

UTRECHT UNIVERSITY

European Master's Programme in Human Rights and Democratisation
A.Y. 2020/2021

LOVE IS HUMAN

Queer Activists in Kenya, Lebanon and Singapore Fighting for Freedom of
Expression and Decriminalization of Same-Sex Relationships

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Abstract

Freedom of expression is a fundamental human right deemed essential in free and democratic societies. Yet, free speech is regularly curtailed by states, including by limiting expression on certain topics, such as sexual and gender diversity. In 2020, 42 states in the world restrict freedom of expression on such issues, including Kenya, Lebanon and Singapore. All three countries also criminalize same-sex relationships. This study seeks to compare how local activists in these three countries with different socio-cultural, political, and historical backgrounds are working to bring about legal change against laws that restrict free speech on queer issues and criminalize their existence. Activists for lesbian, gay, bisexual, trans, queer, intersex plus (LGBTQI+) rights selectively use the human rights framework, including international, regional and national human rights standards, to achieve their goals. This thesis particularly focuses on analyzing how global human rights norms are translated locally to contribute to activists' desired outcomes. This research uses empirical data from 14 interviews with LGBTQI+ activists from Kenya, Lebanon, and Singapore. This thesis found that the struggle for the protection of freedom of expression on sexual and gender diversity issues is closely linked to efforts to decriminalize same-sex intimacy in the study countries.

Key words: Activism, freedom of expression, free speech, human rights framework, Kenya, localization, Lebanon, LGBTQI+, queer, sexual and gender diversity, Singapore

Number of words: 29 922

Acknowledgments

I would first like to thank the brilliant and kind individuals who were interviewed for this research, as well as their respective organizations: the Arab Foundation for Freedoms & Equality, Beirut Pride, the Gay and Lesbian Coalition of Kenya, Helem Lebanon, JINSIANGU, the Katiba Institute, MENA+, the National Gay and Lesbian Human Rights Commission, the Nyanza Rift Valley and Western Kenya Network, Pink Dot Singapore, and Proud Lebanon.

This thesis would not have been possible without the impressive support, genuine kindness and precious guidance of my supervisor Dr. Marjolein van den Brink. I also thank Dr. Antoine Buyse for his warm welcome in Utrecht and Dr. George Ulrich for his judicious advice.

I would like to thank my family for the incredible support they gave me in this crazy project of going to study for one year in Europe, far from home, in the middle of a global pandemic. Special thanks to my mother Chantal, my sisters Émilie and Laurence, my father Maurice and my beloved 101-year-old grandmother Alida, my role model.

My gratitude also goes to my friends Agnes, Ariane, Arlène, Claudia, Evelyne, Joël, Livia, Marialisa, Marisol, Michel, Naomi, Órán, Petya, Pierre-Luc, Ryan, Sam, Sandrine, Valérie and Vincent. Thank you for the support system you have formed around me.

Merci pour tout.

List of Abbreviations

ACHPR African Charter on Human and Peoples' Rights

AFE Arab Foundation for Freedoms & Equality

AHRD ASEAN Human Rights Declaration

AICHR ASEAN Intergovernmental Commission on Human Rights

ASEAN Association of Southeast Asian Nations

AU African Union

GALCK Gay and Lesbian Coalition of Kenya

HRC Human Rights Committee

ICCPR International Covenant on Civil and Political Rights

IHRL International human rights law

ILGA International Lesbian, Gay, Bisexual, Trans and Intersex Association

IMDA Infocomm Media Development Authority

KFCB Kenya Film Classification Board

LAS League of Arab States

LGBTQI+ Lesbian, gay, bisexual, trans, queer and intersex plus

LHR Localising human rights

MENA Middle East and North Africa

NGLHRC National Gay and Lesbian Human Rights Commission

NYARWEK Nyanza Rift Valley and Western Kenya Network

OAU Organisation of African Unity

OHCHR Office of the United Nations High Commissioner for Human Rights

SOGIESC Sexual orientation, gender identity and expression, and sexual characteristics

UDHR Universal Declaration of Human Rights

UN United Nations

UNFPA United Nations Population Fund

UPR Universal Periodic Review

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1. Introduction

“What we have been focusing on is around love. Love is human. We are family. We are one. We are Kenyan.”

– “Louise”, Executive Coordinator at the Gay and Lesbian Coalition of Kenya (GALCK)

“I learned to put people first. You are working for people and not for numbers, figures or statistics. It is real people with stories, pain, hope, emotions.”

– “Elie”, expert on community public health and co-founder of MENA Plus

“Change can sometimes come very slow. Never give up on change. If we don't start planting the seeds today, then someone else down the road is not going to reap those benefits.”

– “Andrew”, lawyer in the constitutional challenge against Section 377A of the Penal Code of Singapore

1.1. Problem and Research Question

The right to freedom of expression encompasses the right of all individuals to express themselves on the basis of their sexual orientation, gender identity and expression, and sexual characteristics (SOGIESC), including the freedom to seek, receive and impart information and ideas related to sexual and gender diversity¹. Yet, many countries in the world restrict and infringe upon free speech. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) has identified 42 United Nations (UN) member states that have national laws and regulations limiting expression on SOGIESC issues, and one-third of these countries have passed such legislation in the last ten years². Governments use a range of methods to restrict free speech in this area, including “criminalising offences against morality and religion, limiting sex education curriculums, prohibiting promotion or propaganda of homosexuality, censorship in media and movies, prosecution for LGBT+ symbols under public manifestation and pornography laws, blocking thematic websites and publications, chasing communications

¹ The Yogyakarta Principles, 2007, see Principle 19: The Right to Freedom of Opinion and Expression.

² Mendos *et al.*, ILGA, 2020, pp. 145-163.

in dating apps³.” As ILGA points out, governments justify these laws and regulations by citing the protection of morals, the protection of minors, or cultural, religious or nationalistic reasons⁴.

In response to these laws restricting free speech, lesbian, gay, bisexual, trans, queer and intersex (LGBTQI+) activists across the globe are mobilizing around various strategies and actions to bring about legal change, as illustrated by the cases of Kenya, Lebanon and Singapore. This research seeks to draw parallels between the strategies used by activists of these three countries. The hope is that this thesis contributes to the sense of solidarity that exists among LGBTQI+ communities globally and lead to reflection on strategies used in queer activism to achieve legal change when free speech is under attack.

Most of the existing literature on legislation adversely affecting LGBTQI+ people focuses on the criminalization of same-sex relationships and not on the infringement of freedom of expression on sexual and gender diversity or on the link between the two⁵. Research on restrictions to LGBTQI+ expression mostly revolves around the case of the Russian “anti-gay propaganda” law⁶, the “no promo homo” laws in the United States⁷ or censorship in China⁸. Kenya, Lebanon, and Singapore are three very different and yet very similar case studies in their local contexts. These three countries criminalize same-sex relationships and restrict free speech on SOGIESC issues, however they have totally different sociocultural, political or historical backgrounds. Their comparison constitutes the novelty of this research. This thesis also stands out for its empirical research based on interviews with LGBTQI+ activists. The interviews look into the motivations and strategic choices of activists and whether they use the human rights framework to further their aims.

The specific focus of this research project is to assess whether and how human rights, including the global human rights regime, come into play in local activist contexts. The main research question this thesis attempts to answer is:

³ *Ibid.*, p. 145.

⁴ *Ibid.*, pp. 145-163.

⁵ *Ibid.*, pp. 113-163 ; OHCHR, 2018 ; Human Rights Watch, 2020a ; Human Dignity Trust, n.d.

⁶ Lenskyj, 2014 ; Hylton *et al.*, 2017 ; Buyantueva, 2018.

⁷ Eskridge, 2000 ; Barrett & Bound, 2015 ; GLSEN, 2018.

⁸ Zhou, 2014 ; Shaw & Zhang, 2017 ; Wang, 2019.

How do activists for LGBTQI+ rights in Kenya, Lebanon, and Singapore use the human rights framework in their local context to change laws that restrict freedom of expression on sexual and gender diversity issues?

In order to answer this main question, four sub-questions are proposed⁹:

1. What are the main activities and strategies used by LGBTQI+ activists in Kenya, Lebanon and Singapore to change laws that restrict freedom of expression on sexual and gender diversity issues? This question allows one to understand what forms queer activism takes in the three study countries, e.g., litigation, advocacy, capacity-building, as well as main features of LGBTQI+ activists' activities, such as their target audience or their objectives.
2. What is the rationale of LGBTQI+ activists in Kenya, Lebanon and Singapore for using or not using the human rights framework in their activities? Through this question, it is possible to assess whether activists use the human rights framework in a broad sense (be it international standards or core human rights values) and how they motivate this choice. It is also seen what kind of language activists use if not human rights language.
3. How does the process of translating the human rights framework into practice take place in the work of local queer activists in Kenya, Lebanon and Singapore? This question helps to determine in which contexts the human rights framework is used and how it is translated to be locally relevant in the three countries, for example using human rights claims, narratives and frames.
4. What are the outcomes and lessons learned by LGBTQI+ activists in Kenya, Lebanon and Singapore from their activism and what is their perception of its effectiveness? This question explores the outcomes of the different strategies employed by activists to ultimately lead to changes in laws that restrict freedom of expression about sexual and gender diversity in their respective countries.

1.2. Terminology

1.2.1. Activism

Activism or activist is defined as “the use of direct and noticeable action to achieve a result, usually a political or social one¹⁰.” In the context of this research, an activist is any individual

⁹ The sub-questions in this research are directly inspired by some of the research questions proposed by Oré Aguilar to researchers using the *localising human rights* (LHR) framework. See Oré Aguilar, 2011, p. 141.

¹⁰ Cambridge Dictionary, n.d.

taking action to achieve the result of legal change against a law or regulation restricting freedom of expression on sexual and gender diversity issues in their country. This means that not all activists covered by this definition are part of the LGBTQI+ community, but all of them work to advance LGBTQI+ rights.

1.2.2. LGBTQI+

LGBTQI+ is an acronym that stands for lesbian, gay, bisexual, trans, queer and intersex. **Lesbian** is “a woman who is sexually and/or emotionally attracted to other women”, **gay** “a man who is sexually and/or emotionally attracted to other men”, and **bisexual** “someone who is sexually and/or emotionally attracted to more than one gender”. **Trans** are “people whose gender identity and expression does not match their assigned gender at birth.” **Queer** is an “umbrella term referring to anyone who is not straight and not cisgender” (the opposite of trans or transgender). **Intersex** are “people who naturally have biological traits which do not match what is typically identified as male or female.” Adding a “+” is to acknowledge that not all identities are included in the acronym¹¹.

1.2.3. Local & Human Rights Localization

Defining what **local** means is particularly difficult, as there are many human rights processes and actors who move between layers¹². Local communities are “groups or organisations, inclusive and plural, which are based at the level of a geographic community and are unified by common needs and interests as articulated in human rights terms¹³.” For the purposes of this research, local is understood as the level at which LGBTQI+ activists primarily work, i.e., the national, regional or community level, as opposed to the level of the global human rights regime, such as the UN, African, ASEAN or Arab states level. **Human rights localization** refers to “processes and mechanisms through which global or international normative standards get implemented and/or adapted to local contexts¹⁴”.

¹¹ Montz, 2019.

¹² Oré Aguilar, *op. cit.*, p. 113.

¹³ *Ibid.*, p. 114.

¹⁴ *Ibid.*, p. 111.

1.2.4. Legal Change

Legal change is defined as the amendment or repeal of a law. Legal change can be achieved through deliberation and the legislative route, as well as through interpretation and judicial means (litigation)¹⁵. Legal change is achieved differently whether the legal system of a given country is based on common law or civil law¹⁶.

1.2.5. Sexual and Gender Diversity

The term **sexual and gender diversity** is understood in this research to include all individuals of diverse sexual orientations, gender identities and expressions, and sexual characteristics. This study relies upon the definitions proposed by the Yogyakarta Principles. According to the Principles, **sexual orientation** refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender¹⁷.” **Gender identity** is “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms¹⁸.” **Gender expression** is defined as “each person’s presentation of the person’s gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references¹⁹.” **Sexual characteristics** correspond to “each person’s physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty²⁰.” Together, sexual orientation, gender identity and expression, and sexual characteristics make the acronym SOGIESC.

¹⁵ Schwartzberg, 2007, pp. 3-7.

¹⁶ Daniels *et al.*, 2011, p. 115 ; El Samad, 2008.

¹⁷ *Ibid.*, p. 8.

¹⁸ *Ibid.*

¹⁹ Yogyakarta Principles plus 10 (YP+10), 2017, p. 6.

²⁰ *Ibid.*

1.3. Structure & Methodology

This research is based on a theoretical framework, mostly the *localising human rights* (LHR) framework, as developed by author Gaby Oré Aguilar²¹. The study also includes empirical data derived from 14 semi-structured interviews. The first chapter contains the introduction. The second chapter dives into the theoretical framework, notably by exploring the concepts of universality of human rights, local relevance of human rights, or human rights narratives and frames. The third chapter presents the international legal framework related to freedom of expression and SOGIESC issues, both at the universal level (the United Nations) and regional level (Africa, the Arab states and Southeast Asia). The third chapter also focuses on the national legal frameworks of Kenya, Lebanon and Singapore, with particular attention to constitutional law, criminal law, communications law and case law relevant to freedom of expression and LGBTQI+ expressions. The fourth chapter discusses the results of the interviews with queer activists from Kenya, Lebanon and Singapore. A comparative analysis between countries and strategies is offered to answer the main research question as well as sub-questions. Finally, the fifth chapter is the conclusion.

The three study countries were first identified from the 42 countries previously mentioned in ILGA's 2020 report as countries with national laws restricting free speech on sexual and gender diversity issues. Of these 42 countries, 20 were eliminated for being hard-line autocracies²², considering that limitations to free speech on SOGIESC issues in these countries may be due to generally repressive government policies, regardless of the type of expression. The degree of political space existing in the study countries had to be large enough to allow activism and human rights claims to take place²³. Another concern was that conducting online interviews with LGBTQI+ activists would put them at risk in countries where governments strongly repress their activities, considering that government surveillance particularly targets marginalized communities²⁴.

²¹ Oré Aguilar, *op. cit.*, p. 112.

²² Afghanistan, Burundi, Cameroon, China, Democratic Republic of the Congo, Djibouti, Egypt, Iran, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, United Arab Emirates, and Yemen. See the Bertelsmann Transformation Index (BTI) 2020.

²³ Oré Aguilar, *op. cit.*, p. 117.

²⁴ Ganesh *et al.*, 2016, pp. 7-8.

Of the remaining 22 countries²⁵, 10 were selected on the basis of equitable and diverse geographic representation: Côte d'Ivoire, Kenya, and Zambia (Sub-Saharan Africa); Lebanon and Tunisia (Middle East and North Africa); Indonesia, Malaysia, and Singapore (Southeast Asia); Paraguay (Latin America) and Lithuania (Europe). A poster was created to call for interviews for LGBTQI+ activists from these 10 countries (see Appendix 1). This poster was translated to French and Spanish and widely shared on social media (LinkedIn, Facebook) in early February and by email to international and local LGBTQI+ NGOs from February to May. In the end, Kenya, Lebanon, and Singapore were chosen due to a good number of activist responses to the call for participation. Additionally, the three countries share similarities in their national legal frameworks, particularly in criminal law penalizing same-sex relationships. In all three countries, the LGBTQI+ activists interviewed stated that criminalization *per se* has a negative impact on freedom of expression. Indeed, articles in penal codes criminalizing same-sex relationships have discriminatory effects for LGBTQI+ people in several spheres of society, including education, health, housing, but also media and communications. For the activists interviewed, repealing these sections of the penal codes is a priority, as it would have the snowball effect of consequently dismantling other discriminatory laws, such as the communications law, which restricts freedom of expression on sexual and gender diversity topics in television, films, radio, the internet, magazines, video games, etc. Other candidate countries, such as Lithuania and Paraguay, do not criminalize same-sex relationships, but rather focus on education and protection of minors in their laws restricting free speech on SOGIESC issues. Having a similar legal framework makes it easier to compare the three countries, despite their differences in other respects (geography, culture, economy, politics, history, religion). Finally, Kenya, Lebanon and Singapore all have a rich case law in terms of free speech and SOGIESC issues.

Regarding the selection of interviewees, the initial target was to have five activists for each country. In the end, 14 activists were interviewed, five for Kenya, five for Lebanon and four for Singapore. Activists were asked to complete an online questionnaire, available in English, French and Spanish, to pre-identify certain characteristics of their profile (see Appendix 2). The eligibility criteria were to be 18 years of age or older and to be an activist (who may or may not identify as part of the LGBTQI+ community) who works to amend or

²⁵ Algeria, Belarus, Côte d'Ivoire, Ethiopia, Indonesia, Jordan, Kenya, Kuwait, Lebanon, Lithuania, Malaysia, Mauritania, Nigeria, Paraguay, Russia, Singapore, Tanzania, Togo, Tunisia, Turkey, Uganda, and Zambia. See the Bertelsmann Transformation Index (BTI) 2020.

repeal laws and regulations restricting free speech on SOGIESC issues. For the three study countries, the laws and regulations concerned are:

- **Kenya:** Sections 162 and 165 of the Penal Code of 1930 (as amended in 2003); Section 12 of the Film and Stage Plays Act (Act No. 34) (1963); Kenya Film Classification Board's Classification Guidelines (2012).
- **Lebanon:** Articles 521 and 531 to 534 of the Penal Code (1943).
- **Singapore:** Section 377A and 294(a) of the Penal Code (1938); Broadcasting Act (1994); Internet Code of Practice (1997); Free-to-Air Radio Programme Code (2004), Board of Film Censors Classification Guidelines (2011); Content Guidelines for Local Lifestyle Magazines (2013); Arts Entertainment Classification Code (2014); Content Code for Nationwide Managed Transmission Linear Television Services (2016); Video Game Classification Guidelines (2019).

Recruitment of activists took place from February to May and the 14 interviews were mostly held in May and early June. Each interviewee read an information sheet and filled a consent form to better understand the purpose of the research, the risks associated with participation, the terms of confidentiality and protection of personal data (see Appendix 3). An interview guide with 16 questions was used for the semi-structured interviews to allow interviewees to share their insights on the same topics and ensure consistency for the analysis that would follow (see Appendix 4).

1.4. Limitations

Several limitations affect the scale of the study. First, this thesis does not address freedoms of opinion, assembly or association, often linked to freedom of expression, in order to have a study focus. Second, the research was restricted to three countries to ensure sufficient analysis of each country situation with respect to free speech and sexual and gender diversity. Third, due to time constraints, this research sample is limited to 14 interviews. Additionally, interviews were conducted with one group (LGBTQI+ activists) while other groups would have provided relevant input (such as religious or community leaders and government officials). Fourth, the focus of this research is on legal and non-legal means of influencing legal change, but does not offer a broader social change perspective. Moreover, this thesis is deliberately law focused (see Chapter 3) and does not bring in social science perspectives, although localising human rights

is the subject of interdisciplinary research²⁶. It is not possible to provide an in-depth analysis of the social, economic, cultural, religious, and other factors that influence the strategies used by LGBTQI+ activists in their fight for freedom of expression. Fifth, the legislation and case law of Kenya and Singapore are readily available in English on the relevant government websites. As for Lebanon, only reports or articles about case law are available, not the judgments themselves, so the analysis could not be as detailed as for Kenya and Singapore. However, a professional translator was hired for this research to translate some articles of the Lebanese Penal Code, also available only in Arabic (see Appendix 5).

²⁶ Oré Aguilar, *op. cit.*, p. 111.

2. Theoretical Framework: When Universal Becomes Local

This chapter provides the theoretical framework for this research. The debate between the universality of human rights and cultural relativism is introduced to understand the origins of the tension between international human rights standards and local reluctance to adhere to or enforce such standards. In other words, cultural relativism is used to justify restrictions on free speech related to SOGIESC issues, opposing universal human rights, including freedom of expression, as protected under international law. Cultural relativism is a major obstacle that prevents local LGBTQI+ activists from achieving legal change through their actions. So how do activists take ownership of the universal human rights language to mitigate cultural relativism and translate global human rights standards into their local contexts? This chapter explores the concept of local relevance of human rights and details the *localising human rights* (LHR) framework by author Gaby Oré Aguilar. The LHR framework is then used to interview content in Chapter 4. Finally, this second chapter concludes with a discussion on human rights narratives and frames, as part of the human rights framework, and how they are used by activists.

2.1. Universality of Human Rights

“All human rights are universal, indivisible and interdependent and interrelated²⁷.” Universality is a key human rights principle which means that all human beings are entitled to the enjoyment of rights by the mere fact of being human, regardless of their gender, race, religion, sexual orientation, or other identity/status²⁸. Human rights are rooted in the inherent dignity of the human person; “all human beings should be treated with equal concern and respect²⁹.” The claim of universal human rights has become particularly strong since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, and with subsequent international human rights treaties and declarations³⁰.

However, the universality of human rights has been questioned by proponents of cultural relativism in various regions of the world. In Africa, many scholars have identified the universality of human rights as a concept excessively linked to individual rights and

²⁷ Vienna Declaration and Programme of Action, 1993, para. 5.

²⁸ Howard-Hassmann, 2019, p. 6.

²⁹ *Ibid.*

³⁰ De Feyter & Parmentier, 2011, p. 1.

individualism carried by the West, as opposed to an African collectivist conception of human rights³¹. In the Arab states, human rights are sometimes considered as an attempt to further colonization and universalize Western culture³². Generally, “human rights must be justified in Islamic terms in order to be deemed relevant³³.” Finally, in Asia, many states have argued that human rights go against the so-called “Asian values”, especially in the 1990s³⁴. Singapore has defended this cultural relativist position with the doctrine of Singapore exceptionalism and the idea of “rice over rights” – economic prosperity over civil and political liberties³⁵.

2.2. Freedom of Expression as a Universal Human Right

Freedom of expression is a fundamental human right enshrined in Article 19 of the UDHR and Article 19 of the ICCPR. Freedom of expression is central to the founding of the United Nations, an organization created in response to the totalitarianism and violence of two world wars³⁶. Free speech is considered essential to the principles of democracy and universality of human rights behind the UN project. In a free and democratic society with open governance, the right to free critique of government is a key condition³⁷.

Yet, states regularly impose limitations or infringe upon freedom of expression. This is because the exercise of this right “takes place in relation to and in coexistence with [other individuals]”: the freedoms and rights of one begin where those of others end³⁸. Freedom of expression is restrained for the respect of the rights and freedoms of others and for “requirements of morality, public order, and the general welfare in a democratic society³⁹.” For example, hate speech or incitement to violence are oftentimes invoked to limit free speech⁴⁰. Limitations on expression about sexual and gender diversity are frequently introduced on the grounds of protecting morality, particularly religious mores and the protection of children⁴¹.

According to Mill’s harm principle, speech ought to be constrained when it would entail mischievous acts that can inflict harm on others. However, he adds to this the notion of offense, and argues that although

³¹ Oyowe, 2014, p. 332.

³² Chase, 2008, p. 14.

³³ *Ibid.*, p. 4.

