



BREAKING THE SILENCE: THE CRIMINALISATION OF LESBIANS AND BISEXUAL WOMEN AND ITS IMPACTS

Second Edition

THE HUMAN DIGNITY TRUST

The Human Dignity Trust works with LGBT activists, local lawyers and governments around the world to defend and advance human rights in countries where private consensual sexual activity between people of the same sex is criminalised. At the invitation of and in collaboration with our local partners, we support both strategic litigation to challenge and overturn these laws and law reform efforts to repeal them and enact protective legislation. Our technical assistance for legislative reform focuses on sexual offences, equal opportunities and hate crime laws, in order to better protect LGBT people and a wide range of other marginalised groups from stigma, discrimination and violence.

In addition to our in-house legal expertise, we work with 25 of the world's leading law firms and eminent barristers, who, as of 2024, have together contributed more than £22 million worth of pro bono technical legal assistance to our work across five continents. We also host and work with a Commonwealth Group of Experts on Law Reform to Eliminate Discrimination against LGBT People, Women and Other Marginalised Groups, comprised of technical experts in legislative drafting and a range of relevant substantive legal issues.

Our local partners always lead and inform our work. They set the pace to ensure that legal interventions are timely and help to drive wider change efforts. Conscious that together we are stronger, we build highly skilled international teams to support meaningful, measurable and sustainable rights-based legal progress.

We are a registered charity (No.1158093) in England and Wales.

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Cover photo: Charrice Talbert and M. Simone Hill, President and Vice President of PETAL, a lesbian and bisexual women's organisation in Belize.

TABLE OF CONTENTS

Overview	5
1. Purpose of this Report	9
2. History and status of criminalisation of lesbians and bisexual women	15
2.1 Express criminalisation of lesbians and bisexual women	16
2.2 Unnatural offences	22
2.3 Express male-only criminalisation	27
3. Persecution and human rights abuses faced by lesbians and bisexual women	29
3.1 The link between sex/gender and sexuality	30
3.2 Human rights violations	34
3.2.1 Mere fact of criminalisation	35
3.2.2 Arrest and prosecution	36
3.2.3 Physical and sexual violence	40
3.2.4 Family control and lack of physical and sexual autonomy	48
3.2.5 Discrimination in education, employment, health and housing	51
3.2.6 Suicide	54
4. Human rights law	57
5. Issues with research and data collection	63
5.1 Research limitations	65
5.2 Underreporting	68
5.3 Lack of voice and agency	69
6. Conclusion	71
Appendix A: Countries where female same-sex intimacy is criminalised*	73
Appendix B: 2023 Gender Gap Index scores for criminalising versus non-criminalising countries	82



OVERVIEW

- As of June 2024, consensual same-sex sexual conduct is criminalised in more than 60 jurisdictions worldwide—about a third of all countries—including more than 50 per cent of Commonwealth countries. Most of these criminal laws stem from British colonial rule. Others are founded in Sharia law (Islamic law).
- Of these criminalising jurisdictions, at least 40 (more than 60 per cent) criminalise same-sex sexual conduct between females. Even in jurisdictions that do not explicitly have laws explicitly against female same-sex sexual conduct, lesbians and bisexual women have been subjected to arrest or threat of arrest.
- At least 12 countries that previously only criminalised male same-sex sexual conduct later expanded their criminal codes to encompass sexual conduct between females. Three of those have since decriminalised all same-sex sexual conduct.
- The criminalisation of lesbians and bisexual women is often amplified by other criminal laws that have a disproportionate impact on women and girls, such as laws criminalising adultery, abortion and sex-work, and laws that permit child marriage and rape within marriage.
- Countries that criminalise consensual same-sex intimacy in any form rank substantially lower in global indices of gender equality than countries that do not. Improved gender equality is thus a positive indicator for decriminalisation.
- Criminalisation, however framed, fosters a climate of state-sanctioned stigma, resulting in abuse, discrimination and violence against the entire LGBT community. Maintenance of these laws is itself a human rights violation, and enables further human rights violations because of the stigma and culture of impunity these laws create.
- Lesbians and bisexual women experience human rights violations in both similar and different ways or to different degrees than gay and bisexual men, because of the intersection between their sex and sexual orientation. They can be particularly vulnerable to certain forms of control and abuse, given the fact that women and girls in many countries continue to be subordinated by male-dominated societies.
- Women in general are disadvantaged economically in many societies, for example by inequality in family structures, labour markets and laws on property and inheritance, which in turn compound the human rights violations faced by lesbians and bisexual women as they are less able to live independently without male family members.
- This economic disadvantage, combined with societal pressures on women to marry and found a traditional family, creates an imperative for many lesbians and bisexual women to enter heterosexual unions that they otherwise would not enter. In some countries, lesbians and bisexual women may be forced into a heterosexual marriage when their sexuality is revealed to their family.

Photo opposite: Kenyan LGBT activists outside the High Court in Nairobi

OVERVIEW

- Women in such marriages are likely to have significantly less control over their own bodies and sexuality than gay and bisexual men who enter sham heterosexual marriages, and such women may have little control over their sexual and reproductive health and choices. They may be compelled, in effect, to endure a lifetime of invisible and undocumented sexual abuse.
- Lesbians and bisexual women are also particularly vulnerable to violence, control and abuse within their own families and by people they know. They frequently experience targeted rape, through which abusers purport to ‘correct’ a victim’s sexual orientation. The criminalisation of their sexuality means that lesbians and bisexual women are often afraid to report these crimes or, if they do, that the crimes are not investigated.
- Lesbians and bisexual women who dress or present in ways that do not conform to traditional notions of femininity may face particular vulnerability to stigma, harassment and violence as a result of their visibility and of societal attitudes that support male entitlement to the maintenance of oppressive gender hierarchies.
- Lesbians and bisexual women also face discrimination in education, employment, health and housing, making them further economically dependent on male relatives.
- The cumulative effects of family control, violence, economic dependency and pressures to enter a heterosexual marriage can contribute to suicides of young lesbian and bisexual women in particular.
- The criminalisation of consensual same-sex intimacy undermines the rights of lesbians and bisexual women to privacy, equality, dignity, freedom of expression, physical and sexual autonomy, freedom from violence, an adequate standard of health, and removal of gender stereotypes, contrary to various international treaties, including the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which virtually all criminalising countries have ratified.
- Much of the research, advocacy and legal discourse on the criminalisation and persecution of LGBT people worldwide has, to date, focussed on the situation of gay and bisexual men. This means that the unique situation of lesbians and bisexual women, among others, has not been properly addressed in legal responses to criminalisation.
- This is, in part, due to the fact that lesbians and bisexual women are often less visible to researchers, that many instances of private sphere violence against women go unreported, and that women in general have a lower level of influence and agency in reform efforts in many societies.
- A major advance, building on the first edition of this report, was the groundbreaking 2022 decision in *Flamer-Caldera v Sri Lanka* by the UN CEDAW Committee, holding that laws criminalising female same-sex intimacy violate CEDAW.
- Since that decision, a Private Member’s Bill has been introduced in Sri Lanka that would decriminalise same-sex sexual activity between males and between females, in what would be a significant step forward for LGBT rights in the country and in the wider region.

- Furthermore, several other countries have repealed or struck down laws that criminalised same-sex sexual activity between women since the first edition on this report, including Trinidad and Tobago in 2018, Bhutan in 2021, Antigua and Barbuda in 2022, Barbados in 2022 and Dominica in 2024.
- Worryingly, in the same period, two further countries have introduced new laws criminalising same-sex sexual activity between females: Chad in 2017 and Brunei in 2019.
- Legal and political efforts to tackle the criminalisation of LGBT people need to do much more to ensure that responses are tailored to the needs and circumstances of the entire LGBT community, including lesbians and bisexual women.

Members of LGBTI Sey in the Seychelles pictured with materials from their campaign ‘Viv, Lanmour, Respe’





1. PURPOSE OF THIS REPORT

This report considers the history, nature and extent of laws criminalising consensual sexual intimacy between women, and the stigma anti-LGBT criminal laws of all varieties foster and perpetuate against lesbians and bisexual women as a particular group.¹

There remains a dearth of legal analyses relevant to the particular experiences of lesbians and bisexual women, which means that the range of legal and other responses to criminalisation and persecution has been incomplete.

Research and activism on criminalisation tends, in many cases, to treat LGBT people as a homogeneous group, without further analysing the differential contexts of and impacts on the constituent members of that group. Virtually all the legal analyses and case law to date, for example, have been centred primarily on the criminalisation of male same-sex intimacy and all of the horrors that such laws have enabled in various regions of the world. As a result, disaggregated data and legal analyses relevant to the particular experiences of others within the group remain sparse, which in turn means that the range of legal and other responses to LGBT criminalisation and persecution has been incomplete.

This report aims to contribute to filling that gap. It is based on independent legal research, an extensive desk review of primary research and anecdotal information gathered by other human rights organisations, as well as detailed input from and consultation with leading lesbian human rights activists, women's human rights academics and human rights lawyers around the world. It is an updated version of our original *Breaking the Silence* report, published in May 2016.

Photo opposite:
Rosanna Flamer-Caldera,
Founder and Executive Director,
EQUAL GROUND, Sri Lanka

Another report in this series examines the many ways in which transgender people are criminalised globally, including under laws criminalising same-sex intimacy.² Trans men and non-binary people, for example, will often be captured by the laws

¹ For brevity, we use the terms 'lesbians' and 'bisexual women' to refer both to women and girls who identify as lesbian or bisexual, and other women and girls, over the age of consent, who have or desire to have sexual intimacy with other women and girls over the age of consent but who may not identify as such. All such women and girls are potentially subject to the persecution and human rights violations that criminalisation of female same-sex sexual relations enables.

² Human Dignity Trust, *Injustice Exposed: The criminalisation of transgender people and its impacts* (2019), available: <https://www.humandignitytrust.org/wp-content/uploads/resources/Injustice-Exposed-the-criminalisation-of-trans-people.pdf>

1. PURPOSE OF THIS REPORT

criminalising female same-sex intimacy addressed here, and many other laws, such as those against cross-dressing, impersonation and vagrancy, are also used to criminalise, stigmatise and harass these and other gender non-conforming members of the LGBT community. We commend that report to anyone interested in the prevalence and impact of these laws.

Female consensual same-sex sexual conduct is criminalised in at least a fifth of all countries in the world, though, as the analysis below will show, a precise number is difficult to determine. In several other countries, it is clear or likely that only male same-sex sexual conduct is criminalised. In all of them, and even in jurisdictions where no LGBT people are criminalised, lesbians and bisexual women and other sexual and gender minorities experience severe human rights violations based on their actual or perceived sexual orientation or gender identity.

As a result of repressive legal regimes, lesbians and bisexual women suffer many of the same consequences as others within the LGBT community. These include violence, discrimination and ostracism, in addition to actual or threatened arrest and prosecution. By virtue of the intersecting forms of discrimination they face, both as women and as members of the LGBT community, they also suffer persecution and rights violations in different ways or to different degrees from gay and bisexual men, including sexual violence, forced or pressured heterosexual marriages, lack of autonomy over reproductive health and choices, and family violence and control. In the many cases where they are forced or socially pressured into marital unions with men, or where such unions are a social and economic imperative, lesbians and bisexual women may be subjected, in effect, to a lifetime of invisible sexual abuse.

Lesbians and bisexual women suffer persecution and rights violations in different ways or to different degrees than gay and bisexual men.

