https://www.towleroad.com/2014/08/lebanese-police-use-whatsapp-to-target-gay-men/>> [Accessed 22 December 2021].

364 LL3

365 Also see Damour individual penal judge, issued on June 20, 2017, unpublished; Nizar Saghie and Wahid Al Farchichi, “Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia”, a study published in 2010 by the LGBT organization Helem, Human Rights Watch, “It’s part of the job: Ill treatment and torture of vulnerable groups in Lebanese police stations”, June 26, 2013 accessible at: https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations#_ftn31

366 LL4

367 Based on work and conversations with Helem -- the work is not public.

368 Americanbar.org. 2021. Parallel Proceedings. [online] Available at: <<https://www.americanbar.org/products/inv/book/214925/>> [Accessed 22 December 2021].

369 LL7

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the 8 files obtained in Lebanon, 5 are based on parallel prosecutions.

Though interviews noted narcotics and prostitution as frequent overlapping parallel changes, the addition of Article 534 charges in a prosecution can happen in any type of case, from the serious to the much less so. *“We had a case in Tripoli, in the North of Lebanon, they caught somebody who they suspected to be an extremist, a radical Islamic person. They confiscated his phone, because this was a top security issue and then they realized that he was also LGBT. And he had friends he had sex chats with, nude photos, and everything. So they also applied Article 534 on him as well.”*³⁷⁰ In one case file from 2016³⁷¹, the arrest was for the violation of a Lebanese law that prohibits civilians from purchasing military clothing. As the defense lawyer outlined:

My client and his friend were in a shop selling military gadgets in north Lebanon. The manager of the shop was military personnel and noticed that my client and one of his friends were civilians who wanted to buy military clothes.

*The manager then called military intelligence and when they arrived they confiscated their phones and found photos related to homosexuality. They arrested them for the attempt of buying military clothes... After the first two days they sent them to the police station since military intelligence cannot investigate civilians on homosexuality.*³⁷²

Sharges were brought with higher than usual stakes, seemingly due to the military element and because one of the pieces of evidence found on the accused’s phone was a video of sexual intercourse in which his face was shown. As of early 2021, this case was still being contested. By contrast, another case file reviewed began with a mild disagreement in the street.³⁷³ The person was taken to a police station “after a complaint by a woman that claimed [they] insulted her and scratched her car.” They were then “transferred to the morality police to investigate [their] alleged homosexuality because of [their] feminine features”. No charge was brought in relation to the allegations of property damage, but the person was convicted under Article 534 and fined 500000 Lebanese Lira (around \$330).³⁷⁴

In other cases, it appears that the original investigation is a mere pretext. In a 2017 case, the individual was stopped and questioned on suspicion of substance violations, but following a device search that turned up *“gay porn videos and photos and WhatsApp conversations,”* an Article 534 charge was substituted.³⁷⁵ In court, the defense team challenged the Narcotics Bureau’s device search as being without reason, evidence-based suspicion, or a warrant. A mandatory drug test came back negative. The judge agreed

370 LL6

371 Case L3

372 Case L3

373 Case L6

374 Case L6

375 Case L4

with the defense and dismissed both charges for lack of evidence. A similar case that commenced in 2016 and had its final appeal decision in 2018 was built on a pretext of a drugs case, but no evidence of drugs were found and drugs were not even mentioned during the interrogation. The individual received two months' imprisonment for 534 charges, but this was later overturned.³⁷⁶

In Tunisia, interviews and case files can be used to show that the accused often comes into contact with the police because they have been the victim of a crime. A lawyer noted that *"your phone was stolen then you go to the police station to make your report and then [if you] look [feminine] or gay, they make the arrest."*³⁷⁷ The pretext may seem thin, but another interviewee said that such cases *"usually [pass] and they are prosecuted through Article 230."*³⁷⁸ As occurred in Lebanon, these outcomes can occur when queer people report serious crimes, such rapes or assaults. Interviewees mentioned *"cases where the person goes to report an abuse/assault and after seeing their phone/ laptop the case is turned against them and they are accused of [Section] 230."*³⁷⁹ In Tunisia, 3 of 9 of the cases reviewed are these such opportunistic cases where one or more of the accused made contact with the authorities to report that they had been the victim of violence and assault. When the investigations of their devices, persons, and private residences uncovered evidence of their queer identities, they were charged under Article 230, along with the perpetrators of the violence. **The victims of violence were not spared when evidence was identified regarding their sexuality.** These types of cases are so prevalent that in one of the interviews, the lawyer had one come in just the day prior:

*"just yesterday [an incident] like this happened. Someone got beaten up, raped, and aggressed by someone. They went to the police to actually let them know that they have been physically, sexually aggressed and instead of taking his side they built up a case against him [...] because the guy actually shared everything about the application [Grindr], how this led [to meeting] this person, etc. etc. thinking that the police is actually going to help but instead obviously they built a case against him."*³⁸⁰

Numerous examples are given of Section 230 cases that commenced during a murder investigation, which was then rerouted into LGBTQ-related charges. *"They gathered the friends of the person who was killed and during the testimony the inadvertently said that they know each other from this gay club that they go to and because they're gay, etc.. So a parallel prosecution was open for them being gay."*³⁸¹ Even if the murder

376 Case L2

377 TL5

378 TL7

379 TL1

380 TL6

381 LL2

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charge is dropped, the LGBTQ charge remains: *“Like in one case there was a murder case and the person, one of the persons who was investigated... he said that he was gay so he was transferred in front of the criminal court because he was transferred along with the file of the murder even though he was not charged with murder case.”*³⁸²

Unfortunately, this can lead to a chilling effect within the queer community in which LGBTQ persons avoid law enforcement whenever possible, including to report crimes committed against them. This leaves many even more at risk of abuse and violence: *“[queer people] are sometimes reluctant to go and report something to the police whenever they have been attacked or they have been [robbed] or something like that.”*³⁸³ It seems in the best-case scenario, *“the police do not take the case of the complaint seriously,”* and more commonly, *“they can arrest him or her by forcing him to give his/her phone and start to search for evidence in order to condemn him.”*³⁸⁴ [TL3] The more marginalized the person or the community, the more likely the repercussions are to be harsh and problematic: for example, refugees who must present themselves to certain precincts or general security under their immigration protocols are at the greatest risk. One lawyer in Lebanon noted that, *“Many Syrians [go] to the general security to renew their permits ... They come in contact with a court and their phones are confiscated so they would look into their phones, and they would see nude pictures or conversations so they would start the process as well.”*³⁸⁵

APP AND SOCIAL MEDIA MONITORING AND ENTRAPMENT

*“[I don’t] exactly know but in [my] imagination [I] think they have this room full of computers, full of PCs, people are sitting around and going through famous dating apps and popular dating apps for everyone and public sites/platforms frequented by LGBT people and they collect cases, like collecting screenshots and printing [them], and printing [them], creating new cases for the people.”*³⁸⁶

In Egypt, police entrapment methods are guided by the General Directorate for Protecting Public Morality,³⁸⁷ and are conducted through the Public Morality Investigation Unit.³⁸⁸ Egyptian human rights organizations, such as the Egyptian Initiative for Personal Rights³⁸⁹ and the pro-LGBTQ organization Bedayaa,³⁹⁰ have covered these methods extensively, and in 2018, ARTICLE 19 looked into the specific use of technology in Egypt

382 LL1

383 TL3

384 TL3

385 LL5

386 EL6

387 Hamid 2017: 11

388 Ibid: 8

389 Eipr.org. 2021. The Trap: Punishing Sexual Difference in Egypt | Egyptian Initiative for Personal Rights. [online] Available at: <<https://eipr.org/en/publications/trap-punishing-sexual-difference-egypt>> [Accessed 22 December 2021].

390 Rights Africa – Equal Rights, One Voice!. 2021. Repression in Egypt: 92 LGBTQ+ arrests last year. [online] Available at: <<https://rightsafrika.com/2020/03/08/repression-in-egypt-92-lgbtq-arrests-last-year/>> [Accessed 22 December 2021].

as an element of entrapment.³⁹¹ Entrapment methods continue to be one of the more prevalent strategies used to target queer people in Egypt, and may be considered particularly destructive as authorities have weaponized the very tools which queer persons in high risk situations have come to rely upon as a means of building and maintaining personal relationships.

Although echoes of Egyptian app and social media monitoring methods are beginning to be seen in Tunisia and Lebanon, as well as the broader MENA region, this research can be used to show that Egypt is one of the only countries to have permanent, dedicated policing operations for technology-based entrapment of LGBTQ people. In 2001, under President Hosni Mubarak, the first cases of online entrapment were documented by Human Rights Watch³⁹² and the Egyptian tabloid *Al-Naba'*, both of which described the arrest of two men who had responded to online personal ads.³⁹³ By the end of that year, “internet monitoring units”³⁹⁴ within the Ministry of the Interior³⁹⁵ were introduced. In May of 2002, General Abdel Wahab al-Adly, head of the Vice Squad within the Ministry of Interior announced, “We are dealing with a different type of criminal and the spread of new crimes... This requires security and technical expertise to be able to patrol the Internet the same way we patrol Egyptian streets.”³⁹⁶ El-Adly is also quoted as having said, “We got 19 cases this way” and “[i]t was great arresting them;”³⁹⁷ – “them” here refers to queer people.

An important development began just before Abdel Fattah el-Sisi took power in 2014, as one lawyer found that, “Starting in 2013 [I] noticed an increase of online entrapment for the LGBTQI community, for homosexual men, trans women, and so on through dating apps and online entrapment.”³⁹⁸ El-Sisi’s government introduced new campaigns to target the queer community, with the yearly average number of arrests more than quadrupling according to the Egyptian Initiative for Personal Rights.³⁹⁹⁴⁰⁰ In 2017, there came one of the biggest crackdowns on the Egyptian LGBTQ community, with 75 arrests made after a rainbow flag was waved at a concert.⁴⁰¹ The LGBTQ NGO Bedayaa recorded

391 ARTICLE 19. 2021. Apps, arrests and abuse in Egypt, Lebanon and Iran - ARTICLE 19. [online] Available at: <<https://www.article19.org/apps-arrests-abuse-egypt-lebanon-iran/>> [Accessed 22 December 2021].

392 In a Time of Torture HRW – page 75

393 In a Time of Torture HRW – page 75

394 Issandr El-Amrani, “Finally free: After a long wait, free internet appears in Egypt,” Cairo Times, January 24-30, 2002; “‘Free Internet’ in Egypt by the end of the year,” press release by the Arab Advisors Group, at <http://www.arabadvisors.com/Pressers/presser-240601.htm>

395 Ibid, quoting hmod Tawfiq, “Sins of the Father,” Cairo Times, November 29-December 5, 2001.

396 Wwrn.org. 2021. Cyberspace-scouring cops accused of suppressing online expression | WWRN - World-wide Religious News. [online] Available at: <<https://wwrn.org/articles/10377/>> [Accessed 22 December 2021].

397 Ibid

398 EL6

399 Arrests for LGBTQ “crimes” averaged 14 per year from 2000-2013. From late 2013–17, the yearly average increased to 66. <https://eipr.org/en/publications/trap-punishing-sexual-difference-egypt>

400 Rigot 2021 <https://slate.com/technology/2020/12/egypt-lgbtq-crime-economic-courts.html>

401 Walsh, D., 2021. Arrested for Waving Rainbow Flag, a Gay Egyptian Takes Her Life (Published 2020). [online] Nytimes.com. Available at: <<https://www.nytimes.com/2020/06/15/world/middleeast/egypt-gay-suicide-sarah-hegazi.html>> [Accessed 22 December 2021].

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92 arrests in 2019.⁴⁰² Arrests haven't stopped during the COVID-19 lockdowns, though they have slowed down temporarily due to restrictions and reduced movement: *"There were lots of cases with fake accounts that were created by the police and this still continues to this day."*⁴⁰³ Because official numbers are not available and many cases go unreported to overworked NGOs, these numbers are unlikely to present a full overview of the problem.

Entrapment is among the easiest methods for Egyptian law enforcement to target and arrest persons in the LGBTQ community. One lawyer said that, *"it's easier for them, the police, to just make some fake accounts on dating apps and just entrap people and that's it, instead of going out and making an effort."*⁴⁰⁴ The police are not engaging in targeted surveillance of individuals per se, but are rather seeking to entrap as many persons as possible, and then narrowing down the search when the opportunities arise, with one interviewee saying,

*"Egyptian authorities do not surveil current individuals but rather surveil online dating websites known to host homosexuals who are looking for sexual relations, [because] some articles from the new cybercrime law can be used to prosecute the users of these websites like the articles regarding the protection of family values."*⁴⁰⁵

The case files and interviews can be used to show how this method of entrapment is applied not only to websites but often, even predominantly, on mobile devices. *"So there is a 'great' unit in Egypt we call the morality police. And in that unit there is the job of being online to target people on Grindr[...] and then WhatsApp."*⁴⁰⁶ . The case files reveal that there are many types of apps involved, and definitely not just dating apps but also social media and websites as well as Google searches.

402 Rights Africa 2021

403 EL2

404 EL6

405 EL5

406 EL4

APP USE AS CITED IN EGYPTIAN CASE FILES

Case No.	Snapchat	WhatsApp	Grindr	Whosehere	Other Dating Apps
Case 1		✓			✓ Kik app
Case 2	✓				
Case 3			✓ *		✓ Hornet
Case 4		✓	✓	✓	
Case 5	✓	✓		✓	
Case 6	✓				✓ Guys App
Case 7		✓		✓	
Case 8			✓		✓ Facebook
Case 9		✓	✓		✓
Case 10		✓		✓	✓ Whoshere & TS Dating
Case 11		✓			✓ Guys App
Case 12	✓	✓		✓	

* In this file, the app mentioned is Hornet however the app actually used is Grindr so both have been added to the chart as a combined use of apps.

The language of the case files has an eerily similar ring, with each stating that an investigation began after an informant happened upon a profile advertising for sex work:

“In accordance to the guidelines issued by the General Director of the Administration for Combating Prostitution and Immorality, we received a tip from one of our trusted secret informants stating that, there’s a person advertising for debauchery on an app called Hornet under the name [redacted]. Our informant contacted that individual and agreed through conversations to have gay sex for money, the individual later gave out his phone number.”⁴⁰⁷

407 Case E8

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And, in a second case file, the same basic frame is used:

“In accordance to the guidelines issued by the general director of the administration for combating prostitution and immorality, we received a tip from one of our trusted secret informants stating that, there’s a person advertising for debauchery on an app called Grindr. The individual sent his pictures during the conversations he had with our informant on Grindr before giving out his phone number to continue talking on WhatsApp. They agreed to meet at Gamat El Dowl St, so a force from the police station moved with the informant to the place of the meeting.”⁴⁰⁸

A common note throughout the case files and interviews is the involvement of money or the labeling of conduct as sex work, even when facially implausible. As noted above, the courts have interpreted Egypt’s Combating Prostitution law to require “indiscriminate” behavior. *“The payment is very very extremely important because it’s the main element that the Court of Cassation relied on... So ‘no discrimination’ is like there is no personal ties.”⁴⁰⁹* In 2016, a doctor was arrested based on accusations of being identified and entrapped on a queer dating app called Guyz. Despite it being clear that the accused had a lucrative job and was in no need of money, the case was framed as a sex working case on vague and contested digital evidence and bank cards. The appeal judge dismissed the case.⁴¹⁰

In some instances, another secret informant is “commissioned” to assemble digital evidence such as conversations and photos. The informants fake romantic or sexual interest in the individuals, engendering a sexually explicit or otherwise queer-leaning conversation that, when printed, will provide all the evidence needed for the charge. The informant then sets a specific meeting point where the arrest is conducted. Once again, the case files documenting these “investigations” read like echoes of one another, illustrating the tightly controlled procedure. A redacted extract provides an example:

In accordance with the Ministry Guidelines to Combat Debauchery and Prostitution and to monitor online websites and applications, we received a tip from one of our secret informants, stating that he found an individual on a gay dating app called Guyz, where an account titled [redacted] contains advertisements for debauchery and a man wanting to have sex with other men for money. We commissioned one of our secret informants to contact the owner of the account and [...] The informant spoke to the accused on the “Guyz” app and the accused said that he wants to have sex with our informant for money and sent pictures of himself to the informant.