³⁴ Ramcharan & Ramcharan, 2019, p. 9.

³⁵ *Ibid.*, p. 9, p. 225.

³⁶ Gearon, 2006, pp. 115-116.

³⁷ *Ibid.*

³⁸ Awesta, 2015, p. 97.

³⁹ *Ibid.*, pp. 96-97.

⁴⁰ *Ibid.*, p. 112.

⁴¹ Mendos *et al.*, *loc. cit.*

it is hard to determine the bounds of this notion, the freedom of expression in the public realm has to meet the civilized conditions of interaction, which he calls ‘the morality of public discussion’, the violation of which should result in the limitation of speech in the same way as action that harms others in society⁴².

Following the harm principle, one could argue that “private consensual sex between adult men does not harm anyone else, therefore the law has no business criminalizing it⁴³”, as it is the case in Kenya, Lebanon and Singapore. People may be offended by such conduct; however, this does not justify the limitation on freedom of expression that encompasses and protects expressions that “offend, shock or disturb⁴⁴”. This shows the impracticality of the “morality as law” argument. How does one define society’s morality in the first place?⁴⁵ Freedom of expression is thus a universal human right, essential to democratic life, and yet abused by claims of cultural relativism and limited by states under different motives, including the normative concept of morality. In this context, many LGBTQI+ activists turn to global human rights standards to protect free speech on SOGIESC issues, as discussed in section 4.3.1.

2.3. Local Relevance of Human Rights

In times of globalisation, transnational movements and power relations related to human rights are being shaped and transformed at a rapid pace⁴⁶. Transnational activism must ensure that its human rights campaigns and discourse are adapted to the local context where it hopes to instigate change and bring about justice⁴⁷. However, it is not yet clear how local activists make use of global human rights standards in their specific context to counteract abuse of power and/or inhumane living conditions⁴⁸.

Different authors have studied what can be called the local relevance of human rights. Merry and Levitt, studying women’s rights at the local level, discuss the process of *vernacularization* of human rights: “the extraction of ideas and practices from the universal sphere of international organizations, and their translation into ideas and practices that resonate with the values and ways of doing things in local contexts⁴⁹.” Civil society organizations and

⁴² Awesta, *op.cit.*, p. 194.

⁴³ Siew, 2015, p. 67.

⁴⁴ As first held in *Handyside v. United Kingdom*. See European Court of Human Rights, 1976, para. 49.

⁴⁵ Siew, *op. cit.*, p. 69.

⁴⁶ De Feyter & Parmentier, *loc. cit.*

⁴⁷ Gómez Isa, 2011, p. 50.

⁴⁸ De Feyter & Parmentier, *loc. cit.*

⁴⁹ Merry & Levitt, 2017, p. 213.

local communities take ownership of the language of universal law developed at the UN level⁵⁰. However, local groups' own ideas about justice are often used to identify human rights violations *before* using international law⁵¹. As argued by Woodiwiss, the law alone is not enough: in order to be effective locally, it must be sociologically and locally informed and become part of people's social routines in everyday life⁵². Pursuing a purely legal approach does not ensure respect for human rights if there is no translation to the local context⁵³.

Moreover, local human rights claims should not be limited to international human rights law and should include local understandings of human rights⁵⁴. As De Feyter puts it, to qualify as a human rights claim, a local claim must meet three conditions: it must use human rights language, address a duty bearer (e.g., government and its agents), and request accountability from the duty bearer⁵⁵. The use of human rights language is sufficient to place the claim within the human rights framework, which goes beyond the UDHR and subsequent human rights treaties and comprises all “human rights norms, principles, ideas, values, discourse and arguments⁵⁶.”

2.4. Localising Human Rights Framework

The *localising human rights* (LHR) framework, as elaborated by Oré Aguilar, is used as a theoretical framework for this thesis. Oré Aguilar draws upon the ideas of Merry and De Feyter, according to which the localization process consists of “translating international human rights ‘down’ into local systems and translating actors’ local stories ‘up’ by telling these stories using global rights language⁵⁷.” In other terms, localization is “a two-way highway: ‘from global to local’ and ‘from local to global’⁵⁸”, “whereby local needs of human rights inspire the further interpretation and elaboration of human rights⁵⁹.”

This research focuses primarily on how LGBTQI+ rights activists in Kenya, Lebanon, and Singapore use global human rights norms to advocate for freedom of expression on sexual

⁵⁰ *Ibid.*

⁵¹ De Feyter, 2011, p. 18.

⁵² Woodiwiss, 2006, p. 32.

⁵³ *Ibid.*, p. 43.

⁵⁴ De Feyter, *loc. cit.*

⁵⁵ *Ibid.*

⁵⁶ Oré Aguilar, *op. cit.*, p. 114.

⁵⁷ Oré Aguilar, *op. cit.*, p. 111.

⁵⁸ *Ibid.*, p. 112.

⁵⁹ *Ibid.*

and gender diversity in their national or local context. The use of international human rights mechanisms, such as the Universal Periodic Review (UPR), by local activists and organizations to influence the national level is also discussed. There is an “increasing ability of human rights activists and local groups to bridge local, regional and global levels”, since many of them “navigate easily from one layer of influence to another⁶⁰.”

Furthermore, Oré Aguilar provides a methodological insight on human rights impact assessment, addressing the measurement of ‘rights empowerment’, which implies that people are already aware of the benefits they can get from using human rights in their strategy⁶¹, as it is the case in this research with interviewed LGBTQI+ activists. Empowerment indicators include an assessment of the capacity and resources available to those claiming their rights, the “power to influence public decisions, power to make decisions, power to express interests, power to raise issues for public debate, power to negotiate on values and interests and power to influence tradition and customs⁶².” Although all of these aspects are somewhat analyzed in this research, the methodology used is not quantitative due to a lack of time and resources. It would take a large number of interviewees to draw conclusions of a quantitative nature, so this research proposes instead to look at activists' self-perceptions through qualitative interviews.

Finally, Oré Aguilar proposes a typical path of the human rights localization process (emphasis added):

The localisation of human rights entails a process (see Figure 1) in which people’s local experiences of **disempowerment and deprivation provide the starting point for action** (track 1) by a network of actors (including the local community itself) that uses the **global human rights framework to frame their claims** in terms of human rights and deploy actions at various levels and political spaces (track 2). Such actions target an institutional response through which the **effectiveness and relevance of human rights** for responding to these claims is tested (track 3). Localisation also inquires into the process by which institutional responses translate into the **further interpretation or elaboration of human rights standards** (track 4). Thus, **local communities become a resource for enhancing human rights protection in theirs and other local communities** (track 5)⁶³.

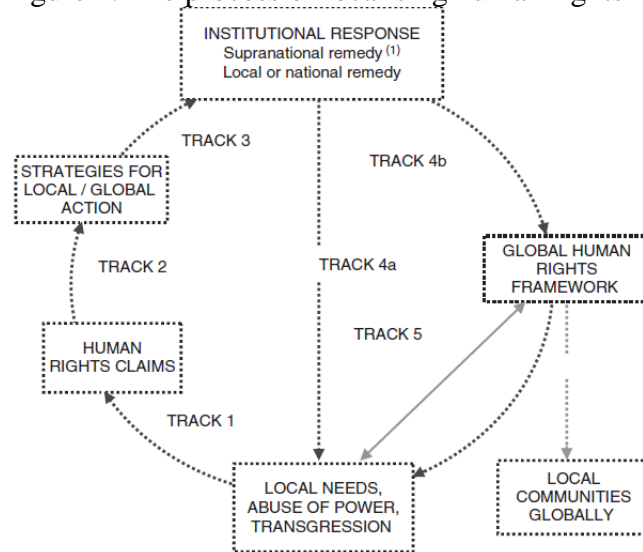
⁶⁰ *Ibid.*, p. 122.

⁶¹ Oré Aguilar, *op. cit.*, p. 118.

⁶² Norwegian Agency for Development Cooperation (NORAD), 2001, p. 17.

⁶³ Oré Aguilar, *op. cit.*, p. 130.

Figure 1. The process of localising human rights⁶⁴



2.5. Human Rights Narratives and Frames

A narrative is “a collection or system of related stories that are articulated and refined over time to represent a central idea or belief⁶⁵.” Stories are part of a wider narrative, in the same way that tiles are to a mosaic⁶⁶. Frames are defined as “ways of understanding the world around us that we use to filter information and arguments⁶⁷.” Oftentimes, they “operate at a subconscious level and are closely related to our values⁶⁸.” Both narrative and framing are discursive strategies used in social movements to convince target audiences⁶⁹. The two strategies are used simultaneously, as they “perform many of the same tasks, from recruitment and mobilization, to collective identity development, to external deployment for legal and policy outcomes⁷⁰.” Both human rights narratives and frames are part of the human rights discourse and the human rights language. These terms are used interchangeably in this study.

The way human rights are framed makes a difference in how they are perceived. Positive frames appealing to intrinsic values lead to greater concern and support for human rights, especially if they are constantly repeated over time⁷¹. In a similar vein, it is recommended to

⁶⁴ *Ibid.*, p. 131.

⁶⁵ Gomez & Coombes, 2019, p. 15.

⁶⁶ *Ibid.*

⁶⁷ Equally Ours, Counterpoint & Public Interest Research Centre (PIRC), 2018, p. 5.

⁶⁸ *Ibid.*

⁶⁹ Olsen, 2014, p. 249.

⁷⁰ *Ibid.*, p. 263.

⁷¹ *Ibid.*

avoid divisive language, to speak to “what really matters to people” and to “trigger people’s core values” in order to effectively communicate human rights⁷². Using an opponent’s frame only reinforces their negative storyline. Human rights activists and organizations must therefore decode their opponents’ discourse and focus on their own positive and compelling narratives⁷³. Narratives have “the power to influence people’s thinking about how the world works, and by extension how people understand the stories, facts and other stimuli they encounter in daily life⁷⁴.” This can be done by triggering hope and empathy and identifying “stories and actions that bring narratives to life⁷⁵.” When the human rights story is embodied by a human person, people feel more concerned about the human rights issues at hand.

Additionally, van der Borgh and Terwindt discuss the power of labeling and framing when NGOs gain or lose political space in policy arenas. For example, if the NGOs agendas and motivations are demonized in the public space, they risk losing support⁷⁶. The same is true for single activists, also represented in this study. From this perspective, the media has the power to influence how stories are framed in their coverage⁷⁷. Crow and Lawlor underscore the role of the media in “selecting issues of importance to highlight to the public and policy makers (agenda-setting)” and in “problematizing policy in a way that attaches meaning to it in a manner that is comprehensible (framing and constructing narratives)⁷⁸”. It is assessed in section 4.2.6. whether LGBTQI+ activists in Kenya, Lebanon, and Singapore seek to build alliances with the media and convey human rights stories in this key space for free speech and democratic debate.

Finally, narratives and frames are used by activists to advance rights of disadvantaged groups, such as LGBTQI+ communities. It is a form of persuasive communication that benefits groups that otherwise lack of access to technical, scientific, or expert discourses, and are being denied access to political participation⁷⁹. By telling the stories of victims of human rights violations, narratives can lead to feelings of empowerment and efficacy. Narratives also help create a personal connection with the audience by highlighting the similarities and common

⁷² European Union Agency for Fundamental Rights, 2018, p. 8.

⁷³ *Ibid.*, p. 15.

⁷⁴ Gomez & Coombes, *op. cit.*, p. 16.

⁷⁵ *Ibid.*, p. 17.

⁷⁶ van der Borgh & Terwindt, 2014, p. 38.

⁷⁷ *Ibid.*

⁷⁸ Crow & Lawlor, 2016, p. 472.

⁷⁹ Olsen, *op. cit.*, p. 249.

goals between said audience and rights claimants⁸⁰. One strategy pursued by the queer movement is to emphasize the common ground between LGBTQI+ people and the heterosexual majority. Telling the stories of queer individuals helps to change mainstream negative conceptions of what it means to be LGBTQI+⁸¹.

In short, narratives and frames are a powerful tool used by LGBTQI+ activists, including in Kenya, Lebanon, and Singapore, to change laws and regulations restricting freedom of expression on sexual and gender diversity, as detailed in section 4.4.2. Human rights narratives and frames are used to engage audiences, empower the LGBTQI+ community, increase media visibility, and most importantly, influence how the issue at hand is perceived. Narratives and frames are part of the definition of human rights framework chosen for this research, a framework used locally by activists to trigger legal change, deriving from universal human rights norms. In the next chapter, the legal framework related to free speech and SOGIESC issues is presented to better understand which norms activists appeal to, whether they are international, regional or national.

⁸⁰ *Ibid.*, p. 250.

⁸¹ *Ibid.*

3. Legal Framework on Freedom of Expression and SOGIESC Issues

Before presenting the main instruments of international human rights law (IHRL) related to freedom of expression, it is necessary to ask whether and how Kenya, Lebanon and Singapore integrate international law into national law. Kenya and Singapore both have a common law tradition, inherited by British colonialism, whereas Lebanon has a civil law tradition brought by French colonialism⁸². Under British rule, Kenya and Singapore adopted a dualist legal system, i.e., international law must be incorporated into the domestic framework through new laws or the amendment of existing laws in order to be used directly in a national court. The ratification of an international treaty by the government of a dualist country is not sufficient⁸³. However, the courts in Kenya increasingly consider that their system has become monist with the adoption of the new 2010 Constitution of Kenya. Indeed, it is now possible for courts to refer directly to international law in their decisions without international treaties having been formally enacted into domestic law since the Constitution “recognises international law as part of the domestic legal order⁸⁴.” Lebanon also has a monist system⁸⁵, where international law takes precedence over national law⁸⁶. Dualist Singapore, however, relies almost exclusively on domestic law; its Constitution is silent on international law⁸⁷. Singapore only ratified four of the nine core human rights treaties (CEDAW, CRC, ICERD and CRPD), while Lebanon ratified six and Kenya seven⁸⁸. However, none of the three countries has accepted individual complaint procedures⁸⁹. Although the CRC (Article 13), the ICERD (Article 5) and the CRPD (Article 21) explicitly protect freedom of expression, this thesis does not focus on children’s rights, racial discrimination or disability rights.

In terms of freedom of expression, the most important international treaty is the International Covenant on Civil and Political Rights (ICCPR), which takes root in the Universal Declaration of Human Rights (UDHR). For the section on the universal human rights system, this chapter focuses on the ICCPR and its treaty body – the Human Rights Committee. The Yogyakarta Principles, Special procedures and the Universal Periodic Review (UPR) are also

⁸² CIA, n.d.

⁸³ Chiam, 2018.

⁸⁴ Okubasu, 2019, p. 548.

⁸⁵ Human Dignity Trust, 2015, p. 38.

⁸⁶ Chiam, *op. cit.*

⁸⁷ Tay, 1999, p. 472.

⁸⁸ OHCHR, n.d. a. ; OHCHR, n.d. b.

⁸⁹ OHCHR, n.d. a.

discussed. The freedom of expression provisions of relevant regional human rights systems – or efforts to establish one – are then presented, namely the African system and the emerging systems in the Arab states and Southeast Asia. The second part of the chapter deals with the national legal systems of Kenya, Lebanon and Singapore, beginning with constitutional law and relevant provisions protecting free speech. It then presents the criminal law and communications law provisions that restrict freedom of expression on SOGIESC issues. Through this, the case law relevant to each country is discussed. The idea is not to assess whether national law meets international law obligations, but rather to present the most relevant international, regional and national legal tools used by queer activists to protect freedom of expression on sexual and gender diversity. Each section of Chapter 3 is revisited in Chapter 4 to analyze in more detail how local activists use or not use these different levels of law, how they do so, and whether and how it is useful to them.

3.1. Universal System

3.1.1. Universal Declaration of Human Rights (Article 19) and International Covenant on Civil and Political Rights (Article 19)

In 1948, the UDHR was adopted by the General Assembly of the United Nations as the cornerstone of the universality of human rights for everyone, everywhere in the world. Article 19 of the Universal Declaration proclaims that: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers⁹⁰.” Although non-binding on states, the Declaration is seen as an authoritative interpretation of the term ‘human rights’ used in the 1945 United Nations Charter⁹¹. A state such as Singapore, which has not ratified the ICCPR but is a party to the UN Charter, has therefore an obligation to respect the provisions of the UDHR⁹².

Additionally, the UDHR text is reflected in subsequent binding human rights treaties. Freedom of expression was enshrined in international law in 1966 with the adoption of the ICCPR. Article 19 of the ICCPR builds upon the UDHR. 19(2) reads as follows: “Everyone

⁹⁰ Universal Declaration of Human Rights, 1948, art. 19.

⁹¹ Hannum, 1996, pp. 322-323.

⁹² *Ibid.*

shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice⁹³.” Freedom of opinion (para. 1) is not the subject of this thesis which rather focuses on freedom of expression (para. 2). Freedom of expression has both an individual and social dimension: it is deemed necessary for the “full development of the person” and “essential for any society”, being “the foundation stone for every free and democratic society⁹⁴.” The ICCPR only clearly prohibits two forms of expression: war propaganda and incitement to hatred, violence and discrimination based on nationality, race or religion in Article 20⁹⁵. Sexual orientation and gender identity are not grounds on which incitement to hatred is explicitly prohibited. It is therefore critically important to understand Paragraph 3 of Article 19 which lays out the restrictions to freedom of expression. Any limitation to free speech must meet three conditions: it must be prescribed by law, be necessary and seek to protect the rights or reputation of others, and/or public order, public health or morals. As discussed in section 2.2., governments usually prohibit or restrict expression on sexual and gender diversity based on the argument of public morality, using their margin of appreciation when interpreting Article 19.

The Human Rights Committee (HRC), the UN treaty body responsible for monitoring the implementation of the ICCPR, validated this margin of appreciation doctrine on issues of freedom of expression and content dealing with homosexuality⁹⁶. Through its individual complaint procedure, in *Hertzberg et al. v. Finland* (1982), it held that “public morals differ widely” between countries and that “there is no universally applicable common standard⁹⁷.” The HRC later reversed its decision in *Irina Fedotova v. Russian Federation* (2012). It found that the Ryazan Regional Law which prohibits “public actions aimed at propaganda of homosexuality among minors⁹⁸” violated the applicant’s right to freedom of expression (Article 19), in conjunction with her right to freedom from discrimination (Article 26)⁹⁹, given that Article 26 encompasses discrimination based on sexual orientation¹⁰⁰. Additionally, the HRC

⁹³ International Covenant on Civil and Political Rights (ICCPR), 1966, art. 19.

⁹⁴ UN Human Rights Committee, 2011, para. 2

⁹⁵ ICCPR, *op. cit.*, art. 20.

⁹⁶ O’Flaherty, 2015a, p. 69.

⁹⁷ Human Rights Committee, 1982, para. 10.3.

⁹⁸ Ryazan Regional Law, 2006, art. 4.

⁹⁹ Human Rights Committee, 2012, para. 11.

¹⁰⁰ *Ibid.*, para. 10.5.

General Comment No. 34, as recalled in the case¹⁰¹, held that “the concept of morals derives from many social, philosophical and religious traditions, consequently, limitations [...] for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination¹⁰².” The General Comment No. 34 is the HRC most recent interpretation of Article 19 of the ICCPR and it guides states in fulfilling their treaty obligations¹⁰³.

Although the HRC’s Views follow “some important characteristics of a judicial decision”, they are not legally binding and many states decide to choose a different interpretation¹⁰⁴, as evidenced by the fact that 42 UN member states, of which 36 are a party to the ICCPR¹⁰⁵, continue to restrict freedom of expression on SOGIESC issues¹⁰⁶. As Nowak observes:

Many States in which gross and systematic human rights violations occur are not (yet) parties to the Covenant or the First Optional Protocol [which allows for individual complaints], and only a minority of States Parties actually make convincing efforts to comply with their obligations under the Covenant and with the legally non-binding decisions of the Committee¹⁰⁷.

Each state party to the ICCPR must report on the implementation of the Covenant to the Human Rights Committee every four to five years. For each reporting cycle, the HRC adopts concluding observations on the progress made by the state party and recommendations for further action¹⁰⁸. In 2021, in its concluding observations to Kenya, the Committee expressed concern over the “national legal provisions [that] have been used to limit online expression, [and] repress lesbian, gay, bisexual, transgender and intersex individuals¹⁰⁹” and encouraged Kenya to “amend all relevant laws, including sections 162 and 165 of the Penal Code, to decriminalize consensual sexual relations between adults of the same sex¹¹⁰.” With regard to Lebanon, in its 2018 concluding observations, the HRC pointed to the violations to the right to

¹⁰¹ *Ibid.*

¹⁰² Human Rights Committee, 2011, para. 32.

¹⁰³ *Ibid.*

¹⁰⁴ Ulfstein, 2015, p. 253.

¹⁰⁵ See OHCHR, 2021. The six member states restricting freedom of expression on SOGIESC issues that are not parties to the ICCPR are China, Malaysia, Oman, Saudi Arabia, Singapore and the United Arab Emirates.

¹⁰⁶ Mendos *et al.*, *op. cit.*, p. 145.

¹⁰⁷ Nowak, 2009, p. 275.

¹⁰⁸ OHCHR, 2005, pp. 15-16.

¹⁰⁹ Human Rights Committee, 2021, para. 42.

¹¹⁰ Penal Code of Kenya, 2012, sections 162 and 165 ; Human Rights Committee, 2021, para. 13(a).

freedom of expression of lesbian, gay, bisexual, transgender and intersex individuals and the constant arrests and prosecutions targeting them under Article 534 of the Penal Code which criminalizes “any sexual intercourse contrary to the order of nature¹¹¹.”

The shortcomings in the implementation of the ICCPR by state parties are particularly salient when it comes to protecting LGBTQI+ individuals, hence the idea of working on an international document that makes their rights explicit in light of existing human rights treaties (not only the ICCPR). It is in this context that the Yogyakarta Principles were created¹¹².

3.1.2. Yogyakarta Principles (Principle 19)

The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity were adopted in 2006 by a group of experts (mostly UN special rapporteurs, human rights scholars and NGO representatives) in order to clarify existing state obligations when protecting and promoting the rights of persons with diverse sexual orientations, gender identities or intersex condition¹¹³. The Principles, later updated in 2017 with the Yogyakarta Principles plus 10¹¹⁴, are seen by many scholars and international organizations as the most authoritative international statement in the matter¹¹⁵. Principle 19 brings together freedom of expression and sexual and gender diversity:

Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers¹¹⁶.

It then details the obligations of states and the steps that must be taken to ensure the realization of this right, including ensuring that notions of “public morality [...] are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities¹¹⁷.” The strength of the Yogyakarta Principles lies in three aspects. First, the Principles are characterized by tactical

¹¹¹ Lebanon Penal Code, 1943, Art. 534. ; Human Rights Committee, 2018, para. 13.

¹¹² O’Flaherty & Fisher, 2008, p. 232.

¹¹³ O’Flaherty, 2015b, pp. 280-281.

¹¹⁴ Yogyakarta Principles plus 10 (YP+10), 2017.

¹¹⁵ O’Flaherty, 2015b, p. 281. ; UNDP & Asia Pacific Forum, 2016, p. 131.