Since the first edition of this report, there have been great successes in the decriminalisation of LGBT people globally. Twelve jurisdictions have decriminalised consensual same-sex sexual activity,³ including five that had specifically criminalised lesbian and bisexual women.⁴ However, there have also been concerning developments,

³ Trinidad and Tobago (2018, subject to an ongoing appeal), India (2018), Botswana* (2019), Gabon (2020), Angola (2021), Bhutan (2021), Antigua and Barbuda (2022), Saint Kitts and Nevis (2022), Singapore (2022), Barbados (2022), Mauritius (2023) and Dominica (2024). *Note that while the Court of Appeal in Botswana in 2021 upheld a 2019 High Court decision decriminalising 'carnal knowledge against the order of nature', it found that a separate provision criminalising 'gross indecency', which criminalises both male and female same-sex sexual conduct, was not properly before the court, and that provision was therefore re-instated and technically remains in force. However, its constitutional validity is strongly in doubt by virtue of the Court of Appeal judgment. See <https://www.humandignitytrust.org/wp-content/uploads/resources/2021.11.29-AG-Botswana-v-Motshidiemang.pdf>.

⁴ Trinidad and Tobago (2018, subject to an ongoing appeal), Bhutan (2021), Antigua and Barbuda (2022), Barbados (2022) and Dominica (2024). As indicated in footnote no. 3, Botswana decriminalised anal intercourse in 2021, but the 'gross indecency' provision that criminalises both male and female same-sex sexual intimacy technically remains in force. Nonetheless, its constitutional validity is dubious.

with the introduction of new criminalising provisions in Chad and Brunei.⁵ Furthermore, other reports over the period demonstrate that much of the persecution outlined in the first edition persists, and in some cases has worsened.

In the past six years, the arrest of lesbian and bisexual women on the basis of their sexual orientation and/or gender expression has continued in many regions.⁶ Reports of psychological, physical and sexual abuse are also pervasive, including so-called 'honour' violence and 'corrective' rape.⁷

As with many violations of women's human rights, these violations often occur in the private sphere, away from public view, and are therefore easily underestimated, unrecognised and/or ignored. Among other harms, this in turn reduces the visibility of lesbians' and bisexual women's experiences within the LGBT legal and human rights discourse, and contributes to the lack of legal challenges relating specifically to lesbians and bisexual women. A factor which exacerbates the lack of focus on the situation of this marginalised group of women is that lesbians and bisexual women tend to be disproportionately underrepresented in many legal, religious, political, civil society and other organisations that are central to reform on LGBT issues. Their experiences and voices, therefore, often have less influence on the direction and framing of research and advocacy efforts.

Lesbians and bisexual women are also often invisible within the principal text of international and legal frameworks, including those aimed at women, where there is an underlying assumption of heterosexuality. One exception is the Istanbul Convention, Article 4(3) of which states that the implementation of the Convention shall be secured without discrimination on any ground, including sexual orientation.⁸ Other legal frameworks have been interpreted as including lesbians and bisexual women. For example, numerous general recommendations under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) have recognised that discrimination against women is inextricably linked to other factors that affect their lives, including sexual orientation and gender identity, and have urged states to repeal laws that enable discrimination and violence, including against lesbians and bisexual women.⁹ The European Court of

⁵ Chad (2017); Brunei (2019).

⁶ Botha, *Our identities under arrest: A global overview on the enforcement of laws criminalising consensual same-sex sexual acts between adults and diverse gender expressions* (ILGA, December 2021), available https://ilga.org/downloads/Our_Identities_Under_Arrest_2021.pdf.

⁷ Human Rights Watch, *Even If You Go to the Skies, We'll Find You* (January 2022) available, https://www.hrw.org/sites/default/files/media_2022/01/afghanistan_lgbt0122_web_0.pdf; Human Rights Watch and Iraqueer, "Everyone Wants Me Dead": Killings, Abductions, Torture, and Sexual Violence Against LGBT People by Armed Groups in Iraq (2022), available https://www.hrw.org/sites/default/files/media_2022/03/iraq_lgbt0322_web_0.pdf; Human Rights Watch, *If We Don't Get Services, We Will Die: Tanzania's Anti-LGBT Crackdown and the Right to Health* (February 2020), available https://www.hrw.org/sites/default/files/report_pdf/tanzania0220_web_0.pdf; Human Rights Watch, "I Have to Leave to Be Me": Discriminatory Laws against LGBT People in the Eastern Caribbean (2017) available https://www.hrw.org/sites/default/files/report_pdf/easterncaribbean0318_web_0.pdf.

⁸ Council of Europe, *Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul 2011), available <https://rm.coe.int/168008482e>.

⁹ CEDAW, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19* (CEDAW/C/GC/35, 14 July 2017), para 31(a), available <https://www.undocs.org/en/CEDAW/C/GC/35>; CEDAW, *General recommendation No. 36* (2017) on the right of girls and women to education, (CEDAW/C/GC/36, 27 November 2017), para 45, available <https://www.undocs.org/en/CEDAW/C/GC/36>; CEDAW, *General recommendation No. 38* (2020) on trafficking in women and girls in the context of global migration (CEDAW/C/GC/38, 20 November 2020), para 88, available <https://www.undocs.org/en/CEDAW/C/GC/38>.

1. PURPOSE OF THIS REPORT



Human Rights in 2022 published a guide on the prohibition of discrimination which outlined the range of cases in which non-discrimination under Article 14 of the European Convention on Human Rights was held to include sexual orientation and gender identity.¹⁰

All of these factors can have significant consequences for the focus of human rights defenders, researchers and lawyers. Importantly, this also affects the allocation of funding that supports human rights work globally.

This report aims to contribute to the expansion of the global discourse by analysing both the status of criminalisation of lesbians and bisexual women as a particular group, and the unique and overlapping human rights violations they experience that are fostered and perpetuated, directly or indirectly, through the criminal law. It also discusses what is needed to break the silence over the persecution of lesbians and bisexual women, including better research, data collection, access to justice, and inclusion of women as decision makers, litigants and other agents of change. It highlights the need for resources to be invested in human rights organisations that specifically focus on the experiences of lesbians and bisexual women, to support their research, advocacy and service provision.

¹⁰ European Court of Human Rights, *Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention* (Update 30 April 2022), available https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf.

The criminalisation of consensual same-sex intimacy is, at its core, a denial of the full citizenship of LGBT people.¹¹ As the United States Supreme court observed, “*there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal.*”¹² Such outlawing is the most direct way a State can exclude people from society and render them susceptible to all manner of abuse in all walks of life across the legal, social, cultural, religious and political spectra.

Nonetheless, while this report focuses particularly on countries that criminalise female same-sex sexual conduct, it is important to note that there may be high levels of violence, discrimination and marginalisation of lesbians and bisexual women and other sexual minorities even in jurisdictions where such conduct is not criminalised, often with no or insufficient state protection for potential victims or punishment of alleged perpetrators. While criminalisation is thus certainly not the only factor, it is a critical signalling factor and threshold issue that must be understood and addressed if states are to begin to meet their legal obligations to remove the structural barriers that inhibit LGBT people from enjoying the same fundamental human rights as everyone else in society.

The sections of this report can be read together or independently. Section 2 summarises the range of legal provisions that are used to criminalise consensual sexual conduct between females. It also outlines some of the history that is relevant to an understanding of how these laws developed—often in ways that are distinct from those criminalising male same-sex intimacy. Section 3 outlines the diverse ways in which lesbians and bisexual women as a particular group experience the violence, discrimination and persecution that such state-sanctioned stigma enables, which, again, often differ in nature or degree from other sexual minorities. Section 4 provides a brief overview of some of the internationally recognised human rights norms that are most relevant to eradicating the abuses faced by lesbians and bisexual women. Section 5 identifies gaps in research and data collection that need to be filled in order that the criminalisation of lesbians and bisexual women and the unique abuses it enables may be better addressed.

¹¹ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A feminist perspective* (Juris Publishing, 2000), p. 128.

¹² *Lawrence v Texas*, 539 U.S. at 583 (O’Connor, J. concurring).



2. HISTORY AND STATUS OF CRIMINALISATION OF LESBIANS AND BISEXUAL WOMEN

As of June 2024, more than 60 jurisdictions worldwide criminalise consensual same-sex sexual conduct in some form, all of which criminalise male same-sex intimacy. Most of these jurisdictions inherited these laws either directly or indirectly from Britain during the 19th and early 20th centuries, and the continuing significance of British colonialism in the existence of these persecutory laws cannot be overstated. Others are rooted in Sharia law. The extent and origins of the criminalisation of female same-sex intimacy, however, are different in certain key respects from those for male same-sex intimacy, particularly in countries that inherited their criminal law from Britain.

There is an ever-increasing need for legal responses to address the criminalisation of women. Such laws add to the vulnerability of lesbians and bisexual women, who are already at risk of a wide range of human rights abuses simply because they are women.

These differences are important to recognise, partly because they are relevant to understanding the extent to which vaguely worded criminal laws apply (or do not apply) to women. The criminalisation of women is also, on the whole, a more recent phenomenon, with a worrying trend towards more countries in recent decades enacting or amending laws to capture all same-sex sexual acts where previously female same-sex sexual conduct would not have been captured. This means there is an ever-increasing need for legal responses to address the criminalisation of women, and to understand how such criminalisation adds to the heightened vulnerabilities of lesbians and bisexual women, who are already at risk of a wide range of human rights abuses simply because they are women.

This section focuses on direct criminalisation of consensual same-sex sexual conduct. However, it must also be recalled that in many of the countries where there is no overt criminalisation of such conduct, the authorities often use crimes such as ‘public nuisance’ or ‘undermining public morality’ to prosecute same-sex intimacy. While an analysis of those laws is outside the scope of this report, research in this area is needed, as even in countries that ostensibly do not criminalise lesbians, bisexual women and other sexual minorities, the criminal law may in fact be used as a tool of oppression and control.

2. HISTORY AND STATUS OF CRIMINALISATION OF LESBIANS AND BISEXUAL WOMEN

2.1 Express criminalisation of lesbians and bisexual women

At least 40 of the more than 60 criminalising countries criminalise consensual sexual conduct between females.

Such conduct is criminalised through statutory penal legislation in 39 jurisdictions, either by express mention of female sexual conduct,¹³ by using gender-neutral language applicable to both male and female same-sex intimacy,¹⁴ by reference to specific sexual acts that can be done between women (such as vaginal–oral sex¹⁵ or vaginal sex with objects¹⁶) or by reference to all ‘homosexual’ acts or acts with someone of the ‘same sex’.¹⁷

Female same-sex sexual conduct is also criminalised in most jurisdictions where Islamic law is applied in addition to or in the absence of a statutory criminal provision, adding a further country.¹⁸ Countries applying Sharia law—in some instances in addition to statutory criminalisation, as outlined above—include Afghanistan, Brunei, Indonesia (Aceh Province and South Sumatra), Malaysia (several states), Maldives, Nigeria (the 12 Northern states), Qatar, Saudi Arabia, Somalia and the United Arab Emirates.¹⁹ In 2019, Brunei completed the final phases of implementation of the Syariah Penal Code, with provisions deriving from the Quran and Sunnah. Since independence, Brunei’s dual legal system has been based on Sharia law and laws originating in the colonial period. The Code expands upon the existing legal system and overlaps with some existing civil and criminal provisions, albeit imposing different sentences and burdens of proof.²⁰ There are several provisions of the Code that apply to non-Muslims as well as Muslims.

