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2.8. LGBTIQ persons

Sources indicated that same-sex relations are criminalised under Section 148 of the Penal Code of 1991,520 which indicates the following:

> '148 Sodomy
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> - (1) Any man who inserts his penis or its equivalent into a woman's or a man's anus or permitted another man to insert his penis or its equivalent in his anus is said to have committed Sodomy.
> - (2) (a) Whoever commits Sodomy shall be punished with flogging one hundred lashes and he shall also be liable to five years imprisonment.
> (b) If the offender is convicted for the second time he shall be punished with flogging one hundred lashes and imprisonment for a term which may not exceed five years.
>
> (c) If the offender is convicted for the third time he shall be punished with death or life imprisonment'.521

The UN FFM report indicated that the Penal Code criminalises same-sex relations with its provision on 'sodomy', which is only applicable to men, and 'indecent acts', applicable to both men and women.522 The Dutch COI report indicated that, according to confidential sources it consulted, '[i]n a legal sense, ‘sodomy’ refers to anal sex, where it does not matter whether the anal sex is performed by two men or by a man and a woman. In colloquial language, however, ‘sodomy’ can be used as a synonym for homosexuality'.523

Sources indicated that with the enactment of Law No. 12 of 2020, the execution and flogging punishments for sodomy were removed from the Penal Code.524 ILGA indicated, however, that 'persons found guilty for a second time are still liable to imprisonment of up to 7 years and to life imprisonment upon a third conviction. Furthermore, Section 151 punishes acts of “gross indecency” and Section 152 punishes acts of sexual nature “that cause discomfort to public sentiment or public modesty” with imprisonment of up to six months and/or a fine'.525 According to a shadow report for the third Universal Periodic Review of Sudan by the Sudan SOGI Coalition (SSC), the Sudanese law and judicial system still allows judges to assign punishments arbitrarily, including the death penalty or corporal punishment such as 'flogging'. 526 The same source also indicated that the new rules of evidence allow the use of digital evidence such as private chats or pictures on mobile phones as the basis for a conviction for homosexuality.527 According to a confidential source cited in the Dutch COI report, 'this change

was intended to allow LGBTIQ+ people to be criminally prosecuted with less evidence'.528

Discrimination and violence against LGBTIQ people are common.529 Freedom House indicated that LGBTIQ people 'are politically marginalized and face serious deterrents to open participation, including a criminal ban on same-sex sexual relation'.530 Section 152 of the Penal Code of 1991 indicates the following:

'152 Obscene and Indecent Acts

- (1) Whoever does in a public place an indecent act or an act contrary to public morals or wears an obscene outfit or contrary to public morals or causing an annoyance to public feelings shall be punished with flogging which may not exceed forty lashes or with fine or with both.
- (2) The act shall be contrary to public morals if it is regarded as such according to the standard of the person's religion or the custom of the country where the act takes place'. 531

Sources indicated that Sudan lacks protection of LGBTIQ persons with regards to discrimination in employment, housing,532 education, and access to health care.533 The Dutch COI report indicated that, according to confidential sources, LGBTIQ people face 'discrimination, stigmatisation, dismissal, social exclusion and mistreatment if their sexual orientation and/or gender identity were to become known', and that in Sudanese society, the LGBTIQ community 'was associated with mental illness and paedophilia', which is why people keep their identity hidden.534

Regarding transgender individuals, the Dutch report indicated that, according to a confidential source, 'it was almost impossible for transgender people to obtain identity documents stating their gender identity' and that they 'experience problems crossing national borders, as the gender listed in their passports did not match their gender identity and the manner in which they expressed and dressed themselves'.535

The Dutch report provided as example of targeting of LGBTIQ persons, that of a homosexual man whose father, upon noticing 'feminine traits', physically assaulted him for 'allegedly disgracing the family honour'.536 In an interview with EUAA, a human rights analyst with in-depth expertise on the country also provided the example of a gay person who was arrested by the RSF on suspicion of collaborating for SAF and when they checked his Tinder profile, upon discovering his sexual orientation, he was tortured with more cruelty.537 Additional information on these or other cases could not be found among the sources consulted by EUAA within the time constraints of this report.

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  UN, Independent International Fact-Finding Mission for the Sudan, 23 October 2024, url, para. 302; ILGA, ILGA Database: Sudan, n.d., url

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Sudan, The Penal Code 1991, 1991, url

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  UN, Independent International Fact-Finding Mission for the Sudan, 23 October 2024, url, para. 302

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  Netherlands, Ministry of Foreign Affairs, General Country of Origin Information Report on Sudan, May 2024, url, p. 94

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  ILGA, ILGA Database: Sudan, n.d., url; SSC, Shadow report for the third Universal Periodic Review of the Republic of Sudan Human rights violations based on SOGIESC in Sudan, March 2021, url, p. 6; Freedom House, Freedom in the World 2024: Sudan, February 2024, url

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  ILGA, ILGA Database: Sudan, n.d., url

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  SSC, Shadow report for the third Universal Periodic Review of the Republic of Sudan Human rights violations based on SOGIESC in Sudan, March 2021, url, p. 6

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  SSC, Shadow report for the third Universal Periodic Review of the Republic of Sudan Human rights violations based on SOGIESC in Sudan, March 2021, url, p. 6

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  Netherlands, Ministry of Foreign Affairs, General Country of Origin Information Report on Sudan, May 2024, url, p. 94

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  Freedom House, Freedom in the World 2024: Sudan, February 2024, url

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  Freedom House, Freedom in the World 2024: Sudan, February 2024, url

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  Sudan, The Penal Code 1991, 1991, url

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ILGA, ILGA Database: Sudan, n.d., url; Equaldex, LGBT Rights in Sudan, n.d., url

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  ILGA, ILGA Database: Sudan, n.d., url; Netherlands, Ministry of Foreign Affairs, General Country of Origin Information Report on Sudan, May 2024, url, p. 94

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  Netherlands, Ministry of Foreign Affairs, General Country of Origin Information Report on Sudan, May 2024, url, p. 94

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  Netherlands, Ministry of Foreign Affairs, General Country of Origin Information Report on Sudan, May 2024, url, p. 95

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  Netherlands, Ministry of Foreign Affairs, General Country of Origin Information Report on Sudan, May 2024, url, p. 95

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  Human rights analyst, interview with EUAA, 10 December 2024

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