

Senegal: Quash Conviction of 7 for ‘Acts Against Nature’

Case Highlights Persecution of LGBT People

August 28, 2015 12:01 AM EDT

(Nairobi) – The [Senegalese](#) government should exonerate and release seven men convicted of consensual same-sex conduct by a court in Dakar on August 21, 2015, in violation of their basic rights, Human Rights Watch said today.

The men were convicted under article 319(3) of Senegal’s penal code, which prohibits “acts against nature” between persons of the same sex and sentenced to six months in prison and additional 18-month suspended sentences. The provision violates internationally protected rights to privacy and non-discrimination and should promptly be abolished, Human Rights Watch said. The evidence against the men was a police document claiming that they were caught in undefined “compromising positions” and had condoms and lubricants in the apartment where they were arrested.

“The conviction of seven men on homosexuality charges is an affront to a tolerant society as well as Senegal’s commitments under international law,” said [Neela Ghoshal](#), senior [lesbian, gay, bisexual, and transgender \(LGBT\) rights](#) researcher at Human Rights Watch. “It also sends the Senegalese public an ominous message that having condoms in your home can be used as evidence that you’ve committed a crime.”

On July 21, police in Guédiawaye, a suburb of the capital, Dakar, arrested the seven men after the mother of one of the men reported him to the police, a Senegalese LGBT rights activist told Human Rights Watch. The police went to the apartment and arrested all those present without a warrant, the activist said.



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At the trial, no police officers or other witnesses testified against the men. The prosecutor presented a procès-verbal, a police record prepared shortly after the arrest. One of the defendants' lawyers said the police document provided none of the basic elements for proving a crime, such as detail about the alleged sexual acts. The prosecutor also asserted in court that the men's telephones contained incriminating messages and images, but did not present them in court, according to the lawyer.

The prosecutor also charged the men with possession of illegal drugs, based on the police record. But no drugs were presented as evidence, and the court acquitted the men on the drug charge.

Although 36 African countries have laws on the books that criminalize same-sex conduct, Senegal is one of the few in which people are actually prosecuted and sometimes convicted on such charges. In 2012, a Senegalese court convicted a well-known journalist, Tamsir Jupiter Ndiaye, and another man on unnatural offenses charges and sentenced them to three years in prison. Ndiaye was convicted of homosexual conduct again in July 2015 and given a six-month sentence. In 2014, the authorities brought four women and a girl to trial on charges of same-sex conduct after patrons at a bar complained to police about their alleged “lesbian” behavior. They were eventually acquitted.

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Neela Ghoshal

LGBT rights senior researcher

The use of condoms as “evidence” of homosexual conduct is not new. In December 2008, police in the town of Mbao arrested nine health activists at a training session on HIV/AIDS prevention, citing condoms and lubricants as evidence. There was no evidence that the men were engaged in sexual acts. The activists were convicted in January 2009 and sentenced to eight years in prison, exceeding the maximum sentence under the law of five years. The Dakar Appeals Court reversed the decision and ordered their release in April 2009.

Senegal’s criminalization and harassment of men who have sex with men (MSM) and men perceived to be gay or bisexual is undermining its effectiveness in addressing the HIV epidemic, Human Rights Watch said. According to Senegal’s National AIDS Control Commission, HIV prevalence is low among the general population in Senegal, at 0.5 percent, but reaches 18.5 percent among MSM. Senegal’s National Strategic Plan on HIV calls for increased accessibility of condoms and lubricants for MSM. It also calls for improving the human rights situation for MSM, dismantling legal barriers that complicate their access to treatment, and ensuring that Senegalese law is aligned with its obligations under international treaties.

Criminalization of consensual same-sex conduct violates the right to privacy and the right to non-discrimination under the International Covenant on Civil and Political Rights, to which Senegal is a party. The United Nations Working Group on Arbitrary Detention has found that arrests for same-sex conduct between consenting adults are, by definition, arbitrary.

In 2013, President Macky Sall stated that Senegal was “not ready” to decriminalize same-sex conduct, but also insisted that LGBT people do not face discrimination in Senegal.

“The absurd conviction of these seven men for acts that should never be a crime is sadly not an aberration, but reflects the Senegalese government’s broader discrimination against the LGBT community,” Ghoshal said. “Unless this case is quickly quashed, it will be a blight on Senegal’s international standing for a long time to come.”