The informant received the phone number [redacted] from the accused and ar-

408 Case E3

409 EL4

410 Case E11

ranged a meeting to have debauchery acts with him for money and agreed to meet near Mesaha Square.

*We moved with a force from the police station with our informant and waited for the accused to come. We sent our informant to talk to him and after verifying that he is the same person from Guyz, our informant gave us the secret signal and we moved in to arrest the person.*⁴¹¹

Whether police are actually conducting searches through the informants, or are performing these searches themselves and then altering the documentation, is an open question. Only one case file contained a police report in which the first-person plural was used to frame how an account was identified, and even that file explicitly mentioned the use of an informant.⁴¹² As one of the lawyers explained, the actual or pretextual use of informants is an issue of procedural legality: “What they always use to try to avoid the illegality of the arrest under criminal procedure law is that they say a secret informant... They always use that line in almost 95% of the cases.”⁴¹³ The interviewee couldn’t be sure whether such informants existed, because the prosecution claimed, “they can’t give [the identity of] the secret informant to be in the court and in the investigation they can’t release his name for his own safety.”⁴¹⁴

When an informant is used, the police can sidestep warrant requirements. If asked how digital evidence was obtained, “They would say that [it was] ‘based on our intelligence resources’. [...] Not only for LGBT cases, for any case that would require an arrest warrant.”⁴¹⁵ Informants are also understood to give the police additional room to maneuver, “As per the criminal procedure law, a police officer can disguise himself, and go undercover to find out about a crime but he can’t seduce someone into doing the crime.”⁴¹⁶

411 Case E11

412 “In accordance to the guideline of the ministry of interior to combat prostitution and homosexuality among the youth, we found an account called [redacted] on gay dating apps Grinder that contains advertising for debauchery and a man wanting to have sex with other men for money. We commissioned one of our secret informants to contact the owner of the account...” [case 9]

413 EL6

414 EL6

415 EL4

416 EL6

While standards related to a defendant's the state of mind vary, the general scope of entrapment involves state actors actively inducing criminal activity. Article 6 of the European Convention on Human Rights Prohibits entrapment that involves "the arrangement of multiple illicit transactions with a suspect by State Authorities". Adding further that-- in order to avoid entrapment--undercover agents must seek to investigate ongoing criminal activity in an essentially passive manner and not exert an influence such as to incite the commission of a greater offence. Other jurisdictions outline additional standards related to the defendant's state of mind. For example, the Japanese standard for entrapment involves situations in which authorities instill the criminal intent necessary to constitute the mental element of the crime. Meanwhile the American standard for entrapment involves two elements: (1) government inducement of the crime, and (2) the defendant's lack of predisposition to engage in criminal conduct.

Rarely are defense attorneys able to document that the police themselves have engaged in entrapment. An interviewee observed how "In one of the cases [...] the police officer did say, "I started talking to the person." And you [could] see that in the screenshots he [had] added that the person was saying, "no," and this is illegal under the law because now [the police officer] was actually seducing him to commit a crime."⁴¹⁷ Where informants are actually involved, interviews also noted that coerced or paid informants are very common.

The strong patterns present across these cases in Egypt led interviewees to speculate about how police officers are trained to conduct them. However, it should be noted that no lawyer or member of an NGO or researcher consulted had had direct access to police training manuals. One of the interviewed lawyers stated

that "it is not really like a centralized kind of instruction. It is more of a routine. So if a new officer is maybe coming into the department of moral public and vice police they would not give him instructions [on how to use this tactic] in that sense but more like he would learn from his counterparts who have already worked on that kind of cases and maybe improve the routine if [he] can... You can see this from how most of the cases very resemble each other" but because they are not identical, "you can see there is no one central instruction to how to proceed in these cases."⁴¹⁸

Because entrapment and monitoring cases usually involve online activity on messaging apps and social media (often privately), more charges are being brought under the new cybercrime laws, meaning the cases are then heard in the Economic Courts. "So the last case [...] same method, he was entrapped online on Grindr and then he was arrested from his home and was charged under the cybercrime law and debauchery law, and

417 EL6

418 EL6

was moved to the economic court.”⁴¹⁹ The interviewees agreed that entrapment cases all now go to the Economic Courts, meaning not only more charges, but also higher sentences.

In Tunisia, there is now an observable shift towards using digital devices and apps to target individuals and it was mentioned in all but one of the interviews. The main method observed was surveillance and monitoring of Facebook activity. However, in a pattern similar to that in Egypt, the Tunisian authorities are now beginning to use fake profiles on both Facebook and dating apps. *“Most of the time they use Facebook and Messenger. They create a fake profile on Facebook... they add the person online; they start a conversation with them to be able to actually have proof.”*⁴²⁰ As of yet, the interviews and cases documented only a sporadic or arbitrary application of these methods by certain officers and precincts.

Interviewees noted that when fake accounts are employed, police use an unusual level of detail: *“they create full profiles. Most of the time, they use fake photos, they create a fake story, to be able to collect as much information as possible from people.”*⁴²¹ In some cases this may be attributable to the size and closeness of the communities in

*“smaller regions... [where] there is more proximity between the prosecutors and the people... [T]hey usually know these people so what they do is that they actually create themselves fake profiles to build something on these people so then when they have enough to actually prosecute this person... like a money dispute or something like this, and they would already have a file that is ready and full of proof.”*⁴²²

One finding that is unique to Tunisia is detainees reported dates with officers who had been monitoring them on these apps with the fake profiles, as well as setting dates, but had also delayed the actual arrest for unknown reasons:

*“B: Yea, sometimes he told me that he was on the application, and he had a meeting or... I mean a date or something like that... maybe it’s not always at the same time. It doesn’t always happen at the same time. For example, the police could use those applications to know the identity of some persons, okay, they collect it and they keep it and they use it in the case that this person has been caught in flagrancy or something like that you know.”*⁴²³

One interview from September of 2020 documented a recent case in which the police made use of a fake profile: *“Sometimes... in a private group on Facebook the police make*

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a false identity and enter that group and make conversation with them and bring them to some place and arrest them.”⁴²⁴ The interviewee went on to explain how the police are using fake profiles not only against the queer community but against other targets as well: *“they use it in LGBT [cases] but one week later in August I had a file which was for a strike movement [...] it’s a tactic of the police. [...] Police make fake profiles and enter apps, dating apps or Facebook [...] I can believe that they are chatting with the gays and trans [people] and they arrest them. [...]”⁴²⁵* Other interviewees discussed additional ways that fake profiles may be employed, where these may initially be created to gather digital evidence *“because [the police] don’t really have access to their, for example, Facebook account.”⁴²⁶* However, then the police *“can use fake accounts in order to blackmail these people. Or they sometimes [invite] them to a place where they are going to meet and then they attack them or beat them or threaten them.”⁴²⁷*

While the research interviews were being conducted, reports came in from interviewees and local experts about Tunisian police in Sousse making numerous accounts on Grindr in order to identify and entrap people. One interviewee said that, *“[Sousse is] known as a touristic place. And there was information that police are systematically using chat [and dating] applications and websites and especially Grindr to kind of identify homosexuals, etc.”⁴²⁸* Organisations such as Damj⁴²⁹ immediately created campaigns to warn the community. When the fake accounts began to initiate contact,

“they actually made meeting points with them, like they wanted to meet them. But luckily the ... queer people [found out] that the police [had] noticed the [Grindr app], and understood that this was police and very quickly they started sharing on LGBTQ Facebook groups ‘to pay attention that there are police using the app, and just to be certain that you are safe.’”⁴³⁰

As a consequence of the effective community response, no arrests were documented.

Based on the information gathered during this period in the interviews and in conversation with local experts, this does not appear to have been an operation directed from upper segments of law enforcement. Rather it is supposed that this happened after an initial arrest and interrogation where the app was identified on a detainee: *“Apparently someone who has been arrested recently got scared and he explained everything about [Grindr]. But they’ve recently only started using Grindr; they really didn’t know about it before.”⁴³¹* However, interviewees still worry about future developments: *“now it could*

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429 Facebook.com. 2021. Damj Tunisie. [online] Available at: <<https://www.facebook.com/damj.tunisie/>> [Accessed 22 December 2021].

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happen again and they could actually use this application to actually try and get to LGBTQpeople.”⁴³²

In contrast to Egypt, the use of entrapment techniques is not well documented in case files. The Tunisian police are not allowed to use fake profiles, and when one lawyer asserted that they had, *“They denied it.”⁴³³* This makes mounting a defense problematic, as, *“in our penal system the lawyer cannot do the search [...] we cannot have access to the profiles. All the work is done by the police so our work is so hard to [prove] that it’s [through] a fake profile.”⁴³⁴* Of course, this means that the police can sometimes fabricate or obscure details of their investigation: *“In the police report they are not really clear, I mean, in the police report they try to hide that part of the story. So they make it just as, there is a person who reported to the police that there is a homosexual, etc., etc.”⁴³⁵*

In Tunisia, another difference between its law enforcement and those active in Egypt is how fake profiles are actually used to monitor individuals for the purpose of gathering evidence in connection with an eventual arrest. The interviews point to the fact that the police resort to this if they believe they may not have enough evidence to build a case from a device search alone: *“In [some] cases, when the police think that they will not find anything, they try to intercept those persons and they take more time, of course” to gather information from apps and social media.⁴³⁶* In contrast to the opportunistic searches described in the section on Lebanese and Egyptian surveillance, in Tunisia, the police

“...actually know [the accused] from before, and they are surveilling them, and they [monitoring] them, and whenever there’s the smallest problem that’s when they actually pursue, because they already know they just didn’t have anything against them, before they didn’t necessarily have proof so once there’s something that’s how they like they know and they pursue it.”⁴³⁷

Once an arrest is made, device searches become the most crucial element: *“And the second things is that when they get arrested, they confiscate their phones; they go through their messages; they go through their photos; they go through all that, so sometimes that’s how they can actually gather proof.”⁴³⁸*

Again, fake profiles are fundamental for this method, and the profiles are elaborate and conversations are had to build cases, but there are no entrapments in a traditional sense here. Predominantly on Facebook and the intention is to gather the data needed

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for future prosecution, for creation of set files on individual.

The complexity and progression in the monitoring and entrapment that has been observed in Tunisia is concerning. Awareness of the situation can be attributed to lack of documentation due to police obfuscation, lack of reporting due to the complexity of parallel cases, and also because the consequences have been significantly mitigated by the success of the Tunisian LGBTQ community in protecting its members through information-sharing.

In Lebanon, entrapment and monitoring methods are the least documented of the three countries. The authorities do not seem to be engaged in any systematic effort to entrap individuals on apps. However, when the idea of the use of fake profiles to surveil individuals, especially more marginalized ones like queer sex workers, was raised with interviewees, they found it plausible. *"I haven't [seen] it but I wouldn't be surprised at all. Because that's something I would expect."*⁴³⁹. One interviewee did indicate that they had observed multiple uses of fake profiles, although this was not confirmed by other sources:

"A: So you say they use fake profiles to just [identify them] and then go and raid their houses? Okay, walk me through that. So how does this happen?"

B: Yeah, of course, it's happened many times.

A: So they go on an app, create fake profiles, and then meet them?

B: Of course. They meet them, they meet them and they maybe arrest them or blackmail them into confessing about someone else. Maybe the person is not the target. Maybe they just pressure him or pressure the person to confess about someone else, about whom he knows; maybe they can get names so they can blackmail them for other cases, for example.

[...]

*[The] officers use fake profiles to trap some victims I had."*⁴⁴⁰

The use of fake profiles as a tool for intimidation and forced confessions, as opposed to simply arresting the targeted person, may be linked to warrant and arrest protocol requirements. If individual lawyers are reporting the use of fake profiles as a means to identify individuals, more work and research needs to be done to challenge the notion that this is not a method used in Lebanon and provide further support and protection to those at risk.⁴⁴¹

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441 Please note, as of the writing of this report ARTICLE 19, Helem and local experts are in the midst of conducting this exact research

“SUSPICIOUS ACTIVITY”: NEIGHBORHOOD REPORTS AND SURVEILLANCE

One of the less common ways through which queer people end up arrested or prosecuted is through official complaints lodged with the police. These complaints might be filed by neighbors, or from staff at businesses patronized by members of the LGBTQ community. The language of the complaints documented in the case files demonstrates that they are often rooted in homophobia or transphobia. For example, a complaint might allege, *“they noticed [something] ‘unusual’... it’s not my word, their words, they use the word ‘abnormal’, ‘unusual’ behavior, something which they deem not conforming to the dominant norm.”*⁴⁴²

Three of the cases from Lebanon and six cases from Tunisia were initiated on the basis of “suspicious” activities pertaining to the individuals’ appearances, and the individuals looking “effeminate.” An example of this occurred in Tunisia in 2019, as a tip was made to the police on the basis that the gender presentation of three people was proof they were engaged in prostitution:

*“According to the preliminary investigation, the defendant was arrested after police officers received information from local informers about a group of 3 homosexuals (effeminate looking and dressing) who used to visit a café in the area and offer sexual services for money. The police officers headed for the cafe where the group usually meets where they found one [in] the suspicious group and led him directly to the police station to interrogate him.”*⁴⁴³

At the station, the defendant was questioned about their sexuality and gender identity, and when a device search revealed some relatively inconsequential digital evidence, this proved sufficient for a charge that resulted in a six-month prison term.