¹¹⁶ Yogyakarta Principles, 2007.

¹¹⁷ *Ibid.*

modesty of activists' demands¹¹⁸. Second, the Principles are based on stable foundations: they are not binding or the result of a state-driven process, but they rely on binding international law to which states have voluntarily decided to be part¹¹⁹. Third, the Principles are strong on effective strategic deployment by including local LGTBQI+ activists in both the drafting of the Principles and their application to make them relevant to the daily lives of people locally¹²⁰. Thus, the Yogyakarta Principles are both used by activists in international forums and in local actions.

3.1.3. Special Procedures

Other sources of global norms related to freedom of expression used by local LGTBQI+ advocates include the Special Procedures of the Human Rights Council. They are independent experts who report and advise on human rights under a particular theme or country¹²¹. On the theme of freedom of expression on SOGIESC issues, the most relevant Special Procedures are the Special Rapporteur on freedom of expression and opinion and the Independent Expert on sexual orientation and gender identity. Neither has visited Kenya, Lebanon or Singapore. However, in May 2019, both Special Procedures jointly released a communication on Lebanon expressing concern over the blocking of Grindr, a dating app mostly used by gay individuals, and over the repeated interferences of Lebanese Security Forces with “human rights events related to gender and sexuality based on morality claims¹²².” They also issued a joint statement on Singapore in 2017 showing concern on the amendments to the Public Order Law which “disproportionally impact on the rights of freedom of expression and peaceful assembly of lesbian, gay, bisexual and transgender persons¹²³”, especially on the organization of the annual Pink Dot rally. All of these communications were also co-authored by the Special Rapporteur on the situation of human rights defenders. No communication on Kenya related to free speech and sexual and gender diversity was made¹²⁴.

¹¹⁸ Thoreson, 2009, p. 328.

¹¹⁹ *Ibid.*, p. 329.

¹²⁰ *Ibid.*, p. 331.

¹²¹ OHCHR, n.d. c.

¹²² OHCHR, 2019.

¹²³ OHCHR, 2017.

¹²⁴ ISHR & ILGA, 2020a. ; ISHR & ILGA, 2020b.

3.1.4. Universal Periodic Review

Since 2006, the Human Rights Council has used a unique mechanism: the Universal Periodic Review. With the UPR, each UN member state is assessed every five years by the other member states on its human rights situation in light of the UN human rights framework¹²⁵. Although the UPR is a state-driven process, civil society organizations play a key role by submitting shadow reports¹²⁶, which is the case for many local LGBTQI+ organizations in the study countries. Indeed, in Kenya, the following queer organizations participated in the UPR: the Gay and Lesbian Coalition of Kenya (GALCK)¹²⁷, the National Gay and Lesbian Human Rights Commission (NGLHRC)¹²⁸, JINSIANGU, NYARWEK¹²⁹ and the Katiba Institute¹³⁰, among others. In Lebanon, Helem¹³¹, the Arab Foundation for Freedoms and Equality (AFE)¹³² and Proud Lebanon¹³³ also submitted a report. In Singapore, Oogachaga¹³⁴, Pink Dot¹³⁵, Sayoni¹³⁶ and TransgenderSG¹³⁷ and others sent submissions. These submissions are sometimes jointly issued with international NGOs. The UPR forum is a prime example of local activists who take ownership of the universal human rights language developed at the global level at the United Nations, as discussed in section 4.4.3. A content analysis of UPR submissions from Kenyan, Lebanese and Singaporean queer organizations related to free speech is also offered in this section.

3.2. African System

Considering that this research includes Kenya, it is important to present the main instruments of the African human rights system in terms of freedom of expression.

¹²⁵ UPR Info, n.d. a.

¹²⁶ UPR Info, n.d. b.

¹²⁷ GALCK, 2019.

¹²⁸ GALCK & NGLHRC, 2015 ; GALCK, NGLHRC, Coalition of African Lesbians & Sexual Rights Initiative, 2015.

¹²⁹ JINSIANGU, NYARWEK, GALCK, NGLHRC, & 6 others, 2020.

¹³⁰ Katiba Institute & Article 19, 2020.

¹³¹ Helem, 2020.

¹³² Helem & AFE, 2015.

¹³³ Proud Lebanon, 2020.

¹³⁴ Oogachaga, 2021.

¹³⁵ Pink Dot & Oogachaga, 2021.

¹³⁶ Sayoni & 5 others, 2020.

¹³⁷ TransgenderSG & Sayoni, 2020.

3.2.1. African Charter on Human and Peoples' Rights (Article 9)

Adopted in 1981 and entered into force in 1986, the African Charter on Human and Peoples' Rights (ACHPR) or Banjul Charter is the cornerstone of the African human rights framework, as created by the member states of the African Union (AU), formerly the Organization of African Unity (OAU)¹³⁸. Kenya is a member of the AU/OAU since its foundation in 1963¹³⁹ and it ratified the ACHPR in 1992¹⁴⁰. Article 9 of the Banjul Charter protects freedom of expression, providing the “right to receive information” and the “right to express and disseminate his opinions within the law¹⁴¹.”

Article 9 differs from Article 19 of the ICCPR in that it does not expressly protect the right to receive ideas or to impart information, nor does it specify the limits under which freedom of expression may be restricted, other than that it must be prescribed by law¹⁴². Freedom of expression therefore falls under the limits set out in Article 27: “the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest¹⁴³.” Several African governments have interpreted the ACHPR as giving them the leeway to restrict free speech on SOGIESC issues by citing the preservation of morality in society. To limit Article 9(2) of the Charter, governments may unduly resort to the ‘claw-back’ clauses contained in the ACHPR. Such clause is “a provision in which a right is recognised provided one abides by ‘the law’ [...] [creating] the impression that the protection of the right in question is subject to any limitations imposed by national law¹⁴⁴.” However, in *Media Rights Agenda and Others v Nigeria* (1998), the African Commission on Human and Peoples' Rights confirmed that “a domestic law limiting the right in question must comply with international standards¹⁴⁵.”

3.2.2. Declaration of Principles of Freedom of Expression and Access to Information in Africa

In 2019, as a result of the repeated violations of free speech in Africa despite the protection of Article 9, the African Commission adopted the Declaration of Principles of Freedom of

¹³⁸ Coliver, 1993, p. 11.

¹³⁹ African Union, n.d.

¹⁴⁰ African Commission on Human and Peoples' Rights, n.d.

¹⁴¹ ACHPR, 1981, art. 9.

¹⁴² Coliver, *loc. cit.*

¹⁴³ ACHPR, *op. cit.*, art. 27.

¹⁴⁴ Heyns & Killander, 2016, p. 298.

¹⁴⁵ *Ibid.* ; African Commission on Human and Peoples' Rights, 1998, para. 66.

Expression and Access to Information in Africa, replacing the 2002 Declaration¹⁴⁶. The Declaration was prepared by the Special Rapporteur on Freedom of Expression and Access to Information in Africa, in collaboration with key stakeholders¹⁴⁷. Although the Declaration is soft law, it significantly expands protection for LGBTQI+ people by recognizing sexual orientation and gender identity as prohibited grounds of discrimination in Principle 3¹⁴⁸. In contrast, the ACHPR does not mention such grounds. The African Commission is increasingly including sexual orientation and gender diversity in its soft law documents and recognizing LGBTQI+ people in Africa as a marginalized group that deserves respect for their basic human rights¹⁴⁹.

3.3. Arab States

Unlike their African, European and Inter-American counterparts, the Arab countries, members of the League of Arab States (LAS), “lack an effective regional human rights system” because of non-existent or weak enforcement mechanisms¹⁵⁰. It is nevertheless relevant to mention what exists on paper and can be used by local LGBTQI+ activists in Lebanon.

3.3.1. Arab Charter on Human Rights (Article 32)

In 2004, the LAS revised its 1994 Arab Charter on Human Rights. Lebanon is an Arab League founding member (1945)¹⁵¹ and a state party to the Arab Charter since its inception¹⁵². Article 32(1) of the Charter provides “the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries¹⁵³”. 32(1) resembles Article 19(1) and (2) of the ICCPR in the scope of protection provided. Additionally, the grounds for limiting freedom of expression in the Arab Charter 32(2) are the same as those in the ICCPR 19(3). However, while the ICCPR states that limitations must be necessary and provided by law, the Arab

¹⁴⁶ African Commission on Human and Peoples' Rights, 2019.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ Isaack, 2017.

¹⁵⁰ Sadri, 2019, p. 1175.

¹⁵¹ Encyclopædia Britannica, n.d.

¹⁵² Arab Charter on Human Rights, 1994, preamble.

¹⁵³ Arab Charter on Human Rights, 2004, art. 32.

Charter provides that freedom of expression must conform to the fundamental values of society, leaving room for custom and religion contradicting international human rights norms¹⁵⁴.

3.4. Southeast Asia

Similar to Arab countries, Asia does not have a comprehensive human rights system. The Association of Southeast Asian Nations (ASEAN), which has 10 member states including Singapore¹⁵⁵, has however established the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009¹⁵⁶.

3.4.1. ASEAN Human Rights Declaration (Article 23)

The creation of the AICHR preceded the adoption of the ASEAN Human Rights Declaration (AHRD) in 2012. The AICHR would be the ideal body to oversee the implementation of the AHRD, however, the latter is declaratory in nature and does not trigger a treaty-based system¹⁵⁷. Although the language of the Declaration is not consistent with international human rights standards, it “creates a framework of expected behaviour¹⁵⁸” that can be useful in the advocacy efforts of local queer activists. Article 23 of the Declaration states that: “every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person’s choice¹⁵⁹.” Limitations are set out in Article 8: they must be determined by law, “with due regard to the human rights and fundamental freedoms of others”, and “meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society¹⁶⁰.” In terms of freedom of expression, the AHRD uses a language similar to the ICCPR and therefore has the potential for equivalent protection; the problem is in its lack of enforceability.

3.5. Constitutional law

While *some* activists interviewed for this research said they use international human rights standards, almost *all* mentioned that they invoke their country's constitution to challenge laws

¹⁵⁴ *Ibid.* ; Allam, 2014, p. 63 ; Vitkauskaite-Meurice, 2010, p. 177.

¹⁵⁵ ASEAN, n.d.

¹⁵⁶ Tan, 2011, p. 140.

¹⁵⁷ Naldi & Magliveras, 2014, p. 204.

¹⁵⁸ *Ibid.*, p. 207.

¹⁵⁹ ASEAN, 2012, art. 23.

¹⁶⁰ *Ibid.*, art. 8.

restricting free speech and criminalizing same-sex relationships, as discussed in section 4.3.5. In other words, the study respondents consider these laws unconstitutional. It is therefore important to briefly outline which articles of the constitutions are being referred to, particularly those protecting freedom of expression.

3.5.1. Constitution of Kenya (Articles 33 and 34)

In 2010, Kenya adopted by popular referendum its new Constitution in an effort to uphold the rule of law, separation of power, and respect of fundamental rights¹⁶¹. The previous Constitution was dated from the independence from Britain (1963) and was amended dozens of times until replaced in 2010¹⁶². Most amendments served the interests of the political elites¹⁶³. The Bill of Rights of the 1963 Constitution only covered civil and political rights¹⁶⁴ and “was littered with ‘claw-back’ clauses that often defeated the very essence of guaranteeing human rights¹⁶⁵.” The 2010 Bill of Rights, however, “contains a most exhaustive catalogue of human rights¹⁶⁶.” Article 33 protects freedom of expression and Article 34 guarantees freedom of the media. 33(1) provides “freedom to seek, receive or impart information or ideas”, academic freedom and artistic freedom as part of freedom of expression. 33(3) states that freedom of expression “shall respect the rights and reputation of others¹⁶⁷.” Protection of morals is therefore not listed as a ground to restrict free speech.

Article 34 expressly protects the freedom of the media, which is a unique feature of the Kenyan constitution, as most democratic constitutions protect the freedom of the media under the freedom of expression provision¹⁶⁸. The contribution of the media to democratization is thus directly recognized in the country's Constitution. Indeed, the Kenyan media have greatly conveyed democratic principles and values at the time of the return of multiparty politics in the 1990s¹⁶⁹. 34(1) ensures the freedom and independence of all types of media, including print and electronic. 34(2) provides that “the State shall not exercise control over or interfere with” the media, nor “penalise any person for any opinion” or content that is broadcasted or

¹⁶¹ Lumumba, 2011, p. 44.

¹⁶² *Ibid.*, p. 13.

¹⁶³ *Ibid.*, p. 44.

¹⁶⁴ Mbondenyei & Ambani, 2012, p. 174.

¹⁶⁵ *Ibid.*, p. 172

¹⁶⁶ *Ibid.*, p. 177.

¹⁶⁷ Constitution of Kenya, 2010, art. 33.

¹⁶⁸ Mbondenyei & Ambani, *loc. cit.*, pp. 198-199.

¹⁶⁹ *Ibid.*, p. 199.

disseminated¹⁷⁰. As explained in section 4.3.5., Kenyan activists widely use constitutional provisions to change laws restricting freedom of expression on SOGIESC issues.

3.5.2. *Constitution of Lebanon (Article 13)*

The Lebanese Constitution was adopted in 1926 to establish Lebanon as “a separate political entity under French mandate¹⁷¹.” The distinctive feature of the Constitution is the representation given to the different religious communities and the sharing of power between them¹⁷². “Constitutional rule in Lebanon is subordinate to the consensus of its major religious communities¹⁷³.” It is possible to disregard the Constitution when a political consensus is reached among the major political forces in the country. Lebanon gained its independence from France in 1943 with the National Pact, “a political compromise between the two major religious communities [the Maronite Christians and the Sunni Muslims] to obtain independence^{174,175}.”

The 1926 Constitution, as amended in 2004, protects various individual rights and freedoms, including freedom of expression. Article 13 provides “the freedom of opinion, expression through speech and writing, the freedom of the press, the freedom of assembly, and the freedom of association”, “within the scope of the law¹⁷⁶.” Limitations to this right are nowhere to be found in the Constitution. Rather, limitations are introduced by laws, such as the Penal Code, as explained in section 3.6.2.

3.5.3. *Constitution of Singapore (Article 14)*

After being a colony for over 140 years, Singapore gained its independence from Great Britain in 1963 and from Malaysia in 1965 after a failed merger. The Singapore Constitution, still in force today, dates from 1965¹⁷⁷. The Constitution comprises a certain number of protections for fundamental liberties, essentially civil rights. Article 14(1)(a) guarantees freedom of speech and expression for every citizen of Singapore. 14(2)(a) introduces many limitations to this right, including morality¹⁷⁸. Comparing it to the Constitutions of Kenya and Lebanon, Singapore's Constitution is the only one that explicitly mentions morality as a ground for limiting freedom

¹⁷⁰ Constitution of Kenya, *loc. cit.*, art. 34.

¹⁷¹ Saliba, 2010, p. 1.

¹⁷² *Ibid.*, p. 2.

¹⁷³ *Ibid.*, p. 12.

¹⁷⁴ *Ibid.*, p. 10.

¹⁷⁵ *Ibid.*, p. 9.

¹⁷⁶ Constitution of Lebanon, 1926, art. 13.

¹⁷⁷ Tan & Thio, 2015, p. 32.

¹⁷⁸ High Court of the Republic of Singapore, 2020, para. 240.

of expression. Singaporean activists extensively the freedom of expression provision, including in the constitutional challenge against the Penal Code, as discussed in section 4.3.5.

3.6. Criminal law

The Penal Codes of all three study countries criminalize same-sex relationships, and such criminalization is used by governmental authorities to justify the violation of freedom of expression on sexual and gender diversity issues.

3.6.1. Kenyan Penal Code (Sections 162 and 165)

The Kenyan Penal Code of 1930 (as revised in 2012), a legacy of British Kenya¹⁷⁹, criminalizes same-sex relationships deemed “unnatural offences”. Section 162 penalizes “any person who [...] has carnal knowledge of any person against the order of nature” with 14 years of imprisonment¹⁸⁰. Section 165 targets intimacy between men by criminalizing “any act of gross indecency” between males with five years of imprisonment¹⁸¹. In Petitions 150 and 234 of 2016, the petitioners argued that Sections 162 and 165 are unconstitutional because of their vagueness and uncertainty¹⁸². The High Court of Kenya rejected this argument by clarifying the definition of natural carnal knowledge as “the act of a man in having sexual bodily connection with a woman¹⁸³” and by determining anal sex as “against the order of nature¹⁸⁴.” Additionally, the High Court stated that unnatural offences include sodomy, buggery and bestiality¹⁸⁵. The High Court upheld the constitutionality of Sections 162 and 165. Petitions 150 and 234 are now pending appeal¹⁸⁶.

3.6.2. Lebanese Penal Code (Articles 531 to 534)

Article 534 of the 1943 Lebanese Penal Code is used to penalize same-sex relationships, although its wording is vague and open to interpretation. Article 534 reads as follows: “Any unnatural sexual intercourse is punishable by up to one year of imprisonment¹⁸⁷.” Some consider 534 as a “colonial relic” from the French mandate, while others identify its origins in

¹⁷⁹ Morris, 1974, p. 11.

¹⁸⁰ Penal Code of Kenya, 2012, section 162.

¹⁸¹ *Ibid.*, section 165.

¹⁸² High Court of Kenya, 2019, para. 58.

¹⁸³ *Ibid.*, para. 270.

¹⁸⁴ *Ibid.*, para. 271.

¹⁸⁵ *Ibid.*, para. 272.

¹⁸⁶ BBC News, 2019.

¹⁸⁷ Lebanon Penal Code, 1943, art. 534.

the Jesuit missions to Lebanon¹⁸⁸. Recently, several legal cases have found the accused discharged from the Article 534 offence¹⁸⁹.

Additionally, Articles 531 and 532 directly infringe upon freedom of expression. 531 states that “any person who violates public rules of conduct in one of the ways mentioned at the first paragraph of Article 209 shall be punishable by one month to one year of imprisonment¹⁹⁰” and 532 indicates that “any person who violates public morality in one of the ways mentioned at the second and third paragraphs of Article 209 shall be punishable by one month to one year of imprisonment and a fine of 20,000 to 200,000 Lebanese pounds¹⁹¹.” Article 209 can be read in Appendix 5, together with other relevant articles of the Penal Code.

Finally, Article 533 states that “anyone who, with the purpose of trading in or distributing them, manufactures, imports, exports or possesses texts, drawings, paintings, photographs, films, emblems or other obscene materials, or who advertises or makes known how such materials may be obtained, shall be subject to the same penalties¹⁹².” There are prosecutions against members of the LGBTQI+ community in Lebanon under Articles 531 and 532. For example, in the decision of the single criminal judge in Beirut on 24/11/2006, two individuals were convicted under 531 for kissing in public. The judge considered that this action demonstrated their readiness “to engage in sodomy¹⁹³.”

Despite the restrictions that the Lebanese Penal Code places upon freedom of expression on SOGIESC issues, it can also be used to protect the LGBTQI+ community. In *X. v. Public Prosecutor* (2018), the applicant referred to Article 183 of the Penal Code¹⁹⁴, which states that “an act undertaken in exercise of a right without abuse shall not be regarded as an offence¹⁹⁵.” In other words, the freedom to express one’s sexuality would be a protected right as long as it does not cause harm to others.

¹⁸⁸ Strenski, 2020, p. 382.

¹⁸⁹ Misdemeanor Court of Appeals in Beirut, 2018 ; Court of Appeal of Mount Lebanon, 2018 ; Ruling by a Single Criminal Judge in Batroun, Mounir Sleiman, 2009 ; Ruling by a Single Criminal Judge in Jdeideh-Metn, Nagi Al Dahdah, 2014 ; Ruling by a Single Criminal Judge in Jdeideh-Metn, Hicham Al Kontar, 2016 ; Ruling by a Single Criminal Judge in Jdeideh-Metn, Rabih Al Maalouf, 2017 (see Proud Lebanon, 2017, p. 5). It was not possible to find primary sources for the last four rulings, neither in Arabic, nor in English, nor in French.

¹⁹⁰ Lebanon Penal Code, *op. cit.*, art. 531.

¹⁹¹ *Ibid.*, art. 532.

¹⁹² *Ibid.*, art. 533.

¹⁹³ Al Farchichi & Saghie, 2009, p. 14, p. 46, p. 48, p. 53. No primary source was found.

¹⁹⁴ Misdemeanor Court of Appeals in Beirut, 2018.

¹⁹⁵ Lebanon Penal Code, *op. cit.*, art. 183.

3.6.3. Singapore Penal Code (Section 377A)

The criminalization of male-to-male sex was introduced in 1938 in the Singapore Penal Code of 1872 with Section 377A: “Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years¹⁹⁶.” However, 377A has rarely been used in situations of consensual homosexual sex in private¹⁹⁷. Queer people have also faced prosecution under section 294(a) which prohibits “obscene acts” in public, as in *Tan Eng Hong v Attorney-General* (2013)¹⁹⁸. In this case, two men were arrested for engaging in oral sex in a public bathroom. They were initially prosecuted under 377A, but this charge was dropped after one of the accused initiated a constitutional challenge against 377A¹⁹⁹. The challenge went on, as the claimant does not need “to be charged, much less prosecuted, under a particular provision in order to qualify for seeking declaratory relief on the constitutional status of that law²⁰⁰.”

3.7. Communications law

Communications law comprises “all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority [...] relating in any way to the offering or provision of communications²⁰¹”, including Internet, cable, satellite, telephone, and wireless communications²⁰². This research cannot cover all aspects of this broad definition and analyze all forms of communication and governmental laws or regulations in Kenya, Lebanon, and Singapore related to expression restrictions on SOGIESC issues. The next few pages therefore offer salient examples from all three countries: the Classification Guidelines of the Kenya Film Classification Board (KFCB), the licenses issued by the General Directorate of General Security in Lebanon and the Content Code for Over-the-Top, Video-on-Demand and Niche Services in Singapore.

¹⁹⁶ Penal Code of Singapore, 1872, section 377A.

¹⁹⁷ Chua, 2014, p. 37.

¹⁹⁸ High Court of the Republic of Singapore, 2013, para. 6.

¹⁹⁹ Mendos *et al.*, *op. cit.* p. 136.

²⁰⁰ Chua, 2012, p. 460.

²⁰¹ Law Insider, n.d.

²⁰² Loy, n.d.

3.7.1. Classification Guidelines of the Kenya Film Classification Board

Under the 2012 Classification Guidelines of the KFCB, the theme of “promotion or glamorization of homosexual lifestyle” shall be restricted or banned for commercial screening as it “may contain materials that erode the moral fabric of society²⁰³.” The KFCB has jurisdiction to restrict or ban the screening of a film in Kenya under Section 12 of the Films and Stage Plays Act (2012). Each film, whether shown publicly or privately, is reviewed by the Board and may or may not receive a certificate of authorization²⁰⁴. The films *Stories of Our Lives* and *Rafiki* were respectively banned from broadcast in Kenya in 2014 and 2018 for allegedly promoting lesbianism and homosexuality²⁰⁵.