- 13 Afghanistan [Penal Code 2017- art. 645]; Brunei [Syariah Penal Code Order 2013, s 92]; Gambia [Criminal Code 1965 (as amended in 2005) – s 147(2)]; Aceh and South Sumatra provinces of Indonesia [Aceh Regulation (No. 6/2014), Article 64 and South Sumatra Provincial Ordinance on the Eradication of Immoral Behaviour (No. 13/2002), Articles 5 and 10]; Iran [Islamic Penal Code, 1991 (as amended in 2012) – ss. 127-133]; Malawi [Penal Code, 1930 (as amended in 2011) – s 137A]; Mauritania [Penal Code, 1984 – s 308]; Nigeria (Kano State) [Kano State Penal Code (Amendment No. 12) 2014, s 4]; Tanzania [Zanzibar Penal Decree Act No. 6, 2004 – s 153]; Tunisia [Penal Code (Arabic version), s 230]; Yemen [Penal Code 1994 – Article 268]; Zambia [Penal Code (as amended by Act No. 15 of 2005) – s 158(2)].
- 14 Iraq [Law No 8 of 1988 (amended)]; Libya [Penal Code, 1953 (as amended by Law 70 of 1973) – s 408(4)]; Malaysia [Penal Code, 1998 – s 377D]; Qatar [Criminal Code 2004- s.281]; Saint Lucia [Criminal Code, 2004 – s 132]; Sri Lanka [Penal Code (as amended by the Penal Code (Amendment) Act, No. 22 of 1995) – s 365A]; Sudan [Penal Code, 1991 – s 151]; Syria [Penal Code 1949- Art 520]; Tanzania [Penal Code, 1945 (as amended by the Sexual Offences Special Provisions Act, 1998) – s 138A; Zanzibar Penal Decree Act No. 6, 2004 – s 154]; Uganda [Penal Code Act, 1950 (Chapter 120) (as amended) – s 148]; United Arab Emirates [Federal Penal Code 1987- Art 356]; [Criminal Code of Abu Dhabi 1970 – Art 80]. See footnote no. 3 regarding Botswana.
- 15 Liberia [New Penal Law, Volume IV, Title 26, Liberian Code of Laws Revised, 1978 – ss. 14.74 and 14.79].
- 16 Gambia [Criminal Code 1965 (as amended in 2005) – s 144(2)(b)].
- 17 Algeria [Penal Code, 1966 – s 338]; Burundi [Penal Code, 2009 – Art. 567]; Cameroon [Penal Code 2016- s 347]; Chad [Penal Code 2017 – Art.354]; Comoros [Penal Code, 1995 – s 318(3)]; Ethiopia [Criminal Code, 2004 – s 629]; Eritrea [Penal Code, 1957 – s 600(1)]; Gambia [Criminal Code, 1965 (as amended in 2005) – s 144(2)(c)]; Guinea [Penal Code, 1998 – s 325]; Maldives [Penal Code 2014- ss. 411(a)(2) and 412]; Morocco [Penal Code, 1962 – s 489]; Oman [Penal Code, 1974 – s 223]; Saint Vincent and the Grenadines [Criminal Code, 1990 – s 148]; Senegal [Penal Code, 1965 – s 319]; the Solomon Islands [Penal Code, 1996 – s 162]; Somalia [Penal Code, Legislative Decree No. 5/1962.2 – s 409]; Togo [Penal Code, 1980 – s 88]; Uganda [Anti-Homosexuality Act 2023].
- 18 Iraq and Saudi Arabia.
- 19 Lucas Ramon Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, *State-Sponsored Homophobia 2020: Global Legislation Overview Update* (ILGA World, December 2020).
- 20 Patrick Greenwalt, *Factsheet: Brunei – Brunei’s Syariah Penal Code Order 2013*, (United States Commission on International Religious Freedom, December 2020), available <https://www.uscirf.gov/sites/default/files/2020%20Factsheet%20-%20Brunei.pdf>.

In countries such as Iraq, where the rule of law has historically been weak and certain regions of the state have been governed by non-state actors, including Sharia judges,²¹ lesbians and bisexual women were *de facto* criminalised and actively targeted, even before express criminalising legislation was passed in 2024.²² In 2017, the Independent Permanent Human Rights Commission of the Organisation of Islamic Cooperation stated that:

*“there is a consensus among Islamic scholars that human beings are naturally heterosexual” and that “homosexuality is seen as a perverted deviation from the norm and all schools of Islamic thought and jurisprudence consider homosexual acts to be unlawful.”*²³

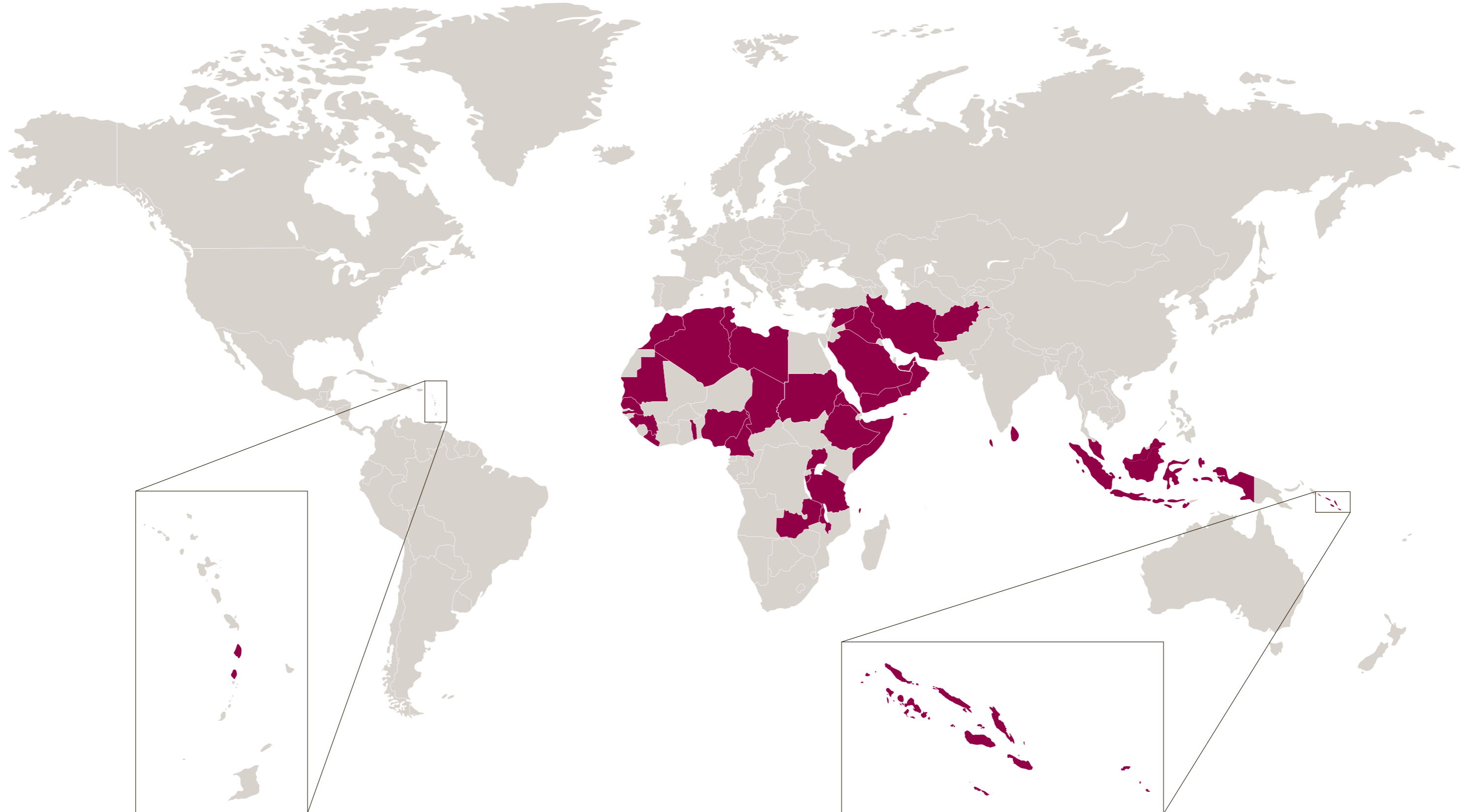
Together, these express and *de facto* laws equate to at least 40 jurisdictions criminalising female same-sex intimacy, or more than 60 per cent of all criminalising jurisdictions. These countries are listed in Appendix A with the sources of criminalisation and relevant provisions for each country. They are also illustrated in Figure A, overleaf.

Of the jurisdictions that criminalise female same-sex intimacy through statutory penal legislation, 11 use ‘gross indecency’ or ‘serious indecency’ provisions, either expressly by reference to females or through the use of gender-neutral language.²⁴ This demonstrates a trend away from the British origins of the concept of gross indecency established in 1885, which targeted only male same-sex sexual conduct.²⁵ There was an attempt in England and Wales through the Criminal Law Amendment Bill 1921 to add a provision on gross indecency between females,²⁶ but the amendment was shelved due to fears of the provision being used for blackmail²⁷ and because it was argued that there was not “one scintilla of evidence that there is any widespread practice of this kind of vice.”²⁸ Thus, it was not by virtue of any acceptance of or indifference to female same-sex sexual conduct, but rather a belief that it simply did not occur, that women were never criminalised in this way in Britain.

- 21 Lucas Ramon Mendos et al., *State-Sponsored Homophobia* (no. 19).
- 22 Human Rights Watch, Iraq: Scrap Anti-LGBT Bill (August 2023), available <https://www.hrw.org/news/2023/08/23/iraq-scrap-anti-lgbt-bill>; Law Library of Congress, Iraq: Parliament passes new law prohibiting prostitution, homosexuality, gender change procedures (May 2024), available <https://www.loc.gov/item/global-legal-monitor/2024-05-15/iraq-parliament-passes-new-law-prohibiting-prostitution-homosexuality-gender-change-procedures/>.
- 23 Organisation of Islamic Cooperation: Independent Permanent Human Rights Commission, *OIC-IPHRC study of sexual orientation and gender identity in light of Islamic interpretations and international human rights framework* (May 2017), para 14, available <https://www.oic-iphrc.org/en/data/docs/studies/46303.pdf>. Note that certain scholars argue that same-sex sexual conduct, despite being described as forbidden by most Islamic scholars, is actually not forbidden in Islam: see Javaid Rehman and Eleni Polymenopoulou, ‘Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World’, *Fordham International Law Journal* (vol. 37:1, 2013); Lucas Ramon Mendos et al., *State-Sponsored Homophobia* (no. 19), p. 34.
- 24 Gambia, Malawi, Malaysia, Solomon Islands, Saint Lucia, Sri Lanka, St Vincent and the Grenadines, Sudan, Tanzania, Uganda, Zambia. See footnote no. 3 regarding the status of a gender-neutral ‘gross indecency’ provision in Botswana.
- 25 A prohibition on ‘gross indecency between males’ was first established in the English criminal law through the Criminal Law Amendment Act 1885, and remained in force until the Sexual Offences Act 1967, though it was not completely abolished until the Sexual Offences Act 2003. The offence of gross indecency was never explicitly defined, though it was generally understood to refer to any sexual intimacy between males, including acts other than penetrative sex.
- 26 “Any act of gross indecency between female persons shall be a misdemeanour and punishable in the same manner as any such act committed by male persons under section eleven of the Criminal Law Amendment Act, 1885.” HC Deb vol. 145 cols. 1799-1800 (4 August 1921).
- 27 HC Deb vol. 145 cols. 1801-1802 (4 August 1921).
- 28 HL Deb vol. 43 at 574-575 (15 August 1921).

2. HISTORY AND STATUS OF CRIMINALISATION OF LESBIANS AND BISEXUAL WOMEN

Figure A: Countries that criminalise lesbians and bisexual women



2. HISTORY AND STATUS OF CRIMINALISATION OF LESBIANS AND BISEXUAL WOMEN

Nonetheless, the concept of ‘gross indecency’ itself is clearly of British origin. Of the states that maintain gross indecency provisions that capture both male and female same-sex sexual conduct, all but one are Commonwealth countries. The exception is Sudan, though even Sudanese criminal law was British-based between 1899 and 1983,²⁹ when the first non-colonial Penal Code of Sudan was enacted.