Indeed, arrests most commonly result from these reports in Tunisia, occurring in *“many cases”*⁴⁴⁴. One interviewee noted that it comes *“especially [from] the neighbors... when someone knows that in that floor in that apartment there is a gay person or there is a gay group they tell the police and the police enters the apartment or floor or the café or the bar... sometimes on the street if there is a trans person the police arrest them [...] just for being trans.”*⁴⁴⁵ One interviewee also pointed out that, in addition to homophobia and transphobia, these reports can be rooted in petty neighborly spats:

“[...] in most of these “moral” let’s say cases, is that neighbors for example if someone who’s on top of you or beneath you is annoyed by some noise or if there are a lot of people coming in and out or if someone is throwing a party and they are annoyed and they call the police, and when the police comes there and they see something that they dislike [...] they would [use] whatever they can find to

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basically arrest these people”⁴⁴⁶

What distinguishes Tunisia’s police response to community reports from those drawn from Egypt is the authorities’ willingness to use these reports to search private homes. Throughout the countries studied, reports can easily stir the police to stop and search someone patronizing a business or in the public street. For example in Egypt, it’s not uncommon for hotel staff to report “suspicious behaviour” -- that is to say, the presence of someone who presents as queer. As illustrated in the Tunisian case above, visible LGBTQ identity is equated with active engagement in sex work. An example from a 2009 case exemplifies this:

“The operation room at the department of public morality received a complaint from a hotel worker and we were ordered to move to Marriott Hotel Zamalek to investigate an individual who was stopped by the security supervisor at the hotel. The security supervisor said that he stopped the individual because he was mov[ing] in the hotel hallways waving and signal[ing] to the people in there to get to know them. We arrived at the hotel and received a memo from the security supervisor Mr [redacted], in that memo he mentioned that there was a suspicious looking person who kept trying to know other hotel guests to seduce them into committing debauchery with him in exchange for money, with the memo we were given the surveillance footage from the hotel’s camera that shows what happened.”⁴⁴⁷

A transcript of the testimony of the security supervisor confirms what is apparent from the police report: what he judged to be “suspicious” was that the defendant was “waving to strangers and trying to get to know them.” The supervisor inferred from this “that he’s trying to seduce the guests.”⁴⁴⁸ A second case file can be used to show similar behaviour of reporting and endangering queer people by the Marriot Hotel and their staff’s profiling and monitoring of individuals. It has become known for homophobic endangerment of queer people.

Residential arrests and searches do happen in Egypt when the police “receive a complaint from a neighbor stating that there’s a ‘suspicious’ group of guys meeting at a flat.”

⁴⁴⁹ However, the police must secure a search warrant before searching the premises. A neighbor’s complaint can be the basis for such a warrant, as illustrated in a story from one of the interviewees, who was representing a queer sex worker:

“It was in 2015, and the person was arrested from his home after the neighbor complained and the police got a search warrant and so on. And they made the arrest. And his home they found all the elements of the crime, the evidence, they

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448 Unofficial translation for this report

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*found sex toys, they found women's clothes, they found money that was from seven different currencies, they found a Facebook page that he was creating to promote himself online, and they found all the evidence for the crime."*⁴⁵⁰

Interviewees were clear, however, that even though securing a search warrant is a low procedural bar, that requirement at least partially explains why Egyptian police prefer to make arrests in public. They prefer to avoid the necessary paperwork:

*"From my experience the police usually arrest individuals while patrolling the streets and noticing some 'suspicious' people or after raiding a gay meeting spot and then they start collecting the evidences from the individuals that are arrested. [But, in the] other case is the police raiding a house after receiving an anonymous tip from someone that there's 'suspicious' looking guys going to that house to commit debauchery, then the police issue an arrest warrant from the public prosecutor office and raid the house and make the arrest."*⁴⁵¹

The patterns seen in Lebanon are similar to those in Egypt, wherein people's lives and livelihoods are sporadically monitored by community members, and may also be reported to police. Sadly, these are even sometimes close connections: *"we have complaints—they have complaints from neighbors, we have complaints from family members sometimes who denounced people to the authorities."*⁴⁵² Fortunately, *"these cases at this moment are actually rare."*⁴⁵³

As in other contexts, the group most heavily impacted are trans women in Lebanon, and reports frequently contain accusations of prostitution.⁴⁵⁴ This pattern was documented by Human Rights Watch back in 2013,⁴⁵⁵ as *"there are certain areas where trans people [gather] together and neighbors complain to the police officers who come and arrest people there."*⁴⁵⁶ One interviewee shared a typical story of a more recent occurrence:

*"I've had the case [where] trans women were having drinks at the coffee shop. The people of the town just filed the complaint with the municipality, the municipality transferred the complaint to the public prosecutor, and public prosecutor charged the Morals Bureau to go down and to look at who was practicing prostitution."*⁴⁵⁷

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454 It should be noted that sex work is criminalized in Lebanon when it is practiced outside of the facilities of licensed brothels[Article 523 of the PC]. No brothel license has been issued since 1975 and suspicion of practicing illegal sex work based only on the appearance of trans women has led to their detainment, arrest and prosecution as showed above.

455 Human Rights Watch, "It's part of the job: Ill treatment and torture of vulnerable groups in Lebanese police stations", June 26, 2013 accessible at: https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations#_ftn31.

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This specific case was won by the NGO Legal Agenda, who represented the defendant, because the formal charge brought was for prostitution even though there was no evidence for any elements of that crime.



THE ROLE OF DIGITAL EVIDENCE IN PROSECUTIONS

“I think that we have not challenged the use of digital [evidence] enough, you know. We still have a lot to go there.”⁴⁵⁸

As well as the definition of digital evidence that this report is guided by, it is important to note that in general practice digital evidence should be treated as any other form of evidence: it has to be relevant to the case, and it has to pass an admissibility test to demonstrate its evidential integrity.⁴⁵⁹ However, as it will be seen here, there is little to no data to show that these standards have been regularly emplaced for these LGBTQ cases.

Digital evidence is uniquely well-suited to “prove” something so intimate and private as an individual’s sexuality. The actual way digital evidence is gathered, and how it is used during investigations and in court, as the basis for convictions and sentencing, clearly establish both state and corporate complicity in the prosecution of LGBTQ people in Egypt, Lebanon, and Tunisia. It also provides vital insights that afford opportunities to challenge the prosecution of marginalized people, and creates a launchpad for the modification and design of better digital technologies that can support and protect communities.

What is important to remember is that no one piece of hardware or software exists in a vacuum: rather, apps are raided interchangeably for pictures and messages, and integrated with web history and even phone contact lists. That patchwork of digital existence drawn from a personal device – almost always a phone – maps a person’s identity and is used under vague laws that penalize such identities, to create a narrative that can destroy someone’s life. In line with this mosaic theory; regardless of whether each piece of evidence itself provides enough proof or not, inferences that can be made from all this deeply intimate and personal device data, when taken together, can be that “proof” of a person’s identity.

The use of digital evidence did not give rise to any new means of prosecuting queer people; the relevant laws predate many of the technologies and of course queer people were prosecuted under these laws prior to the existence of digital evidence. Instead, the impact of digital evidence has been on *how* prosecutions proceed, from the investigation to the trial. Before digital evidence was available, law enforcement authorities

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459 A. Kamal. ‘Integration of Forensic Techniques into the Threshold of Admissibility of Computer Derived Evidence: Should the Paradigm be Re-phrased’, ASA University Review, Vol. 5 No. 1, 2011.p 43

used other methods to gather so-called proof, including torture (including medicalised torture such as anal exams),⁴⁶⁰ forced confessions, mass raids, informants or witnesses, and circumstantial evidence. One lawyer in Lebanon offered a rough timestamp:

“I think the cases that you have seen before, like back 7 years ago, didn’t have any digital evidence. And they didn’t actually use it... they relied on witnesses [or] on circumstantial evidence, which is videos, like having pornographic CDs, or having condoms, or ordering the rectal exam.”⁴⁶¹

It is fundamental to understand how authorities use digital evidence in conjunction with other evidence to push through prosecutions. The report shows linking digital evidence with other types of evidence, especially confessions, produces the highest rates of conviction and the most stringent sentences. Digital evidence reduced the workload for prosecutors, police and investigators: they need only gather a picture, app or a video from a phone to make a case.

To identify the relevant information about the gathering and use of digital evidence, interviewees were asked about what they had witnessed as tactics used to gather evidence, as well as what evidence was specifically sought as the cases continued, and what became the most detrimental evidence. Case files were also evaluated to see what digital evidence is officially presented therein.

DIGITAL EVIDENCE SUPPORTS IDENTITY-BASED PROSECUTIONS

“This is a crime that doesn’t leave much [evidence]... There is simply nothing. It’s just two people having sex. What kind of evidence do you leave in that? Especially if it is not done by force... [I]n my opinion, you cannot compare it to any other crime because it doesn’t have to be a crime. So you don’t have any traces. This is why they rely on these kinds of evidence because this is all they can get, this is all they have.”⁴⁶²

As queerness and consensual sexual acts which may be defined as criminal leave neither victims nor crime scenes, digital evidence has become a key tool in providing evidence for a crime that is otherwise very difficult to prove. It supports states in their efforts to criminalize an identity. **Yet, what is deemed too queer to be legal is not defined.** The text of the laws require sexual acts to be committed in most cases, but it is rare to have individuals caught “in the act,” thus hints of queerness form a basis for the mens rea of the “crime.”

“It’s not that the intention becomes enough but it is proof that this person is ho-

460 Long, S., 2004. IN A TIME OF TORTURE - The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct. [ebook] Human Rights Watch, p.13. Available at: <<https://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf>> [Accessed 30 October 2021].

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homosexual and this is a confusion you know. I mean they consider that this proves that this person is homosexual and when you are homosexual you will definitely have sexual relationships. So [...] the claims that you have done something are true because you are a homosexual, you know, this logic.”⁴⁶³

When it comes to proving a person’s identity, non-digital evidence tends to be circumstantial, such as locating clothes, condoms, or social connections. However, digital evidence, the interviewees concur, *“provid[es] evidence for something that usually is very hard to find evidence for. [...] at this stage digital evidence is actually providing new type of evidence and is providing evidence for something that was really impossible before.”*⁴⁶⁴ When a device search is performed incident to arrest or other contact with the authorities, the outlines of the case can be built immediately: *“there is nothing I can think of except for the confession and digital evidence[...] that really proves on the spot that a person is LGBT and therefore you [can] apply Article 534.”⁴⁶⁵* Procurement and use of digital evidence is such a key part of many cases that one lawyer said that in the absence of either digital evidence or a confession, *“they don’t have a case.”⁴⁶⁶*

As with many types of police tactics, digital evidence collection methods were pioneered among the vulnerable and marginalized communities, and were then implemented more broadly. In Egypt, it began with sex workers, and in Lebanon, with Syrian refugees. One of the interviewees expanded on this observation in Lebanon, as part of their own view of the timeframe in the use of digital evidence:

“As for the digital evidence I think this is quite new especially with apps, with the use of WhatsApp. [...] And I think this is something they started doing with Syrians [...] the use of digital evidence against LGBT individuals I would say started at the same time with using digital evidence against the Syrians, against Syrian refugees.”⁴⁶⁷

The interviews and the court files reviewed for this research project demonstrate the dominance of a heteronormative and homophobic outlook in the evidence gathering process. Police and prosecutors actively look for proof of queerness, as opposed to proof of sexual acts, as queerness is seen as an indicator of guilt. One interviewee noted that, *“They look for something that [would] make them they say that they are gay”*⁴⁶⁸, and law enforcement is *“searching and collecting personal photos especially for offend-*

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*ing social criteria and social stereotypes, [they are looking] for gay stereotypes.”*⁴⁶⁹

What “proves” queerness is clearly formed by the preconceptions of the police, prosecutor, or investigator. They look for visceral and contextual clues: *“So, any personal photos they can find that indicate that the individual has done any kind of debauchery [sic] before or personal conversation with even his friends, if he uses words that indicates that he is gay or involved in debaucherial acts.”*⁴⁷⁰ In one Egyptian case file, the police included screenshots where the defendant used she/her pronouns as evidence of prostitution, in addition to screenshots of conversations with purported clients⁴⁷¹. Additionally, any participation in tools created for the queer community is evidence enough to prove queerness:

“A: In terms of Grindr at something like Grindr, it in itself. It doesn’t prove any sort of sexual act. How does that get approached?”

*B: It’s considered to be a suspicion of queer activity for those who know it – that’s for the moral police[...]. They know that this is an app used by the queer community.”*⁴⁷²

This interviewee clarifies that in Lebanon, *“the mainstream trend towards judges is to actually sentence on the basis of sexual orientation without there being a specific intercourse act prove by the evidence.”*⁴⁷³

Any relationship falling outside cis heteronormative behaviour is deemed punishable, from flirting to friendships to even the most mundane interactions. Certainly, sexually explicit and overtly amorous exchanges are perceived as a goldmine for police and investigators. These include *“romantic conversation or voice note or pictures”*⁴⁷⁴ and if *“you send[] your nude photo to another man... This is also a kind of a proof that you... this is your sexual orientation.”*⁴⁷⁵. This type of evidence seems especially notable in the interviews in Tunisia. *“For example in 2013, 2015, and 2016, in these three cases I remember that the judge mentioned that in the text messaging on the phone, there was a romantic relationship between both who were arrested; in another case he cited that the guy promised the other one to buy him a PC [...]”*⁴⁷⁶

However, even merely sweet or amicable exchanges may be treated as damning. In one case from Lebanon, the individual who had their device searched was questioned

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471 Case E5

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about a contact they had saved in their phone as “honey”⁴⁷⁷. The investigators called this individual to ask about the choice of name. The notes from the defense lawyer read:

When they search[ed] the phone of my client, they found out that he register[ed] a name in his contact under the nickname of “honey”, they called [that number] and ask[ed] him to come and make a statement:

- *I know the accused since 2008, I met him in a swimming pool, we talked and later we met all the time in the same place.*
- *I am married and I have three children.*
- *I visited him in the hospital as a friend.*
- *I don’t have any explanation why he gives me the nickname of honey*
- *I assume the relation with him was just friendship not more and I don’t have any idea if he has any relation with same gender.*⁴⁷⁸

In Tunisia, similar messages with a friendly context have been used in court, and the prosecution has implied that friendliness is coextensive with queerness. *“I remember,” one lawyer shared, “that there were some screenshots of discussions, of messages like, ‘I like you.’ Even it’s not sexual or even it’s not an invitation to sex... Even messages [that are] emotional I would say, emotional messages, etc., are interpreted like ‘This is the identity. This is what you want. And we can prove that you are a homosexual.’ You know, this is the logic behind this.”*⁴⁷⁹ In Case T3, the lawyer’s notes in the case file notes stated that:

“While searching the accused phone, the police agent found the following applications: messenger application, tinder, and the gallery of pictures. By searching them, no precise proof of sexual offer for money was found. Nevertheless, some discussions on messenger that barely could be considered as flirting with men were found. Messages such as ‘you look beautiful’ and ‘you are charming’, and ‘I like you’.”

MISPLACED TRUST IN DIGITAL EVIDENCE

Digital evidence is described in some interviews as “hard evidence.” Lawyers in each country explained the difficulty in challenging evidence that is seen as so accurate and so incriminating by judges or prosecutors. There is a conflation between the existence of digital evidence for one thing—same-sex attraction or conduct associated with the LGBTQ community—and proof, which is required by these laws, of the actual physical

477 Case L2

478 Case L2

479 TL4

sexual acts themselves. *“It’s hard to dispute the digital evidence in general in front of the judge or in front of the prosecutor because it is hard evidence, they have it in their hands [...] they have the phone, so it is very clear that this evidence does exist.”*⁴⁸⁰ Tunisian interviewees talk about how they try to bring constitutional and procedural challenges to the use of this type of evidence in court, but due to the perceived power of digital evidence, this is often impossible. *“You try and ask them to not admit it because of privacy basically, confidentiality, etc. and all the other laws, it’s very hard for them to actually not take it into consideration, because it’s also a kind of a proof that is irrefutable.”*⁴⁸¹

Interviewees noted that there is often a deference to evidence that is derived from technological sources. *“Digital evidence ... it’s like the ‘truth’ when the judges can find or have those pieces of proof... It’s like the ‘truth’ for them.”*⁴⁸² One interviewee stated that when there are certain types of digital evidence, *“it’s like the case is closed”*.⁴⁸³ Factoring in how these cases can proceed with limited adherence to even national-level procedural guarantees, it is clear digital evidence plays a fundamental role in prosecutions.