Rafiki’s ban was challenged in court in *Kahiu v. Mutua* (2020), also known as the *Rafiki* case. The applicant, Rafiki’s filmmaker, complained of a violation of her freedom of expression, in particular her artistic freedom. The KFCB justified the ban by stating that “the moral of the story in this film is to legitimize lesbianism in Kenya contrary to the laws and the Board’s content classification guidelines²⁰⁶.” The High Court of Kenya upheld the ban and confirmed the constitutionality of the Classification Guidelines. However, it granted an interim conservatory order that allowed the film to be presented to the Oscar Selection Committee and shown for seven days in Kenya to consenting adults²⁰⁷. Moreover, the judge ruling on the issue, Justice Okwany, said: “I am not convinced that Kenya is such a weak society whose moral foundation will be shaken by simply watching a film depicting gay theme²⁰⁸.” The case is currently pending appeal so that the film can be shown in Kenya on a permanent basis²⁰⁹.

3.7.2. Licenses of the General Directorate of General Security in Lebanon

Queer individuals in Lebanon are being targeted and criminalized by various security forces, including the General Security, Beirut Police, Internal Security Forces, intelligence agencies, and prison guards²¹⁰. Concerning freedom of expression, the General Directorate of General Security is the most relevant body, as its Bureau of Publications is responsible for issuing licenses for the publication or broadcast of magazines, books, plays, films, TV series or

²⁰³ Classification Guidelines of the Kenya Film Classification Board, 2012, section 6.3.5.

²⁰⁴ Films and Stage Plays Act, 2012, section 12.

²⁰⁵ Mendos *et al.*, *op. cit.*, p. 147.

²⁰⁶ High Court of Kenya, 2018, para. 58.

²⁰⁷ *Ibid.*, para. 64.

²⁰⁸ *Ibid.*, para. 62.

²⁰⁹ Bhalla, 2020.

²¹⁰ Al Farchichi & Saghie, *op. cit.*, p. 48.

documentaries in Lebanon²¹¹. In 2018, the second edition of Beirut Pride was shut down after law enforcement agencies cracked down on the venue that was hosting the Arabic reading of *Ogres*, a play depicting homophobia around the world²¹². The lead organizer, Hadi Damien, was arrested. As Damien recalls:

A few minutes before the event began, members of the Censorship Bureau at the General Security [the Bureau of Publications] arrived to the theatre venue, demanding the immediate cancellation of the reading because the company didn't file for a permit. This was wrong, as the company had previously asked the Censorship Bureau if a censorship permit was required for the reading, and the bureau had replied that it was not necessary, since it was a simple reading, not a performance. We talked them through it, but they didn't want to engage. At the same time, officers from the Vice Squad, the General Security and the Intelligence agencies arrived on site. Part of the audience had already left in fear of escalation or arbitrary detention²¹³.

Damien was detained overnight by the Security Forces, and released the next day. The interrogation proved that the permit issue was an excuse, and what triggered the agencies was a fabricated program of events that was misattributed to Beirut Pride, and that was sent to the Police claiming that Beirut Pride was organizing events of debauchery, drugs, and prostitution. Despite proving the falsity of this program, the General Prosecutor of Beirut suspended the scheduled events of Beirut Pride, and initiated criminal proceedings against Damien for organizing an event “inciting to debauchery” under Article 526 of the Lebanese Penal Code²¹⁴. In 2018, the General Security forces similarly disrupted NEDWA, an annual LGBTQI+ conference organized by the Arab Foundation for Freedoms and Equality (AFE)²¹⁵. Beyond General Security's censorship efforts, other examples of violations of freedom of expression on SOGIESC issues in Lebanon include, both in 2019, the blocking of the gay app Grindr²¹⁶ and the cancellation of a concert by Mashrou' Leila, an iconic queer music group from Lebanon²¹⁷.

3.7.3. Content Code for Over-the-Top, Video-on-Demand and Niche Services in Singapore

Singapore has an extensive legislative arsenal to restrict queer expressions in society across all communication platforms, from the internet to radio, movies, TV, video games or magazines, all of which have their own classification codes or guidelines to restrict the “promotion of

²¹¹ General Directorate of General Security, n.d.

²¹² Lautissier, 2018.

²¹³ Hadi Damien was interviewed for this research - these are his words.

²¹⁴ Metzker, 2019 & Damien himself.

²¹⁵ Human Rights Watch, 2018.

²¹⁶ Hall, 2019.

²¹⁷ Beaumont-Thomas, 2019.

homosexual lifestyle²¹⁸” under the supervision of the Infocomm Media Development Authority (IMDA), the government body that regulates media content in Singapore²¹⁹. Platforms such as Netflix are regulated by the IMDA Content Code for Over-the-Top, Video-on-Demand and Niche Services²²⁰. The Code classifies content by assigning a rating, including the age restrictions M18 (mature 18) and R21 (restricted 21). “Homosexual theme or content as a subplot, if discreet in treatment and not gratuitous” is classified M18 and “films that portray, as a main theme, same-sex marriage or parenting” are R21²²¹. Popular Netflix series showing positive LGBTQI+ content, such as Glee, Modern Family, Pose, Queer Eye, Sense8, or Tales of the City have all been rated R21 by the IMDA. RuPaul’s Drag Race is rated M18²²². IMDA’s communication codes directly contribute to the systematic erasure of any positive LGBTQI+ representation in Singaporean society²²³.

In short, Chapter 3 provides for a legal framework about freedom of expression on SOGIESC issues, starting with the universal system of international human rights law, particularly the UDHR/ICCPR, the Human Rights Committee, the Yogyakarta Principles, the Special procedures and the Universal Periodic Review. The African human rights system and the efforts of the Arab states and the ASEAN to establish human rights standards related to free speech are then discussed. Finally, an overview of relevant legal provisions in Kenya, Lebanon and Singapore is presented, from to constitutional law to criminal law to communications law. All of these legal tools, whether or not they are used by the activists interviewed for this study, are discussed again in section 4.3.

²¹⁸ Mendos *et al.*, *op. cit.*, p. 153.

²¹⁹ Info-communications Media Development Authority Act, 2016, para. 5.

²²⁰ Content Code for Over-the-Top, Video-on-Demand and Niche Services, 2018.

²²¹ *Ibid.*

²²² Miyano, 2020.

²²³ Heckin’ Unicorn, 2021.

4. Analysis of Interviews with Local LGBTQI+ Activists

Chapter 4, the most substantive chapter of this thesis, unveils the results of 14 interviews with local queer activists from Kenya, Lebanon and Singapore. First, the methodology used for the interviews is explained. Second, the various strategies used by study respondents to bring about legal change against laws restricting freedom of expression on sexual and gender diversity and criminalizing same-sex relationships are presented, thus answering the first research sub-question. Third, the rationale for using or not using the human rights framework in the different strategies used by local activists is analyzed, thus providing answers to sub-question 2. Fourth, the process of translating the human rights framework locally is discussed, as a response to sub-question 3. Fifth, the outcomes and lessons learned by study respondents through their activism are addressed, ultimately answering sub-question 4.

4.1 Methodology

This sub-section 4.1. finds the inspiration for its structure in the way Carlson presents the methodology of his own thesis²²⁴.

4.1.1. Collection of Data

This thesis uses the qualitative method of semi-structured interviews. This type of interview “is sufficiently structured to address specific dimensions of [the] research question while also leaving space for study participants to offer new meanings to the topic of study²²⁵.” An interview guide (see Appendix 4) was used to have a standard set of questions to ask to all interviewees regardless of their country of work. However, it was possible to deviate from these questions in order to deepen certain aspects mentioned by the interviewees, especially the specific context of their country. All interviews were held online to reach respondents living on three different continents. All interviewees were asked to fill a consent form allowing them to express their agreement to participate in the research within its parameters of confidentiality and potential risks (see Appendix 3).

4.1.2. Presentation of Interviewees

As mentioned in the introduction, 14 interviews were conducted – five for Kenya, five for Lebanon and four for Singapore. 10 interviewees are activists working in civil society

²²⁴ Carlson, 2020, chapter 4.

²²⁵ Galletta & Cross, 2013, pp. 1-2.

organizations serving LGBTQI+ populations. Two are lawyers working in legal firms involved in constitutional challenges against the Penal Codes criminalizing same-sex intimacy. Finally, two interviewees are independent activists working for LGBTQI+ rights. Although the original plan was to anonymize all interviewees, some wished to have their names published. Others were given fictitious names. These names are used throughout Chapter 4 to distinguish the different individuals. Some agreed to share their age, while others preferred not to disclose it. All interviewees are over 18 years of age, as validated in the pre-interview questionnaire (see Appendix 2). Here is a presentation of the 14 interviewees:

1. “Regina” is a Programs Officer at JINSIANGU, an organization for intersex, trans and gender nonconforming individuals based in Nairobi, Kenya.
2. “Daniel Peter”, 38 years old, is the Executive Director at Nyanza Rift Valley and Western Kenya Network (NYARWEK), an LGBTQI+ coalition based in Kisumu, Kenya.
3. “Jela” is the Head of Legal Affairs at the National Gay and Lesbian Human Rights Commission (NGLHRC), an independent human rights institution based in Nairobi.
4. “James”, 48 years old, is the Litigation Manager at Katiba Institute, an organization established to promote the understanding and implementation of the Constitution of Kenya²²⁶. He was involved in both the *Rafiki* case and the constitutional challenge against Sections 162 and 165 of the Kenyan Penal Code.
5. “Lorna” is the Executive Coordinator at the Gay and Lesbian Coalition of Kenya (GALCK), the national umbrella body representing LGBQ voices across Kenya²²⁷.
6. “Mahdy”, 37 years old, is an Associate Director at the Arab Foundation for Freedoms & Equality (AFE), an organization that supports sexual rights and sexual health in the Middle East and North Africa, and is based in Beirut, Lebanon.
7. “Tarek”, 37 years old, is Director at Helem, an organization that works for the protection of lesbians, gays, bisexuals and trans people in Lebanon.
8. “Elie”, 35 years old, is an expert on community public health and co-founder of MENA Plus, a network of people living with HIV in the Middle East and North Africa.

²²⁶ Katiba Institute, n.d.

²²⁷ GALCK, n.d.

9. “Bertho”, 39 years old, co-founded Proud Lebanon, a non-profit that works with marginalized groups in Lebanon, in particular the LGBTQI+ community²²⁸.

10. “Hadi”, 32 years old, is the initiator of Beirut Pride, a collaborative platform based on the creative industries. It is “a militant gathering where demands are expressed through speeches, communiqués, cultural and festive events²²⁹” to reach the decriminalization of LGBT status in Lebanon, and to address discrimination and hate based on sexual and gender diversity.

11. “Dylan”, 36 years old, is a media and entertainment lawyer and an active volunteer at Pink Dot Singapore, a non-profit movement whose flagship activity is the organization of an annual rally in support of LGBTQI+ people.

12. “Indulekshmi”, 34 years old, is a lawyer and author of *Same but Different: A Legal Guidebook for LGBT Couples & Families in Singapore*²³⁰.

13. “David”, 31 years old, is the co-author of Ready4Repeal, an online petition calling for the inclusion of Section 377A in the 2018 review of the Singapore Penal Code. He was also a counsel in *Ong Ming Johnson v. Attorney-General and other matters* (2020)²³¹.

14. “Andrew” is involved in the constitutional challenge against Section 377A of the Penal Code of Singapore.

4.1.3. Method of Analysis

All interviews were recorded and transcribed to facilitate the analysis of empirical data. The method used to analyze data was categorization: “a component of qualitative data analysis [...] to group patterns observed in the data into meaningful units or categories²³².” Another strategy was using a thematic analysis “by which qualitative data are segmented, categorized, summarized, and reconstructed in a way that captures the important concepts within the data set²³³.” All relevant information was highlighted in the transcripts and placed in the different sections or categories leading to the construction of Chapter 4. In addition, all interviewees were asked for their permission to use direct quotes from the interview. Some interviewees then made corrections to better reflect their thoughts and all agreed that the quotes could be used.

²²⁸ Proud Lebanon, n.d. a.

²²⁹ Beirut Pride, n.d. a.

²³⁰ Rajeswari, 2017.

²³¹ High Court of the Republic of Singapore, 2020.

²³² Chenail, 2008, p. 73.

²³³ Ayres, 2008, p. 868.

4.1.4. *Validity and Reliability*

Validity can be described as the “soundness” of a study²³⁴. Qualitative criteria for validity are often difficult to place. For this research, a social constructivist approach is preferred, meaning that the validity of the research comes from “the resonance of [the] findings with participating communities' common discourses²³⁵.” In other words, this research is intended to be representative of the voices of LGBTQI+ communities through some of its activists in Kenya, Lebanon and Singapore.

Reliability refers to “the dependability, consistency, and/or repeatability of a project's data collection, interpretation, and/or analysis²³⁶.” As this is a qualitative research, with the exception of section 4.3.6., strict reliability criteria cannot be met. Rather, the notion of reflexivity is preferred, meaning that the researcher cannot ignore his own “backgrounds, interests, skills, and biases”, which “play unique roles in the framing of studies and in the collection, analysis, and interpretation of data²³⁷.” The researcher is a social subject who cannot extract himself from the society where the object of his study is situated. A certain degree of subjectivity inevitably tinges the research.

4.2. **Strategies**

4.2.1. *Strategy Objectives*

The purpose of this subsection is to elaborate on the overall objectives behind the strategies used by study respondents. The following subsections detail each of the strategies one by one. Advocates for LGBTQI+ rights interviewed identify multiple objectives that they aim to achieve in their activism. Most express that their number one priority is the safety and well-being of the LGBTQI+ community they serve (see section 4.2.9.). Additionally, the interviewees identify the decriminalization of same-sex intimacy as one of their objectives, in Kenya and Singapore as a primary goal and in Lebanon some have identified it as a primary goal, others as a secondary one. Most respondents mention that decriminalization would have positive effects in other areas, including anti-discrimination efforts for LGBTQI+ people in health, education, housing, employment, but also in the media. For example, respondents from

²³⁴ Miller, 2008b, pp. 909-910.

²³⁵ *Ibid.*

²³⁶ Miller, 2008a, p. 754.

²³⁷ *Ibid.*

Singapore and Lebanon say that media censorship guidelines prohibiting or restricting queer expressions would be repealed or amended if decriminalization were to occur in the first place. For this reason, activists focus their efforts on the issue of decriminalization and not on the protection of freedom of expression – although the two are related.

One of the interviewees from Singapore, Dylan, explains this interrelation between decriminalization and free speech in these words: “If you don't repeal 377A [of the Penal Code], then you still have the discriminatory media guidelines and censorship. And how are you going to change hearts and minds if all you see is negative perceptions of LGBT people?” About the representation of LGBTQI+ people in Singapore's media, she says: “What the public thinks is that A homosexual people do not exist, B they exist, but they are pedophiles, perverts, or drug addicts, or C they can be straightened up.” As a result, these negative portrayals fuel the public perception that criminalization of same-sex relationships is necessary, which justifies the government's position not to decriminalize. Other Singaporean interviewees make similar comments, stating that their main objective is to repeal 377A, the provision criminalizing same-sex relationships, because of its far-reaching discriminatory impact on the lives of LGTBQI+ people. David affirms that “377A is like the mothership. It leads to downstream negative effects in other areas, like media, education, policy, social attitudes.”

Decriminalization is similarly identified as a main objective of queer activists' efforts in Kenya. There is currently a constitutional challenge against sections 162 and 165 criminalizing same-sex intimacy in Kenya. One of the interviewees, Lorna, describes the decriminalization case as a “high-profile business” requiring a comprehensive and concerted strategy between the various Kenyan LGBTQI+ organizations. James mentions that “[sections 162 and 165] have a far too great limitation on people's fundamental rights to justify the imagined harm that it's preventing.” Respondents from Kenya do not make a clear link between decriminalization and free speech protection, instead discussing the two legal cases separately, i.e., the constitutional challenge against the Penal Code and the *Rafiki* case. The nature of these two cases is also very different: *Rafiki* is mostly an individual petition brought by the film director, while the petition 234 against the Penal Code has mobilized several LGBTQI+ organizations²³⁸. Thus, the protection of freedom of expression is rather a secondary objective

²³⁸ Petition 234 was however consolidated with petition 150, which was, like *Rafiki*, presented by a single individual.

for queer organizations in Kenya. In fact, unlike in Singapore, they do not mention the right to freedom of expression in the constitutional challenge.

Some Lebanese activists participating in this research identify decriminalization as their primary target, while others say it is secondary. Respondents mostly focus on meeting the needs of the LGBTQI+ community, which is tremendous with the recent events in Lebanon, namely the economic crisis²³⁹, the pandemic²⁴⁰ and the Beirut Port blast²⁴¹. As Elie puts it: “Right now, and for the last year, with what is happening in Lebanon, livelihoods have really been flashing all the time. A lot of people lost their jobs, lost their homes, people are hungry, their mental health is really deteriorating.” Additionally, the Lebanese respondents cite the difficulties of achieving legal change in the Lebanese legal system. Tarek explains:

Decriminalization is actually not the only priority for us. In a country like Lebanon that doesn't have a Supreme Court, in which legislative change requires political and parliamentary majority for the laws to be removed or amended, it is obviously a much more difficult task than just taking a particular case to the Supreme Court and having a judgment, which seems to be the trend around the world, particularly in sort of post colonial global South countries like India and Angola. It is important to remove Article 534, but it is not our central *modus operandi*.

Indeed, in Singapore, the decriminalization case is currently on appeal to the Supreme Court, and the same will likely happen in Kenya according to Lorna, one of the respondents. Two interviewees, Bertho and Hadi, however set the repeal of 534 as their primary target. Bertho says that “by abolishing 534, [the authorities] will have no reason to use 534 to arrest people. And then it will create a snowball effect on other legislations.” He gives as an example the fact that most of the censored or banned films in Lebanon have a queer theme or character and that if 534 were dropped, this kind of censorship would stop as a result. As Hadi puts it: “Decriminalization is the cornerstone of improving LGBT realities all over the world.”

4.2.2. Strategic Litigation

Kenya and Singapore have a common law legal system, while Lebanon follows a civil law tradition. Kenyan and Singaporean courts develop jurisprudence that creates legal precedents. In other words, their rulings have direct effects on the law: if a high court or a supreme court were to rule in its judicial review that sections of Penal Codes are unconstitutional, Parliament would have to respond and change the law²⁴². This is not the case in Lebanon, which operates

²³⁹ World Bank, 2021.

²⁴⁰ Koweyes *et al.*, 2021.

²⁴¹ BBC News, 2020.

²⁴² Daniels *et al.*, *op. cit.*

under French civil law where codes of law are used as the main point of reference. Each judge needs to be convinced of the unconstitutionality of those sections of the Penal Code. As Tarek explains, “we go lawyer by lawyer, judge by judge until the whole jurisprudence around it changes.” While courts sometimes follow established precedent, particularly landmark rulings of the Court of Cassation, legal change ultimately happens through parliamentary and not judicial channels²⁴³. Gathering support from the different political parties is therefore essential, as discussed in the next section 4.2.3. Nevertheless, six legal cases in Lebanon have contributed to the building of jurisprudence in favour of decriminalization²⁴⁴. One of the interviewees, Mahdy, sums up the main argument used by Lebanese LGBTQI+ activists in court: “Article 534 does not speak about homosexuality as such, it speaks about unnatural intercourse. Since homosexuality is natural, this article of the law does not apply.” While interviewees recognize that these legal cases will not ultimately lead to decriminalization, they defended their importance. As Elie explains, “these legal litigations are key to make sure people are not arrested. They are not criminalized, or at least they are not sent to jail.”

Strategic litigation in Kenya and Singapore is done with the clear aim of achieving decriminalization. In both countries, legal teams choose to challenge the constitutionality of the Penal Codes. In Kenya, the strategy behind the constitutional challenge is threefold. As outlined by Daniel Peter and Lorna, the three components or strategies are the litigation, security and communications. The High Court of Kenya did not rule in favour of decriminalization, however the legal case is now pending at the Court of Appeal. In addition to the constitutional challenge, strategic litigation is used in Kenya in the *Rafiki* case. The only interviewee involved in the case, James, explains that the strategy also revolves around challenging the constitutionality, this time of the ban imposed by the KFCB on the lesbian film. Again, the High Court of Kenya rejected the petitioners' claims, but the case is now under appeal.

In Singapore, strategic litigation is at the forefront of efforts by LGBTQI+ activists to bring about decriminalization – and thereby protect freedom of expression on sexual and gender diversity. Andrew justifies the use of strategic litigation as follows:

The legal route is quite often indispensable because any kind of a challenge against constitutionality, and many civil rights issues require you to challenge the constitutionality of unjust laws, or require some form

²⁴³ El Samad, *op. cit.*

²⁴⁴ Misdemeanor Court of Appeals in Beirut, 2018 ; Court of Appeal of Mount Lebanon, 2018 ; Proud Lebanon, 2017, p. 5.

of exercise of statutory interpretation to read down the law, or to limit its effects. That's where lawyers play a hugely important role in pushing the boundaries of civil rights and liberties and to give full expression to freedoms which every individual is entitled to.

Unlike in Kenya, where the communications strategy was an important aspect of the strategic litigation, in Singapore the applicants decided not to put any press statements and the legal strategy focuses exclusively on convincing the judges. The activists feel that they should not politicize the legal case by trying to lobby outside the courtroom. The first challenge, *Tan Eng Hong v Attorney-General* (2013), focused on bringing scientific evidence that homosexuality is innate²⁴⁵. The second challenge, *Lim Meng Suang and another v Attorney-General* (2014), focused on the argument that it is unconstitutional for the legislature to try to bind the prosecutorial powers of the Attorney General²⁴⁶. The main legal argument raised in the third constitutional challenge, *Ong Ming Johnson v. Attorney-General and other matters* (2020), was the respect of the articles of the Constitution protecting equality before the law, liberty of the person and freedom of expression²⁴⁷. The three cases were consolidated in the Supreme Court and the arguments of the third challenge were strategically given precedence, after consultation between the three legal teams. They are now awaiting the Supreme Court's decision.

4.2.3. Advocacy with Government Officials, Parliamentarians and Political Parties

Activists interviewed from the three countries report being engaged with members of government or parliament as well as with representatives of political parties. In the case of Kenya, efforts appear to be targeted at progressive members of parliament (MPs), while for Singapore and Lebanon more general efforts have been made. Lebanese interviewees differ on their views regarding this advocacy strategy, with one respondent rejecting the idea of engaging with politicians, and two others very active in advocating with political parties.

Jela and Lorna from Kenya stress the importance of advocating with parliamentarians, as decriminalization has to be passed into law, even if the Court of Appeal or Supreme Court rules in favour of decriminalization. Both respondents, however, mention the difficulty of allying themselves with progressive members of Parliament and the Senate who may not be successful in retaining their seats in a new election cycle – the work has to be done over and

²⁴⁵ High Court of the Republic of Singapore, 2013.

²⁴⁶ See Court of Appeal of the Republic of Singapore, 2014. The Prime Minister of Singapore affirmed that 377A was not being proactively enforced in Singapore, and should therefore not be removed. However, it is not up to the Prime Minister to decide whether an individual should be prosecuted under the law in Singapore.

