

**Flygtningenævnets baggrundsmateriale**

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|---------------------------------|--------------------------------------------------------------------------|
| <b>Bilagsnr.:</b>               | <b>573</b>                                                               |
| Land:                           | Somalia                                                                  |
| Kilde:                          | International Lesbian Gay Bisexual Trans and Intersex Association (ILGA) |
| Titel:                          | State-sponsored homophobia.                                              |
| Udgivet:                        | maj 2017                                                                 |
| Optaget på baggrundsmaterialet: | 30. maj 2017                                                             |

On 24 December 2015, 11 men were **arrested** on suspicion of offenses under Section 319. The court released them four days later, but their faces and identities had been shared on social media, stirring huge public homophobia. The **backlash** to their release was led by the Islamic organisation, Jamra. Around 90% of the population is estimated to be Muslim (Sufi), but Senegal borders with Northern Nigeria where Boko Haram are active, and its neighbor, Gambia, recently declared itself an Islamic state.

In its 2<sup>nd</sup> cycle UPR cycle in October 2013, the Government of Senegal received 13 SOGI recommendations, seven of them (from Belgium, Greece, Germany, Ireland, Netherlands, Switzerland and Mexico) to repeal the above-mentioned article. The Government **rejected** them and argued that Article 319 must be interpreted as a punishment for “unnatural acts committed in public”, and that nobody has been imprisoned for same-sex sexual activity in the country.

In March 2016, in the context of discussions around Constitutional reform, the President of Senegal was **unequivocal** that the law penalising same sex sexual relations will never be repealed under his tenure. Later in March, campus **violence** broke out concerning a young gay man.

## SIERRA LEONE



### Offences against the Person Act 1861.

[BUGGERY]

#### Section 61

“Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than ten years.”

Both the *Being LGBT in West Africa report* (at 63) and Kaleidoscope Trust’s *Speaking Out* (at 24) describe very hostile socio-political environments in Sierra Leone.

In April 2014, the Human Rights Committee made a strong clear **statement** to Sierra Leone in its first Concluding Observations for that State under the ICCPR: “The State party should review its Constitution and legislation to ensure that discrimination on the grounds of sexual orientation and gender identity is prohibited, including by decriminalizing sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatisation of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity”.

In its 2<sup>nd</sup> UPR in January 2016 six States made recommendations to Sierra Leone (three Latin American, three European). Four of these **urged** the State to repeal the 1861 Act (decriminalise), while five contain language urging non-discrimination or anti-stigmatisation initiatives. The Sierra Leone delegation ‘noted’ (functionally rejected) all six recommendations.

## SOMALIA



### Penal Code, Legislative Decree No. 5/1962.

#### Article 409. Homosexuality

[INTERCOURSE WITH A PERSON OF THE SAME SEX]

“Whoever has carnal intercourse with a person of the same sex shall be punished, where the act does not constitute a more serious crime, with imprisonment from three months to three years. Where the act committed is an act of lust different from carnal intercourse, the punishment imposed shall be reduced by one-third.”

**Article 410. Security Measures**

"A security measure may be added to a sentence for crimes referred to in Articles 407, 408, and 409." (Unofficial Translation)

**Article 400**

Under the heading of sexual violence, specifies increased punishment when such violence is done to a person of the same sex in the context of "against nature".

**Article 406****[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]**

"Whoever, in a public place or a place open to the public, incites anyone to lewd acts, even in an indirect manner, shall be punished, where the act does not constitute a more serious offence, with imprisonment up to one year or with fine up to Sh.So. 2,000."

The political situation in Somalia has been complicated since the fall of the dictator Mohamed Siad Barre in 1991, and the appropriate enforcement of the national Penal Code is **questionable**. However, Somaliland in the north has declared itself independent, and it still **applies** the Penal Code.

However, further south and central in the country, as **recorded** in Christman's 2016 report, "Al-Shabaab's beliefs stem from a Salafi-Wahhabi strand of Sunni Islam (an ultra conservative movement within Sunni Islam). They enforce a strict interpretation of Shariah law. Shariah law explicitly forbids homosexuality - the punishment for those 'found guilty' is at a judge's discretion, and may be punished by death".

Writing in 2014, the Somali artist and writer Diriye Osman, now resident in the UK, **says** to come out in Somalia one must be prepared for, "...physical abuse, ceaseless harassment, imprisonment or death". Osman's own family threatened him with violence upon learning that he is gay. In early 2017, it is **reported** that al Shabaab (a militant group allied to al-Qaeda) murdered two individuals on account of their sexual orientation.

In its 2<sup>nd</sup> UPR in early-2016, Somalia appears to have received only one recommendation (Canada) regarding SOGI: "Address widespread impunity—including for attacks against journalists, civil society and human rights defenders, women and LGBTI persons—by conducting timely and impartial investigations, investigating threats of violence, and prosecuting perpetrators". The State 'noted' this recommendation, and no other comment was recorded in the Working Group's **report**.

## SOUTH SUDAN



**Penal Code Act No. 9 of 2008, § 248, 1(1) Acts Supplement to the Southern Sudan Gazette (Feb. 10, 2009).**

**Section 248. Unnatural Offences****[AGAINST THE ORDER OF NATURE]**

"(1) Whoever, has carnal intercourse against the order of nature with any person and whoever allows any person to have such intercourse with him or her commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years and may also be liable to a fine. [...]"

*Explanation:* Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

**Section 151. Indecent Acts****[GROSS INDECENCY]**

"Whoever commits an act of gross indecency upon the person of another person or any sexual act which does not amount to Zina or Sodomy shall be punished with not more than forty lashes and shall also be liable for imprisonment for a term which may not exceed one year or fine."

**157 Qadhf (Casting Accusation of In chastity)****[QADHF]**

"(1) Whoever imputes to any honourable living or dead person by express words, implicitly, by writing or indicative signs accusation of Zina or Sodomy or illegitimacy is said to commit Qadhf.

(2) A person is said to be honourable (Chaste) if he has not been convicted for Zina, Sodomy, Rape, Incest or Practising Prostitution.

(3) Whoever commits Qadhf shall be punished with flogging eighty lashes."