The extension of the British formulation to include female same-sex sexual conduct largely occurred after the end of British rule. Some states initially had male-only gross indecency provisions, but later amended their penal provisions to apply equally to lesbians and bisexual women. This was the case for Trinidad and Tobago in 1986, Solomon Islands in 1990, Barbados in 1992, Sri Lanka in 1995, Botswana in 1998, Malaysia in 1998, The Gambia in 2005, Zambia in 2005 and Malawi in 2011. Except in Trinidad and Tobago and Barbados, all of these provisions remain on the statute books.³⁰

This has also occurred in at least two jurisdictions using a non-British criminal formulation. In Kano State in Nigeria, the State Penal Code was amended in 2014 to add a new offence of ‘lesbianism’, with a punishment of 14 years imprisonment.³¹ In Brunei, where the inherited British penal code only criminalises male same-sex intimacy, the introduction in April 2019 of the remaining provisions of the Sharia Penal Code Order 2013 officially criminalised same-sex intimacy between both males and females. Male conduct is punishable by whipping with 100 strokes and imprisonment for one year or death by stoning, and female conduct by a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes, or a combination of any two of these.³²

Thus, although the global trend is towards decriminalising both male and female same-sex sexual intimacy, with 62 jurisdictions decriminalising either through legislative reform or the courts since 1980,³³ the same period has also seen at least 12 jurisdictions that previously only criminalised male liaisons amend their laws to include, for the first time, new criminal sanctions against lesbians and bisexual

²⁹ El Bushra Mohamed El Amin, ‘The Criminal Justice System of the Republic of Sudan’, *The Protection of Human Rights in African Criminal Proceedings* (1995), p. 232.

³⁰ And on Botswana see footnote no. 3.

³¹ Kano State of Nigeria, K.S. Law No. 9 of 2014, Kano State Penal Code (Amendment No. 12) 2014 (1436 AH) (11 November 2014) s 4. Women would already have been separately criminalised under Sharia law.

³² Human Dignity Trust, *Briefing on Brunei’s implementation of the Syariah Penal Code Order 2013* (2019), available https://www.humandignitytrust.org/wp-content/uploads/resources/2019_04_08-Briefing-on-Bruneis-implementation-of-the-Syariah-Penal-Code-Order-2013-WS.pdf.

³³ Colombia (1981); Vanuatu (1981); Micronesia (1982); Portugal (1983); New Zealand, Haiti (1986); Israel (1988); Liechtenstein (1989); Andorra (1990); Bahamas, Hong Kong, Ukraine (1991); Latvia, Estonia (1992); Australia, Guinea Bissau, Ireland, Lithuania, Russia (1993); Belarus, Serbia (1994); Albania, Djibouti, Moldova (1995); Macedonia, Romania (1996); China, Ecuador (1997); Cyprus, Kazakhstan, Kyrgyzstan, South Africa, Tajikistan (1998); Chile (1999); Azerbaijan, Georgia (2000); Bosnia and Herzegovina (2001); Armenia, United States (2003); Cape Verde (2004); Marshall Islands (2005); Vanuatu (2007); Nepal, Nicaragua, Panama (2008); Fiji (2010); Sao Tome and Principe (2012); Northern Cyprus, Palau (2014); Mozambique (2015); Belize (2016); Nauru (2016); Seychelles (2016); Trinidad and Tobago (2018); India (2018); Botswana (2019); Gabon (2020); Angola, Bhutan (2021); Antigua and Barbuda, St Kitts & Nevis, Singapore, Barbados (2022); Cook Islands (2023); Mauritius (2023); Dominica (2024).

women.³⁴ In addition, in 2017, Chad introduced, for the first time in its history, legislation criminalising all same-sex sexual activity.

Ironically, such amendments have often been made on the inaccurate premise of ensuring non-discrimination in the State’s treatment of males and females who are not heterosexual. For example, in *Kanane v The State*,³⁵ a Botswana court found that a gross indecency law that only applied to male same-sex intimacy and not female same-sex intimacy was discriminatory, but that the discrimination was rectified when the provision was made gender-neutral. Similarly, in *DPP v Bowie*,³⁶ a court in Solomon Islands found that the male gross indecency law was discriminatory since women were not criminalised, but found that this would be rectified by removing the word ‘male’. As a result, in 1990, the government repealed and replaced the provision to make it gender-neutral. The fact that these laws, however framed, violate a range of internationally recognised fundamental human rights norms was not properly considered in these cases.

Formulations similar to the ‘gross indecency’ model originating from British colonial law exist in Eritrea (‘any other indecent sexual act’), Ethiopia (‘any other indecent act’), Libya (‘indecent act’) and Mauritania (‘indecent act’).

Countries that expressly criminalise lesbians and bisexual women but which do not use an ‘indecency’ formulation either simply ban all sexual activity between persons of the same sex or use specific references to female same-sex sexual conduct—in some cases with reference to religious standards and punishments.

For example, in the Islamic Penal Code of Iran provides that, ‘*Musahaqah*’, which carries a punishment of 100 lashes,³⁷ is defined as where a female person puts her sex organ on the sex organ of another person of the same sex.³⁸ The death sentence applies upon a fourth conviction.³⁹ The death penalty applies to male same-sex sexual conduct in certain additional circumstances.⁴⁰ In Mauritania, the criminal law provides that:

[a]ny adult Muslim man who commits an indecent act or an act against nature with an individual of his sex will face the penalty of death by public stoning. If it is a question of two women, they will be punished as prescribed in article 306, first paragraph [a sentence of between three months’ to two years’ imprisonment and a fine of 5,000 to 60,000 UM].⁴¹

³⁴ Trinidad and Tobago (1986); (subsequently declared unconstitutional); Solomon Islands (1990); Barbados (1992) (subsequently declared unconstitutional); Sri Lanka (1995); Botswana (1998) (see Note 3); Malaysia (1998); The Gambia (2005); Zambia (2005); Malawi (2011); Nigeria (Kano State) (2014); Brunei (2019). Bahamas also did so in 1989, though all anti-LGBT criminal laws were later repealed in 1991.

³⁵ *Kanane v The State* (2 BLR 67, 2003) (Court of Appeal). This case has since been overturned in *Motshidiemang v Attorney General* (MAHGB-000591-16, 2019) on which see footnote no. 3.

³⁶ *Director of Public Prosecutions v Noel Bowie*, Solomon Islands Law Reports 113 (1988).

³⁷ *Ibid.*, s 239.

³⁸ Islamic Penal Code of Iran (2013), s 238, available <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>.

³⁹ *Ibid.*, Chapter Six.

⁴⁰ *Ibid.*, ss. 234 and 236.

⁴¹ Mauritania Penal Code (1984), s 308.

2. HISTORY AND STATUS OF CRIMINALISATION OF LESBIANS AND BISEXUAL WOMEN

In Yemen, sexual acts between women are defined as ‘sexual stimulation by rubbing’, and the penalty for ‘premeditated commission’ is up to three years’ imprisonment. This contrasts with anal sex between men, which is punished with 100 lashes of the whip or a maximum of one year of imprisonment for unmarried men, or with death by stoning for married men.

Liberia criminalises all ‘deviant sexual intercourse’, which is defined to include, among other acts, sexual contact between the mouth and vulva involving *“human beings who are not husband and wife or living together as man and wife though not legally married.”* A number of African countries, such as Algeria, Burundi, Chad, Cameroon, Comoros, Ethiopia, Eritrea, Guinea, Morocco, Senegal and Somalia, as well as Oman, simply criminalise any sexual conduct between persons of the same sex.⁴²

In Tunisia, the Arabic version of the criminal code, translated into English, provides that *“[h]omosexual acts between males or females, that are not covered in any of the other previous articles, are punished with imprisonment for three years.”*⁴³

2.2 Unnatural offences

Lesbians and bisexual women may also be at direct risk in other jurisdictions that maintain another vague 19th century British formulation of criminalisation, which often creates confusion for 21st century law enforcement officials and the general public. Various countries that criminalise same-sex sexual conduct do so, in whole or in part,⁴⁴ through provisions proscribing ‘unnatural offences’, generally described as ‘carnal knowledge against the order of nature’, ‘carnal intercourse against the order of nature’ or ‘acts against nature’. At least 21 jurisdictions⁴⁵ maintain such provisions. In most cases, it is clear or likely that this type of provision only captures penile–anal intercourse, putting gay and bisexual men and transgender women at particular risk of arrest.

The interpretation of these vaguely worded criminal provisions rests, in most cases, on a historical understanding of ‘carnal knowledge’,⁴⁶ meaning sexual intercourse, and

⁴² See Appendix A.

⁴³ The French version of the same provision uses ‘la sodomie’, which implies that lesbians and bisexual women are not subject to the French version of the law. Afsaneh Rigot, *Digital Crime Scenes: The Role of Digital Evidence in the Persecution of LGBTQ People in Egypt, Lebanon, and Tunisia* (2022), available <https://www.article19.org/wp-content/uploads/2022/03/Digital-Crime-Scenes-Report-3.pdf>.

⁴⁴ Several states with ‘carnal knowledge’ offences also have other anti-LGBT offences which apply to lesbians and bisexual women: e.g. Malawi, Tanzania, and Uganda (gross indecency), Togo (homosexuality), Gambia (express reference to female same-sex acts), and Nigeria (Sharia Law in Northern states, ‘lesbianism’ in Kano State Penal Code).

⁴⁵ Bangladesh [Penal Code, 1860 – s 377]; Brunei Darussalam [Penal Code, 2001 – s 377]; Gambia [Criminal Code, 1965 (as amended in 2005) – s 144]; Ghana [Criminal Code, 1960 (amended in 2003) – s 104]; Grenada [Criminal Code, 1958 – s 431]; Kenya [Penal Code, 2003 – s 162]; Lebanon [Penal Code, 1943 – s 534]; Malawi [Penal Code – s 153]; Malaysia [Penal Code 1998, s 377A]; Myanmar [Penal Code, 1860 – s 377]; Nigeria [Criminal Code Act, 1990 – s 214]; Pakistan [Penal Code, 1860 – s 377]; Papua New Guinea [Penal Code 1974 s.210]; Somalia [Penal Code, Legislative Decree No. 5/1962.2 – s 409]; South Sudan [Penal Code, 2008 – s 248]; Sri Lanka [Penal Code 1883 (as amended by the Penal Code (Amendment) Act No. 22 of 1995) s.365]; Syria [Penal Code, 1949 – s 520]; Tanzania [Penal Code, 1945 (as amended by the Sexual Offences Special Provisions Act, 1998) – s 154(1)]; Togo [Penal Code, 1980 – s 88]; Uganda [The Penal Code Act of 1960 (Chapter 120) (as amended) – s 145]; Zambia [Penal Code 1933, s.155].

⁴⁶ As with gross indecency, the English origins of this concept would not have captured female (or, in this case, even male) same-sex sexual acts. In the 1861 Act, male same-sex sexual conduct is criminalised under sections 61 and 62 on ‘buggery’ and is never referred to as ‘carnal knowledge’.



‘against the order of nature’, as well as on any statutory explanatory notes or judicial interpretations. In some cases, express definitions within the provisions clarify what is captured. In certain cases, this limits the provision to male acts, while in others, broad definitions are included such that lesbians and bisexual women are or may be covered.