²⁴⁷ High Court of the Republic of Singapore, 2020.

over again. Daniel Peter, whose organization, NYARWEK, covers the Rift Valley and Western Kenya rather than the capital Nairobi, also speaks about his organization's work with local chiefs and local administrators.

In Singapore, LGBTQI+ activists have been directing their advocacy to all parliamentarians. Dylan gives as an example that all MPs are invited, year after year, to the Pink Dot rally, a public event in Singapore supporting LGBTQI+ rights. However, no elected parliamentarian ever accepted the invitation. Several nominated MPs – not elected – have supported the repeal of 377A. David explains that the biggest advocacy effort with lawmakers was through the Ready4Repeal campaign, an online movement calling for the inclusion of Section 377A in the 2018 Penal Code Review. The campaign consists of an online petition that has reached not only the general population, but also important public figures in Singapore in all fields. The petition was submitted to the Ministry of Home Affairs. Former Singapore's Prime Minister, Lee Kuan Yew, even declared that homosexuality should not be criminalized and 377A not enforced, but that society was too conservative and that 377A should therefore remain on the books²⁴⁸. David summarizes the political situation as follows: “We are not dealing with a parliamentary or executive body that is filled with bigots and homophobes. These are not people who, I think, personally sympathize with the law. It really is down to perceptions of electoral importance, which gives me quite some hope that when the situation changes, the law will go and that's a question of when not if.”

Finally, in Lebanon, two opposing views on the advocacy strategy with politicians emerge in the interviews. Elie believes that the political class is not ready for decriminalization because it is too conservative. He points out that several parliamentarians even want a clearer and harsher criminalization. Article 534 does not currently mention homosexual sex, but rather “unnatural sexual intercourse”, which leaves room for interpretation. Also, the penalty for such behaviour is one year in prison, but some politicians would like 5, 10, 15 years and this is what Lebanese queer activists fear the most according to Elie. He also says that it would be impossible to reach a political consensus on the issue, given the wide variety of political parties represented in Parliament. Finally, he mentions his reluctance to get involved with political parties that do not represent his values and were involved in war crimes. “There is no use in trying to work with the corrupt because it goes against our principles of equality and acceptance.”

²⁴⁸ Ng, 2018.

In contrast, Bertho and Hadi have made significant efforts to engage the political class in support of decriminalization. For example, Proud Lebanon has organized roundtables and held discussions with political parties of all stripes and faiths. Bertho says: “We approached political parties that we would never have imagined would support us, or even that we would be able to discuss with them.” He explains how he tailors the message to the political party representative he is speaking to. Bertho acknowledges, however, that now is not the right time to repeal 534 in Parliament, as the country is still dealing with the aftermath of the Beirut Port explosion and urgent humanitarian needs. Hadi makes decriminalization his number one priority, speaking extensively about his engagement with the political class. He explains:

There are ways to engage with politicians and officials. Everywhere in the world, politics is about transactions and priorities. You need to identify a topic that serves as an entry point to a conversation that is interesting to the official who agrees to meet you. Then when you build a “perception of commonalities”, you start talking about LGBT matters in a clear, short, and outcome-driven way. It all boils down to the personal contact.

4.2.4. Capacity-Building for the Judiciary and Law Enforcement Officials

Capacity-building for legal professionals (judges, prosecutors, lawyers) and future professionals (law students) is a strategy used in both Kenya and Lebanon to ensure that human rights standards are met for LGTBQI+ individuals. Concerning law enforcement officials, only three interviewees indicate they have already conducted trainings with this group. None of the Singapore interviewees reports being engaged with either the judiciary or law enforcement officials. As Andrew explains, the judiciary seeks to preserve its independence by not engaging directly with NGOs.

Jela describes the progressive members of the judiciary as an opportunity to increase protection for LGTBQI+ individuals in Kenya. They mention instances where sexual orientation and gender identity have been considered grounds on which a person cannot be discriminated against. In addition, Jela and Regina stress the importance of targeting universities, as law students are the next policy and law makers. Daniel Peter emphasizes that police officers are among the main perpetrators of human rights violations in Kenya, hence the importance of training them on LGTBQI+ rights.

Engaging with judges is a major strategy for queer activists in Lebanon, considering the previously mentioned strategic litigation to have Article 534 of the Penal Code interpreted to not cover gay sex. As Tarek explains, the idea is to create a new jurisprudence around sexual orientation and gender identity in Lebanon by training as many judges as possible. Elie notes:

“It just depends on who the judge assigned to you is, and how lenient he can be. It is really who you are addressing your message to. It is not so much about the arguments you put forward or if you refer more or less to human rights.” Tarek also mentions the efforts made with university law students, noting that they are more open-minded and less politicized on queer issues. As for law enforcement officials, Bertho recounts a capacity-building training with army and general security officials. Elie mentions training with prison guards regarding the needs of trans people and people living with HIV. Finally, Hadi stresses the importance to engage with the police on queer issues to avoid hate crimes, including murder.

4.2.5. Capacity-Building for Religious Leaders

Interviewees are rather divided on the strategy of engaging with religious leaders. Some Kenyan and Lebanese interviewees report engaging with religious leaders, while some say they would rather not. Again, this capacity-building strategy does not apply to Singapore. Only Andrew mentions that one of the members of the legal team challenging the constitutionality of 377A is a respected conservative, evangelical Christian, who has used his platform on social media to influence fellow religious leaders on queer issues, which is not as such a capacity-building training.

In contrast, in Kenya, two interviewees mention doing capacity-building for religious leaders, including Daniel Peter who uses the Bible to translate human rights into language understood by and familiar to religious leaders. He reports that NYARWEK has trained over 600 progressive religious leaders. Conversely, Lorna says she does not engage with religious leaders: “I have very little faith in religious leaders, and how best they can bring about change. They don't conduct themselves in righteous ways, but are very quick to point fingers at people to deflect attention.” As for Lebanon, one of the interviewees, Mahdy, also mentions that he does not engage with religious leaders, noting that Lebanon is a secular Republic and that his organization uses a purely human rights-based approach. Bertho and Hadi, on the other hand, engage with religious leaders. Bertho trains Muslim leaders by using material from different queer organizations around the world that interpret the Quran in light of LGBTQI+ rights.

4.2.6. Use of Traditional Media

Interviewees in all three countries report using mainstream media to push for legal change against laws restricting freedom of expression on sexual and gender diversity. Interviewees in all three countries indicate that this strategy is working: they have seen progress in the way the media cover queer issues. Nevertheless, they acknowledge that their message can be distorted

by traditional media. Many use social media to get around this difficulty and convey a message that is true to their ideas, as explained in section 4.2.7.

First, in Kenya, queer activism has increasingly used traditional media in recent years. As previously mentioned, in the decriminalization case, a communications strategy was put in place, including webinars, podcasts, TV appearances, radio interviews, and press releases. Daniel Peters notes: “what we really achieved was the media, we had a very positive media publicity.” Jela recognizes the important role of media in shaping people’s opinions and explains that NGLHRC’s efforts have focused on training media professionals on how to humanize LGBTQI+ stories. Lorna notes progress in increasing the number of allies in the media: “In traditional media, the narrative started to shift and it was not so vitriolic and hateful. It was slightly more balanced.” Finally, Lorna mentions that queer organizations have also bought advertising space in print media, while Regina and Jela mention billboards in every major city in Kenya as part of the #LoveIsHuman campaign.



© National Gay & Lesbian Human Rights Commission (Kenya)

Second, Mahdy and Elie both say they train journalists on how to tackle LGBTQI+ issues, as media coverage has been very unfavourable to queer people in Lebanon. Tarek says: “The Lebanese media, particularly the talk shows, have historically only covered LGBTQ issues from the lens of sex and scandal, not from the lens of rights.” He adds:

It is incredibly important to diversify the conversation away from the obsession with sex. Article 534 centralizes sex. And although it is a right, constantly talking about LGBTQ issues from the point of view of sex and body really frames it as a sex and body issue only and it is not. This is the other sort of subliminal, subconscious problem in constantly framing queer rights within an article 534 framing.

About the strategy used by Lebanese queer organizations when present in the media, Bertho explains: “We always try to find common ground and our language is not confrontational. It is consensual and polite, but also clear and sharp.” Additionally, Mahdy reports that when the General security forces banned the 2018 LGBTQI+ conference organized by AFE, one of the first actions AFE took was to hold a press conference to denounce the violation to their freedom of expression and association. Finally, Hadi notes the role of the international press: “The international press is familiar with Pride, and we knew that Beirut Pride would have great global echo. Beirut Pride brings visibility to LGBT realities, which generates a lot of discussions, both internationally and locally. Lebanese people tend to be more interested in Lebanese happenings when they make it to the international press.” However, he mentions that the press often distorts events to make them “as dramatic as possible.”

Third, in Singapore, Dylan says that Pink Dot releases press statements and engages with journalists. Indulekshmi also notes that the queer movement has been working for more than 10 years to create contacts with reporters sympathetic to LGBTQI+ issues, but that the level of censorship is such that the coverage is at best neutral and rarely positive. As an example of censorship, Dylan talks about the show *Modern Family* and its characters Mitch and Cam, a gay couple. In Singapore, the American show is so edited that Mitch and Cam look like two men living in the same house, their relationship is never explained. Regarding coverage of the annual Pink Dot rally, Dylan recalls that the media used to represent the event as a picnic. “Recently, [the printed media] even called us an outdoor rally, which is a lot more appropriate for what we are than calling us a picnic.”

4.2.7. Digital Advocacy and Social Media

Interviewees in all three countries say they rely heavily on social media and their organizations' web pages to reach the general public, and thus advance positive attitudes towards sexual and gender diversity, which is seen by many as necessary to achieve legal change against laws restricting free speech on SOGIESC issues. David Peter notes that social media allows for the free framing of the message that queer organizations wish to convey. Lorna recounts how the decriminalization case in Kenya has freed up queer voices, especially on social media. “Social media was a flame with all new people and new conversations. And people with courage, people who didn't care about this law, and who were not afraid anymore. That was beautiful.”

In Lebanon, Bertho, details the efforts of his organization, Proud Lebanon, in engaging with the general public on social media. He mentions the interviews with major political figures

standing for LGBTQI+ rights²⁴⁹ and the videos with celebrities for the International Day Against Homophobia, Biphobia and Transphobia²⁵⁰ that were published on his organization's website. In both cases, the goal was to raise awareness and contribute to a more inclusive and tolerant society. However, Tarek warns that before starting a large-scale public campaign, queer organizations in Lebanon would need a level-playing field in terms of opportunities for policy and legal change.

In Singapore, Dylan raises the point that “social media is the only space where we can still spread our messages without censorship”, as opposed to traditional media. Similar to Proud Lebanon, her organization, Pink Dot, appoints celebrities who advocate for LGBTQI+ rights on social media. These Pink Dot ambassadors, allies of the LGBTQI+ community, are influential members of society, such as business leaders, athletes, artists, and television hosts²⁵¹. On the power of social media, Indulekshmi agrees with Dylan: “Without social media, our entire movement would not have taken off the way it has, because that's the only way that we can. We are free to reach our own people and our own audiences.” Finally, a major example of digital advocacy for the decriminalization of homosexuality in Singapore is the Ready4Repeal campaign, an online petition. As David recalls, “Ready4Repeal was a hearts and minds campaign” which raised awareness of the importance of decriminalization among a significant number of people in Singapore. “The petition was a real milestone in local LGBT+ activism”, says David.

In sum, digital advocacy is a primary strategy for most of the queer activists interviewed for this research. One interviewee, Jela, however, warns of the downside of social media, which are also used by opponents of LGBTQI+ rights: “The use of social media has become a tool for violence in regards to cyber discrimination and cyber violations. We have put ourselves out there and are being attacked by a lot of people who do not appreciate us, who are homophobic, biphobic and transphobic.” Hadi also mentions: “Social media is tricky, and we often forget that it is an echo chamber. Social media is a curated world, it is not the whole world.”

4.2.8. Public Events

Organizing public events is one of the strategies named by activists from Lebanon and Singapore to lead to decriminalization of homosexuality or to claim freedom of expression on

²⁴⁹ Proud Lebanon, n.d. b.

²⁵⁰ Proud Lebanon, n.d. c.

²⁵¹ Pink Dot, n.d. a.

SOGIESC issues. Queer activists from Kenya do not mention holding public events. In both Lebanon and Singapore, efforts are concentrated on one annual event: the Beirut Pride and the Pink Dot rally. The first edition of Beirut Pride took place in 2017, attracted 4,000 people and included many activities: “workshops, seminars, talks, gatherings, parties, concerts and screenings²⁵².” The 2018 edition held many events, but was disrupted by General Security forces, as explained in section 3.7.2. The opening night of the 2019 edition was similarly disrupted, subject to threats and false information spread by religious groups and alleged General Security agents²⁵³. The 2020 and 2021 editions were held online due to the COVID-19 pandemic and the rocketing cost of living in Beirut. Hadi, the initiator of Beirut Pride, explains the purpose of the event as follows:

You need the politicians for the decriminalization of LGBT status. You want them to do work. So, you better incentivize them. How? By creating momentum that helps them gain confidence about the success of decriminalization. Throw big events like Beirut Pride, gather a lot of people, secure great press clips, make it the talk of the country. This excitement helps things move forward. Build on this momentum, let people and officials boast, grow this bubble, and then hold them all accountable by asking them: How are you delivering now on the decriminalization of LGBT status?



A participant of the ‘Lip Synch Performance’, an event of the 2017 Beirut Pride.

© Sabrina Teggat

The Pink Dot rally aims to bring visibility to the LGBTQI+ community in Singapore and to celebrate love and diversity. The event has also been used as a platform to ask for 377A

²⁵² Beirut Pride, n.d. b.

²⁵³ Beirut Pride, 2019.

to be repealed²⁵⁴. There have been 13 editions of the Pink Dot rally between 2009 and 2021. Each year features different ambassadors who are celebrities in Singapore. The rally takes place in a public space, the Speakers' Corner in Hong Lim Park and concerts are usually organized. The 2020 and 2021 editions were held online due to the COVID-19 pandemic²⁵⁵. As Dylan, a Pink Dot volunteer, underlines: “For some people, [the Pink Dot rally] is the one day in the year when they can truly be themselves and be in an inclusive and accepting place.”



Pink Dot participants form the words 'Repeal 377A' using light sticks

© Pink Dot Singapore

4.2.9. Research

Research is the last strategy identified through the interviews to challenge laws restricting free speech on sexual and gender diversity. Indeed, respondents from all three countries underscore the value of verifiable data to prove the detrimental effects of these laws on the well-being and rights of LGBTQI+ people, particularly their discriminatory effects. Elie, Jela, Lorna, Mahdy, Regina and Tarek explain that research supports their advocacy for holistic human rights protection. Daniel Peter emphasizes the role of research in enabling evidence-based interventions to influence policy and legal change. Daniel Peter and Tarek mention partnerships between their organizations and universities. Dylan mentions that the Institute of Policy Studies in Singapore has shown that public opinion is gradually shifting in favour of decriminalization,

²⁵⁴ Pink Dot, 2019.

²⁵⁵ Pink Dot, n.d. b.

especially among young people²⁵⁶. More precisely, interviewees from Singapore repeatedly state that what is holding back the government in repealing 377A is the perception that the electorate is against such action.

4.2.10. Community Support and Services Provision

Unlike the previously mentioned strategies, supporting and providing services to the LGBTQI+ community is not part of the strategies to bring about legal change against laws restricting free speech on SOGIESC issues. However, it was necessary to devote a section of this thesis to highlight how this is a task that requires time, resources and energy for queer activists in the three study countries, which explains in part the difficulties in implementing the other strategies mentioned. As Indulekshmi puts it: “We don't have the energy to fight both the system and serve a community at the same time.” Interviewees cite multiple services that their organizations provide to LGBTQI+ individuals: legal aid, psychosocial support and mental health services, human rights education, security mechanisms and rapid response to human rights violations, social activities, sexual health services, and COVID relief.

4.3. Using the Human Rights Framework

The various strategies used by LGBTQI+ activists to fight laws restricting free speech on SOGIESC issues were presented in the previous section. This helps answering the first sub-question about activists' activities and strategies and it corresponds to track 1 of the *localising human rights* (LHR) framework, as developed by Oré Aguilar²⁵⁷. It is now important to ask what role human rights play in activists' strategies. Do they use the human rights framework at all? What is the rationale for choosing, consciously or not, to appeal to human rights? This section explores answers to the second sub-question regarding the rationale for using the human rights framework. In particular, the next sub-section 4.3.2. looks at the research focus: do queer activists in Kenya, Lebanon and Singapore appeal to freedom of expression in their strategy? The following sub-questions discuss specific components of the human rights framework, namely international human rights law, regional human rights law, constitutional rights, and human rights values and principles. Section 4.3. concludes with an overview of other

²⁵⁶ Mathews, Lim & Selvarajan, 2019.

²⁵⁷ Oré Aguilar, *op. cit.*, p. 130.

frameworks used by queer activists in Kenya, Lebanon and Singapore beyond the human rights framework.

4.3.1. Rationale

The use of the human rights framework by LGBTQI+ activists varies greatly from one study country to another. On the one hand, most Kenyan and Lebanese interviewees consistently use the human rights framework, but do not necessarily use human rights language with some duty bearers they interact with, such as judges and police officers. On the other hand, Singaporean respondents find the human rights framework useless in their context and do not use it, while recognizing its inspirational nature and usefulness when linked to the Constitution of Singapore. The five Kenyan interviewees affirm using the human rights framework. As Regina puts it, “Human rights are centered in our activities, and it is because of the backdrop of what human rights calls for. It gives our work a very strong validation.” Almost all Lebanese respondents also say they use the human rights framework. Mahdy says: “We speak about human rights in general, not specifically about LGBT rights. LGBT rights are not only LGBT rights, they are human rights.” Only Hadi does not use human rights language:

Language is a tool, and not a finality. It is a means to ensure that the message reaches the recipient and comes across. This is the role of language. If the so-called human rights language is not serving this purpose, then I'm not going to use it. Moreover, for language to be effective in delivering a message, both the sender and the recipient must be familiar with the language they use, and acknowledge the meaning of the words. Expressions such as ‘human rights’ are elastic – and there is no worldwide agreed upon and adopted definition on what rights ‘human rights’ entail. There should be work on this to effectively use this language.

Kenyan and Lebanese interviewees mention not using human rights with certain audiences. For example, Lorna advises against using human rights language with the police: “If I were arrested by the police... I know all my rights from top to bottom, left to right but I wouldn’t let the words ‘human rights’ come out of my lips. Because that for some audiences is a trigger that elicits further violations.” Finally, about conservative judges ruling on a section 534 charge that criminalizes same-sex relationships, Elie remarks: “Speaking of general human rights, they are not going to care if they think you are a second-class citizen, or not even human.”

All four Singaporean respondents agree that the human rights framework is generally not useful in the context of their country. Dylan explains: “Human rights language is quite foreign to the average Singaporean. We are not familiar with the human rights framework and language.” Andrew clarifies that rights-based language can be used if it fits within the rights

provided in the Singapore Constitution: “In a Singapore court, a broad appeal to human rights, in the absence of a specific constitutional protection, is not going to get you anywhere. Any human rights concern ultimately has to be hinged on specific provisions of our Constitution.” David acknowledges that the human rights framework is inspirational, but explains that human rights are too broadly formulated and do not translate into reality, as they are often not codified in Singapore. “Human rights language is inspirational by design. It paints an aspirational picture and in a way it's like the closing scene of a great Hollywood movie.”

This study finds that the universality of human rights and human rights violations provide the rationale for using the human rights framework. Four interviewees from Kenya and Lebanon evoke universality of human rights, as first discussed in section 2.1. Human rights language humanizes LGBTQI+ people, reinforcing the idea that everyone is entitled to their rights, regardless of their sexual orientation, gender identity or expression, and sexual characteristics. As Jela says, “human rights bring about the universality or it brings about a situation that captures everything about us being humans.” Daniel Peter adds: “we have the language of human rights, specifically humanity. Human rights are more of me as a person: my feelings, my understandings, it's me.” Elie concludes:

I want to make sure that all LGBTIQ are protected and have good health care, and have their freedom. They are going to say no, this is immoral, this goes against my religion, my principles. But when you come and say, we are working to ensure that all your citizens have the right to freedom, all your citizens have the right to healthcare, it becomes more acceptable, because the word ‘all’ relates to us. The law protects everyone.

Besides the universality of human rights, respondents from Kenya and Lebanon say they use the human rights framework in reaction to human rights violations. As Jela puts it: “Human rights have always been and will always be the first instance where we will seek equality and equity for all, because we come from a space where our rights are constantly infringed upon because of who we love, how we are or who we are.” Elie adds: “All of our work is about human rights. It's all about making sure that people are entitled to their basic rights. It's about giving them the rights that have been forcibly taken by others on no basis.” Regina explains that human rights are used as a powerful tool to address and counter violence against LGBTQI+ people in Kenya.

4.3.2. Appealing to Freedom of Expression

In all three study countries, the LGBTQI+ activists interviewed identify protecting freedom of expression on sexual and gender diversity issues as a secondary priority in their activism or

litigation strategy. Respondents from Kenya report focusing on various rights in their activism, but not freedom of expression. Furthermore, free speech was not used as an argument in the decriminalization case. However, freedom of expression and freedom of the media were the two main rights brought up in the *Rafiki* case. Overall, it is argued that free speech plays a secondary role in queer activism in Kenya. Interviewees from Lebanon make the connection between decriminalizing same-sex intimacy and protecting free speech on SOGIESC issues. Additionally, they have denounced the violation of their freedom of expression in specific instances, such as the ban on an LGBTQI+ conference. However, in general, the efforts of Lebanese queer activists seem to focus on the protection of other rights, particularly socio-economic rights. Finally, the interviews with Singaporean respondents revolve mainly around the constitutional challenge against 377A, in which the protection of free speech is used as a secondary argument, while the protection of equality before the law and liberty of the person are primary arguments.

Firstly, as mentioned in section 3.5.1., petitions 150 and 234 of 2016 demanding the decriminalization of same-sex relationships in Kenya focus on various rights, but not freedom of expression²⁵⁸. The only Kenyan respondent who elaborates on free speech is James, who is involved in the *Rafiki* case. He explains that his role in the case was to narrow the opportunity for the government to use censorship tools to silence queer expression in Kenya. James recalls how the legal argument is constructed: “There are no bad books, only bad readers. So, from a freedom of expression point, I wanted to make sure that we were focusing on having good readers, and not trying to ban what anybody might consider to be bad books.” The ban on the lesbian film is presented by the petitioners as “curtailing [...] [the] right to artistic creativity as a medium of expression²⁵⁹”. The applicants point out that the film could have been rated 18+ rather than banned altogether. The counsel submits that “even though certain ideas may be considered subversive, their very essence is to stir the conscience of the public to reflect on the said unpopular ideas with a view to raising questions²⁶⁰.” Thus, the *Rafiki* case is centered on freedom of expression and freedom of the media. However, this case originates as an individual petition, and LGBTQI+ organizations in Kenya are more mobilized to defend other rights for queer people, such as the right to equality or freedom from discrimination and torture.