Throughout the interviews with Lebanese lawyers was the theme that judges who grant more progressive interpretations of the law also regret the impact sexual digital evidence has in the court. *“We’ve had judges... I mean some kind of sympathetic judge is saying: ‘do they really have to sex that much? Why did they do so much sexting!?’ I’ve heard from a judge. because judges are thinking, ‘why do I have evidence? I would prefer not to have evidence so that I can issue a non-guilty verdict’.”*⁴⁸⁴

When asked about whether judges might exclude some digital evidence before trial, the common—and almost unanimous response—was a firm no. Only in rare occasions of grave procedural error can digital evidence be rendered inadmissible. Even when the evidence is not used in court, defendants’ fear of its possible impact can make it a valuable tool in the hands of police and prosecutors, who can apply it as a psychological tactic. For example, one interviewee noted that, *“with digital evidence, you have more indications about a particular incident that has already happened or about to happen.”*⁴⁸⁵ This interviewee goes on to explain that if the prosecutor or investigators have ideas about a person’s identity or sexual activity, digital evidence in these situations *“is facilitating the investigating role into getting more[...] especially there are pictures or something that like they can be even used as manipulation”*⁴⁸⁶

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HOW DIGITAL EVIDENCE IS PRESENTED

Screenshots

Screenshots⁴⁸⁷ are generally defined as a visual information capture of all or a selected part of what is seen on a screen and may be taken from either the phone of the accused or an informant. They can be produced through a built-in function of most phones and laptops,⁴⁸⁸ and offer a low-tech method to create hard evidence for court proceedings. Screenshots are significant in evidence-gathering and are frequently presented in court by prosecuting teams. They are popular because they are wrongly viewed as irrefutable and concrete, and have a visceral impact on judges. They are also an alternative to technical data extraction of the evidence, which may be required by the laws of evidence but in practice, might not be enforced:

“Under the criminal procedure law, in order to have the evidence included in the case they need a technical expert to collect the evidence, and to prove that the evidence do belong to the person. And since the [app users] usually use a fake name and don’t use their [real] names on dating apps so essentially you can’t relate these screenshots to the person himself.”⁴⁸⁹

The most basic use of screenshots is to document what is on the accused’s phone, including that the accused has profiles on particular apps, and “now screenshots of the conversation as well.”⁴⁹⁰ When the prosecutor wants to use data from “WhatsApp, they use Facebook, and dating applications” the evidence is “mostly screenshots.”⁴⁹¹ Documentation of a screenshot’s source is often casual, as an interviewer observed that, “they don’t have a chain of evidence to be sure... you don’t always see that they printed them out; sometimes they just refer to them in the minutes.”⁴⁹²

However, screenshots do not always serve the best interests of the prosecution. In one Egyptian case, the screenshot actually served to prove that the evidence was forged:

“When the person takes a screenshot from a conversation it shows the date on the top. So the prosecutor didn’t really go through the evidence, like he didn’t collect it himself, he just relied on whatever the police presented. The police took the screenshot of the conversation after the date of the initial police report. He made the arrest first and then he made the screenshots. As such it’s easy to attack that evidence because the time stamp [on] the screenshot provided happened after

487 Computerhope.com. 2021. What is a Screenshot?. [online] Available at: <<https://www.computerhope.com/jargon/s/screenshot.htm>> [Accessed 22 December 2021].

488 It’s also often possible to disable screenshotting, but this may not be effective as police may also take photographs or use other methods to capture what appears on screen.

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the arrest. So the person was not in control of his phone at that time. So as such it was easy to say that the conversation was fabricated.”⁴⁹³

Similar examples of these procedural errors can be observed in the Egyptian cases. In one case, the police and investigator notes refer to the app used as being Hornet throughout the file; however, the copies from the court file and the screenshots used proved the screenshots were taken from Grindr. The notes on the case point to the fact that often police just say the name of any queer app and drop in the screenshots.⁴⁹⁴

Impact of Entrapment on Evidence Methods

The way digital evidence is handled in Egyptian entrapment cases differs slightly, as entrapment techniques allow law enforcement authorities to tailor the evidence which will be needed during the investigation and for the trial. Entrapment cases reveal their preferences, and routinely focus on the visceral alongside procedurally required details such as dates and timestamps. *“They always try to make the person send pictures and like, the pictures would be dated; like they need the conversation in a way that they can say they like, they asked for money.”⁴⁹⁵*

Informants also capture phone numbers from their chats, which can later be used to counter denials. In a 2017 case, two individuals were arrested on dating apps and had allegedly given a phone number to the officers. The phone numbers were used to gain a confession.

While the authorities generally have access to informants’ phones, and may gather and save data from the profiles of the entrapping account, they don’t distinguish strongly between the value of digital evidence taken from informants’ phones and those of the accused. Anything that is available to be used in the case, might be used in the case:

“From the defendant’s phone, if they have a dating app they just open the dating app and print out some of the conversations he had, or from the police phone they were using to entrap the person they just print their conversations. And not only the dating apps, if it’s in WhatsApp, he sometimes uses the print out chats from it, or pictures they found in the gallery or the pictures they [have] received, then they print everything and they attach it to the police report.”⁴⁹⁶

However, if the evidence from one side is missing, it is easier for the defense teams to highlight inconsistencies and suggest the possibility of fabrication by the informant.

In Tunisia, where online entrapments are still relatively rare, no consistent image has

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494 Case E3

495 EL3

496 EL2

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yet emerged of what types of conversations are sought and what exact evidence is being collected. In the data reviewed for this report, the entrapments were conducted seemingly without mentions of money. Currently, there is not enough thorough information on the types of conversations to see a theme. However, in the cases that they have been observed, where police have created fake profiles, they are presented to the court under the pretense—familiar from Egypt—that there was an informant who cannot be present:

“in the case of fake profiles and how the police actually is taking part in that, is that when they are actually writing the report what they are saying is that, that person X like who was in this case the police let’s say, like the person X is taking part in the conversation is no longer nowhere to be found. It’s basically... they refuse it like let’s say in a certain way.”⁴⁹⁷

Technical Evidence from Other Sources

As noted in the section on Gathering Digital Evidence, investigation tactics are generally low-tech and focus on material directly available on a digital device during a search. However, interviewees in Tunisia reported participating in cases that included information gathered from national telecommunications service providers. This was also mentioned in one interview in Lebanon⁴⁹⁸. In these instances, the telephone logs are used to connect the accused to other individuals. One interviewee explained: *“I’ve seen in the files listings of... the different calls that go between two different phones [in a case].”⁴⁹⁹* There was no evidence of successful requests for data as introduced by social media, dating app, or messenger, and chat-based application companies. This is not to suggest that such requests have not been made, but rather that they were not reported in either the studied cases or by the interviewees.

If passcodes were not provided, authorities simply rely on other evidence. This was the case in three files from Egypt⁵⁰⁰. In Case E3 the investigation notes read:

“Investigation at Headquarters:

When we asked him to open his phone he refused, but when we showed him that the phone number he used to communicate with our informant and the screenshots we had from his conversations with our informant, he confessed that he did communicate with our informant through his phone. He also confessed that the female golden pieces and necklaces we found on him; he uses during his sex sessions with his clients.”

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499 TL7

500 Case E1, Case E3, and Case E4

Further in the investigation notes they highlight this with the first accused and how they used the evidence from the entrapper for a confession:

“Investigation Notes

First accused:

We showed the accused the screenshots from the conversations he had with the informant and he denied knowing anything about it.

When we tried to open the mobile phone from evidence number [redacted], we couldn’t because it was locked with a password, when we asked the accused to open it he entered a wrong pin code and we couldn’t open it.

When we tried to open the mobile phones in the evidence number [redacted], we couldn’t because it was locked with a pin code and the accused denied knowing anything about it.”

However, in Case E4, the analysis to connect the number from the conversations with the entrapper to the individual is more advanced as the individual had also refused to provide access to the device. The case file states that the investigators used the Truecaller⁵⁰¹ application to ID the individual name to the phone number used.

“Investigation notes:

When we opened evidence number [redacted]; contains a mobile phone, the accused denied knowing anything about this phone.

When we searched for the sim card number [redacted] we found in the phone on ‘truecaller’ we found an account with the picture of the accused as a profile picture.”

Despite the organized and operationalised nature of how police search for these cases in Egypt, their evidence gathering, and report creation methods are very clumsy. Yet, there is indication that this is changing and there is a move towards further sophistication and technical expertise in these cases, especially with the move to the Economic Courts. Prior to the introduction of the executable list of the Economic Courts⁵⁰², lawyers had been able to use a lack of definitions and procedures as part of their defense in cases seen in the Economic Courts. However, as mentioned, the executive list now codifies a broad range of elements that are chargeable digital offenses. It also provides the

501 Truecaller.com. 2021. Truecaller is the leading global platform for verifying contacts and blocking unwanted communication. | Truecaller. [online] Available at: <<https://www.truecaller.com/>> [Accessed 22 December 2021].

502 cairo52. 2021. اللائحة التنفيذية للقانون رقم 175 لعام 2018 بشأن بشأن مكافحة جرائم تقنية المعلومات - cairo52. [online] Available at: <<https://cairo52.com/ar/%D8%A7%D9%84%D9%84%D8%A7%D8%A6%D8%AD%D8%A9-%D8%A7%D9%84%D8%AA%D9%86%D9%81%D9%8A%D8%B0%D9%8A%D8%A9-%D9%84%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%B1%D9%82%D9%85-175-%D9%84%D8%B9%D8%A7%D9%85-2018-%D8%A8/>> [Accessed 22 December 2021].

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courts with power to bring in technical experts to certify the digital evidence presented. Before, the way evidence was collected was very flimsy and penetrable. *“It was just a piece of paper printed out; it doesn’t have any value to it; it was up to the court to just decide if this is even admissible or not and it was relatively easy to challenge it[...] It was just part of the atmosphere that the person committed the crime.”*⁵⁰³

With these changes, and the uses of the new cybercrimes and telecommunications laws, *“there is a specialized cyber person. An engineer sometimes comes and actually checks the phone, and checks the conversation, and checks the data, and checks the IPs, and checks everything, and gives a detailed technical report to the court that details of this really happened or this didn’t really happen.”*⁵⁰⁴ This is often when the defense or prosecuting teams ask for expert analysis of the evidence. Here, the purpose of challenging arguments around the validity of the evidence is terminated “because now he has a detailed technical expert that says, “This happened from that IP address,” for example and *“This IP address is connected to this person’s SIM card or this Wi-Fi.” So, it is very easy to connect the things to the accused and most of the reports come out against the accused.*⁵⁰⁵ This is a worrying development and will merit additional research in the future.

Limited Uses in Lebanon

In contrast to how digital evidence is used in Egypt and Tunisia, digital evidence in Lebanon is not always presented in court or in court files. This means often when digital evidence is present, it is either referenced in files and not directly added in or only used to coerce confessions.

Although in the eyes of Lebanese law enforcement such evidence may be fatefully incriminating, practical limitations intervene. In some instances, this comes down to a lack of printers: the Morals Bureau often deals with these cases and are very low in resources.⁵⁰⁶ Only in exceptional cases might the Cybercrime Bureau be brought in: *“Yea, the Morals Bureau does not have the technical tools to get the pieces out of the phone. But if the judge, if the prosecutor tells them, ‘Send the phone to the Cyber Bureau’, the Cyber[crime] Bureau can do it.”*⁵⁰⁷ The variables range between agencies:

“If you get arrested at the first stage at the General Security, they will print them out. If you get arrested by the Maloumat, the Information Division, they will print them out. It depends actually on the bureau that has arrested you and on the

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*decision of the judge if the bureau does not have the technical tools ...*⁵⁰⁸

As an alternative when printers or the Cybercrime Bureau are not an option, evidence may be transcribed into or even just loosely described in the investigation notes and minutes. *“For them I think it’s not a big deal to work on it. [...] So they just put the conversation [in] writing [in the minutes], for example they say, ‘X sent a message for Y and they write for example, something like ‘I love you my baby’, blah, blah, blah.’ They will write it.”*⁵⁰⁹ This may result in correlation and evidentiary issues for the case, but in the absence of a well-prepared defence attorney, the prosecution can use the vague framing to suggest inferences favourable to their case. *“We rarely see an actual extraction of the evidence inside the phone or separate reports indicating what was found inside the phones and the digital evidence... They don’t do this when it comes to digital evidence for queer people. They just mention [it] in the report.”*⁵¹⁰

Even where digital evidence is left out of the prosecution’s case entirely, interviewees reiterated that it remains a systematic part of the investigation.

*“Sometimes the evidence is not discussed in the courtroom, but it is submitted to the preliminary investigation, and therefore would be part of the evidence. It’s not that evidence that they submitted directly to court. But since it was used in preliminary investigations the court can rely on it as evidence.”*⁵¹¹

One of the lawyers, who had never seen digital evidence presented in a court file, nonetheless confirmed that clients always shared that device searches had occurred. In these situations, the digital evidence is a means to an end—specifically, the end being a confession: *“they just use the digital evidence to get the person to talk. Because the person has... because in all of our minds we think that the digital evidence is unquestionable evidence. So, the people... when you show them the phone the people start talking because they will think they cannot deny what’s on the phone.”*⁵¹²

TYPES OF DIGITAL EVIDENCE IN INVESTIGATIONS AND PROSECUTIONS

While the breadth and arbitrariness of device searches conducted against LGBTQ people in Egypt, Tunisia, and Lebanon might suggest otherwise, this research revealed that digital evidence is not a monolith. Rather, law enforcement authorities preferentially seek out certain types of digital evidence, either for particular purposes or based on the police, investigator or prosecutor’s preconceived biases. Understanding these categories – and how investigations proceed between them – is key to effective response.