Section 377 of the Indian Penal Code 1860—introduced under British colonial rule as part of the codification of English common law in India⁴⁷ and struck down as unconstitutional in 2018⁴⁸—was the first statute to criminalise the act of ‘carnal knowledge against the order of nature with any man, woman, or animal’ with a statutory explanation that penetration was sufficient to constitute the *actus reus* of the offence.⁴⁹ One Indian case, *Khanu v Emperor* (1925),⁵⁰ found, *obiter*, that female same-sex conduct would not be captured by section 377:

there is no intercourse unless the visiting member is enveloped at least partially by the visited organism ... Looking at the question this way it would seem that sin [sic] of Gomorrah is no less carnal intercourse than the sin of Sodom. The sin of Lesbos or Reboim is clearly not such intercourse, and I doubt if mutual cheirourgia [masturbation] would be such.

⁴⁷ Replacing the previous statutory provision they had introduced in 1828 criminalising ‘the abominable crime of buggery’.

⁴⁸ *Navtej Singh Johar & Ors v Union of India* (6 September 2018) (Supreme Court of India), available <https://www.humandignitytrust.org/wp-content/uploads/resources/2018.09.06-Johar-v-India-judgment-Indian-SC.pdf>.

⁴⁹ Although the reported cases in India virtually always relate to non-consensual sexual conduct or acts with minors who are unable to consent, section 377 and provisions like it make no distinction between consensual adult conduct and sexual assault. Consent, age of the parties or location of the acts are irrelevant to the offence, thereby irrationally conflating consensual intimacy with violence and abuse.

⁵⁰ AIR 1925 Sind 286.

2. HISTORY AND STATUS OF CRIMINALISATION OF LESBIANS AND BISEXUAL WOMEN

Thus, the focus in the first jurisdiction where the ‘carnal knowledge against nature’ offence was enacted, to the extent that it covered same-sex sexual acts, was exclusively on male conduct.⁵¹

However, despite the fact that section 377 did not apply to female same-sex sexual conduct, there were reports of the law being used against women while it was in force. For example, in 1999, a woman was reportedly arrested and jailed under section 377 after it was revealed she had been in a lesbian relationship for 17 years outside of her marriage, and she and her female partner were subjected to a medical examination in an attempt to determine whether (digital) penetrative sex had occurred between them. It is not clear how long she spent in prison before being released on bail.⁵² This illustrates the very real risk that women can face from incorrect application of an outdated and vaguely worded law.

Further, according to one Indian non-governmental organisation, commenting while section 377 was still on the statute books:

*[f]amilies ... use Section 377 of the Indian Penal Code ... to threaten daughters if they do not give up their same-sex relationships. While Section 377 is rarely used in court against women, the very presence of such a law is used as a mechanism by families to blackmail and threaten their lesbian kin.*⁵³

Thus, the stigmatising and coercive use of the criminal law, even where it does not or should not cover female same-sex intimacy and is rarely used even against consensual male same-sex sexual conduct, can have a pernicious impact on all members of the LGBT community, albeit in different ways or to different degrees.

In other jurisdictions, judicial interpretation has confirmed that carnal knowledge against nature is limited to anal sex. For example, carnal knowledge against the order of nature in Botswana,⁵⁴ before the provision was declared unconstitutional in 2019,⁵⁵ required there to be penile–anal penetration.⁵⁶ This applied equally to heterosexual and homosexual penile–anal intercourse,⁵⁷ with female same-sex sexual

⁵¹ Some jurisdictions, including India (prior to being struck down), Bangladesh, Brunei Darussalam, Ghana, Nigeria and South Sudan, have explanatory notes in the legislation itself to the effect that penetration is necessary for carnal knowledge. The historical focus when the British spread these laws was clearly exclusively on penile penetration.

⁵² Bina Fernandez and N.B. Gomathy, *The Nature of Violence Faced By Lesbian Women in India* (Research Centre on Violence Against Women, Mumbai, 2003), pp. 50–59, available http://download.tiss.edu/fap/RCI-VAW/RCI-VAW_Publications/The_Nature_of_violence_faced_by_Lesbian_women_in_India.pdf.

⁵³ National Alliance of Women, *India Second NGO Shadow Report on CEDAW* (November 2006), p. 208, available <http://pldindia.org/wp-content/uploads/2013/06/CEDAW-Second-Shadow-report-2006.pdf>.

⁵⁴ Botswana Penal Code (1998), s 164.

⁵⁵ The Human Dignity Trust, *High Court strikes down discriminatory laws in huge win for human rights of LGBT people in Botswana and beyond* (11 June 2019), available <https://www.humandignitytrust.org/news/high-court-decision-huge-win-for-human-rights-of-lgbt-people-in-botswana-and-beyond/>. Full judgment available <https://www.humandignitytrust.org/resources/motshidiemang-v-attorney-general-botswana-2019/>. Upheld on appeal, see <https://www.humandignitytrust.org/resources/attorney-general-of-botswana-v-motshidiemang-ors-2021/>. See also footnote no. 3.

⁵⁶ *Gaolete v State* (B.L.R 325, 1991) (holding that penile penetration between another man’s thighs without consent did not constitute ‘carnal knowledge against nature’ but could amount to attempted carnal knowledge where the intent, albeit unsuccessful, was to have anal intercourse).

⁵⁷ Daniel David Ntanda Nsereko, *Criminal Law in Botswana*, (Wolters Kluwer, 2011), pp. 237–38.

acts only being captured under the separate gross indecency provision.⁵⁸ Extrajudicial commentary in Uganda likewise notes that “*women who perform sexual acts on each other are not caught by the current law because they do not possess a sexual organ with which to penetrate each other.*”⁵⁹

In contrast, The Gambia has a broad statutory definition that includes all same-sex sexual conduct. Article 144(2) of the Criminal Code provides:

*In this section “carnal knowledge of any person against the order of nature” includes—carnal knowledge of the person through the anus or mouth of the person; inserting any object or thing into the vulva or anus of the person for the purpose of stimulating sex; or committing any other homosexual act with the person.*⁶⁰

In Togo, the law applies to any parties of the same sex by proscribing ‘*imprudent acts or crimes against nature with an individual of the same sex*’.⁶¹

The High Court of Nakuru in Kenya observed in 2012 that:

*[t]he offence of having carnal knowledge of any person means to have sexual relationship with another person. The phrase “against the order of nature” means “sexual intercourse or copulation between man or woman in the same sex, or either of them with a beast.”*⁶²

While the application to lesbians and bisexual women was not at issue in that case, this would seem to go against the historical intention discussed above and illustrates again the risk that this vague criminalising language can pose for lesbians and bisexual women who may live in uncertainty about the reach or application of these archaic provisions. In 2019, the High Court of Kenya ruled that criminalising provisions⁶³ of the Penal Code 1930 were not unconstitutional.⁶⁴ In the ruling, the court determined whether sections 162(a)(c) and 165 were unconstitutional on grounds of vagueness and uncertainty.⁶⁵ The court held that the phrases ‘against the order of nature’ and ‘gross indecency’ had been clearly defined in legal dictionaries and in judicial pronouncements, referencing *Gaolete v State*, which stated, “‘*Carnal knowledge*’ is not defined in the Penal Code, but its accepted meaning is ‘sexual intercourse’... it is the penetration through the anus that makes the intercourse ‘against the order of nature.’”⁶⁶

⁵⁸ Botswana Penal Code (1998), s 167. See footnote no. 3.

⁵⁹ Lillian Tibatemwa-Ekirikubinza, ‘Criminal law in Uganda: Sexual Assaults and Offences Against Morality’, *Fountain Series in Law and Business Studies* (2005), p. 47.

⁶⁰ Penal Code of the Gambia (1965) (as amended in 2005).

⁶¹ Togo Penal Code (1980) s 88.

⁶² *Ali Abdi Shabura v Republic* (Criminal Appeal 90 of 2007) (involving anal rape of young boys rather than consensual conduct).

⁶³ *Ibid.*, paras 162 and 165.

⁶⁴ *Eric Gitari and 7 Others v Attorney General, DKM and 9 others (Interested Parties); Katiba Institue and another (Amicus Curiae)* (24 May 2019) (High Court of Kenya), available https://www.humandignitytrust.org/wp-content/uploads/resources/Petition_150_234_of_2016_Consolidated.pdf. This judgment is under appeal.

⁶⁵ *Ibid.*, paras 260–279.

⁶⁶ *Gaolete v State* (no. 56).

2. HISTORY AND STATUS OF CRIMINALISATION OF LESBIANS AND BISEXUAL WOMEN

The confusion and uncertainty this old colonial language creates was captured in a judgment of a Lebanese court, which noted:

... it does not appear that the Lebanese legislator clearly define [sic] what is meant by the act referred to in Article 534 [sexual intercourse against nature]. Leaving, therefore, the issue to the discretion of the judiciary on a case-by-case basis, and ... various Lebanese courts have differed in their interpretation and application of the law based on the acts presented before them, as some courts have criminalized sexual relations between two men, others have criminalized sexual relations between two women, and some have even criminalized sexual relations between a man and a woman when it was established, before the court, that the relations were not undertaken in a manner that would lead to reproduction ...⁶⁷

In a 2017 judgment, the Penal Appeal Court in Mount Lebanon⁶⁸ determined that the Penal Code should be considered in the context of the purpose and intent of the law, and that *“the penal law is not intended to penalize homosexuality but rather the offense to public morals.”* The Court defined an ‘offense to public morals’, in the context of ‘sexual intercourse against the order of nature’, as follows:

What constitutes an offense to public morals in the light of social development is the sexual intercourse that deviates from the traditional concept of the natural sexual relationship between a man and a woman, when it occurs in sight of the others or within their hearing or in a public place or when it involves a minor who must be protected.

This decision was upheld by the Court of Criminal Appeal of Mount Lebanon in 2018 in a ruling that, while not legally binding on other courts in Lebanon, can be expected to have persuasive influence on other courts in the country.

As a result of these widely varying interpretations, lesbians and bisexual women thus remain in a sort of legal limbo in some jurisdictions and, at best, cannot be assured that their consensual sexual relations will not put them at risk of arrest. Further, as the Constitutional Court of South Africa aptly articulated in the context of a criminal law which only applied to male same-sex sexual conduct:

The effect is that all homosexual desire is tainted, and the whole gay and lesbian community is marked with deviance and perversity. When everything associated with homosexuality is treated as bent, queer, repugnant or comical, the equality interest is directly engaged ... the result is that a significant group of the population is, because of its sexual nonconformity, persecuted, marginalised and turned in on itself.⁶⁹

⁶⁷ Judgment on Article 534 of the Lebanese Penal Code (28 January 2014) (translated from Arabic).

⁶⁸ Decision No. 333/2018.

⁶⁹ *National Coalition for Gay and Lesbian Equality v. Minister of Justice* (6 BHRC 127 (CC, 1998); 1998 (12) BCLR 1517 (CC)), paras 108-109.

This was echoed in a report from Kenya, where it was observed that: *“the wider public ... draws on the criminalisation of same-sex practices among men to condemn and even legitimize violence against [lesbian, bisexual and queer] women.”⁷⁰*

Vague 19th century notions of ‘unnatural’ sexual relations are in significant need of reform to make the criminal law fit for the 21st century, and the imperative to repeal or strike down these laws is directly relevant to all members of the LGBT community.

2.3 Express male-only criminalisation

Finally, there are 15 jurisdictions where the explicit wording of the law directly targets only male same-sex sexual conduct,⁷¹ either by using language referencing males only or by criminalising only specified acts such as ‘buggery’ or ‘sodomy’ which, by definition, require penile penetration. Some of these jurisdictions do not actively enforce their laws in respect of consensual conduct between men, while others do. However, the threat or fear of arrest and prosecution is a constant reality for gay and bisexual men and transgender women in these jurisdictions. In one further jurisdiction, Egypt, although there is no express criminalisation of same-sex sexual conduct, debauchery and prostitution laws are actively used to criminalise male same-sex intimacy.⁷²

Laws criminalising consensual same-sex intimacy, however they are formulated, foster and perpetuate disenfranchisement of all LGBT people.