²⁵⁸ High Court of Kenya, 2019, paras. 59(a)(b) & 65.

²⁵⁹ High Court of Kenya, 2018, para. 18.

²⁶⁰ *Ibid.*

Secondly, Lebanese respondents are similarly involved in defending other LGBTQI+ rights, mainly freedom from torture and socioeconomic rights. As Tarek explains, claiming the rights to housing, employment, education or health is a key strategy to end discrimination against LGBTQI+ individuals in Lebanon. However, the Lebanese interviewees agree that free speech is a secondary component of their advocacy strategy. Tarek mentions that his organization, Helem, is a founding member of the Coalition to Defend Freedom of Expression in Lebanon, a coalition that emerges as a response to repeated violations of free speech following the 2015 protests against the Lebanese government²⁶¹. As Elie observes, “expression has always been a key characteristic of our country surrounded by a lot of dictatorship regimes in the region. We've always been praised for our freedom of speech. It has regressed in the last few years; we have been seeing more and more violations.” When it comes to free speech on SOGIESC issues, Tarek submits that “freedom of expression is a queer issue beyond the fact that it protects the rights of LGBTQ people to say what they want to say or do to be able to express themselves.” He explains that many individuals are arrested and detained under Article 534 of the Penal Code without any evidence that they engaged in homosexual sex, but simply out of suspicion because of their gender expression, be it their clothing, mannerisms, or speech. Tarek emphasizes how important it is to denounce violations of gender expression as part of freedom of expression when building effective strategies to resist such arrests under 534.

Thirdly, when asked whether they have a focus on the protection of freedom of expression on sexual and gender diversity topics, Singaporean respondents mention the decriminalization case. In *Ong Ming Johnson v. Attorney-General and other matters* (2020), freedom of expression, as protected by Article 14 of the Singapore Constitution, is used as an argument by the plaintiffs²⁶². David explains: “the argument was that expressing love through physical intimacy, including sex, is a fundamental trait of human expression.” Andrew further explains:

The argument, in the context of 377A, is that intimacies within committed homosexual relationships are so much a part of the expression of the individuals involved, an expression of their identities, an expression of who they are as human beings, and what brings them fully alive... And banning or criminalizing such intimacies in private constitutes an unwarranted curtailment of an individual's freedom of expression.

²⁶¹ Human Rights Watch, 2020b.

²⁶² High Court of the Republic of Singapore, 2020, para. 240.

However, interviewees note the limited jurisprudence of Singapore in terms of freedom of expression, which is mainly understood as verbal speech, as opposed to physical intimacy. They suggest that this argument has been more successful in the decriminalization case in India, *Navtej Singh Johar v. Union of India* (2018), which also challenged the constitutionality of the Penal Code, including on the free speech provision²⁶³. In this context, respondents feel that they stand a better chance of winning the case currently pending before the Supreme Court on the basis of their two other arguments: the equality provision of the Constitution (Article 12) and the liberty of the person (Article 9)²⁶⁴. In sum, freedom of expression is used as a secondary argument to challenge the constitutionality of the criminalization of same-sex relationships in Singapore. Regarding the media guidelines restricting free speech on SOGIESC issues, they are denounced by the activists interviewed, without this being at the forefront of their efforts and strategies, given that the primary target is decriminalization and that media censorship is seen as a downstream effect of criminalization.

4.3.3. Using International Human Rights Law

Now that it has been discussed whether queer activists in Kenya, Lebanon, and Singapore use the human rights framework, and specifically an appeal to freedom of expression, the next sections look at various components of the human rights framework and analyze whether the activists interviewed use them or not. First, do the respondents in this study use international human rights law (IHRL), and particularly freedom of expression standards presented in section 3.1.? Respondents from Singapore say they do not use them, with the exception of the Universal Periodic Review which is discussed in section 4.4.3., while those from Kenya and Lebanon report using most of them. Kenyan interviewees note the usefulness of IHRL in their local context, while Lebanese respondents say that its potential is limited in Lebanon.

On the one hand, the Singaporean interviewees are categorical in their answer: international human rights law is not part of their activist strategy. Indulekshmi says: “The minute you mention the words ‘international human rights law’, the government will just shut down and not listen to you anymore. So, for us, it is simply not useful.” As David explains: “we have learned some lessons from the previous round of constitutional challenges to 377A, which is to keep things local.”

²⁶³ Supreme Court of India, 2018, para. 29.

²⁶⁴ High Court of the Republic of Singapore, 2020, para. 164. & para. 280.

On the other hand, the situation could not be more different in Kenya, where interviewees report using all of the instruments presented in section 3.1., and even name more. Jela, Lorna, Regina and Daniel Peter say they constantly refer to the UDHR, ICCPR and Yogyakarta Principles. With regard to free speech, Article 19 of the ICCPR is mentioned in the petitioners' submission of the *Rafiki* case²⁶⁵. General Comment no 34 of the Human Rights Committee is also featured in the submission²⁶⁶.

Finally, Lebanese respondents state that they generally use IHRL. Bertho and Mahdy name the ICCPR, Mahdy the Yogyakarta Principles and Elie the UDHR. Elie explains that IHRL serves as an entry point to engage in advocacy with the government, but that it is important to know how to use this leverage, in what context and language, to avoid confrontation with the government. For example, he uses diplomatic and consensual language by congratulating them on the signing or ratification of a particular treaty. Concerning the judiciary and the use of IHRL, Tarek says: "When we engage with the judiciary, when we engage with judges, the way we work is not that we cram international law down their throats. Judges do not like to just hear arguments containing international law." He explains that they rather use local arguments, relevant to the Lebanese sociocultural context, as well as constitutional law.

4.3.4. Using Regional Human Rights Law

When it comes to regional human rights law, as part of the human rights framework and as described in sections 3.2. (Africa), 3.3. (Arab states) and 3.4. (Southeast Asia), only the Kenyan interviewees report using it. The Arab states and Southeast Asia lack a human rights system for which the standards are enforced. Faced with this lack of effectiveness, the Lebanese and Singaporean interviewees say they do not engage with those regional mechanisms. In contrast, Kenyan interviewees all say they engage with the well-established African human rights system. Lorna, Regina and Daniel Peter mention the ACHPR. James recalls that Article 3 (equality before the law and equal protection of the law) and Article 9(2) (freedom of expression) of the ACHPR are used as arguments in the *Rafiki* case²⁶⁷.

²⁶⁵ High Court of Kenya, 2020, para. 61.

²⁶⁶ *Ibid.*, para. 62.

²⁶⁷ High Court of Kenya, 2020, para. 61.

4.3.5. Using Constitutional Law

Constitutional law can be part of the human rights framework, insofar as constitutional rights are concerned. As seen in section 3.5., all three Constitutions of the study countries protect the right to freedom of expression and have been used in LGBTQI+ legal cases to protect free speech and/or to seek decriminalization of same-sex relationships. All but one of the interviewees say that their Constitution is useful to claim rights, regardless of their country of origin. Indulekshmi submits that constitutional rights in Singapore are too broadly framed and full of exceptions, making them unsuitable for queer activism. She adds: “the Constitution is not helpful because no one has ever won a constitutional challenge in Singapore.” In contrast, other interviewees from Singapore indicate that the Constitution represents their best chance to bring about the decriminalization of same-sex intimacy, because of the primacy of the Constitution in the Singaporean legal system (as opposed to international law, for instance).

Kenyan interviewees also appeal to constitutional rights, noting the progressive nature of their new 2010 Constitution, particularly its comprehensive Bill of Rights. Regina explains the purpose of the Petitions 150 and 234 of 2016: “we are asking that the government of Kenya aligns those sections of the Penal Code to the Constitution of Kenya. We are challenging the constitutionality of that Penal Code, based on constitutional rights.” Although not relying on Articles 33 and 34 on freedom of expression and freedom of the media, the Petitions use constitutional provisions, such as Articles 27 (equality and freedom from discrimination), 28 (human dignity) and 29 (freedom and security of the person)²⁶⁸. In *Kahiu v. Mutua* (2020), however, Articles 33 and 34 were central to the court's strategy²⁶⁹, but the Attorney General argued that freedom of expression could reasonably be limited under Article 24 of the Constitution, which sets the limitations to the fundamental rights and freedoms of the Bill of Rights²⁷⁰.

In Lebanon, Bertho also mentions that the repeal of section 534 of the Lebanese Penal Code is called for due to its incompatibility with the Constitution, although the legal cases in this regard in Lebanon so far are not constitutional challenges as such, unlike in Kenya and Singapore. Tarek explains that when it comes to engage with the judiciary, “we ensure that we use the Lebanese Constitution as a founding principle because it guarantees equality and rights

²⁶⁸ High Court of Kenya, 2019, paras. 59(a)(b) & 65.

²⁶⁹ High Court of Kenya, 2020, para. 6.

²⁷⁰ *Ibid.*, para. 8.

for everybody who is a citizen of the country.” Although Article 13 of the Lebanese Constitution on freedom of expression could be used by local LGBTQI+ activists to challenge the constitutionality of sections of the Penal Code, legal cases on decriminalization have rather appealed to other sections of the Constitution, such as Article 14 (right to privacy) in *X. v. Public Prosecutor* (2018)²⁷¹.

Singapore is the only one of the three study countries where the constitutional provision on freedom of expression is part of the strategy established in court by LGBTQI+ activists to challenge the constitutionality of sections of the Penal Code that criminalize same-sex relationships. Indeed, in *Ong Ming Johnson v Attorney-General and other matters* (2020), Article 14(1)(a) is mentioned as a subsidiary legal argument. The strategy also hinges on Articles 9 (liberty of the person)²⁷² and 12 (equal protection before the law)²⁷³. Appealing to freedom of expression as protected in the Singapore Constitution was not part of the strategy of the two previous constitutional challenges against the Penal Code²⁷⁴. In short, beyond free speech, constitutional rights are widely used in Kenya, Lebanon and Singapore by study respondents, well before international law and even more before regional law.

4.3.6. *Appealing to Human Rights Values and Principles*

The last sub-sections offered an analysis of the use by LGBTQI+ activists in Kenya, Lebanon and Singapore of various components of the human rights framework, including international human rights law, regional human rights law and constitutional rights. However, this thesis relies on a broader definition of the human rights framework, which includes “human rights norms, principles, ideas, values, discourse and arguments²⁷⁵”. Human rights norms refer to internationally accepted rights, such as freedom of expression, as already discussed in section 4.3.2. The human rights discourse is analyzed in section 4.4.2. about human rights claims, narratives and frames. Human rights ideas and arguments evoke concepts too broad to be covered and analyzed as such in this research. This leaves the human rights values and principles, which can also be difficult to pin down. This thesis uses the lists of human rights values and principles prepared by the Council of Europe and the United Nations Population Fund (UNFPA) respectively. The Council of Europe identifies the human rights values of

²⁷¹ Misdemeanor Court of Appeals in Beirut, 2018.

²⁷² High Court of the Republic of Singapore, 2020, para. 280.

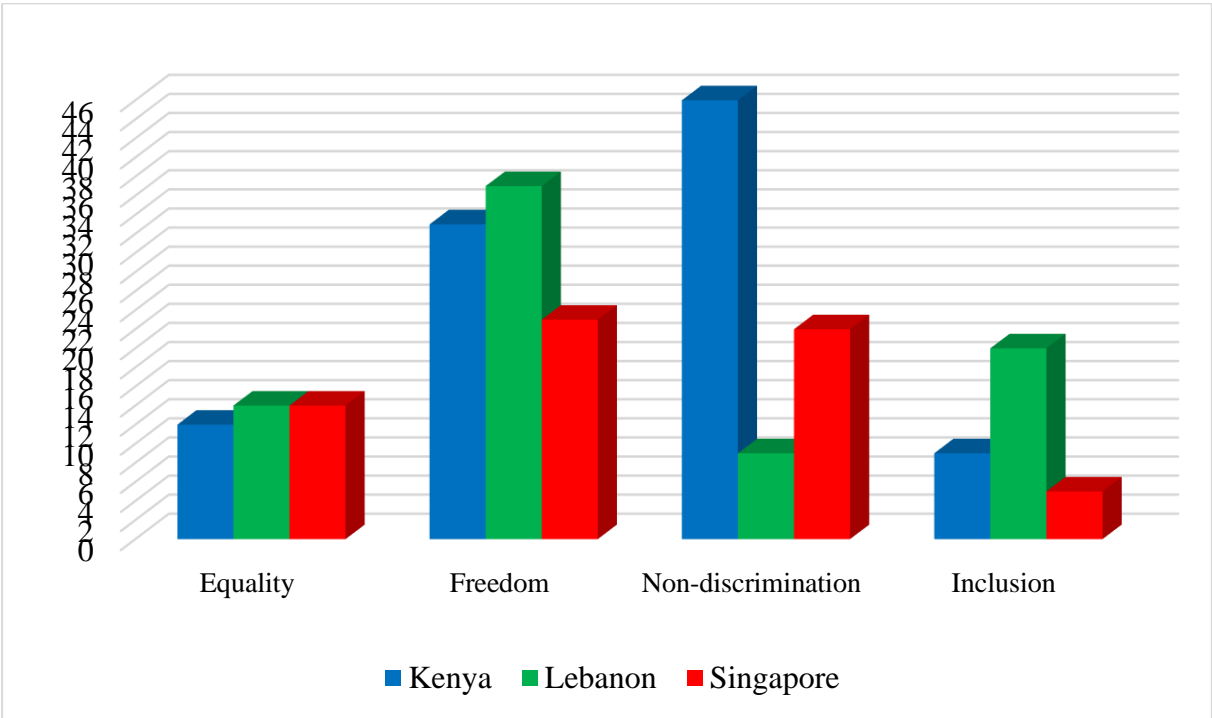
²⁷³ *Ibid.*, para. 164.

²⁷⁴ High Court of the Republic of Singapore, 2013 ; Court of Appeal of the Republic of Singapore, 2014.

²⁷⁵ Oré Aguilar, *op. cit.*, p. 114.

human dignity, equality, freedom, respect for others and non-discrimination, among others²⁷⁶. The UNFPA mentions the human rights principles of universality and inalienability, equality and non-discrimination, participation and inclusion, as well as accountability and rule of law²⁷⁷. These values and principles are regularly mentioned during the interviews, without the respondents necessarily being aware that they are referring to human rights values and principles, which are part of the human rights framework, and which they use in their activism for the protection of free speech on SOGIESC issues and/or the decriminalization of same-sex relationships. In view of the often-unconscious nature of the responses given by interviewees and to ensure greater reliability of the study, the method proposed for this subsection therefore moves from qualitative to quantitative analysis. Each time a human rights value or principle is mentioned in an interview transcript, it is counted. The most mentioned values and principles are presented in the table below.

Figure 2. Human rights values and principles used by LGBTQI+ activists in Kenya, Lebanon and Singapore²⁷⁸.



²⁷⁶ Council of Europe, n.d.

²⁷⁷ UNFPA, n.d.

²⁷⁸ It should be reminded that Singapore has one interviewee less than Kenya and Lebanon, which can in part explain why the numbers for Singapore are smaller in the figure.

Given that this is a research on freedom of expression, the value of freedom unsurprisingly comes out on top, mentioned 93 times by respondents. It is followed by non-discrimination (77 times), equality (40 times) and inclusion (34 times). Some values are particularly appealed to by respondents of certain countries: Kenya with non-discrimination (46 times) and Lebanon with inclusion (20 times). Many human rights principles were not included in the figure, considering the small number of times they are mentioned: participation (3 times), universality (2 times), rule of law (2 times) and accountability (2 times). The same goes for certain human rights values: respect for others (11 times) and dignity (9 times). Besides human rights values, many interviewees from the three countries mention they appeal to core human values, such as love (31 times) and acceptance (19 times). Kenyan interviewees alone appeal 19 times to love. As Lorna says, “what we have been focusing on is around love. Love is human. We are family. We are one. We are Kenyan.” Appealing to core human or human rights values is a strategy used by queer activists in this study to raise empathy and awareness. As David mentions, a typical communications strategy is to tell human stories of discrimination and injustice experienced by queer individuals. Lorna explains that her organization, GALCK, uses language that speaks to the humanity of people and seeks to find commonalities between them. One interviewee, Hadi, however provides a critical view of the concept of values and principles: “I dislike buzz words. They are emotionally charged to play people. Value for example, is a word reminiscent of mathematics. It can either be negative or positive. But lately, people who claim virtue and self-righteousness constantly use the word ‘value’ as an exclusively positive term. Words like "values" and "principles" sound good, but are deceiving.”

In conclusion, the table below summarizes different components of the human rights framework used by the activists interviewed. The next subsection briefly explores how queer activists from Kenya, Lebanon and Singapore frame their discourse beyond the human rights framework.

Figure 3. Use of the human rights framework by LGBTQI+ activists in Kenya, Lebanon and Singapore.

Country	Kenya	Lebanon	Singapore
International human rights law	YES	YES	NO
Regional human rights law	YES	NO	NO
Constitutional rights	YES	YES	YES
Human rights values and principles	YES	YES	YES

4.3.7. Beyond the Human Rights Framework

Study respondents mention framing their message not only within a human rights framework, but also within other frames. The ‘bread-and-butter’ framing is used in Singapore, while Lebanese interviewees mention the development and humanitarian frameworks, as well as the health language, and Kenyan respondents say they adopt a feminist perspective. Finally, interviewees from all three countries use a framing of breaking with the colonial past.

4.3.7.1. Bread-and-Butter Issues

Dylan and Indulekshmi report a framing specific to the Singaporean context: the bread-and-butter issues. They explain that the political class in their country constantly depicts queer issues as non-issues that do not concern the majority of their constituents. Politicians say they have more pressing matters or ‘real problems’ to deal with, particularly providing economic opportunities for their people. Queer activists in Singapore have reclaimed this discourse to highlight the bread-and-butter issues affecting LGBTQI+ people, including the economic impact of their systematic discrimination, be it homelessness, unemployment or lack of access to housing. Their strategy is to show how this discrimination stems from Section 377A of the Penal Code, and therefore the repeal of this section is a bread-and-butter issue.

4.3.7.2. Using the Development and Humanitarian Frameworks

All Lebanese respondents mention the dire situation of their country at the moment in terms of hyperinflation, economic crisis, unemployment, and public health crisis. According to the UN, 1.5 million Lebanese are currently in need of humanitarian aid²⁷⁹. In this context, Tarek explains that he uses the human rights, development and humanitarian frameworks simultaneously, since the three frameworks reinforce each other. For example, Lebanese queer organizations use the UN Sustainable Development Goals, appeal to human rights law and provide humanitarian relief, such as food boxes, cash allowances, medical care and psychosocial support. Mahdy and Elie are involved in a coalition of civil society organizations, called Yalla Care, to assist the most vulnerable members of society, including LGBTQI+ people.

4.3.7.3. Using the Health Language

Elie, an expert on community public health, submits that using the health language is an entry point to serve marginalized communities, such as gay men, trans women, people who use drugs

²⁷⁹ United Nations, 2021.

and sex workers. He says that conservative governments in the region, including in Lebanon, stop listening if asked to uphold the rights of these marginalized groups deemed criminals, second-class citizens and immoral individuals. However, governments are more likely to collaborate when asked to respond to public health concerns, such as HIV/AIDS. Using the health language has therefore sometimes been used in Lebanon rather than the human rights framework.

4.3.7.4. Feminist Perspective

Jela, Lorna and Regina from Kenya all use a feminist perspective to inform their activism. Lorna mentions the importance of dismantling patriarchy, deconditioning people's minds, empowering queer women and adopting an inclusive and intersectional approach. Regina highlights how JINSIANGU builds allyship with feminist organizations by showing them how Section 162 of the Penal Code, which criminalizes "any person who [...] has carnal knowledge of any person against the order of nature²⁸⁰", also affects cisgender heterosexual women. For example, anal sex is also prohibited for them.

4.3.7.5. Breaking with the Colonial Past

Evoking the colonial past is a strategy used in the three study countries to challenge the Penal Codes inherited by French or British rule. James argues that old statutes, such as the 1930 Kenyan Penal Code, need to be interpreted and revised according to the new 2010 Constitution. Mahdy similarly says that Article 534 of the Lebanese Penal Code is a French legacy and that his organization uses a post-colonial lens. Finally, Andrew and David explain that in the constitutional challenge for decriminalization, it was argued that section 377A of the Singapore Penal Code contradicts the original intent of the British, which was to restrict commercial sex between males²⁸¹. David notes, however, that this strategy has not proven successful, saying that "Singapore is quite unique in the sense that we are a country that celebrates our colonial past."

4.4. The Process of Localising Human Rights in Practice

Section 4.3. about the human rights framework helped answering sub-question 2 on whether and why LGBTQI+ activists from Kenya, Lebanon and Singapore use a human rights

²⁸⁰ Penal Code of Kenya, 2012, section 162.

²⁸¹ High Court of the Republic of Singapore, 2020, paras. 24-25.

framework to change laws restricting freedom of expression on SOGIESC issues. Section 4.4. seeks to answer sub-question 3 on the process of using the human rights framework. In other words, when and how does the human rights framework become locally relevant to queer activists of the three study countries? To help determine this question, the theoretical framework presented in Chapter 2 is useful, in particular the *localising human rights* (LHR) framework, as analyzed in section 4.4.1. Section 4.4.2. offers an analysis of human rights claims, narratives and frames used by queer activists from Kenya, Lebanon and Singapore. Finally, section 4.4.3. discusses the Universal Periodic Review and how this mechanism of the Human Rights Council, which is part of international human rights law and thus part of the human rights framework, is used by LGBTQI+ activists to bridge the global and local in their activism.

4.4.1. Translating the Global Language into the Local Context

The LHR framework, as developed by Oré Aguilar, provides a theoretical framework for analyzing how global human rights norms, particularly those related to freedom of expression, are integrated or not at the local level by study respondents. In figure 1, Oré Aguilar presents five tracks of the LHR process. Track 1 corresponds to the starting point for action, which stems from disempowerment and deprivation²⁸² and was discussed in section 4.3.1. concerning the rationale for using the human rights framework. Indeed, one of the main reasons for using human rights language identified in this study is to address injustices, violence, discrimination and human rights violations. Track 2 is about the use of the global human rights framework to frame human rights claims²⁸³ – this is analyzed in this and the next sub-section. Track 3 is about the effectiveness and relevance of human rights²⁸⁴ – this is discussed in section 4.5. about the outcomes and lessons learned by interviewees. Tracks 4 and 5, which concern “further interpretation or elaboration of human rights standards” and local communities as a resource contributing in themselves to the protection of human rights²⁸⁵ fall outside the scope of this research and require further research.

How are global human rights standards used locally by study respondents? The answers differ greatly from country to country. As seen in section 4.3.3, Singaporean respondents do not use international human rights law in their activism. However, David says that while human rights language is not useful in the Singapore context, he finds it personally inspiring. He recalls

²⁸² Oré Aguilar, *op. cit.*, p. 130.

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

the quote from Eleanor Roosevelt: “Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world²⁸⁶.” Kenyan and Lebanese interviewees insist on the importance of bringing human rights to the local level and distancing themselves from the West in particular.