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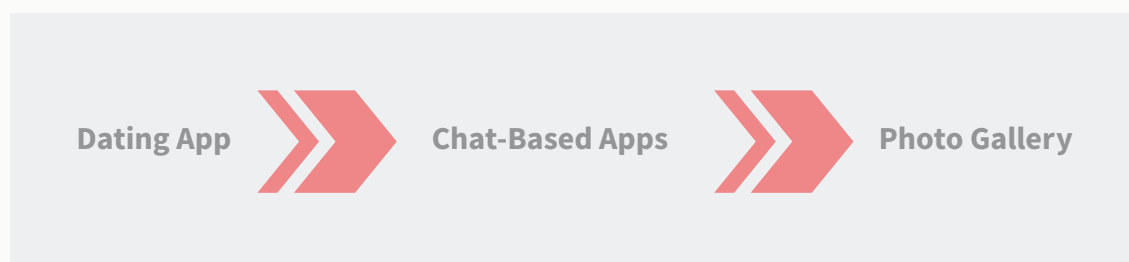
512 LL4

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It's the interplay between types of digital evidence that, in the investigation and prosecution process, is marshaled to form the most harmful frame for individuals. Digital evidence is the scene of the crime of queerness, because *"your mobile mainly is the main evidence [which will] get used against you."*⁵¹³ This notion of the combination of evidence was repeated in every interview. It is reflective of how device confiscations happen: when a device is searched, it is searched in its entirety: *"They mainly use WhatsApp, they use Facebook, and dating applications to be able to collect all the data and information that they are using and to include them in the report that they actually submit to the court later on [...]"* With many queer people in Tunisia, Lebanon and Egypt having security awareness on these issues, they may be able to erase some things before their phone or device is taken, but what is left can be dug into: *"all evidence is crucial but mostly when they find conversations that haven't been erased, photos and videos, these are the ones that are the most damaging."*⁵¹⁴

In Lebanon and Tunisia, the patterns of extraction are not just about evidence for court, but can be used as leverage to gain a confession: *"on the phone they look at WhatsApp conversations, that look at Grindr. They look at all messaging apps. They look at photos. They look at the sexting specific..."* and when they get it *"They either unofficially confront them with the evidence to extract a confession as I said, or they actually mentioned [it] in the police report."*⁵¹⁵

So, which tools are first searched and what follows? The experiences of the lawyers involved revealed two main routes:



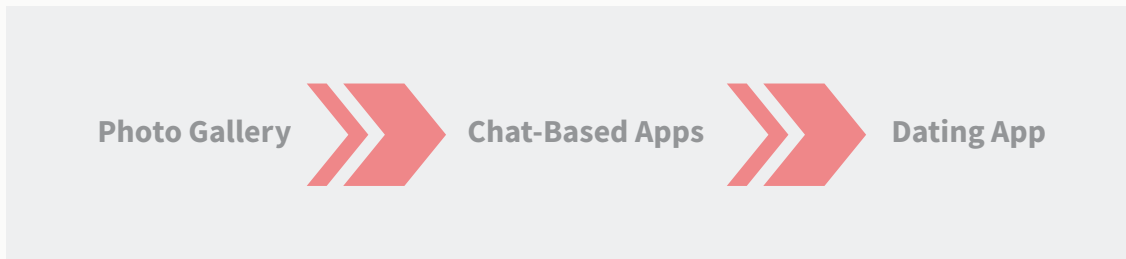
A search may begin with the identification of a dating app on the phone, especially a queer dating app. Details from this app, such as names, photos, and dates, are then used to target a search of messenger and chat-based applications like WhatsApp in Lebanon Facebook Messenger in Tunisia. It's also the most prominent pattern mentioned in the Egyptian interviews, where one lawyer explained that *"The most detrimental kind of evidence, is mostly when the person switches from dating apps to social media, like WhatsApp and messengers because these can be easily linked to the person's identity"*

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*whether it is through the phone number and so on...*⁵¹⁶ As some messenger and chat-based applications save images directly into the device’s photo gallery, this may be the final stop, and some of the most valuable – because visceral – evidence. For the police, dating apps have the advantage of specificity but the disadvantage of anonymity; supplementing that digital evidence with more from messenger apps and the photo gallery resolves the dilemma.



A search may also start with the phone’s gallery, since visual cues may be easier for officers to quickly assess. When something turns up, they dive deeper: in Tunisia, *“They look for everything, the application for the camera first, first the camera and then other applications.”*⁵¹⁷ As another Tunisian lawyer described it: *“First thing they do obviously they go into the photos and try to find photos and videos; [then] they go through conversations; they open the conversations hoping to find something; and now since they started knowing about Grindr, [...] they go into Grindr.”*⁵¹⁸ This pattern may also appear if a dating app is not present, since the photo gallery is the next more overt place to look, as one Lebanese lawyer clearly outlines: *“Usually if they don’t find the gay dating apps, they go through photos and WhatsApp usually first.”*⁵¹⁹

Visceral Images

Photos and videos which can evoke a strong emotional response in witnesses are highly detrimental to the defense, as it is difficult to challenge their authenticity.

In 22 of the 29 case files reviewed, photos were included; these photos were taken either from the galleries of the devices or collected from chats within different apps. However, not all these images documented the same or even similar things; while some contained explicit content, others did not. Whenever possible, the most visceral images were selected by the prosecution, as photos or videos of individuals engaged in intimate acts that are considered to be criminal are the most damaging for the defendant’s case. *“[I]ntimate photos are obviously the thing that are the most difficult to contest later on -- that actually two people in a specific position where it’s*

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very difficult to basically argue that it's not true."⁵²⁰ Authorities are aware of the impact of such images, and it can influence their search patterns, where *"They sometimes specifically look for photos or videos; sometimes people would take photos of themselves to send to their partners, sometimes they even do sexting"* ⁵²¹

If sexually explicit content cannot be located, other photos and videos may be used that also produce a visceral effect. The defendant's desire to keep aspects of their life private, along with the courts' willingness to impose punishments based on morality, can elevate seemingly innocuous data to detrimental effect. Examples of this are photos and/or videos which may hint at the person's sexuality, those containing "sexual poses," or those with effeminate or otherwise gendered clothing. Trans people are often the most at risk for intentional misinterpretation of such data, as *"sometimes even if a person is wearing drag or, it's a trans person and they find photo of this person like basically being herself and trans as being trans, or if they find people wearing makeup[...]these are enough reasons for them to condemn."*⁵²² This outcome was noted as occurring in Egypt, Lebanon, and Tunisia.

In Tunisia and Egypt, even selfies may be used in criminal trials. Selfies are often used because they have elements of nudity, or aspects deemed "effeminate." In Egypt, selfies are framed as photos used to incite debauchery and to advertise debauchery under Article 14 of of Law No. 10/1961, on the Combating of Prostitution. In Lebanon, a selfie does not seem to be considered as sufficient evidence unless it is clearly sexualized or contains nudity. However, in Lebanon, photos that capture intimate moments are often used in court. *"Usually they arrest [after] they see a picture. Sometimes you have pictures whether it is intercourse or a kiss or a sexual act. Sometimes it's just pictures of naked people."*⁵²³ For instance, in Case 1, a photo of the two accused kissing is used as evidence of a breach of Article 534.

In all three countries, nudity is a common theme for data considered sensationalized or otherwise in violation of morality codes. One interviewee noted that *"even [if] you have like a naked picture of yourself, like only you standing in front of a mirror being naked, this ... can be used as evidence."*⁵²⁴ In four of the case files from Egypt, selfies were included as part of the evidence file. Case 2's investigation notes provide some insight into the prosecution's rationale: "We included five naked pictures from the accused's phone that he uses to promote himself and seduc[e] tourists for sex." They were not directly corroborated with other evidence presented. TSuch photos may also be used to embarrass the individual into confessing their sexuality, as occurred during the questioning in Case 5 in which police asked, *"We examined your phone and found your naked*

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pictures and chats on it, what do you say about what we found?"

Multiple interviews confirmed that any type of visual evidence hinting at sexuality is used against the defendant. It was also confirmed that if there is no confession and no sexually explicit visuals, they will adopt what is available. One interviewee stated that *"Even if he doesn't confess they find pictures on his phone or pictures on him and especially if it's nudes [would] tape on it or someone who looks like him and the person is sexually active and there's evidence they don't really need a confession."*⁵²⁵ It was also reported that the more graphic the photo, the more likely the conviction, regardless of the strength of the actual evidence of any crime. In one interview, an Egyptian lawyer mentioned how blurry images were easier to contest and provided better chances for the defendant, where, *"If there is a clear photo of the individual with his face then the judge will give a strong sentence. But if there isn't a clear picture, it depends how good the defence lawyer is at arguing that in the court"*⁵²⁶

Evidence Seen in Case Files

EGYPT: TYPES OF EVIDENCE									
Case No.	Pictures (Device Gallery)	Pictures (on Apps)	Videos (Device Gallery)	Chats (on Apps)	Money	Clothing and other physical items	SIM Card	Web-pages	Anal Test
Case 1	✓ "Gay photos"	✓ "Gay photos"	✓	✓ Kik app & Queer WhatsApp Groups	✓		✓	✓ Backpage porn website	✓
Case 2	✓ Nude Selfies		✓	✓ Snapchat WhatsApp Whosehere	✓	✓ Make up Clothing			
Case 3	✓ Nude Selfies		✓	✓ "Hornet" but in fact Grindr	✓	✓ Gold Necklace	✓		
Case 4	✓ Nude Selfies	✓ Nude Selfies	✓	✓ Grindr Whosehere	✓		✓		

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Case No.	Pictures (Device Gallery)	Pictures (on Apps)	Videos (Device Gallery)	Chats (on Apps)	Money	Clothing and other physical items	SIM Card	Web-pages	Anal Test
Case 5	✓ Nude Selfies	✓	✓	✓ Snapchat WhatsApp Whoseh- ere	✓	✓ Clothing Make up Condoms Wigs “Creams”			
Case 6		✓		✓ Guys App	✓		✓		
Case 7	✓ Por- nographic Photos		✓	✓ Whoseh- ere WhatsApp	✓		✓		
Case 8	✓	✓	✓	✓ Facebook Grindr WhatsApp	✓		✓		
Case 9		✓		✓ Grindr WhatsApp	✓		✓		
Case 10	✓ Por- nographic Photos	✓	✓	✓ TS Dating Whoseh- ere WhatsApp	✓		✓		
Case 11		✓		✓ Guys App WhatsApp	✓ Credit Card		✓		
Case 12	✓ Por- nographic Photos	✓	✓	✓ Snapchat WhatsApp	✓		✓		

TUNISIA: TYPES OF EVIDENCE

Case No.	Confession	Pictures (Device Gallery)	Pictures (on Apps)	Videos (Device Gallery)	Chats (on Apps)	Anal Test	Clothing and other physical items
Case 1	✓	✓ Photos with others and "effeminate" photos	✓	✓ Pornographic videos			
Case 2	✓	✓ Pornographic photos	✓ Pornographic photos		✓ Facebook Messenger		
Case 3	✓	✓			✓ Facebook Messenger		
Case 4	✓	✓		✓ Pornographic videos			
Case 5	✓				✓		✓ "Feminine" Clothes
Case 6	✓			✓ Video of LGBTQ org (laptop)		✓	✓ Clothes Condoms
Case 7	✓						
Case 8	✓	✓		✓	✓		✓ Condoms Lubricants
Case 9				✓ Kissing and discussion of sex		✓	

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LEBANON: TYPES OF EVIDENCE

Case No.	Confession	Pictures (Device Gallery)	Pictures (on Apps)	Videos	Chats (on Apps)	Anal Test	Clothing and other physical items	Other Phone Features
Case 1	✓	✓ Nudes photos Kissing photos						
Case 2	✓			✓ WhatsApp Por-nographic Video	✓ WhatsApp			✓ Contact list name
Case 3		✓	✓ WhatsApp Sexual photos Photos of dancer		✓ WhatsApp			
Case 4		✓		✓				
Case 5	✓	✓ Nude photo				✓		
Case 6						✓		
Case 7		✓				✓	✓	
Case 8								

Conversations and Chat Applications

Conversations with clear romantic or intimate content are second only to photos and videos in terms of visceral impact on court proceedings. Such conversations are also heavily relied upon to create cases. The application that is most frequently mentioned in both the case files and by the interviewees is WhatsApp, which was mentioned in 8 out of 10 Egyptian case files and 3 out of 8 Lebanese casefiles, followed by Facebook Messenger, which was mentioned in 5 out of 9 cases in Tunisia. Regardless of the interviewee's country of origin, WhatsApp was mentioned in every single interview. *"They look for [Facebook] Messenger, WhatsApp, Viber, Grindr now... any application where they can actually find conversations."*⁵²⁷ Other apps such as Viber, Telegram, and text messages are also searched: dating apps are used in concurrence with messenger and chat-based applications, but their impact on a case is different than data considered to be of purely evidential value (this shall be discussed in a later section). In Egypt, 50% (6 out of 12) of the cases and more than half of interviewees mentioned WhosHere,⁵²⁸ a relatively unknown app outside Egypt. WhosHere is a geolocation social networking app, known to be popular with visitors to Egypt from the local MENA region. Many entrapments in Egypt are linked back to WhosHere, and it is regularly used in cases even when documentation of use is questionable. For example, in one case, the prosecution presented evidence that was likely fabricated, claiming it came from WhosHere when that was technically impossible based on the nature of the evidence presented.⁵²⁹

When it comes to conversations, messenger apps such as WhatsApp and Facebook are frequently mentioned in the interviews due to their popularity in the region. This popularity is in part due to the efforts of the local queer communities, for whom switching between apps and tools becomes a safety tactic and necessity. One interviewee noted that, *"In Lebanon, WhatsApp is one of the main means of communication for everyone and the queer community. They use Grindr to meet up and if there are security alerts, then they would use more private applications. But our law enforcement are not very familiar with all these."*⁵³⁰ However, chat conversation can be burdensome to search, as they do not have the innate visceral impact as do photos and videos. Authorities will look at the conversations surrounding specific photos shared in a chat conversation, but they will also use keyword searches as outlined in the prior "Gathering Digital Evidence" section. Conversations of a sexual and romantic nature can be hard for defense teams to challenge, especially if they are firmly proved to be linked to a specific individual. In

527 TL6

528 <http://whoshere.net/>. 2021. WhosHere. [online] Available at: <http://whoshere.net/> [Accessed 22 December 2021].

529 Case E7

530 LL3

these contexts, law enforcement uses conversations *“as critical proof of acknowledging [sexuality and relationships] ... it’s very hard to convince the judges that those discussions are not authentic, or those discussions do not mean the accused person had a sexualrelationship.”*⁵³¹

Despite this, the use of conversation transcripts is frequently challenged. One lawyer outlined their method of showing the court how easy it is for officers to falsify conversations, saying, *“So when I go to the court, I use an application called [redacted] to show the judge that it’s very easy to make a fake conversation on WhatsApp and such with anyone.”*⁵³² This is reinforced by how often officers have access to phones for long periods of time and there has been a documented history of Egyptian police fabricating evidence against defendants, as described in the “Fabricated Evidence” section. An interviewee noted that, *“Since the officers also have the defendant’s phone in custody they can make up any conversation they want on the phone and put it in there.”*⁵³³

There is an additional layer of complexity in sex worker cases, where in addition to searching for data indicating sexuality and queerness, law enforcement officers are also looking for discussions about money and arrangements to meet. This is true whether or not such data is necessary to pursue a conviction. One interviewee clarifies this in saying, *“Even though they don’t necessarily need proof because they’ve caught them in the middle of it, they use their telephones to go through their messages because most of the time sex workers would actually meet clients through messages or apps.”* This interviewee continues by saying that law enforcement officers *“are looking specifically at messages that would include the price, that would include the any detail about the kind of work that they are doing, any conversation about like meeting up, anything that could actually point them out to what...to sex work basically.”*⁵³⁴

Queer Dating Apps

Dating apps provide insight into the structures and implementation how law enforcement acts against queer communities in the MENA region. Dating apps are of special importance for their ability to connect queer persons and queer communities: these apps are used to meet, to establish relationships, and perhaps to aid in dating and romance.