As already discussed, in many cases, harassment and other abuse of LGBT people in general is heightened and effectively sanctioned by virtue of the signalling impact of these criminal laws. Furthermore, these laws have a broader chilling and stigmatising effect on the entire LGBT population by reason of their non-conformity with heterosexual norms. Laws criminalising consensual same-sex intimacy, however they are formulated, foster and perpetuate disenfranchisement, and lesbians and bisexual women experience both overlapping and unique forms of human rights violations compared with their male counterparts as a direct or indirect result.

⁷⁰ Gay and Lesbian Coalition of Kenya (GALCK), *Research on the Lived Experiences of Lesbian, Bisexual and Queer Women in Kenya* (2016), p. 38, available https://issuu.com/galckkenya/docs/research_on_the_lived_experiences_o.

⁷¹ Gaza (Occupied Palestinian Territories), Guyana, Jamaica, Kiribati, Kuwait, Namibia (as of May 2024; court decision pending), Papua New Guinea, Samoa, Sierra Leone, Swaziland, Tonga, Turkmenistan, Tuvalu, Uzbekistan, Zimbabwe.

⁷² Lucas Ramon Mendos et al., *State-Sponsored Homophobia* (no. 19), p. 52.



3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

Lesbians and bisexual women face different types of human rights violations, to different degrees, based on characteristics including, but not limited to, nationality, race, ethnicity, religion, economic status, geographic location (rural or urban), and physical presentation (wherein women who do not conform to conventional gender norms stand out and are more likely to be targeted). As will be discussed later in this report, a major gap in our understanding is created by the lack of systematic attention, research and disaggregated data collection on the specific experiences of lesbians and bisexual women.

Nonetheless, various common patterns of abuse can be gleaned from the available studies and anecdotes. Some are directly linked with criminalisation and others occur in varying degrees regardless of the maintenance of anti-LGBT criminal laws. In many countries that have never criminalised same-sex sexual conduct, or which have long ago eliminated such laws, lesbians and bisexual women are far from safe from violence, discrimination and coercive control, and remain much less free to pursue and nurture intimate relationships of their choosing.

In all contexts, what is clear is that lesbians and bisexual women experience persecution and rights violations in ways that are both similar to and distinct from gay and bisexual men or trans people, and the multi-faceted means of effectively addressing these issues, therefore, have both commonalities and differences. As one report put it:

The problem extends far beyond the criminal justice system, especially for women who identify as lesbian or bisexual. Interviews ... suggested that there are fewer women than men arrested and jailed, yet women who do not dress in typically feminine attire, or who engage in conduct deemed unfeminine, are often singled out for persecution. Women suspected of having sex with women can be specifically targeted for rape and sexual attacks. They can lose custody of their children with little chance of challenging this because of their fear of arrest and jail. Like men, they can be ostracized by their families or suffer physical abuse at the hands of family members, which is especially difficult in a society where women are expected to remain dependent and in the family fold.⁷³

⁷³ Human Rights Watch, *Criminalising Identities: Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (2010), p. 5, available <https://www.hrw.org/sites/default/files/reports/cameroon1010web.pdf>.

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

3.1 The link between sex/gender and sexuality

At the outset, the links between sex-based, gender-based and sexuality-based discrimination and their impact on the nature and scope of human rights abuses experienced by lesbians and bisexual women must be recognised. As the above observation indicates, for lesbian and bisexual women and girls in particular, their subordinated position in society as females, particularly in traditionally male-dominated societies, largely dictates the types of marginalisation and human rights violations to which they are subjected. The significance of entrenched societal subordination of women and girls on the nature, extent and degree to which lesbians and bisexual women and girls experience persecution and an inability to enjoy physical and sexual autonomy cannot be overstated.

Such subordination still exists worldwide. As leading academics on women's human rights have long noted:

Although its forms differ significantly across societies and cultures, the phenomenon of women's subordination is found worldwide. Throughout the world women are economically, socially, politically, legally and culturally disadvantaged compared with similarly situated men. These disadvantages operate on a number of levels, international, regional, national, local, communal and familial... Womanhood means a particular and universal vulnerability to diverse forms of physical and psychological violence... Women are controlled by all tiers of society, male family and extended family members as well as religious and political leaders within local and national communities.⁷⁴

This, combined with generalised oppression of LGBT people, creates a particularly lethal combination. As one court put it: *"discrimination against women and against homosexuals, and especially a mix of the two, may depending on the facts be particularly repugnant to [basic human rights] values."⁷⁵*

This 'intersection' between discrimination on grounds of sex/gender and discrimination on grounds of sexual orientation has been recognised at the international level. CEDAW Committee, which oversees implementation of the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) has noted that:

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2 [of the Convention]. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as ... sexual orientation and gender identity.

⁷⁴ Charlesworth and Chinkin, *The Boundaries of International Law* (no. 11), p. 4.

⁷⁵ *Amare v. Secretary of State for the Home Department* [2005] EWCA Civ 1600, 20 December 2005 (England and Wales Court of Appeal), para 26, available <http://www.unhcr.org/refworld/docid/47fd5b0.html>. See also, RRT Case No.071862642 [2008] RRTA 40 (19 February 2008) (RRT of Australia), available <http://www.unhcr.org/refworld/docid/4811a7192.html>.

Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men.⁷⁶

Likewise, a UN High Commissioner for Refugees Guidance Note recognises that:

While the violence and human rights abuses faced by LGBT persons have many common elements, it is also necessary to distinguish among them. Lesbian women often experience harm as a result of the inter-relation of their sexual orientation and gender, since women's position in society is generally less powerful than that of men.⁷⁷

While lesbian and bisexual women in many countries are at risk of state persecution, including arrest, prosecution and police brutality, the perpetrators of abuses against them are even more often from within the family or community. The lack of visibility of this mistreatment or any meaningful state protection against it, which, in itself, is a violation of the State's legal duty to protect against abuses by private citizens, means those perpetrators can often exert control over and commit violence against lesbians and bisexual (and all other) women with impunity. This is both enabled and compounded by the institutionalised economic disadvantage of women in most countries, which limits women's ability to leave hostile domestic or community environments or live independently.

Lesbians and bisexual women experience unique forms of harm as a result of the intersection between their sex/gender and sexual orientation.

Women and girls are perpetually enveloped in social, political, legal and institutional constructs that were not created by or for them and that keep autonomy, assistance or agency out of their reach. For example, in many countries, national and customary laws create a property law regime that gives preference to men and makes women dependent on their male relatives.⁷⁸ This is particularly true in the many contexts where women lose property rights as a result of a change in marital status, such as divorce or the death of their spouse.⁷⁹ Economic structures that privilege men also impoverish women because they presume that women will always be tied to a man—first to male family members and then to their husbands.

⁷⁶ UN CEDAW Committee, *General Recommendation 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW/C/GC/28, 16 December 2010), para 18. Several other CEDAW General Recommendations have similarly recognised the need to understand intersecting identities as a fundamental part of the legal obligation to eliminate discrimination.

⁷⁷ UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity* (Geneva, 21 November 2008), p. 9.

⁷⁸ S.F. Joireman, 'The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property Rights and Customary Law', *World Development* (2008).

⁷⁹ E. Braunstein and N. Folbre, 'To Honor and Obey: Efficiency, Inequality, and Patriarchal Property Rights', *Feminist Economics* (vol. 7, no. 1, 2001).

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

In addition to and linked with the generalised gender-based discrimination they face as women, lesbians and bisexual women are affected by the societal norms and expectations of compulsory heterosexuality. Countries that criminalise LGBT people tend to retain these (in most cases imported) laws due to a conservative populace. Majoritarian views opposing same-sex intimacy may be based on a belief that such intimacy subverts the natural order, a belief also supported by certain interpretations of major religious texts.

If LGBT people are not in heterosexual romantic relationships, they may also feel more able to reject traditional gender norms, roles and stereotypes. LGBT identities can thus be seen to constitute an assault on both the gendered structuring of society and the institution of the traditional family, with generalised patriarchal and conservative religious mores and structures acting as the gatekeepers of both. Importantly, this means that the societies that oppose same-sex sexual conduct are also often those in which strong views are held about the role of men and women in society. As Amnesty International has noted, “[l]esbians can be seen as a threat to men’s position in society; choosing to have sex with other women can be seen as a rejection of male ownership of their bodies, as well as disconnecting sex from reproduction.”⁸⁰

It is not surprising, then, that countries that have attained greater gender equality are also less homophobic. For instance, the Gender Gap Index (GGI),⁸¹ produced by the World Economic Forum, is a country ranking system that benchmarks equality between women and men on the basis of economic, political, educational and health criteria, with the highest possible score being 1 (equality) and the lowest being 0 (inequality). As illustrated in Figure B, below, a comparison of GGI scores for countries that criminalise same-sex intimacy versus those that do not (in any form) illustrates that there is a significant correlation between gender inequality and the criminalisation of same-sex intimacy. Countries that do not criminalise same-sex sexual conduct (male and/or female) average 0.729 on the 2023 GGI scale. Countries that do criminalise same-sex sexual conduct (male and/or female) average 0.668 on the scale.⁸²

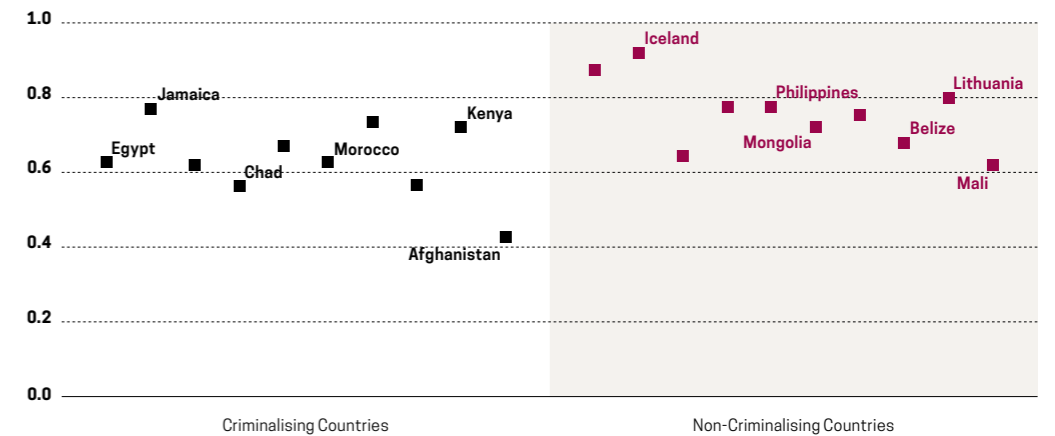
Countries with greater gender equality are less likely to criminalise same-sex intimacy.

⁸⁰ Amnesty International, *Making love a crime: Criminalization of Same-Sex Conduct in Sub-Saharan Africa* (AFR 01/001/2013, 25 June 2013), p. 47, available <https://www.amnesty.org/en/documents/afr01/001/2013/en/>.