Jela explains that one of the reasons Petitions 150 and 234 challenging the constitutionality of the Penal Code were dismissed by the court is the perception that decriminalization of same-sex relationships is a Westernized concept. In this context, Jela emphasizes the strategy of referring to African jurisprudence, including the examples of South Africa, Angola, Botswana and Mozambique, which have all decriminalized homosexuality. As Lorna puts it: “Another thing that we find here in this country is that folks love using the argument that Oh, that's happening in some foreign country, that's a foreign agenda, especially if it's white. We need to generate the type of information that is contextually relevant, that no one can refute as belonging to somebody/somewhere else.” Daniel Peter, who works in rural parts of Western Kenya and the Rift Valley, explains how this localization process is achieved: “We are looking at different cultures that we have in Kenya and how they are portraying the LGBT as within their local language.” He adds: “Sexuality is not being bought, is not being copied, is not being borrowed, sexuality is within you. It is who you are. It is what you are feeling and expressing. You cannot say that I borrowed this from Western, or I have borrowed it from urban. We are empowering the LGBT persons within the rural, to speak the language of their context and their environment that can be understood.”

Regarding IHRL specifically, respondents acknowledge the difficulty of making it local. As Lorna says, “translating that is a whole other ball game. You can have things on paper, but it's like virtual money. You can have it, but you don't have it.” Elie from Lebanon agrees: “I learned that these international declarations and conventions, as important as they are, do not really have a big leverage on the national context. And what interpretation goes into the national context is not what the global one is meant for. And I learned that the fight on the ground has to be done by people who are from the country, who have lived these experiences, who know the dynamics, who know the politics.” Bertho insists on the importance of translating global norms into a language understood by local decision makers: “We always use the recommendations received by the UN, and we adapt them to the level of the politicians, to their political views and to their political agendas.”

²⁸⁶ Council of Europe, 2017.

Although most Kenyan and Lebanese respondents use IHRL, they agree that local arguments have more impact. Elie warns against the danger of not taking the local context into account: “We are in the global south, we are in a post colonial context, and we have different historical and cultural contexts. The trajectory of our movements does not necessarily reflect or looks like anything that has happened in the West.” Mahdy agrees by saying: “We took the international model. We were influenced by the international model and the West. And that is a mistake because we come from different cultures, different backgrounds, different everything. It is a mistake to mirror what is happening outside. You can definitely learn from previous experiences, but you need to adapt to your context.” However, two Lebanese respondents, Bertho and Hadi, take the opposite view by mentioning that the example of the West can be useful in Lebanon. Bertho says: “During the last roundtable with the political parties, we were discussing on finding allies within these political parties. We come to them from a basic human rights perspective and using the different tactics followed by other LGBT organizations in the West or in the world to ease their fear.” Hadi stresses that it is not necessary to reinvent the wheel and cites American and European examples of LGBTQI+ fights for decriminalization. However, he warns against the use of human rights language: “68 countries criminalize LGBT status, and their societies often say that LGBT people are imports from the West, so how would I use a language to which people are already allergic to, as they view it as a Trojan horse of colonialism, a way for countries to dominate others through the argument of human rights?”

In summary, respondents from Singapore do not seek to integrate global human rights standards locally, as they do not use IHRL. Kenyan and Lebanese interviewees find themselves in a constant tension to translate these norms into their context. Most insist on the power of local arguments and the importance of distancing themselves from the West. However, some argue that the West can serve as a model and source of inspiration.

4.4.2. Formulating Human Rights Claims, Narratives and Frames

As discussed in section 2.3., human rights claims must meet three conditions: use human rights language, address a duty bearer (e.g., the state), and request accountability from the duty bearer²⁸⁷. This research finds that all interviewees meet the latter two conditions when formulating their claims. With the exception of some strategies aimed at the general population (e.g., social media campaigns, public events), most efforts undertaken by study participants are aimed at duty bearers, especially state officials, namely government officials, parliamentarians,

²⁸⁷ De Feyter, *op. cit.*, p. 18.

the judiciary and the police (e.g., strategic litigation, advocacy, capacity-building). Remaining strategies target other duty bearers, such as traditional media, political parties and religious leaders. As seen in section 4.3.6., the principle of accountability is seldom mentioned as such by interviewees (2 times). However, accountability is broadly interpreted here: accountability means giving an account²⁸⁸, which is “a statement explaining one’s conduct” or a “reason for action”²⁸⁹. It is argued that study respondents do ask duty bearers to justify their conduct and action, which is criminalizing same-sex intimacy and restricting free speech on SOGIESC issues. Now, what about the first criterion? Some interviewees, especially those from Singapore, reject or are skeptical of human rights language. However, as discussed in the section on values and principles, they may still implicitly call for respect for human rights. Narratives and frames and a summary analysis of the activists’ discourse can inform this discussion, as discussed in section 2.5.

First, all Kenyan interviewees clearly mention they use human rights language. As Regina puts it: “we use our human rights language when we engage with every community because that is what makes our message much stronger. Our lived reality can only evoke emotion, empathy, sympathy.” As seen in section 2.4., a ‘rights empowerment’ perspective implies that activists are already aware of the advantages of using human rights, including empowering the marginalized groups they serve²⁹⁰ – which is clearly the case for Kenyan respondents. Lorna explains that building support for human rights is all about telling human stories and bringing LGBTQI+ people to the forefront of those stories. “My business is to bring those people to tables, get them the seat, prepare them for what to expect, and then they can run with their stories. It is about creating enabling spaces for people.” She adds that she uses positive frames to reinforce LGBTQI+ rights: “One of the first things about communications campaigns is you don’t parrot the bad things that are being said about you, you don’t repeat them.”

Second, Lebanese interviewees affirm using similar narratives and frames to bring stories to public attention. Tarek explains how the tone and the language used matter. He says he never uses an aggressive tone or emotional blackmail. He rather uses humor. Several frames can be used to tell a story, the frame of love, the frame of non-discrimination, the frame of shared humanity, the frame of non-violence. All of these frames are part of a larger narrative

²⁸⁸ Merriam-Webster, n.d. a.

²⁸⁹ Merriam-Webster, n.d. b.

²⁹⁰ Oré Aguilar, *op. cit.*, p. 118.

calling for the same thing: better living conditions for LGBTQI+ people and respect for their rights, especially through the decriminalization of same-sex relationships and the protection of free speech on sexual and gender diversity. Elie exemplifies: “When I am doing any kind of advocacy, I bring out the most gruesome stories, the saddest stories, and stories that people can relate to. Depending on the audience, I select the story that people are going to resonate with. When you talk to people as humans, you appeal to their human side.”

Third, while more reluctant to use human rights language, respondents from Singapore use similar narratives and frames, especially in bringing up stories of discrimination experienced by LGBTQI+ people and linking them to the criminalization of homosexuality under 377A. David explains: “I have come to be more sympathetic of the view that people's entry into feeling empathy for another group comes from an emotional trigger rather than an intellectual or cognitive understanding of the problem. So we tried to highlight personal stories of discrimination from people within the community.” It is argued that whether it is in Kenya, Lebanon or Singapore, framing stories and bringing up narratives of equality, non-discrimination, freedom, love, acceptance and inclusion empowers queer activists and the community they serve.

4.4.3. The Universal Periodic Review as a Bridge between Global and Local

This sub-section highlights a particular mechanism of the Human Rights Council, the Universal Periodic Review (UPR), to show how the process of translating global human rights standards can be done locally, and how local activists take ownership of the universal language of human rights. As laid out in section 3.1.4., many LGBTQI+ organizations from Kenya, Lebanon and Singapore have taken part in the UPR cycles of their respective states by preparing shadow reports. Three Kenyan interviewees, three Lebanese and two Singaporeans mention having participated to the UPR. Bertho points out that participating in the UPR is a way to “make your voice heard” and integrate LGBTQI+ rights in the broader human rights agenda. Lorna, however, reports the difficulties of getting the accepted recommendations implemented into national law. As Indulekshmi says, UPR reports represent an exceptional circumstance for queer organizations in Singapore to use IHRL, as they normally do not use it in their local activism. Dylan explains that her organization, Pink Dot, has translated ten of its UPR recommendations into comic strips to make them accessible to the general Singaporean public.

Now, what are the priorities or recommendations identified by queer activists from Kenya, Lebanon and Singapore in these UPR shadow reports? In Kenya, Sections 162 and 165 of the Penal Code are the main targets, mentioning the discriminatory effects of criminalization on queer people and recommending the alignment of the Penal Code with the Constitution and international human rights obligations²⁹¹. Additionally, Kenyan queer organizations highlight that “freedom of expression, including gender expression, is a universal human right, whether or not it is reflected in a specific country’s laws²⁹².” They note numerous interferences of the KFCB with artistic freedom, as part of freedom of expression, in particular the ban on the film *Rafiki* for “promot[ing] lesbianism”²⁹³.

In Lebanon, LGBTQI+ organizations denounce numerous violations to freedom of expression on sexual and gender diversity, including the disruption of Helem’s 2017 IDAHOBIT²⁹⁴ conference, the crackdowns on the 2018 and 2019 editions of the Beirut Pride, the disruption of the NEDWA conference organized by AFE in 2018 and the ban on the gay app Grindr in 2019²⁹⁵. They also mention the full or partial censorship of 14 movies, five theatre plays, one art exhibition and two blogs with LGBTQI+ content in 2014²⁹⁶. Queer organizations further recommend the “repeal [of] articles 534, 521, 526, 531, 532, and 533 of the Lebanese penal code that are used to criminalize same sex relations and nonconforming gender identity and expression²⁹⁷.”

In Singapore, queer organizations recommend the “repeal [of] legal provisions criminalising sexual activity between consenting adults of the same sex”, namely section 377A of the Singapore Penal Code, and the “rectif[ication] [of] media codes, policies, and practices that prohibit neutral or positive portrayals of LGBTQ persons”²⁹⁸. They also mention the restrictions to freedom of assembly and expression placed on the Pink Dot rally through the Public Order Act²⁹⁹. They underscore “the stigma of being LGBTQ associated with Penal Code Section 377A and media censorship³⁰⁰”. Finally, they point to several instances of free speech

²⁹¹ GALCK, 2019.

²⁹² JINSIANGU, NYARWEK, GALCK, NGLHRC, & 6 others, 2020.

²⁹³ Katiba Institute & Article 19, 2020.

²⁹⁴ IDAHOBIT stands for International Day Against Homophobia, Biphobia and Transphobia.

²⁹⁵ Helem, 2020.

²⁹⁶ Helem & AFE, 2015.

²⁹⁷ Helem, 2020.

²⁹⁸ Sayoni & 5 others, 2020.

²⁹⁹ *Ibid.*

³⁰⁰ TransgenderSG & Sayoni, 2020.

violations on SOGIESC issues, including censorship of LGBTQI+ content in songs, TV commercials, films, and concerts³⁰¹.

This thesis contends that the UPR is a forum for Kenyan, Lebanese and Singaporean queer activists to bring their human rights claims to international attention. The UPR also represents an opportunity for LGBTQI+ organizations to take ownership of the language of international human rights law, especially for those who do not usually use it in their national context, such as in Singapore. Finally, the UPR allows for the ‘vernacularization of human rights’, as developed by Merry and Levitt³⁰², in the sense that the language of universal human rights is articulated to express local claims and arguments that are culturally relevant and situated in the appropriate socio-historical context. In brief, the UPR is a prime example of the localization process described by Oré Aguilar.

4.5. Outcomes and Lessons Learned

This new section seeks to answer sub-question 4 about outcomes and lessons learned by LGBTQI+ activists of Kenya, Lebanon and Singapore in their efforts to bring about legal change against laws restricting free speech on SOGIESC issues. What are the self-perceptions of study respondents on the effectiveness of their work? Do they see themselves as having achieved the desired results? What are the opportunities or challenges that have moved them forward or backward? What are the future perspectives?

4.5.1. Successes and Opportunities

All interviewees are optimistic that the situation of LGBTQI+ rights is improving in their country and mention a certain degree of success in their activism, despite the setbacks and challenges. In Kenya, queer activists have shown their “power to raise issues for public debate³⁰³.” As Daniel Peter puts it, “we achieved our goal of bringing visibility to the LGBT, for people to understand that LGBT persons exist in Kenya.” He and Jela also underscore the ability of LGBTQI+ organisations to effectively reach out to the judiciary, including judges, lawyers and law students, and change their mindset to become champions of LGBTQI+ rights. Lorna observes a positive change in attitudes towards the queer community: “Opening up spaces is critical. The law [Sections 162 and 165 of the Penal Code] hasn't gone anywhere. But

³⁰¹ Oogachaga, 2021.

³⁰² Merry & Levitt, *loc. cit.*

³⁰³ NORAD, *loc. cit.*

windows of opportunity provided for more interactions and more engagement, so it's not like queer people are a totally alien concept.” About the *Rafiki* case, James acknowledges that they have lost a battle with the unfavourable decision of the High Court of Kenya which did not uphold freedom of expression. He however states: “pushing forward with rational, compelling, morally right arguments is always a success.”

In Lebanon, study respondents highlight the success of their work in raising awareness and creating a sense of community for queer people. Bertho notes an increase political participation of LGBTQI+ individuals. Elie affirms: “people are more flamboyant, they are out there, outspoken. They are not afraid. And this does not happen overnight. This is because there was a lot of work that was done in the past to allow people to become freer with themselves.” He also mentions a sense of solidarity coming from parts of the Lebanese public in the context of the 2019-2021 protests³⁰⁴, also known as the October Revolution³⁰⁵. He explains that a part of the population is now demanding rights for all Lebanese, regardless of their sexual orientation or gender identity, and call for decriminalization of same-sex intimacy. Finally, Tarek says: “We know how to engage with homophobes and transphobes. We know how to frame the conversation. Our work in engaging with new audiences, new stakeholders, beyond the traditional ones, has been incredibly successful.” Bertho and Hadi specify that those new stakeholders include mainstream media, politicians, political parties, judges, police and religious leaders.

In Singapore, all four respondents show satisfaction with their work, stating that they are achieving successful outcomes in their activism, even though no constitutional challenge against Section 377A of the Penal Code has yet been won. Indulekshmi says that 15 years ago it would have been unthinkable for queer activists in Singapore to bring a constitutional challenge against 377A because activists were too afraid to challenge government’s views. Concerning the pending decision of the Supreme Court, Andrew says: “I think we've got a real chance of getting it repealed. And even if we don't, our jurisprudence on equal protection in Singapore is likely to be revamped because we had a very, very restrictive doctrine of equal protection, which didn't offer much scope for that constitutional guarantee.” He adds:

I don't see the downside of the constitutional challenge. Because at the end of the day, there is an unjust law. And it's perfectly fine to shine light on it using legal processes and making legal arguments. My critics might say it's a type of legal action that is divisive in nature. Anything that seeks to change the

³⁰⁴ OCHA, 2021.

³⁰⁵ Sullivan, 2019.

status quo is divisive. And it is not negative just because it makes uncomfortable conversations with people. We can't really develop maturity until we start learning how to deal with difficult sensitive issues, respectfully. From my point of view, I see all the upsides of the challenge, regardless of the outcome.

4.5.2. *Setbacks and Challenges*

Study respondents also identify setbacks and challenges preventing them from achieving the desired results of their activism. First, Kenyan interviewees mention the constant lack of funding, persistent homophobia/biphobia/transphobia, unfavourable political situation, ignorance ingrained in culture and religion, perception that being queer is un-Kenyan, COVID-19 and discriminatory laws. On the political situation, Jela says that “LGBTQ people are always a punching bag in every election year in Kenya.” On the conception that queerness equals un-Kenyan, James suggests: “They [the opposing respondents in *Kahiu v. Mutua*] were clinging to this notion that somehow this was a threat to some core aspects of what it means to be Kenyan.” He explains that the lesbian film *Rafiki* is more threatening to the conservative bangs of Kenyan society compared to other queer art pieces circulating in Kenya such as the song *MONTERO* of American rapper Lil Nas X, whose content is much more explicit than *Rafiki*. As he puts it: “I don't think *Rafiki* could have had the same impact as Lil Nas X. I think what scared the Kenyans was that *Rafiki* was coming from Kenya.”

Second, Lebanese respondents also report many challenges, the first being the current situation in Lebanon. As Tarek summarizes: “Our country went through a pandemic, an economic crisis and hyperinflation, and also our city was destroyed.” Additionally, Elie mentions the barriers imposed by culture and religion, especially in rural areas outside Beirut. Lastly, Elie denounces the political instability and systematic corruption in Lebanon. He explains: “The political leverage has not been very successful, due to the complex political situation in Lebanon. It is not like you have two parties you are working with. You have 15 parties, and working with one means you are going to be liked by a few and hated by a lot.” Referring to the eventual decriminalization of homosexuality, Bertho specifies: “In Lebanon, we need a consensus to have a law passed. Not an overall majority, but a majority in each group: the Christians, the Sunnis, the Shiites, the Druze. If one group is against, it will fail.”

Third, one Singaporean interviewee mentions how the government is increasingly clamping down on freedom of expression and political opposition in the wake of the insecurity of the decades-old ruling party, the People's Action Party, which is having difficulty finding a successor to the current prime minister. Dylan talks about the 2016 Public Order (Unrestricted Area) Order, which prohibits foreign citizens from participating in, organizing or financing

events of the Speakers' Corner in Hong Lim Park³⁰⁶ where the Pink Dot rally is held every year. This new order, directly targeting Pink Dot's activities, created many hurdles for the organization of the rally, which was largely funded by multinational companies. Indulekshmi summarizes as follows the difficulty of the present situation regarding the decriminalization of homosexuality in Singapore:

We have been in the same impasse for the past 10 years. We tell them that we need to repeal section 377A, and they say sorry, people are very conservative. And it has been the same dialogue forever. Nothing has changed. For change to happen, they would need to either feel that they will not lose votes by repealing 377A, or the political situation changes, or we have a real opposition to vote for. And I don't see this happening.

4.5.3. Lessons Learned and the Way Ahead

Three main lessons are identified from the content of the interviews, regardless of the country. The first and most discussed lesson is that (legal) change takes time. The second lesson is that building allyships matters. The third lesson is that queer activists need to focus on the people they serve and adapt their language to the local level. Change takes time. As Lorna puts it: "I have never seen fast change last long. In this kind of work, you are in for the long haul." She points to the messiness of social movements: "The one lesson that informs all strategies is that movements are a messy thing. There is politics, there is competition, and all sorts of human interactions. It's like being in a family, you will get on with some of your brothers and sisters, and you might not get along with some other brothers and sisters, and then some will band together and then there will be family wars. It's messy." Jela says, however, that one should not give up on change: "As human rights defenders, you have to pursue what you feel that is necessary for a society to change, to accommodate the person you are, and that is what constantly pulls people up." James warns that legal change is only one step, and that social change is much harder to achieve:

We have to recognize that a single court decision is not going to change things. And we cannot let the setbacks buckle us. And we cannot assume that the victories are going to deliver us where we want to be. Both of those things are not true. Whatever the outcome is, we either have to sober up from our celebration the next day and keep fighting or we have to dust ourselves off from our despair and keep fighting. And that is going to be a long, long fight for this to sort of weed out the entrenched comfort with the marginalization and violence against LGBTQ+.

³⁰⁶ Public Order (Unrestricted Area) Order, 2016.

Bertho and Hadi stress that one cannot easily change thousands of years of cultural references that are negative towards sexual and gender identity. Singaporean respondents similarly state that legal change takes time. Dylan mentions the pressure from Pink Dot followers and sponsors and from other NGOs to achieve more in less time, but she warns that change takes time, citing the example of Taiwan where it took 30 years for the LGBTQI+ movement to make the gains it has today. Andrew says that despite the time it takes, queer activists should “never stop challenging unjust laws.” He adds: “Change can sometimes come very slow. Never give up on change. it's important to just always continue to push the boundaries. If we don't start planting the seeds today, then someone else down the road is not going to reap those benefits.” David says that timing is often beyond the activists’ control, pointing to the failure to include 377A in the 2018 Penal Code Review despite a favourable context including the decision of the Supreme Court of India to decriminalize homosexuality³⁰⁷. Concerning the way ahead and the pending judgment of the Supreme Court, Andrew affirms: “the Court’s eventual judgment may simply move the needle, even if it does not fully strike down the law.” In other words, he says that “if the words ‘in private’ get removed, this is going to be a huge victory”, meaning that private consensual sex between male adults would be allowed in Singapore (as opposed to public sex, which would still be criminalized).

The second lesson learned by study respondents is to build allyships to make the queer movement stronger. As Daniel Peter from Kenya says: “We realized that we cannot work in silo. We are currently reaching out to working with the disability movement, working with the feminist movement. It is an issue for everybody to create synergies, because we realized, when the judgment was out, that it was taken as an LGBT issue, not as a human rights issue.” Tarek highlights the efforts of Helem Lebanon seeks to create links with other social movements, for example the labour movement, saying that socio-economic rights are often a window of opportunity to advance civil and political rights. About engaging with politicians, Hadi says:

We work with everybody, we reach out to everybody, to the so-called conservatives, the so-called liberals, the so-called terrorists, the so-called mafia, the so-called everything, whether I like it or not. They are the result of the democratic system, they are what the Lebanese people chose to elect, regardless of why and how. These are my interlocutors today; and therefore, I'm going to work with them, because we want to improve LGBT realities today.

Bertho adds: “We have to find common ground with the counterparties that we are talking to, and we have to understand them, even though we are being discriminated against, even though

³⁰⁷ Supreme Court of India, 2018.

we are the ones who are paying the highest price.” In Singapore, David emphasizes the need to reach out to as many groups as possible so that when the time comes for decriminalization, it is already socially accepted.

Finally, the third lesson learned by respondents across the three countries is to focus on serving people first and on adapting language to the local context. As Dylan says, “we understand the local situation best, we know our audience best.” Jela mentions that people have different lived realities and that they must ensure to adapt to each audience. Tarek talks about the importance of having a local diagnosis on the LGBTQI+ situation of any given country. Bertho also mentions that language should be adapted locally. Finally, Elie says: “I learned to put people first. You are working for people and not for numbers, figures or statistics. It is real people with stories, pain, hope, emotions.”

5. Conclusion

This thesis is unfolded in three main chapters. After the introduction (chapter 1), the second chapter provides a theoretical framework about the universality of human rights, freedom of expression, the local relevance of human rights, the *localising human rights* (LHR) framework, and finally human rights narratives and frames. This theoretical framework informed the discussion on the rationale of local queer activists for using human rights (section 4.3.1.), the translation of global human rights norms into the local context (section 4.4.1.), the articulation of human rights claims, narratives and frames (section 4.4.2.) and the use of the Universal Periodic Review as a bridge between global and local (section 4.4.3.). The third thesis chapter offers a legal framework on freedom of expression on SOGIESC issues, at the universal, regional and national levels. This legal framework is consistently referred to in chapter 4, especially in sections 4.3.3. about IHRL, 4.3.4. about regional human rights law, and 4.3.5. about constitutional law. Finally, the fourth chapter, the most substantive and the one that brings originality to this research by providing new knowledge and empirical data, discusses the results of interviews with 14 LGBTQI+ activists from Kenya, Lebanon and Singapore.