For law enforcement, the presence of a queer dating app on a digital device is suggestive of queerness itself. The presence of the app can also provide avenues through which the user may be profiled and entrapped, and thus used to gather evidence against them. This has become a well-documented practice for law enforcement officers in Egypt,⁵³⁵ but is also becoming commonplace

531 TL4

532 EL1

533 EL1

534 TL7

535 Rights Africa – Equal Rights, One Voice!. 2021. Repression in Egypt: 92 LGBTIQ+ arrests last year. [online] Available at: <<https://rightsafrika.com/2020/03/08/repression-in-egypt-92-lgbtqi-arrests-last-year/>> [Accessed 22 December 2021]. and Eipr. org. 2021. The Trap: Punishing Sexual Difference in Egypt | Egyptian Initiative for Personal Rights. [online] Available at: <<https://eipr.org/en/publications/trap-punishing-sexual-difference-egypt>> [Accessed 22 December 2021].

among law enforcement officers in Lebanon and Tunisia.⁵³⁶ When asked in one interview about the most detrimental piece of digital evidence against a defendant, the interviewee's reply was the existence of the apps and the content on them: *"[On the dating app] the person's profile, his account, especially if there is a picture of his face and so on. They also rely on the kind of conversation that leads to confirmation that the person is asking for money or even if there is no money, and so on."*

The use of LGBTQ-specific platforms, such as Grindr, PlanetRomeo, Hornet, SCRUFF, Wapa, and HER has risen dramatically in recent years as mediums for connection. Unlike messenger, chat-based, and social media apps, there are no especially dominant players within LGBTQ-specific platforms. Popularity varies, and switching between apps by users is common as users frequently assess aspects such as accessibility, perceived risks,⁵³⁷ and strategies to avoid law enforcement. One interviewee noted that, *"In Lebanon ... the queer community... use[s] Grindr to meet up and if they are security alerts, then they would use more private applications"*.⁵³⁸ The queer community applies caution regarding the use of queer dating apps in Egypt, Tunisia, and Lebanon, as very presence of such an app on a phone can be framed as sufficient reason for arrest. This was demonstrated in 2018 in a study about Iran, Lebanon, and Egypt,⁵³⁹ and it is the same case in Tunisia, Lebanon, and Egypt today. *"If they see on your phone that dating application like Grindr for example they will arrest you immediately,"*⁵⁴⁰ said an interviewee from Tunisia, and in Egypt, one stated, *"So basically, even if they find a dating app, a gay dating app on the phone, this is evidence enough."*⁵⁴¹

Dating apps are weaponized by law enforcement in combination with a patchwork of other tools and apps. Dating apps have played a critical role in entrapments of LGBTQ persons by law enforcement. The apps have developed some notoriety as "LGBTQ+ trap networks."⁵⁴² One of the Tunisian lawyers highlighted this *"as a common trend ... for example I mean platforms [such as] Grindr, applications, [and] Tinder."*⁵⁴³ A second interviewee, this one from Egypt, said that he *"has seen that the apps that are being used are regular apps: SayHi, WhosHere, and some website TS-Dating, and so on."*⁵⁴⁴ The popularity of dating app monitoring and entrapments by Egyptian police means that they are also knowledgeable about the different apps they search. In contrast, in Lebanon and Tunisia, the popularity of such

536 ARTICLE 19. 2021. Apps and traps: dating apps must do more to protect LGBTQ communities in Middle East and North Africa - ARTICLE 19. [online] Available at: <<https://www.article19.org/resources/apps-traps-dating-apps-must-protect-communities-middle-east-north-africa/>> [Accessed 22 December 2021].

537 More about this "network effect" can be read here <https://www.article19.org/resources/apps-traps-dating-apps-must-protect-communities-middle-east-north-africa/>

538 LL3

539 Ibid

540 TL3

541 EL2

542 TL4

543 TL4

544 EL6

apps as an element of data-based law enforcement is less prominent, and there are only one or two that they're familiar with regardless of the apps currently in use: as noted, WhatsApp is one of these which is frequently mentioned and used in court filings. Both interviews and case files reflect that the police are not diligent in mentioning which exact apps were used. An interviewee in Egypt noted that *"Usually [police and prosecutors] don't mention which app on the police report, and they just write 'dating app' and sometimes mention a social media app like WhatsApp and Facebook."*⁵⁴⁵ This is also observed in the case files where screenshots show data taken from one application, but the police report mentions another well-known application.

Service providers for LGBTQ-specific apps which are used in Egypt have become more security-aware, resulting in shifts in how an app's users interact with both the app and with law enforcement. *"So it's different, and it changes in different time periods,"* one interviewee said. *"For example, in 2013 and 2014, Grindr itself issued warnings on its application 'Do not provide personal information' and 'This is a country where [the] LGBT community is prosecuted.' And so on."*⁵⁴⁶ Such warnings were helpful as it meant more users were security aware, but were limited in scope and impact due to user base: in this instance, Grindr's larger user base would be warned of possible apprehension and misuse of an individual user's data, but other LGBTQ-specific apps might not be accompanied by similar warnings.

In Lebanon in January of 2019, the Ministry of Telecommunications ruled to block Grindr on the 3G and 4G state-owned mobile data networks of Alfa and Touch.⁵⁴⁷⁵⁴⁸ This came in the midst of a number of landmark cases in the Lebanese ministry relating to homosexuality, which included the identification of Lebanese military personnel on Grindr.⁵⁴⁹ A correlation between those military court cases and the Grindr ban is still not clear, but this court's decision could be used to prove that LGBTQ-specific dating apps were recognized by Lebanese law enforcement and cyber ministries. Interviews for this report made clear that, though knowledge about dating apps currently remains low in the official ranks of law enforcement, investigating personnel are taking an interest. *"... they don't know how to use Grindr but they know what Grindr is. So in some cases even if they see that you have like Grindr on your phone, it's a presumption that you are gay. So they dig in more and look what is in the phone."*⁵⁵⁰ Another stated that *"A lot of people know to delete Grindr very quickly. But yes, Grindr has been used and it's been banned in Lebanon."*⁵⁵¹

545 EL5

546 EL6

547 SMEX. 2021. Statement: Block of Grindr App in Lebanon. [online] Available at: <<https://smex.org/statement-block-of-grindr-app-in-lebanon/>> [Accessed 22 December 2021].

548 They are the two mobile telephony and data operators in Lebanon

549 Global Voices. 2021. In landmark decision, Lebanese military court rules that homosexuality is not a crime. [online] Available at: <<https://globalvoices.org/2019/04/09/in-landmark-decision-lebanese-military-court-rules-that-homosexuality-is-not-a-crime/>> [Accessed 22 December 2021].

550 LL5

551 LL3

This, then, is the distinction between dating apps and other social media and messenger platforms: many users have become informed of the risks that come with dating apps, and thus use different security protocols provided by the apps, or delete them temporarily. General applications such as Facebook and WhatsApp are presumed to be safe for use in that these are not perceived as connected to the user's sexual or gender identity. An important distinction between digital evidence from queer dating apps and other dating, messenger/chat-based, or social media apps is in the perception of use. Nearly all social media apps have the same basic functionality, in that these can transmit and store personal data that can be used against individuals. With the recognised queer dating apps, their mere presence is seen as a confession of sexuality: *"So everybody uses or benefits from his phone, there are chats, there are photos, there are dating apps. The moment they see those [queer] apps on your phone they automatically say that 'okay, you are LGBT.'"*⁵⁵² With other apps, their presence is more an invitation to further searches to find the incriminating data: *"If you have other dating apps like Tinder, which is common for everybody, they are going to try to go into it and to see, you know, what your interests are, like if you go for same sex or other sex".*⁵⁵³

Social Media Posts

While private messenger tools on social media accounts were often referenced by the interviewees, public social media posts did not come up as often as other forms of evidence, either in interviews or case files. Interviewees had observed cases in which such information was used against defendants, and also described how this information might be used.

*"Even if something was shared publicly on Facebook, if it was for example, let's say, a party or something there is nothing that could stop them from deciding to come and actually question you about it. Like whichever thing that they can find that would make them want to actually question you about it they have the kind of the right to do so."*⁵⁵⁴

Self-protection methods within the queer community are believed to be increasing, as LGBTQ persons are more aware of the risks that may follow them if they post potentially incriminating content. Public self-censorship is often seen in policed, marginalized communities, and is not uncommon. The cases reviewed for this research indicate that even some vague social media data can be used, such as when one interviewee said, *"From [what I] experienced specifically mostly Facebook and Instagram, and mostly Instagram, with two of the beneficiaries [...] there were even stories from Instagram that have been used as proof."*⁵⁵⁵ Posting intentionally vague personal information for the purposes of

552 LL6

553 LL6

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555 TL7

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circumnavigating self-incrimination is thus not a failsafe option.

Some of the queer sex worker cases in Egypt were linked to the use of social media for advertising services. When this happened, it triggered more intense searches by law enforcement, especially if specialist teams were included. If such posts were combined with any other evidence, it was likely that the accused could be linked to sexuality and queerness. In one case, a Facebook page selling sex toys was targeted, which led to a more intensified search through identifying the individual via their IP address:

“There was a case before, it was it based on the fact that the person had a Facebook page and was selling sex toys [and pictures]... very damaging. This evidence, is the technical evidence[...]. Actually, they caught his IP address, and the rest of it, and went into the home, to the... in this procedure this technical evidence, it’s hard to defend (against it) in the court. [...]”⁵⁵⁶

556 EL3



NOT ALL IS DIGITAL: OTHER TYPES OF EVIDENCE

While digital evidence plays a significant role in cases which target LGBTQ persons on the grounds of morality and perceived sexual perversion, it is not the only type of evidence used. Prior to the introduction of digital evidence in these cases, other physical types of evidence were relied upon to build a case against the LGBTQ person. Today, these pieces of physical evidence may be used in combination with digital evidence. In the majority of the interviews, there is consensus that current methods used in the prosecution of queerness rarely happen without some type of digital evidence, but it is unclear if these cases could be prosecuted based on other forms of evidence alone. Other forms of evidence which have been mentioned in corroborating interviews and case files is outlined, and may be used to create a broader picture of how the courts respond to charges of queerness.

Condoms, lube and clothes

When property raids are performed, items such as condoms, lubrication, or clothing deemed “effeminate” by the police or law enforcement are collected to prove intention of sexual activity, especially anal sex. If these items are found on a person, they are added to the file as evidence. Clothing deemed “effeminate” by the police/law enforcement are used as framing elements of an individual’s gender and sexual identity. For trans persons, even their physical presence in court can be used as part of the prosecution’s argument. A 2019 case from Cairo resulted from a report from the Marriott Hotel staff in which all the items found on the individual—from money to clothes and digital evidence—were gathered, as well as passports from individuals the accused was allegedly soliciting. The evidence was presented without any real connection. In effect, they are presented with malicious interpretation. All the evidence found linked to sexual or gender identity is used to frame a charge of prostitution. Here is an extract from part of the police report.

- *We asked the accused to open his phone to examine it. We found number of conversations with number of Arab tourists on WhatsApp and Whoshere to seduce them to have sex for money. We placed the two phones we found on him in a white envelope to give it to the public prosecutor office.*
- *We included the supervisor’s report, a copy of the Saudi citizen’s passport, and two pictures of the surveillance’s cameras.*
- *We included five naked pictures from the accused’s phone that he uses to promote himself and seducing tourists for sex.*
- *We found makeup and female clothes with the accused that he uses during his sex sessions with his clients, we included it in the evidence and placed it in a white envelope.⁵⁵⁷*

557 Case E2

This individual was charged with one year imprisonment at the Court of First degree, which was reduced to 3 months on appeal. The original presiding judge concluded that the evidence was valid and admissible, despite illegal evidence-gathering methods, and that the individual was not caught at the time of the sexual act. A conclusion from the judgment in the file states how: *“the court found the evidence provided by the prosecutor to be concrete and valid, as the accused did confess his crimes in the police report and the evidence provided to the court of makeup, naked pictures on his phone and surveillance footage.”*⁵⁵⁸

Although clothing is frequently mentioned, especially in cases in which the accused is a trans person, make-up and gold jewellery are also regularly mentioned. Broadly anything deemed not to fall in-line with patriarchal and heteronormative frameworks. The use of these types of evidence is very common especially if there are prostitution charges included. In the case files, 4 of the Egyptian cases, 4 of the Tunisian cases, and 2 of the Lebanese cases included clothing and jewellery items as part of their case files.

Condoms and lubricants are generally known to be used by all types of couples and folks having sex, regardless of sexuality, but are very often used to suggest anal sex or sodomy, and have therefore led to criminal charges in each of these three countries. In Tunisia, the interviewees have noted that even something as inconspicuous as a logo of an LGBTQ organisation on a laptop has been used as evidence as proof the defendant is part of the queer community: *“they considered it as a piece of proof, you know, that you... as like you belong to this community and that you are homosexual, so you are convicted.”*⁵⁵⁹ As occurred with digital evidence, these pieces of physical evidence help enhance the narrative of LGBTQ sexuality, rather than related to any evidentiary requirement under the elements of each crime in each country. One of the lawyers interviewed reflected on this process and its inherent flaws, noting that: *“I showed up one time to make a point, because when you hear that for the very first time it’s extremely annoying. I said, ‘you said that this is a conditional evidence of a crime’ I got [this condom] from the pharmacy outside of here.”*⁵⁶⁰

Money

In Egypt, especially with the articles and outlines of the debauchery laws, money as evidence is an important factor and is mentioned in every interview. The presence of money is used to strengthen cases, especially in relation to the charges of prostitution, whether or not it is a sex worker case. This is especially the case with the precedence from the Courts of Cassation linking money to the concept of habituality, in which: *“payment is extremely important because it’s the main element that the Court of Cassation⁵⁶¹ relied on to emphasize the repetition with different people [as required by the habitual*

558 Unofficial translation of Case 2 Egypt for the report

559 TL4

560 EL4

561 cairo52. 2021. Court of Cassation - cairo52. [online] Available at: <<https://cairo52.com/court-of-cassation/>> [Accessed 22 December 2021].

element of Article 9 (c)] or like having that conduct or sexual conduct with different people with no discrimination.”⁵⁶²

The interviewees clarify that the presence of money, or the evidence of payment, is an additional element for a successful case, but is not a mandatory requirement. The Courts of Cassation reduced the threshold in these cases as judgement in which an act of debauchery or prostitution is not necessarily proven by the financial transaction but by other elements relating to sexuality, sexual acts, and/or queerness. However, for the prosecuting teams, a monetary element is de facto proof of the crime.⁵⁶³

The significance of the monetary transaction in these cases is presented in scripts and screenshots of discussions along with the rest of the digital evidence. Whether or not an individual accepts the offer of money, the very mention of money can still be used as evidence. In one interview, when asked about the scenario where an individual does not accept or respond to the offer of monies, the interviewee responded that this is not going to undermine the prosecution’s case, as: *“Even if the police or under the law initiated the deal, from a legal perspective even if they did, it doesn’t really matter that much because in the end of the day the crime did happen. The person in the end accepted that kind of conversation [...] At the end of the day the crime did happen. So, it is not agreyarea.”⁵⁶⁴*

In one case from Egypt from 2017, an individual was contacted via cairo.ebackpage.com. In this case, a conversation about money was not even present.⁵⁶⁵ The report by the police does not mention any solicitation for sex work; the case relies upon the explicit nature of the kink presented on the individual’s post on Backpage, and later the photos and evidence found on his device. However, the money found on the individual at the point of arrest was added to the evidence docket. The case was fully based on “incitement to debauchery” charges under Article 14 of *Law No. 10/1961, on the Combating of Prostitution*.