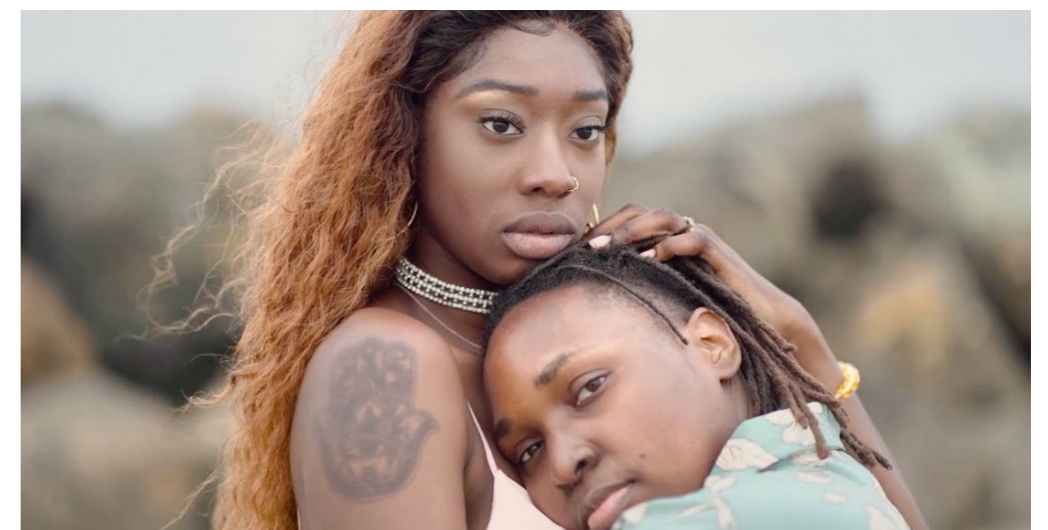
⁸¹ World Economic Forum, *Global Gender Gap Report 2023: Insight Report* (June 2023) available https://www3.weforum.org/docs/WEF_GGGR_2023.pdf.

⁸² *Ibid.*

Figure B: Sample of 2023 Gender Gap Index scores for criminalising versus non-criminalising countries⁸³



Male-dominated societies limit the rights of all women, regardless of their sexual orientation. This, in and of itself, is a violation of the fundamental right to equality and non-discrimination on grounds of sex or gender in all spheres of life. However, lesbians and bisexual women experience a type of oppression that is both intrinsically linked to, and distinct from, that of heterosexual women. The economic impoverishment of lesbians and bisexual women in systems that presume women will always be attached to and financially dependent on men renders them financially unable to remain ‘single’ or pursue romantic relationships with other women. Therefore, it is often an economic imperative that they enter an opposite-sex relationship and depend on a man for their survival, as well as for their social acceptance. The disadvantage they suffer on account of being women thus informs why lesbians and bisexual women may be less visible in such societies, and why they make ostensibly ‘free’ decisions to enter into opposite-sex relationships.



⁸³ See full list of GGI scores in Appendix B.

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

3.2 Human rights violations

Lesbians and bisexual women face a wide range of human rights violations. These include direct violations by state actors, such as through the maintenance of anti-LGBT criminal laws, arrests and detainment, blackmail by law enforcement, and physical and sexual violence by public authorities, together with indirect violations through the failure of the state to prevent and punish conduct by non-state actors, such as various forms of silencing, control and violence within the family and community, all of which are enabled by socio-economic and legal structures that favour men. Many lesbians and bisexual women will also be subjected, in effect, to a lifetime of sexual abuse through the societal imperative of entering marital unions with heterosexual men who, enabled by deeply entrenched legal and social structures, will often control their bodies and sexuality.

Figure C: The effects of criminalisation on lesbians and bisexual women



3.2.1 Mere fact of criminalisation

The mere fact of LGBT people being criminalised has been widely recognised as a human rights violation in itself. Where a law proscribing consensual female same-sex sexual relations exists, even if it is not enforced by the state in practice, lesbians and bisexual women are criminalised purely on the basis of an intrinsic aspect of their human identity. These laws contravene the rights to privacy, equality, non-discrimination, human dignity and freedom of expression, and may engage other rights and freedoms such as the right to health, freedom from inhuman and degrading treatment, and freedom of association. These are discussed in detail in other Human Dignity Trust reports, and they apply equally to all members of the LGBT community who are caught under the criminal law.

Even where the criminal law does not capture female same-sex sexual conduct, anti-LGBT laws of any kind encourage and enable state and non-state actors to discriminate against, harass, abuse, blackmail and demonise all LGBT people. The South African Constitutional Court's observation noted above is again apt: *"The effect is that all homosexual desire is tainted, and the whole gay and lesbian community is marked with deviance and perversity."*⁸⁴

This is also well illustrated in Jamaica, for example, where, despite only male same-sex sexual conduct being criminalised under the 'buggery' and 'male gross indecency' laws, lesbians and bisexual women regularly face stigma, discrimination and physical and sexual violence at the hands of a society whose views are strongly influenced by state-sanctioned homophobia, and they do not have any realistic confidence in the ability or willingness of the state to protect them. Many Jamaican lesbians and bisexual women have sought and been granted asylum abroad based on this persecution and lack of state protection.⁸⁵

The pernicious and widespread impact of anti-LGBT criminal laws, however framed, has been recognised by the Inter-American Commission on Human Rights, which reported that the buggery laws in Jamaica *"contribute to an environment that, at best, does not condemn, and at worst condones discrimination, stigmatization, and violence against the LGBT community."*⁸⁶ This situation affects members of the LGBT community in different ways.

This was confirmed in the first-ever decision by the Commission in response to a direct challenge to laws criminalising LGBT people, in *Henry and Edwards v Jamaica*.⁸⁷ In that case, supported by the Human Dignity Trust, a lesbian was one of the petitioners on the basis that, even though female same-sex sexual activity is not criminalised in Jamaica, the laws criminalising male same-sex intimacy also create

⁸⁴ *National Coalition for Gay and Lesbian Equality v. Minister of Justice* (no. 69).

⁸⁵ Information obtained by Human Dignity Trust from 'Rainbow Railroad', which assists LGBT people to escape and seek asylum from countries, including Jamaica, that persecute based on sexual orientation and gender identity.

⁸⁶ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Jamaica* (OEA/Ser.LJ/V/II.144 Doc. 12, 10 August 2012), para. 271.

⁸⁷ *Henry and Edwards v Jamaica* (31 December 2020) (Inter-American Commission on Human Rights, Report No. 400/20), available <https://www.humandignitytrust.org/wp-content/uploads/resources/2020.02-GH-SE-v-JAM-IACHR-final-decision.pdf>.

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

and perpetuate a hostile environment for lesbians and bisexual women. The female petitioner had been subjected to horrific gun violence by community members who knew or suspected she was a lesbian, and she had little protection from the state. She was ultimately forced to seek refugee status abroad.

The Inter-American Commission determined that it was well established that “*the existence of laws that criminalise consensual sexual relationships between adults of the same sex in private generates a culture of hostility, discrimination and serious violations against LGBTI persons.*”⁸⁸ The Commission reiterated its earlier position in stating:

*that said norms constitute a restriction on private life, which has a disparate impact on LGBTI person in Jamaica... though the majority of these laws do not specifically address sexual acts between women, rampant homophobia puts women who do have sex with women, or women who do not conform to a more feminine gender identity, at risk.*⁸⁹

Regardless of the scope of anti-LGBT criminal laws, the mere fact of criminalising consensual same-sex sexual conduct in private has a chilling and stigmatising effect on all LGBT people. This is true even where the law may not technically target them or, indeed, where it is not enforced in practice against anyone. Anti-LGBT laws of any kind foster and perpetuate generalised homophobia in society. They create an environment in which lesbians and bisexual women and other sexual and gender minorities are subjected to generalised forms of discrimination, marginalisation and violence, and where they cannot form and nurture loving, meaningful and visible relationships of their choosing.

3.2.2 Arrest and prosecution

There are many reports of lesbians and bisexual women, or women suspected of being lesbian, experiencing actual or threatened arrest and prosecution, and fearing such arrest and prosecution if they engage in consensual same-sex relationships of their choosing. In most cases, it is mere suspicion of being lesbian or bisexual, rather than actual sexual conduct, that leads to arrest, harassment and violence.

In August 2022, it was reported that a case had been filed against a 22-year-old lesbian woman in Sri Lanka when she disclosed her sexual orientation to her parents.⁹⁰ Another case in Sri Lanka concerned a lesbian couple who were arrested and held by police after the father of one of the women objected to the relationship.⁹¹ In both instances, the authorities ordered the women to present to a psychiatrist for evaluation. Also in August 2022, it was reported that two women were sentenced

⁸⁸ Ibid, para 37.

⁸⁹ Ibid, para 79; referencing IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas* (Oas/Ser.L/V/II.rev.1, Doc.36, 12 November 2015), para 61, available <http://www.oas.org/en/iachr/reports/pdfs/violenceagainstlgbtpersons.pdf>.

⁹⁰ Newswire, 'Wattala court dismisses case filed against a lesbian' (2 August 2022), available <https://www.newswire.lk/2022/08/02/wattala-court-dismisses-case-filed-against-a-lesbian/>.

⁹¹ Newswire, 'Indo-Lanka lesbian love: Couple held in SL' (27 June 2022), available <https://www.newswire.lk/2022/06/27/indo-lanka-lesbian-love-couple-held-in-sl/>.

to death in Iran on charges of ‘corruption on earth’. Iranian officials claimed the women were involved in human trafficking, but LGBT rights activists believe them to be innocent.⁹²

In 2020, amid a ‘crackdown’ on the LGBT community in Senegal, police reportedly arrested four teenage girls on charges related to ‘lesbianism’.⁹³ Two years prior, there were reports of two men and two women being arrested for ‘acts against the order of nature’.⁹⁴

In The Gambia, three women were arrested on 13 November 2018. They were detained, beaten and threatened with rape by security forces. They were also told that if they did not ‘confess’ to the charges of homosexuality, a device would be forced into their anus or vagina to ‘test’ their sexual orientation.⁹⁵ In 2018, a Sharia court in Malaysia ordered a lesbian couple to be caned after they were allegedly caught having sex in a car.⁹⁶

In December 2017, police arrested four people in Tanzania in connection with a video of two women kissing at a bar. Prosecutors brought indecency charges against the two women, and also charged the proprietor of the bar and the person who filmed the kiss and posted it online.⁹⁷ In Somalia, a young lesbian activist was sentenced to death for being a lesbian. She was able to flee Somalia before her scheduled execution.⁹⁸

In 2014, 26 people were reportedly arrested in a raid in Nigeria on suspicion of being lesbians,⁹⁹ a lesbian couple were arrested in Malaysia after a police raid on their room,¹⁰⁰ a lesbian couple were arrested at a guest house in Sri Lanka,¹⁰¹ and two lesbians in Cameroon were convicted and sentenced to four months in prison plus fines and costs.¹⁰² Also in Cameroon, in 2006, police arrested four young women in 2006 after the grandmother of one of the girls tipped them off that they were lesbians and each was sentenced to three years’ probation,¹⁰³ 10 lesbians were arrested

⁹² Openly, 'Iran sentences two women to death for "corruption on earth"- IRNA' (6 September 2022), available <https://www.openlynews.com/i/?id=b0c3763a-e9ce-4dc6-aeb9-e50305601c00>.

⁹³ Moise Manoel-Florisse, 'Senegal: Anti-gay zealots target 25 arrested men, 4 teenage girls', *76crimes* (27 October 2020), available <https://76crimes.com/2020/10/27/senegal-anti-gay-zealots-target-25-arrested-men-4-teenage-girls/>.

⁹⁴ Colin Stewart, '4 anti-gay arrests in Senegal as 2019 election approaches', *76crimes* (24 September 2018), available <https://76crimes.com/2018/09/24/anti-gay-arrests-in-senegal-as-2019-election-approaches/>.

⁹⁵ Amnesty International UK, 'Gambia's latest anti-gay Bill' (12 January 2018), available <https://www.amnesty.org.uk/gambia-anti-gay-bill>.

⁹⁶ Hannah Ellis-Petersen, 'Malaysia accused of "state-sponsored homophobia" after LGBT crackdown', *The Guardian* (22 August 2018), available <https://www.theguardian.com/world/2018/aug/22/malaysia-accused-of-state-sponsored-homophobia-after-lgbt-crackdown>.

