

DISCRIMINATION AGAINST THE LGBTQ+ COMMUNITY

Clooney Foundation for Justice

Justice for Victims of Unfair Trials

Too often, members of the LGBTQ+ community face prosecution simply for who they are. As it stands, [71 jurisdictions](#) around the world criminalize private, consensual same-sex sexual activity; and [new laws](#) are under consideration that would add to this tally. In addition to laws that discriminate on their face, the authorities in some countries are relying on facially neutral laws, including petty offenses, to target persons who identify as or are perceived as LGBTQ+. And countries are also cracking down on those who advocate for LGBTQ+ rights, eroding already shaky support systems for LGBTQ+ communities. Members of these communities, just like everyone else, are entitled to courts that protect their rights and are not weaponized against them.

TrialWatch has monitored a range of criminal cases brought against these communities. In some of the cases, the charges were dismissed. However, it's not just a question of whether someone is convicted that matters. Even if ultimately acquitted, accused persons suffer consequences from criminal proceedings, which are too often prolonged: the anxiety of a potential prison sentence, disruption of life activities, and the financial burden of mounting a legal defense. Moreover, those perceived as affiliated with the LGBTQ+ community are often harassed in pre-trial detention or face social stigma simply as a result of being charged with certain crimes.

TrialWatch monitoring has exposed the discrimination that infects these proceedings, and the harmful ecosystem they create, regardless of their outcome.

In Practice:

- > In Nigeria, CFJ's partner the American Bar Association Center for Human Rights monitored the first-ever trial under that country's Same Sex Marriage (Prohibition) Act as part of TrialWatch: forty-seven men were indiscriminately rounded up at a hotel and charged with 'public displays of same sex affection.' According to the police, the arrests were based on a tip that a 'gay initiation' was taking place. As described in the TrialWatch [Fairness Report](#) on the case, the defendants were then paraded in front of the press and some also reported being abused by the police. While the charges were eventually struck out, the publicity meant that a number of defendants lost jobs, another was forced to leave his home because his family told him

he had "brought shame on" them, and at least one defendant reported being assaulted in public. In another case in a different country that the Center monitored as part of TrialWatch, two individuals were charged with 'gross indecency' for kissing in public. As in the Nigeria case, the prosecution dragged out the proceedings. When the court threatened dismissal, the prosecution withdrew the charges, but not before the defendants spent time in detention, were shamed on social media, and were subjected to a series of court hearings. And in Uganda, two individuals, one of whom is a transgender woman, have been charged with having had sex. The proceedings have been ongoing for over a year, with little progress, with the result that one defendant has lost his job and has been expelled from his community, while both have faced public shaming.

- > TrialWatch monitoring has also shown how facially-neutral laws can be weaponized against those identifying or perceived as LGBTQ+. In one case in Uganda, the authorities relied on a 'common nuisance' law to prosecute 67 individuals arrested in a raid on an LGBTQ+-friendly bar. But the authorities offered shifting justifications for the arrests: The Ugandan police initially told the press that the raid on the bar was to enforce the Tobacco Control Act's prohibition on smoking shisha, only later pursuing the common nuisance charge. And homophobic comments were reportedly made at the police station. This shows that discrimination was at the root of the arrests and prosecution. Further belying the ostensible justification for the proceedings, one of the judges (the defendants were separated into five groups for trial) asked at the beginning of a hearing whether the case before her was "for the gay people misusing their bums." In another of the cases, the prosecution introduced charges of 'gay propaganda' partway through trial. The TrialWatch [Fairness Report](#) on the cases, by the ABA Center for

Human Rights, marshals this and other evidence and concludes that the authorities used a vague, facially-neutral law to discriminate on the basis of sexual orientation. The case against one of the five groups of defendants remains open, a year and a half after the arrests.

- > Finally, in several other cases, we have seen how those who stand up for LGBTQ+ rights are targeted by the courts. For instance, in Poland three activists were prosecuted for ‘offending religious feelings’ because they added rainbow halos to posters featuring a religious image. Likewise, in Turkey several students are currently facing charges for ‘provoking hatred based on religion’ after they added rainbow flags to the corners of an image of a Muslim holy site. By prosecuting human rights defenders, the authorities create a more permissive environment for subsequent targeting of those who identify as or are perceived as LGBTQ+ and diminish the support such individuals can obtain in fighting these prosecutions.

States are using the courts in a variety of ways to further discrimination against the LGBTQ+ community. TrialWatch will continue to press for reform of discriminatory laws and to expose how facially-neutral offenses can be used to effect discrimination in practice. Further, we will continue to advocate for those accused of crimes for defending LGBTQ+ rights.