Interviewees have also reported that there has been money planted on defendants to ensure that it is mentioned in the evidence.⁵⁶⁶

Although the use of money as evidence has been referenced in all three countries it is not deemed a large trend in Tunisia and Lebanon, based on the findings of this report.

Anal Exams

Anal exams have been mentioned multiple times in this report, but these tests have

⁵⁶² EL4

⁵⁶³ This has been analysed by Cairo52: Noralla, N., 2020. Elkara Khana. [ebook] Cairo: Cairo 52, p.16. Available at: https://cairo52.com/wp-content/uploads/2020/11/ElKarakhana_English.pdf [Accessed 22 December 2021].

⁵⁶⁴ EL6

⁵⁶⁵ Case E1

⁵⁶⁶ EL1

not yet been described. In all three countries, “anal exams”⁵⁶⁷ or “virginity tests” are used as part of the evidentiary process. These examinations have been outlined as “a form of cruel, degrading, and inhuman treatment that can rise to the level of torture”⁵⁶⁸ by international organizations, national medical syndicates, the World Medical Association and UN bodies.⁵⁶⁹ As Human Rights Watch states, “the overwhelming weight of medical and scientific opinion holds that it is impossible to use these exams to determine whether a person has regularly engaged in same-sex conduct.”⁵⁷⁰ Only Egypt is noted as routinely using these specific forms of torture on queer people routinely without banning anal examination. Lebanon and Tunisia have both officially banned the use of this practice;⁵⁷¹ however, as confirmed in this report and more broadly, the threat of anal exams continues to be used against individuals. In Lebanon and Tunisia, all interviewees point out that even with the accused certified right to refuse anal exams, this refusal is used in court as a form of additional evidence, as it is framed as an admission of engaging in anal sex. In Tunisia, regardless of the legal wins on this issues, one interview who was interviewed in October of 2020 mention that *“the last [known] anal test that has been used in one of the cases was May 9 of (2020).”*⁵⁷² The Lebanese interviews suggest that there are indications to suggest the practice is still being conducted illegally.

A last important note regarding both anal tests and other types of non-digital evidence is how these are now linked to digital evidence, either to create causality or as part of coercion tactics, or even to move proceedings forward. An interviewee from Tunisia noted that, *“if they find for example videos, photos, etc. they will use those to push for an anal testing. If the anal testing is positive then obviously that doesn’t go in their favor; if they refuse to do the anal testing then they would rule that because they refused it’s probably true then this is it.”*⁵⁷³

Confessions

The role digital evidence plays in compelling confessions and vice versa is mentioned in many of the interviews. The role of confessions on their own is significant, as there is a general understanding that most confessions are taken under duress or under illicit means, and much of the efforts of the defendant’s legal team is to dispute the credibility and legality of the confession as well as the lack of elements in the crime. *“Usually in all*

567 Human Rights Watch. 2021. Dignity Debased. [online] Available at: <<https://www.hrw.org/report/2016/07/12/dignity-debased/forced-anal-examinations-homosexuality-prosecutions>> [Accessed 22 December 2021].

568 Hrw.org. 2021. Dignity Debased. [online] Available at: <<https://www.hrw.org/node/291627/printable/print>> [Accessed 22 December 2021].

569 Ibid

570 Human Rights Watch. 2021. Dignity Debased. [online] Available at: <<https://www.hrw.org/report/2016/07/12/dignity-debased/forced-anal-examinations-homosexuality-prosecutions>> [Accessed 22 December 2021].

571 Human Rights Watch. 2021. Global Medical Body Condemns Forced Anal Exams. [online] Available at: <<https://www.hrw.org/news/2017/10/17/global-medical-body-condemns-forced-anal-exams>> [Accessed 22 December 2021].

572 TL6

573 TL6

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*these cases they need a confession of having practiced sodomy recently or in the far past and a digital evidence to make the case solid.”*⁵⁷⁴ Many of the interviews and case files can be used to show that in all three countries there are “standard” confessions that are used in case files. These are often pre-set lines in the statement referring to mental health, childhood abuse, and other homophobic and transphobic stereotypes (all the cases reviewed except for Case L5 included such stereotypes).

Interviewees from all three countries mention that regardless of whether there is or isn’t a confession, a confession is created. However, in the findings of this report, it’s only in Egypt that there doesn’t seem to be a huge emphasis on the gathering of confession, and interviewees from Egypt have noted that confessions are almost always compelled and included in the court documents.

In interrogations where the interrogators are looking to gather a confession by any means, it is no surprise that digital evidence can and has played an important role in helping coerce confessions. The existence of digital evidence can be used to convince individuals that they are already convicted or play on their fears of being outed by the police to their families. To gather confessions, Tunisia lawyers in particular have reported blackmail and threats of outings as well as the use or threat of physical violence. Interviewees in Tunisia note that, *“they harass them and they beat them even sometimes. Luckily the people he has worked with, they wouldn’t confess but in general like it’s through violence and harassment that they actually get the confessions. [...]”*⁵⁷⁵

In Lebanon, lawyers report blackmail, threats of outing and other *“sneaky ways to get confessions out of”* individuals.⁵⁷⁶ Due to the abuse and mistreatment of the police and prosecutors, there is a general mistrust of them. This means individuals may confess fearing consequences including the leaking of the digital evidence identified on them *“The police will not say “I will leak your pictures.” They will never say that but I think for people... for people who are being investigated or interrogated, they might think — I’ve heard someone tell me this: “I confessed because I thought they would send my pictures to my family,””*⁵⁷⁷ The pressure put upon defendants in police stations and during investigations means they have little power to refuse.

574 TL1

575 TL7

576 LL1

577 LL5



SO WHERE TO NOW? RECOMMENDATIONS AND PATHS FORWARD

Egypt, Lebanon, and Tunisia are far from being the only countries to prosecute LGBTQ people, or to have abusive policing and law enforcement structures that allow queer communities to be targeted. As mentioned in the definition adopted of “digital evidence” guiding this report, an alteration of the widely used definition was necessary, as the concept of relevancy is both subjective and is more dependent on context and interpretation of individual law enforcement officials than standard legal doctrine. As seen in the report, digital evidence is applied whether or not it is relevant or has been legally obtained. Despite this, the use of digital evidence as a critical element in persecuting such cases is highly unlikely to be unique to these countries. How, then, can assistance be targeted towards those affected by these laws and policies? The work in pushing for legal reform and decriminalization of LGBTQ communities and issues are long-term goals, and are upheld by NGOs, activists, and experts on the ground, such as those lawyers and case workers who contributed their knowledge to this research project.

Simply doing away with the use of digital communications as a means of self-preservation is not an option. In the MENA region, apps form a critical means through which LGBTQ persons can access like-minded communities.⁵⁷⁸ While digital apps and tools can put users in real physical danger, previous research shows that the drive for sex, love, intimacy, and association is often stronger than the perceived risks.⁵⁷⁹ Queer people, like many other marginalised and oppressed communities, are creative, diligent and masters in navigating the risks that befall them. Often those that face the highest brunt of laws and structures created to erase them are those who excel at building strategies to survive. However, the risks of using these apps should not befall those using these technologies: the greater the reliance that LGBTQ people have on these digital technologies, the more the developers of these tools need to recognize how their decision-making can impact the user base. Many of the apps, tools, and platforms used by the LGBTQ communities in the MENA region were created for very different contexts, and the effects of their technologies are far reaching beyond any preformed contextual analysis. There is a real need to address how these digital technologies were not designed for their current use, and how western-centrism development might negatively affect vulnerable and/or hard-to-reach communities.

Here, it is posited that the burden of protection shouldn't be solely on users: UN standards make clear that companies have human rights responsibilities.⁵⁸⁰ Security notifications are not enough: companies must make the effort to understand their users'

578 OpenGlobalRights. 2021. Apps and traps: why dating apps must do more to protect LGBTQ communities. [online] Available at: <<https://www.openglobalrights.org/apps-and-traps-why-dating-apps-must-do-more-to-protect-LGBTQ-communities/>> [Accessed 22 December 2021].

579 ARTICLE 19. 2021. Apps, arrests and abuse in Egypt, Lebanon and Iran - ARTICLE 19. [online] Available at: <<https://www.article19.org/apps-arrests-abuse-egypt-lebanon-iran/>> [Accessed 22 December 2021].

580 For example, the UN Guiding Principles on Business and Human Rights Ohchr.org. 2021. [online] Available at: <https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> [Accessed 22 December 2021].

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environments and experiences. As these technologies expand in use and importance, recognition of human rights responsibilities is critical. Businesses have an obligation to provide proactive protective, security, and safety measures to their users. Proper planning and assessment of how apps are used might help mitigate some of the negative impact on users: while it is certain that some consequences will continue to be unforeseen, there are initiatives, standards, and efforts which can and should be put in place to predict and minimize threats to users.⁵⁸¹

It is thus a responsibility for providers to protect the users of their products by implementing prevention and mitigation strategies and practicing due diligence as well as making proactive efforts to support users in staying safe. This is especially the case when these apps are functioning in countries in which there are higher risks to marginalized users. In fact, the UN Special Rapporteur on Freedom of Expression has clarified that for ICT companies, a proper process of due diligence requires considering the human rights impacts of “design and engineering choices”⁵⁸² In this era of virtual connectivity and increased reliance on the internet for general daily functions by marginalized groups, due to factors such as oppressive laws, social stigma and pandemics, companies and technologists must re-frame their security and privacy features. Additionally, consumer interest conversations must be framed outside the “biggest use case” scenarios which guide most technological development programs. This research report pushes the notion that not only is this something that can and should be done, but also that it’s highly beneficial for all users and the companies.

581 The framework established in the UN Guiding Principles on Business and Human Rights (UNGPs) provides a valuable starting point and a minimum baseline for understanding the human rights responsibilities of business enterprises in the ICT sector. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/095/12/PDF/G1609512.pdf?OpenElement>

582 2 David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report to the UN Human Rights Council, May 2016, para 88



DESIGN FROM THE MARGINS

A core element of this report is how technology would benefit if the most marginalized users were centered during the design process, hereafter referred to as “Design From the Margins”.⁵⁸³ This project shouldn’t be seen as a singular case study in order to only address the needs of the specific LGBTQ communities of the MENA region—who themselves are varied, nuanced and complex—but that by centering these “extreme” cases, and building from these, safer and more justice-oriented products are created.

The core belief here is that centering development around the most marginalized may result in better tech for all.

There are always conflicting interests and trade-offs, and DFM may not be appropriate for all situations. DFM requires a deeper understanding of the complexities of human experiences and institutional frameworks of power and historical oppression and marginalization. There are many marginalized communities and impacted groups; within a DFM framing, identifying who is most impacted and targeted (in the different contexts) especially those without legal and social protections is a vital part of identifying who the designing process should be centered around. With an understanding of who is most

583 Belfer Center for Science and International Affairs. 2021. Afsaneh Rigot. [online] Available at: <<https://www.belfercenter.org/person/afsaneh-rigot>> [Accessed 21 December 2021].

impacted by social, political and legal frameworks, we can also understand who would be most likely to be a victim of the weaponization of certain technologies.⁵⁸⁴

Communication technologies and tools are not designed for these “edge cases”, yet are still advertised to and relied upon by their most vulnerable users. Often the people affected by such cases are not seen by the creators of major technologies. In development, an “Edge Case” is seen as an atypical or less common use case for a product.⁵⁸⁵ Edge cases are seen as more difficult to solve and as cases that impact fewer people. The “move fast, break things” ethos was also built on the belief that you can develop products for the masses without solving “Edge Cases”.

Much of our design methodologies in our major products embody western-centrism and have disproportionate impacts on vulnerable and/or hard-to-reach communities. Human rights abuses via tech are only responded to after the fact, when they could be reduced or avoided if technology was designed with these impacts in mind from the onset of the design and engineering process, as part of their international obligations under business and human rights principles.⁵⁸⁶ Designing from the margins would place the intervention early in the technology lifecycle to influence what use cases are identified by tech designers when conceptualizing their product for market and designing for them.

“Edge cases” are often crucially informative, highlighting key needs for products across the board and are better seen as cases repositioned from their rightful spaces of importance and power. As such, under DFM they are referred to as **decentered cases**. How such cases are protected are a vital metric on how other users are protected. Referring to them as **decentered** rather than edge cases also signal a need to reposition these cases to a central point from the onset of the design and engineering processes of our communication technologies.⁵⁸⁷

The author of this report is also a senior researcher at ARTICLE 19, where she is working on a larger research and with marginalized groups to identify those who are impacted by the issues described in this research paper. The purpose is to identify what needs to be changed in existing digital technologies based on these very high risk situations.⁵⁸⁸ So far, the broader project has led to fundamental changes on tools such as Grindr that benefited all their users.⁵⁸⁹

584 The majority of this knowledge exists among NGOs and other human rights and expert organisations. The DFM methodology is set to be released in 2022

585 Digital Transformation Glossary. Say Yeah! (n.d.). Retrieved February 5, 2022, from <https://sayyeah.com/glossary/#edge-case>

586 David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report to the UN Human Rights Council, May 2016, para 88

587 Belfer Center for Science and International Affairs. 2021. Afsaneh Rigot. [online] Available at: <https://www.belfercenter.org/publication/dont-call-us-edge-cases-designing-margins>. [Accessed 05 February 2022]

588 Shamas, N., 2021. Queer Dating Apps Need to Protect Their Users Better. [online] Slate Magazine. Available at: <https://slate.com/technology/2018/02/queer-dating-apps-need-to-protect-their-users-better.html?via=gdpr-consent> [Accessed 22 December 2021].

589 Pnewswire.com. 2021. Grindr Introduces Discreet App Icon Feature for All Users. [online] Available at: <https://www.pnewswire.com/news-releases/grindr-introduces-discreet-app-icon-feature-for-all-users-301008211.html> [Accessed 22 December 2021].

The draft findings of this report were provided to WhatsApp due to their heavy presence in the findings. As of the writing of this report, the findings and needs of this community have lead to changes to the disappearing messages on WhatsApp.⁵⁹⁰ Once again, these changes were based on the experience of this user-base that would normally be seen as marginal users or “edge cases”⁵⁹¹ and the “extreme” user experience. Yet, the changes are changes that will benefit the safety and privacy of the global community.

This report also provides insight from frontline lawyers who have experience in how digital evidence is used against their clients in granular detail. This knowledge base can be used to reimagine both existing and potential future technologies for communication that are safer, more private, and center the needs of those at the margins.

CONCLUSIONS AND RECOMMENDATIONS FROM THE REPORT

The findings of this report provide a lot of information that can yield many recommendations for many groups. The report itself hopes to provide impetus for further national and international advocacy as well as a documentation tool showing the impact of the combination use of traditional policing methods with the use of digital evidence. However, the main target of the recommendations in this section are technology companies, especially the types of products and companies that are relied upon by the LGBTQ community and by the police and prosecutors who prosecute them.