The fourth chapter seeks to answer the four research sub-questions, starting with the main activities and strategies used by study respondents to change laws restricting freedom of expression on sexual and gender diversity topics, as discussed in section 4.2. This research found that many strategies are used by local queer activists in the study countries to achieve legal change, including strategic litigation, advocacy with the political class, capacity-building for the judiciary, law enforcement officials and religious leaders, use of traditional media and social media, public events and research. Three main findings were found on the objectives of those various strategies. First, decriminalization of same-sex intimacy is a primary target for all Kenyan and Singaporean interviewees and for some Lebanese respondents. Second, the protection of freedom of expression on SOGIESC issues is a secondary goal for most interviewees. Third, many respondents identify the criminalization of same-sex relationships as a direct cause of censorship of LGBTQI+ content in their country, explaining that once decriminalization is achieved, free speech will find better protection.

In section 4.3., the second sub-question finds answers. The question is whether and why LGBTQI+ activists in Kenya, Lebanon and Singapore use the human rights framework in their strategies to achieve legal change against laws restricting free speech on sexual and gender diversity issues, which corresponds to track 1 of the *localising human rights* (LHR) framework.

There are two main findings for this sub-question. Firstly, Kenyan and Lebanese respondents mostly use the human rights framework, as they embrace a language of universality and shared humanity and/or they find the human rights framework useful in addressing violence, discrimination and human rights violations experienced by LGBTQI+ people locally. This first main finding is linked to a secondary finding related the human rights framework: international human rights law is used by both Kenyan and Lebanese respondents, while regional human rights law is only used in Kenya. Secondly, Singaporean interviewees reject the human rights framework, deemed useless in their local context. Yet, Singaporean respondents appeal to constitutional rights and human rights values and principles, two components of the human rights framework, as do the Kenyan and Lebanese interviewees.

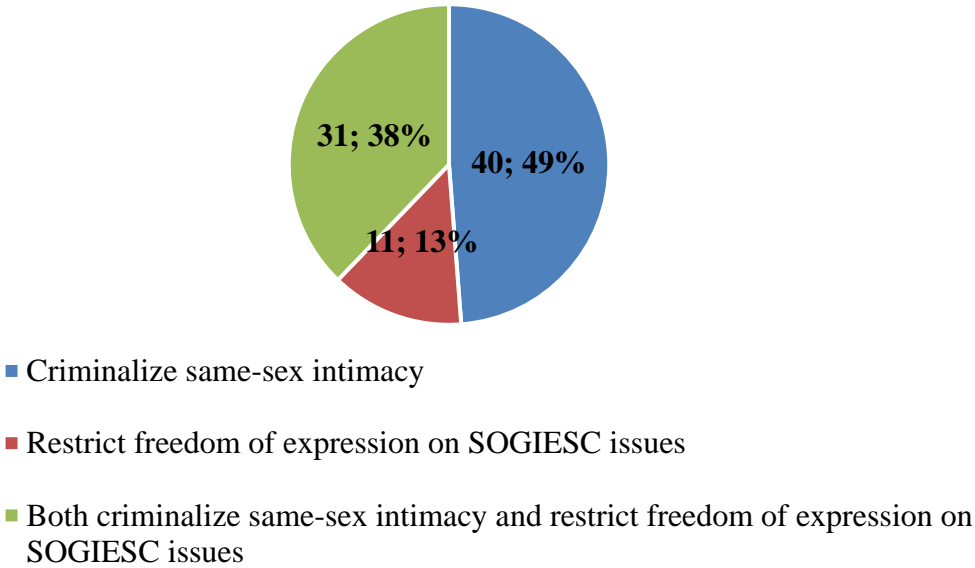
Sub-question 3 is discussed in section 4.4. about the process of using the human rights framework in the local context of queer activists of Kenya, Lebanon and Singapore, which relates to track 2 of the LHR framework. There are four main findings for this sub-question. First, study respondents highlight the importance of using sociocultural, historical and legal arguments relevant to their local context *before* using global human rights norms or the example of Western countries. Second, when using IHRL in particular, interviewees stress the need to translate it into a language understood locally. Third, queer activists use human rights claims, narratives and frames to advance their discourse in favour of decriminalization of same-sex relationships and protection of free speech on sexual and gender diversity issues. Fourth, the UN mechanism that is the Universal Periodic Review is a typical example of the localization process as a forum for exchange between global and local human rights standards in LGBTQI+ activism.

Finally, in section 4.5., sub-question 4 on the outcomes and lessons learned of study respondents' activities is addressed (track 3 of the LHR framework). The research results derived from this sub-question are based on the self-perceptions of study respondents on the effectiveness of their activism; there are three main findings. First, the interviewees are mostly optimistic about the future, citing successes in bringing awareness and shifting public perceptions towards positive attitudes about sexual and gender diversity. Second, study respondents acknowledge persistent challenges and setbacks that prevent them from achieving the desired outcomes of their activities, including a lack of leverage on the political situation and lingering cultural and religious barriers. Third, study participants draw lessons from the strategies employed in their activism, including that (legal) change takes time, that alliances with other social groups matter, and that the LGBTQI+ people they serve must remain their

priority and thus they must adapt their language to the local level. Taken together, these four sub-questions contribute to answering the main research question on how activists for LGBTQI+ rights in Kenya, Lebanon, and Singapore use the human rights framework in their local context to change laws that restrict freedom of expression on issues of sexual and gender diversity.

Despite the insightful research findings that emerge from this study, it is important to acknowledge that the sample size (14 respondents in three countries) is limited and that the generalization of results should be avoided, as discussed in sections 1.4. and 4.1. Additionally, it would be worth exploring further the relationship between decriminalization and free speech. In many countries, the criminalization of consensual same-sex sexual acts between adults in private is not in the books, but laws restricting free speech on SOGIESC issues nevertheless exist³⁰⁸. The reverse is also possible, 40 countries criminalize same-sex intimacy without restricting freedom of expression on SOGIESC issues³⁰⁹.

Figure 4. Number of countries criminalizing same-sex intimacy and/or restricting freedom of expression on SOGIESC issues³¹⁰.



In sum, this research found that the struggle for the protection of freedom of expression on sexual and gender diversity issues is closely linked to efforts to decriminalize same-sex intimacy in the context of Kenya, Lebanon and Singapore. LGBTQI+ activists working on the

³⁰⁸ Belarus, China, Côte d’Ivoire, Democratic Republic of the Congo, Djibouti, Jordan, Lithuania, North Korea, Paraguay, Russia and Turkey. See Mendos *et al.*, 2020, pp. 113-163.

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

ground are dedicated to achieving both goals in order to improve the lives of LGBTQI+ people and protect their human rights. In Kenya and Singapore, constitutional challenges against Penal Codes are pending appeal or judgment. In Lebanon, queer activists are striving to gather political support behind the decriminalization of homosexuality. While legal change seems within reach in favour of decriminalization, study participants point out that change takes time. It also remains to be seen whether decriminalization will translate into greater protection for free speech on sexual and gender diversity. As one of the interviewees states: “Never stop challenging unjust laws.”

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Appendixes

Appendix 1: Research Poster



Research on freedom of expression and LGBTQI+ activism: participants wanted for interviews!

What?
Interviews of 30-90 minutes focusing on the strategies used by LGBTQI+ activists to counter laws that restrict freedom of expression.

Where?
Video conferencing platform Zoom.

When?
Between March and May 2021.

Who?
[Charles-Antoine Leboeuf](#) is the main researcher and will conduct interviews.
He is a Master's candidate in the European Master's Programme in Human Rights and Democratisation, [Global Campus of Human Rights](#), completing his master's thesis at Utrecht University, the Netherlands, under the supervision of [Dr. Marjolijn van den Brink](#), Law Professor.

Why?
The purpose of the research is to assess which strategies used by activists are most likely to bring about a socio-legal change in their respective countries (e.g. education, strategic litigation, advocacy, research).

How?
Participation in this research is voluntary and no compensation is offered. Your confidentiality and security will be ensured according to your needs during the interview process.

Eligibility criteria

- Be 18 years of age or older;
- Be an LGBTQI+ activist (who may or may not identify in the community);
- Fight to amend or repeal one of the laws listed in page 2.

If you are interested in being interviewed, please fill out [this form](#).

For more information, you can write to c.leboeuf@students.uu.nl



Côte d'Ivoire

- Articles 357 and 416 of the Penal Code (2019)



Indonesia

- Law on Pornography (Law No. 44) (2008)
- Circular to All Broadcasting Companies on Effeminate Men (2016)
- Draft Criminal Code (2019)



Kenya

- Section 12 of the Film and Stage Plays Act (Act No. 34) (1963)
- Kenya Film Classification Board's Classification Guidelines (2012)



Lebanon

- Articles 531, 532, and 533 of the Penal Code (1943)



Lithuania

- Law on the Protection of Minors against the Detrimental Effect of Public Information (No. XI-594) (2009)
- Attempts to reform the Code of Administrative Offences (2010, 2014, 2015)



Malaysia

- Film Censorship Act (2002)
- Film Censorship Guidelines (2010)



Paraguay

- Resolution No. 29,664 of the Ministry of Education and Sciences (2017)



Tunisia

- Article 226 bis of the 1913 Penal Code (amended in 2004)



Singapore

- Section 377A of the Penal Code (1938)
- Broadcasting Act (1994)
- Internet Code of Practice (1997)
- Free-to-Air Radio Programme Code (2004)
- Board of Film Censors Classification Guidelines (2011)
- Content Guidelines for Local Lifestyle Magazines (2013)
- Arts Entertainment Classification Code (2014)
- Content Code for Nationwide Managed Transmission Linear Television Services (2016)
- Video Game Classification Guidelines (2019)



Zambia

- Article 178(z) of the Penal Code (1930)

**Are you fighting to
repeal or amend one
of these laws?
If so, you are eligible
to be interviewed for
this [research!](#)**

Appendix 2: Pre-Interview Questionnaire

Research on Activist Responses to Laws Restricting Freedom of Expression on Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics Issues

**mandatory field*

1- Are you above 18 years old?*

Yes

No

2- Can you briefly describe your work as a LGBTQIA+ activist?

3- I am working to repeal or amend the following legislation*:

Côte d'Ivoire: Articles 357 and 416 of the Penal Code (2019)

Indonesia: Law on Pornography (Law No. 44) (2008), the Circular to All Broadcasting Companies on Effeminate Men (2016), and/or the draft Criminal Code (2019)

Kenya: Section 12 of the Film and Stage Plays Act (Act No. 34) (1963) and the Kenya Film Classification Board's Classification Guidelines (2012)

Lebanon: Articles 531, 532, and 533 of the Penal Code (1943)

Lithuania: Law on the Protection of Minors against the Detrimental Effect of Public Information (No. XI-594) (2009), and/or attempts to reform the Code of Administrative Offences (2010, 2014, 2015)

Malaysia: Film Censorship Act (2002) and Film Censorship Guidelines (2010)

Paraguay: Resolution No. 29,664 of the Ministry of Education and Sciences (2017)

Singapore: Section 377A of the Penal Code (1938), Broadcasting Act (1994), Internet Code of Practice (1997), Free-to-Air Radio Programme Code (2004), Board of Film Censors Classification Guidelines (2011), Content Guidelines for Local Lifestyle Magazines (2013), Arts Entertainment Classification Code (2014), Content Code for Nationwide Managed Transmission Linear Television Services (2016), and/or Video Game Classification Guidelines (2019)

Tunisia: Article 226 bis of the 1913 Penal Code (amended in 2004)

Zambia: Article 178(g) of the Zambian Penal Code (1930)

Other laws (please specify in the next question)

None of these

4- Other laws (optional)

5- What name would you like us to use during the interview to address you?

6- When would you like to be interviewed between March and May 2021?

7- In what language would you like the interview to be conducted?

English

French

Spanish

8- Please leave us your email here to be contacted for the interview*.

9- Do you know other persons who would be interested in participating in the research? If so, please leave their email addresses.

10- Additional comments (special needs, questions, concerns)

You will be contacted as soon as possible and be informed whether or not your profile corresponds to the research needs. If so, an interview will be arranged with you and further details will be provided to you. Thank you for your interest!

Appendix 3: Consent Form

Information Sheet and Consent Form: Research on Freedom of Expression and LGBTQI+ Activism

Author: Charles-Antoine Leboeuf, researcher, Utrecht University (Netherlands) and Global Campus of Human Rights (Venice, Italy) c.leboeuf@students.uu.nl

Last edited: April 29, 2021

The **purpose of this research** is to conduct a comparative analysis of the strategies used by LGBTQI+ activists in Kenya, Lebanon, and Singapore in order to achieve their goal of changing or influencing laws and regulations that restrict freedom of expression on sexual and gender diversity in their respective jurisdictions. A particular focus will be on activists' use of the human rights framework, including international law and constitutional standards of freedom of expression, and human rights values. The research will contribute to sharing best practices between LGBTQI+ organizations from different countries, and thus be part of the international solidarity movement for LGBTQI+ rights.

Your participation in this research will contribute to the advancement of research in the field of LGBTQI+ rights and freedom of expression. The research results will be shared with you and your organization, which could potentially lead to a strategic strengthening of your approach or activities. Indeed, this research aims to share many different strategies and discourses used by activists to bring about legal change, which could positively inspire other LGBTQI+ organizations or activists elsewhere in the world.

The **confidentiality** of your identifying information, such as your name, age, work organization and job title, will be maintained during the research. For example, your name will be replaced by a code in the interview transcript and by a false name of your choice in the text of the research. The name of your work organization, your position in the organization and your age will be disclosed only with your express consent. You may refuse to disclose any or all of this information at your convenience. You can request access to and rectification or erasure of any or all of your personal data.

The research does not focus on your personal characteristics, but rather on the strategies you use in your work or activism to advance LGBTQI+ rights. In addition, you are free to choose

what information you want to share and you do not need to give your consent to everything written in the form below. The interview will be just as valuable.

The **risks associated** with your participation in this research are a possible breach of security and loss of confidentiality of your personal data. This may include your identification as an activist for LGBTQI+ rights and any repercussions this may entail. To reduce these risks, recordings of the interviews will take place on the Microsoft Teams video conferencing platform, which is secure and encrypted. Only the researcher will have access to the interview recordings, and they will be deleted after being transcribed and pseudonymised. Coded interview transcripts will not mention your name and will be securely stored in Utrecht University’s institutional drive. Only the researcher will have access to the interview transcripts.

You can **withdraw from the research** at any time without justification, by contacting Charles-Antoine Leboeuf (see contact information below). Upon withdrawal, all data already collected about you will be removed from the research. However, please note that the research will be submitted in July 2021 to the review committee of the Global Campus of Human Rights, composed of human rights professors from different participating universities in Europe. From July 2021 onwards, we will be unable to retract any personal information included in the research paper, such as the name of your organization or your job title. We will still be able to remove your personal information from our own database.

The research will be **published** in the [Global Campus of Human Rights Repository](#) in October 2021. The study can be downloaded in PDF format without restriction by any individual accessing the website. The information you provide to us during the research process may be reused for other **dissemination** purposes (subject to your express consent in this form).

CONSENT FORM

Please tick the appropriate boxes

Yes No

Taking part in the study

1. I have read and understood the study information dated [29/04/2021]. I have been able to ask questions about the study and my questions have been answered to my satisfaction.

2. I consent voluntarily to be a participant in this study and understand that I can refuse to answer questions and I can withdraw from the study at any time, without having to give a reason.

3. I understand that taking part in the study involves an audio-recorded interview (having the camera on is optional), which will be later transcribed.

Risks associated with participating in the study

4. I understand that taking part in the study involves the risk of an eventual digital security breach leading to loss of confidentiality.

Use of the information in the study

5. I understand that information I provide will be used for publication in the Global Campus of Human Rights Repository and other dissemination purposes and I give permission for it.

6. I understand that personal information collected about me that can identify me, such as my name, will **not** be shared by the researcher to third parties. However, I agree to disclose:

- The name of my work organization or campaign
- My position or role in my work organization or campaign
- My age

7. I agree to have my words quoted in the research. The researcher will share the citations via email with me for my approval before including them in the research text.

Name of participant:

Date:

I have accurately read out the information sheet to the potential participant and, to the best of my ability, ensured that the participant understands to what they are freely consenting.

Researcher name: Charles-Antoine Leboeuf

Date: April 29, 2021

Contact details:

Charles-Antoine Leboeuf

Researcher

c.leboeuf@students.uu.nl

charles.leboeuf@hotmail.ca

For further information:

Marjolein van den Brink

Supervisor

m.vandenbrink@uu.nl

Data Protection Officer

Utrecht University

privacy@uu.nl

Appendix 4: Interview Guide

The first set of questions is about **your activism for LGBTQI+ rights**.

1. *What are the main activities of your LGBTQI+ activism?*

- Is the activity a court case, an online campaign, a public demonstration, an educational workshop, an advocacy effort?
- Since when have you started your LGBTQI+ activism?
- Where does your LGBTQI+ activism take place?
- With whom are you doing this LGBTQI+ activism?
- How often do you participate in or organize these activities for LGBTQI+ rights?

2. Now, we will focus on activity X and activity Y. *What level of organization was required for these activities?*

- How many employees/volunteers/activists were involved?
- How detailed was the activity plan?
- How much access did you have to resources?
- Were there any differences of opinion about the plan among the organizers of the activities?

3. *What was the target audience of the activities?*

- Was your target audience judges, politicians, the general public?

4. *What was the objective of the activities?*

- Is the focus on freedom of expression? On decriminalization of same sex relationships? On discrimination based on sexual orientation or gender identity?
- Is there a focus on a specific part of the LGBTQI+ community?

5. *What was the strategy used?*

- Was it strategic litigation, human rights education, digital/institutional advocacy, research, fundraising, public protest, civil disobedience, direct action?

The second set of questions is about the **human rights framework**. You might also call them civil rights, constitutional rights or simply rights or freedoms, for example.

6. *Did human rights play a role in any way in these activities?*

- Was the action triggered by a human rights violation?
- Did you appeal to human rights in the activities?
- How did you decide it was necessary (or not) to invoke them?
- Was it a conscious decision, a planned strategy to use human rights?
- Are you involved in human rights procedures, for example at the UN level?
- Did you follow the lead of other human rights NGOs?

7. More specifically, *did you appeal to international human rights law in your activities?*

- Did you refer to the UDHR, ICCPR, Yogyakarta Principles? Why?
- What was the process for making such a decision? Was it a conscious decision, a planned strategy?

8. *Did you appeal to human rights norms in your activities?*

- Did you appeal to freedom of expression, right to physical integrity, right to be free from discrimination, right to respect for private life, right to health? Why?
- What was the process for making such a decision? Was it a conscious decision, a planned strategy?

9. *Did you appeal to regional human rights law in your activities?*

- Did you appeal to the African Charter on Human and Peoples' Rights, Arab Charter on Human Rights, ASEAN Human Rights Declaration? Why?
- What was the process for making such a decision? Was it a conscious decision, a planned strategy?

10. *Did you appeal to constitutional law in your activities?*

- Did you appeal to provisions on freedom of expression, e.g. Article 33 of the Constitution of Kenya, Article 13 of the Constitution of Lebanon, Article 14 of the Constitution of Singapore. Why?

- What was the process for making such a decision? Was it a conscious decision, a planned strategy?

11. *Did you appeal to human rights values and principles in your activities?*

- Did you appeal to values, such as freedom, human dignity, equality, respect for others, non-discrimination, tolerance, justice, responsibility? Why?
- Did you appeal to principles, such as universality, and inalienability, indivisibility, interdependence and interrelatedness, equality and non-discrimination, participation and inclusion, accountability and rule of law? Why?
- What was the process for making such a decision? Was it a conscious decision, a planned strategy?

12. *Did you appeal to other elements than the human rights framework?*

- Did you refer to the importance of breaking with the colonial past? Religion? Culture? Economy? History? Rejecting/bridging politics?
- Did you use a language of resistance or consensual language?

The third set of questions is about the **outcome of your activities** for LGBTQI+ rights.

13. *Reflecting back on these activities, would you say it was successful or effective?*

- Did you achieve your goal(s)?
- Did it lead to legal change?
- Was the LGBTQI+ community further empowered?
- Were there other positive side effects, such as bringing the issue to the agenda, raising awareness, increasing media attention, pressuring politicians?
- Did you experience a backlash?

14. *What factors do you consider to have led to the (un)success of your activities?*

- Did the human rights discourse increase the effectiveness of your action?
- What were the constraints? Social, cultural, economic and religious factors? Local circumstances?

- Were your activities affected by the following factors: international support, funding, public visibility, your organization's size, institutionalization, and access to resources, the degree of freedom of expression in itself allowed in your country, the region/area where your activities took place?

15. *What do you consider to be the effects of your activities, both positive and negative, for...?*

- The LGBTQI+ activists themselves?
- LGBTQI+ communities (as a collective)?
- Other civil society organizations? Allyships?
- Duty bearers (government officials, civil servants, police, judges, politicians)?
- Religious leaders?
- International organizations?
- The general population?

16. *What are the lessons learned after these activities?*

- What are the expected/unexpected benefits/losses?
- Would you do things differently?

Appendix 5: Selected Articles of the Lebanese Penal Code

Translated from Arabic to English for this research by Mariam Yacoub, M.A., Trad. a.

Article 183

An act undertaken in exercise of a right without abuse shall not be regarded as an offence.

Article 209

Are considered means of dissemination:

1- Actions or movements that took place in a place that is public, accessible to the public or exposed, or that, because of the error of the doer, were witnessed by someone who was not involved in the act.

2- Speaking or screaming, whether in public or transferring using mechanical means, in a way that makes such information known by an uninvolved party.

3- Writing, drawing, painting, taking photographs, filming, making emblems or other forms of imaging if displayed in a place that is public, accessible to the public, or exposed, or if they are sold or offered for sale or distributed to one person or more.

Article 521

Disguising in women clothing and accessing a place reserved for women

Any man who disguises himself in women clothing and enters a place where only women are allowed or a place in which anyone aside from women is prohibited from entering during operating hours is punishable by up to 6 months of imprisonment.

Article 531

Violation of public rules of conduct

Any person who violates public rules of conduct in one of the ways mentioned at the first paragraph of Article 209 shall be punishable by one month to one year of imprisonment.

Article 532

Violation of public morality

The fine stipulated in Article 532 was amended as per the Law No. 239 of 27/5/1993, as follows:

Any person who violates public morality in one of the ways mentioned at the second and third paragraphs of Article 209 shall be punishable by one month to one year of imprisonment and a fine of 20,000 to 200,000 Lebanese pounds.

Article 533

Trading in obscene material

Anyone who, with the purpose of trading in or distributing them, manufactures, imports, exports or possesses texts, drawings, paintings, photographs, films, emblems or other obscene materials, or who advertises or makes known how such materials may be obtained, shall be subject to the same penalties.

Article 534

Unnatural sexual intercourse

Any unnatural sexual intercourse is punishable by up to one year of imprisonment.