As mentioned, addressing these abuses that are perpetuated through the use of technology is also a responsibility for providers. This is a responsibility to protect the users of their products by implementing prevention and mitigation strategies and practicing due diligence as well as making proactive efforts to support users in staying safe. International legal standards require companies to “*prevent, address and remedy human rights abuses*”.⁵⁹² To this end, many parts of the world regulatory frameworks are being discussed to introduce risk-based rules and mandatory risks-assessments (such as Human Rights Impact Assessments).⁵⁹³

Below, the lawyers in question have also provided insight into how and what these companies can do to make winning cases more of a possibility as well as making the data and evidence gathering missions of police, investigators and prosecutors harder.

“Until now there’s been no communication from the websites or app with the individuals that have been arrested through [the apps]”⁵⁹⁴

The lawyers interviewed all agreed that the companies implicated are responsible and

590 Meta. 2021. More Control and Privacy on WhatsApp With Default Disappearing Messages and Multiple Durations | Meta. [online] Available at: <<https://about.fb.com/news/2021/12/whatsapp-default-disappearing-messages-multiple-durations/>> [Accessed 22 December 2021].

591 Kimya, A., 2018. Thinking like a developer, part II: design the edge cases. [online] Medium. Available at: <<https://uxdesign.cc/thinking-like-a-developer-part-ii-design-the-edge-cases-fe5f21516d20>> [Accessed 24 December 2021].

592 Guiding principles on business and Human Rights - OHCHR. Guiding principles on business and Human Rights. (n.d.). Retrieved February 6, 2022, from https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

593 Such as regulatory frameworks on Artificial Intelligence in Europe.

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need to take further measures to protect those affected. *“We are in your application, you must protect us.”*⁵⁹⁵ . They talk about how when companies expand, they are liable to the contexts they expand to *“they are spread in very dangerous countries that have really harsh sentences on... There are countries that have death sentences. These apps are responsible to be more aware of that”*⁵⁹⁶

They point out the fact that the apps have done little to protect the community, although they are *“one of the reasons why people are in this situation because it’s so easy for them [the police] to have access to this information that they are providing.”*⁵⁹⁷

Yet, those at the forefront challenging these laws and policies, some of whom who are not only lawyers in these cases but also part of the queer communities, do not feel that companies know about whats going on and how the tools are being used against people, but that they also don’t care, as one put it *“we’re talking about international companies. They don’t know that in the Middle East we have these problems, for example, in Lebanon and other countries... When we talk about WhatsApp or Facebook, you know, for them in their country or where they work, it’s not a crime if you are LGBT.”* she goes on to add *“These companies won’t help since they are not personally moved by it.”*⁵⁹⁸

1 - TIMED/EPHEMERAL MESSAGES AND “UNSENDING” MESSAGE DELETION OPTIONS

When asked about what could be done to make digital evidence less used in these cases in court, every interviewee directly or indirectly mentioned this idealized concept of “if the evidence didn’t exist in the first place”. Secondary to that 16 of the interviewees directly talked about the need for timed/ephemeral messages or options to delete messages or photos. They often discusses these feature in relation to existing variations of this on apps like timed messages on Signal⁵⁹⁹ and Wire⁶⁰⁰ or deletion options as seen on Instagram.⁶⁰¹ One also points to the helpfulness of being able to unsend messages without the other person being notified: *“For example on Instagram you can delete the messages without any trace, so it’s helpful. If I have a conversation with a certain person and*



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599 Signal Support. 2021. Set and manage disappearing messages. [online] Available at: <<https://support.signal.org/hc/en-us/articles/360007320771-Set-and-manage-disappearing-messages>> [Accessed 22 December 2021].

600 Wire. 2021. Send a self-deleting message. [online] Available at: <<https://support.wire.com/hc/en-us/articles/213216845-Send-a-timed-message>> [Accessed 22 December 2021].

601 Alphr. 2021. How To Delete All of Your Instagram Direct Messages. [online] Available at: <<https://www.alphr.com/delete-all-instagram-direct-messages/>> [Accessed 22 December 2021].

*I don't keep it for the future for him to blackmail me or for the police officers to know it, I can delete the app or delete the conversation without the other person noticing that I'd deleted it or... there is no sign no trace of the conversation.”*⁶⁰²

To the lawyers, this makes the gathering of data on queer individuals harder, especially as the criminalisation of queerness needs these types of evidence. One lawyer in Tunisia asked that companies should “*at least delete the conversation that can condemn the accused*”⁶⁰³ through this method. The timed message and deletion options also need to be varied with many options to provide to the different scenarios. Here the apps which allow the sending of photos and messages would have an option to delete them from both parties’ devices (especially important for entrapment cases where evidence from both sides can be used). They ask for a possibility to enable the timed deletion of an entire conversation with a recipient, as well as deletion on a per-message basis seen as “Unsending” of messages. One lawyer mentioned this option where there’s a need for “an option that you can delete your conversations” so even in cases “if you forget deleting it, it auto-deletes”⁶⁰⁴

Finally, one lawyer specifically highlighted a need for an extra method to be able to delete conversations or messages/photos when not in the possession of your device; this is in a scenario when the officers are already in possession of a device, their can be a way for the contents of that device to be wiped of information on the queer individual that would be used against them.

2 - PINS

Security PINs become very useful in these situations. Having a pin on the app will reduce the likelihood of access to the content of the app if the phone falls into the hands of police, either in interrogations or other ways. This is something that has been recommended by more than ten of the lawyers interviewed as well as local NGOs due to the impact it can have in limiting police and judicial access to data on people’s phones.

Double PIN/Secret Folders

Having a double pin option is ideal. In most of the situations we’ve seen, police coerce individuals into providing access to locked devices and apps. So, having a vault option or second PIN that locks away more sensitive content that the user has assigned can be extremely helpful in these cases. One lawyer talks about the way this could be implemented and a necessity “*I would definitely say like the double password, like just to have*



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a certain protection from anyone trying to use the phone or entering the phone.” She continues, “I’ve always thought if there is a way to do a password for WhatsApp, you know like a double identification [to] at least have another password to go to WhatsApp for like certain conversations.”⁶⁰⁵

For example, this can work like a locked archive folder on the app for sensitive photos and conversations. In these cases, especially as it’s the chats and photos that become detrimental in people being arrested and convicted, this can add a real barrier for the police and judicial branches who will not have access to these chats. Also, strategically, if the individual provides access to the app due to coercion, the idea will be that they will not know there are hidden locked folders, thus not rousing suspicion.

Creating an in-app, password-protected camera roll that photos/videos from messages in the app can be saved to (without saving to the phone’s general camera roll) is also highly recommended.

3 - SELF DESTRUCT/PANIC BUTTON

Seven of the lawyers interviewed also recommended that in moments of high risk a panic button can be very impactful in ensuring that police do not get into data relating to the sexuality of a user. The panic button provides a way for the user to protect their privacy and safety in times of danger or stress by easily triggering predetermined safety measures. These are situations such as prior to interrogation or entrapment or street arrests, when a user is forced to provide access to the content of their phones. One notes that this should be outside intrusive methods such as through fingerprinting or face recognition (which is very easy for officers to bypass by forcing individual to physically provide access *“Again we are very limited here because I cannot encourage using either fingerprint for anything else -- but some form of passcode that in case it is typed wrongly a couple of times the account would be deleted or whatever or like locked completely off.”*⁶⁰⁶



Panic button states can also be triggered by inputting an incorrect password or PIN multiple times, or using external devices like a headphone pause/play button being pressed in a pattern, or a Bluetooth device not being available or an option for this could be the addition of a “self-destruct” PIN feature. As recommended to Grindr and other partnering apps, the PIN feature (similar to recommendation #7) would be implemented in this option if the user purposely inputs the PIN incorrectly three times the app content will self-destruct and only provide an “error” message. Here, in

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situations such as checkpoint, interrogations and other forced access to the device, the user has the power to feign nervousness and forgetfulness in the face of coercion to also limit suspicion that in fact they are implementing the self-destruct feature. This was implemented by Grindr in a few “high risk” countries, with anecdotes of usage as part of routes users used to ensure their security. *“I think definitely the double password, you know if you type the password three times to have it blocked [...] just in case for example someone was under pressure and they obliged them to put the password twice.” This lawyer calls this the “immediately delete button” so that in time of arrest they “press one button and have everything deleted.”*⁶⁰⁷

The distance option for this, especially if the phone is out of the individual’s possession and confiscated is very important “a button where you can delete your entire data from the account and something from a distance, like if your iPhone gets stolen you can still delete the data on it from the iCloud and so on. This can be helpful.”⁶⁰⁸

4 - DIRECT LINE OF COMMUNICATION - INCLUDING WITH LAWYERS

When an individual is arrested or there are other forms of targeting the community, having swift action and rapid response between local groups, lawyers and companies can be vital. Eleven of the lawyers interviewed mentioned forming direct lines of communication with companies in these situations. Lawyers who are often the first to interact with an arrested individual can be first responders to send notice and have the arrested individual’s accounts deleted.

This direct line of communication is also linked in creating lists or outlines of fake and entrapping accounts that have been observed in court files -- information that lawyers are privy to and can provide companies so the same profiles are not continuing to target others. In cases of entrapment, for example, this can be done as the lawyers and teams working on these cases will have access to the case files that have the informant or officer’s numbers. They outline a method where lawyers can provide *“blacklist of the individuals using these apps for entrapment or rubbery or blackmailing and their working with the police as secret informants.”* And outline that if something like this occurred, especially in Egypt, it drains their resources and challenges them from many different angles *“This would force police to change their informants every day and so on*



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*and like they should publish a blacklist of the accounts”.*⁶⁰⁹

Of course, this depends on procedural standards and safeguards for the lawyers and NGOs involved, as assessed by them. This will need to be created based on consultations and direction of these front-line groups and teams.

This direct line of communication also leads to more holistic and robust support, because without direct contact with not only the selected organizations or experts, connecting to the victims of arrest and imprisonment will help further understand what needs there are: *“they should provide more support to these individuals and a clear line of communication with people that have been arrested via their apps. Not only to provide support but to how they got arrested and try to see and fix the bugs of anything they have wrong with their apps.”*⁶¹⁰

5 - SCREENSHOT WARNINGS

Six of the lawyers interviewed directly mention options of either blocking screenshots or providing notifications to users if a screenshot is taken. This is due to the number of individuals whose case files are created based on screenshots of conversations. The warning itself can provide a hint to a user about suspicious activity. This can also be seen as a feature deployed regionally, if not practically globally. *“I don’t know for instance if pictures [can’t be] saved or if you cannot even screenshot or save or download the pictures. This can be one of the things or like the exclusively shared on the app per se nowhere else this would help”*⁶¹¹

The research shows that screenshots from conversations and pictures are a risk to users and can be used directly against them in court and are often relied upon especially by emptrapers. These screenshots are often used in courts as evidence, or as tools for blackmail and harassment. Although this may mean that the conversation or photo has already been captured, the notification of an unsolicited or non-consensual screenshot can provide the user with an indication that the person they are in contact with may not be trustworthy and could help prevent further information being shared.



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6 - USERNAMES INSTEAD OF PHONE NUMBERS (AS SEEN ON WIRE) - ANONYMITY

In the case file analysis, especially from Egypt, it was clear that even if individuals used fake names, the SIM card of an arrested individual was used to match their phone numbers to the conversations from informats or police. Having anonymity for users in these cases can be fundamental. In a number of those cases, if the SIM card match was not performed, the defense lawyers have very good vantage points to dispute the evidence. Although we have not fleshed out this recommendation before, the envisioned option for this (as also mentioned by two of the lawyers) can be through a similar model to the messenger app Wire, where users can add each other based on user names. Due to the safety features of Wire and this ability to ensure that the conversations are not linked to government-registered phone numbers, all of our partners and activist groups, and members of the community in general, use and trust Wire for their communications. For example, WhatsApp can do similar work.



7 - NOT SAVING PHOTOS DIRECTLY INTO GALLERY AS A DEFAULT SETTING

Past research and the lawyers in this research point out that saving of photos directly into galleries, especially from explicit chats, has caused issues for a lot of individuals who have been stopped and searched or interrogated. Having the photos in one place and only on the app helps limit access to them and this should be the default setting unless otherwise changed by the individuals. Many people may not know that they can disable this feature and more should be done to either disable the feature or at least not have photos saved directly to the phone on the camera roll as the default. When they are saved to the phone as a default, the timed messages and other security features can become redundant.

This also means, when an application allows a user to take a photo from within the application, the app should use the built-in camera support on the platform to take the photo, but should not save the resulting media file to the public phone gallery. This is implemented on a number of existing secure messaging applications.



8 - LEGAL FUND SUPPORT - RESEARCH SUPPORT

Part of the work and framing stems from the fact that as these technology tools are used for human rights abuses there is a large responsibility from the companies to the users and communities impacted. This responsibility does not end with only app changes. In order to truly support the groups impacted, one of the major recommendations to companies is for them to support legal aid funds in these countries. The NGOs and lawyers working on these cases are often doing them pro bono or are massively underfunded and understaffed. Due to the nature of the work, many lawyers will refuse to work on these cases, so the lawyers themselves are taking risks, the NGOs are in constant risk. In supporting the legal aid costs and court costs through a legal fund for these cases, it will ensure that the community is defended. It's also the highest form of realizing the responsibility the companies have in these cases.

Similarly, this research, as well as similar research, is done with very few resources and often off the funds and capacity of under-resourced NGOs or individual researchers. Research such as these are vital in connecting companies to their impact on the ground and to enact change, however, they cannot be sustained without support. In doing this research, we are doing the impact assessments for our partner companies that are often funded with thousands of dollars. Supporting this work will be fundamental in making changes in how we deploy technology in marginalized and highly at risk communities, as well as understanding the impact of tech on communities for which it was not designed.



This report's close examination of police and investigative protocols yields information that will allow responsible corporate actors to reverse engineer their tools and offer product support with the safety of those most impacted in mind.

Implementing such changes can be vital. The resilience of marginalized communities as they shift through new realities and technologies has remained constant. Queer communities (especially queer communities of color), regardless of omnipresent legal, societal and historical barriers and threats, have found ingenious methods to evade threats imposed on them to continue to live and exist. One of the most important outcomes of the 2018 ARTICLE 19 research into the online risks faced by LGBTQ communities in Middle East and North Africa (MENA) continues to be that “the drive for sex, love, intimacy, and association is often stronger than the fear of risks”.⁶¹²

Learning from the creative ways queer communities -- in countries where their identities are criminalized -- continue to navigate and be in community, as well as understanding their needs, has led us to create and design better tools and features and work on a core structure that can encourage a different framing in how we design tools and understand privacy and security of tech. Here it became clear that focusing on a community rarely engaged but highly at risk – MENA LGBTQ communities – can be inherently powerful for global users.

⁶¹² ARTICLE 19. 2021. Apps, arrests and abuse in Egypt, Lebanon and Iran - ARTICLE 19. [online] Available at: <<https://www.article19.org/apps-arrests-abuse-egypt-lebanon-iran/>> [Accessed 22 December 2021].



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