⁹⁷ Human Rights Watch, *If We Don't Get Services, We Will Die* (no. 7), p. 65.

⁹⁸ Catrina Stewart, 'Young Somali activist sentenced to death for being a lesbian', *The Independent* (31 January 2016), available <https://www.independent.co.uk/news/world/africa/young-somali-activist-sentenced-to-death-for-being-a-lesbian-a6844216.html>.

⁹⁹ Immigration and Refugee Board of Canada, *Nigeria: Treatment of sexual minorities, including legislation, state protection, and support services; the safety of sexual minorities living in Lagos and Abuja (February 2012-October 2015)* (NGA105321.E, 13 November 2015), available <https://web.archive.archive.unhcr.org/20230530090328/https://www.refworld.org/docid/565bfcc84.html>.

¹⁰⁰ Andrew Loh, 'M'sian lesbian couple arrested after sex toys found in hotel raid', *The Online Citizen* (2 September 2014), available <http://www.theonlinecitizen.com/2014/09/m'sian-lesbian-couple-arrested-after-sex-toys-found-in-hotel-raid/>.

¹⁰¹ Equal Ground, *Human Rights Violations against LGBT People in Sri Lanka: A Shadow Report* (October 2014), p. 6, available https://www.ecoi.net/en/file/local/1205025/1930_1413374965_int-ccpr-css-lka-18258-e.pdf.

¹⁰² Colin Stewart, 'Cameroon sentence: 4 months for lesbian activity', *76crimes* (5 May 2014), available <http://76crimes.com/2014/05/05/cameroon-sentence-4-months-for-lesbian-activity>.

¹⁰³ Human Rights Watch, *Criminalising Identities* (no. 73).

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

and detained in 2012,¹⁰⁴ a lesbian couple were arrested and convicted and another convicted lesbian was serving a five-year sentence.¹⁰⁵

In 2013, Senegalese police arrested five women suspected of being lesbians who were celebrating a birthday in a restaurant, including the assistant director of a lesbian human rights NGO.¹⁰⁶ The women were later released for lack of evidence.¹⁰⁷ A senior figure at the NGO said that, while in past years it was primarily gay men who were targeted: *“suspected lesbians have been under mounting pressure in the wake of several scandals that have garnered significant media attention ... people are now on the hunt for lesbians.”*¹⁰⁸ She added that her NGO had been made aware of at least 30 women who had been interrogated by police on suspicion of violating Senegal’s anti-gay law, though it was unclear how many had been jailed.¹⁰⁹

In Sri Lanka in 2012, a woman whose appearance did not conform to gender norms was arrested on a public street, charged with vagrancy, and detained for approximately five hours before being released.¹¹⁰ In The Gambia, merely holding what was considered an “indecent dance ceremony” for tourists led to a group of allegedly gay men and lesbians facing felony charges for unnatural offences.¹¹¹ As noted earlier, Lebanese courts have also applied criminal prohibitions against lesbians.¹¹²

In some jurisdictions, the impact of enforcement of these laws can be extreme. In Iran, for instance, although accurate data are difficult to obtain, some human rights activists estimate that, since the onset of the Islamic Revolution, there have been more than 4,000 cases of execution of LGBT people, both male and female.¹¹³ Lesbians and bisexual women are also subjected to flogging as a result of being convicted of *Musahaqah*,¹¹⁴ or ‘lesser moral offences’, stemming from their real or perceived same-sex sexual orientation.

Even in states where it is unlikely or uncertain that the criminal law captures female same-sex sexual conduct, lesbians and bisexual women have faced arrest and prosecution. As discussed earlier, in India (prior to decriminalisation) a lesbian was arrested and jailed under the ‘carnal knowledge’ provision, according to case

¹⁰⁴ Simon Tomlinson, ‘Ten women arrested in Cameroon for being lesbian’, Mail Online (24 February 2012), available <http://www.dailymail.co.uk/news/article-2105855/Ten-women-arrested-Cameroon-lesbian.html>.

¹⁰⁵ Information obtained from their legal counsel in Cameroon, Alice Nkom.

¹⁰⁶ Colin Stewart, ‘Senegal police arrest 5 alleged lesbians’, *76crimes* (12 November 2013), available <http://76crimes.com/2013/11/12/senegal-police-arrest-5-alleged-lesbians/>.

¹⁰⁷ Robbie Corey-Boulet, ‘Accused Lesbians in Senegal Freed for Lack of Evidence’, *Voice of America* (20 November 2013), available at <http://www.voanews.com/content/accused-lesbians-in-senegal-freed-for-lack-of-evidence/1793998.html>.

¹⁰⁸ Colin Stewart, ‘Senegal police arrest 5 alleged lesbians’ (no. 106).

¹⁰⁹ *Ibid.*

¹¹⁰ Equal Ground, *Human Rights Violations against LGBT People in Sri Lanka* (no. 101), p. 5.

¹¹¹ Colin Stewart, ‘Dancing in Gambia: 18 gays, 2 lesbians face felony charges’, *76crimes* (20 April 2012), available at <http://76crimes.com/2012/04/20/dancing-in-gambia-18-gays-2-lesbians-face-felony-charges/>.

¹¹² Judgment on Article 534 (no. 67).

¹¹³ Iran Human Rights Documentation Centre, *The Execution of Women in Iranian Criminal Law: an Examination of the Impact of Gender on Laws Concerning Capital Punishment in the New Islamic Penal Code* (28 August 2012), available <https://iranhrdc.org/the-execution-of-women-in-iranian-criminal-law-an-examination-of-the-impact-of-gender-on-laws-concerning-capital-punishment-in-the-new-islamic-penal-code/>.

¹¹⁴ Islamic Penal Code (no. 37), s 239.

law, only applied to male sexual conduct.¹¹⁵ In Bangladesh in 2013, a lesbian couple discovered to be living together were arrested, subjected to forced ‘gender testing’, and prosecuted under section 290 of the Penal Code relating to public nuisance.¹¹⁶ In Kenya, lesbians and bisexual women report random arrests and overnight lock-up, with release without charge the following day:

*“Most times, however, they had to pay hefty bribes in order to be released or to avoid being taken to court on trumped up charges. Some ... were raped by police as a form of bribe to ensure their release.”*¹¹⁷

Many LGBT people struggle to secure legal counsel when they are charged with these offences. This may be because they are poor and cannot afford the legal fees, or because no lawyers will represent them. In Cameroon, there are very few lawyers who will defend clients charged under section 347-1 of the Penal Code—which criminalises all sexual relations with a person of the same sex—and they are unable to cover cases across the entire country. Djamil Bangoura, the head of a Senegalese NGO that works with LGBT people, similarly explained that when LGBT people are arrested, they struggle to find lawyers to take their case at all.¹¹⁸

Women may be affected by multiple layers of criminalisation, often related to sexual and reproductive matters.

Women in general are disproportionately criminalised in several other ways, often related to sexual and reproductive rights. Lesbians and bisexual women may confront particular risks in several of these areas in parallel. The UN CEDAW Committee has recognised that women are:

*disproportionately criminalised owing to their situation or status, such as being involved in sex-work, being a migrant, having been accused of adultery, identity as a lesbian, bisexual or transgender woman or intersex person, having undergone an abortion, or belonging to other groups that face discrimination.*¹¹⁹

As lesbians and bisexual women may be isolated from family and social structures because of their sexual orientation, limited economic opportunities may force them

¹¹⁵ Fernandez and Gomathy, *The Nature of Violence Faced By Lesbian Women in India* (no. 52).

¹¹⁶ Richard Ammon, ‘Bangladesh jails “married” lesbian couple’, *GlobalGayz* (1 October 2013), available <https://archive.globalgayz.com/asia/bangladesh/bangladesh-jails-married-lesbian-couple/>. See also Steve Williams, ‘Bangladesh Arrests Gay Couples and Threatens Supporters’, *S J Hossain Blogspot* (4 October 2013), available <https://sjhossain.blogspot.com/2013/10/bangladesh-arrests-gay-couples-and.html>.

¹¹⁷ GALCK, *Research on the Lived Experiences* (no. 70), p. 25.

¹¹⁸ Corey-Boulet, ‘Accused Lesbians in Senegal Freed for Lack of Evidence’ (no. 107).

¹¹⁹ UN CEDAW Committee, *General Recommendation 33 on women’s access to justice* (3 August 2015), para. 49, available https://tinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CEDAW%2FC%2F33&Lang=en.

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN



into sex-work, which is often criminalised. They may become pregnant through sex-work, targeted rape or forced marriage and seek an abortion in a context where abortion is criminalised. They may also be accused of adultery—which in some jurisdictions is only an offence for women—if they seek to engage in an intimate same-sex relationship of their choosing outside of a forced or pressured heterosexual marriage. All of these factors put lesbians and bisexual women at an amplified and multi-dimensional risk of arrest and social stigma. Further, women are particularly impacted by widespread laws that permit child marriage and rape within marriage. The CEDAW Committee has called on states to abolish all such discriminatory laws.¹²⁰

3.2.3 Physical and sexual violence

As with all others in the LGBT community, lesbians and bisexual women are susceptible to a variety of forms of violence, threat and harassment, which can range from petty annoyances to life-threatening conduct. This spectrum of conduct is fostered and enabled through the signalling effect of the criminal law and is often a much more prevalent threat for all members of the LGBT community than enforcement of the law by the state itself.

All LGBT people who present in a way that does not conform to gender stereotypes may be subjected to verbal abuse, insults and harassment in public spaces. This may

¹²⁰ Ibid, para. 51(l).

be based on their choice of dress, mannerisms, interpersonal relations, and other aspects of their outward appearance. Lesbians and bisexual women who present in a way that is deemed incompatible with gender norms face intersecting forms of harassment based on both their sex and their sexuality.¹²¹ This can leave them particularly vulnerable in societies where men feel entitled to exert power and control over women and act as custodians of hierarchical notions of masculinity and femininity.

This exertion of control over notions of femininity and masculinity can extend from demoralising treatment—as occurred, for example, when females dressed in trousers and flat dress shoes were treated as male customers by a night club that permitted free entry to females only¹²²—to extreme and life-threatening forms of physical violence in the public sphere. One Jamaican lesbian, for instance, was shot twice in a homophobic attack by community members outside of her home, necessitating the removal of one of her kidneys and part of her liver. The known perpetrator was never prosecuted, and her experience made it clear to her that lesbians could not trust the authorities for protection. She experienced multiple other forms of threatened violence and discrimination before and after the shooting, and eventually fled Jamaica and was recognised abroad as a refugee on the basis of her sexual orientation. She was one of the petitioners in the Inter-American Commission on Human Rights case of *Henry and Edwards v Jamaica*, successfully arguing that Jamaica's 'buggery' and 'gross indecency' laws and lack of state protection for all LGBT people violate fundamental human rights.¹²³

Any number of incidents are possible in between these two extremes. For example, in Indonesia, 12 women were reportedly forced from their home and village following reports by locals that they were lesbian couples. The village consultative board responded by raiding their homes, with police officers and villagers being involved in the raid.¹²⁴

In Iraq, a 21-year-old lesbian woman from Baghdad was targeted by armed groups due to her gender expression. She said:

*Directly after Moqtada al-Sadr had tweeted about LGBT people on May 17, three men on a motorbike accosted me, beat me up, and stabbed me with a knife in my leg and cut up my arms. They said that they were from Saraya al-Salam and warned me to stop my immoral behavior. I was bleeding uncontrollably and thought I would bleed out. My friends helped me and bandaged my wounds.*¹²⁵

¹²¹ GALCK, *Research on the Lived Experiences* (no. 70), pp. 23-24.

¹²² Shereen Ali, 'Aria Lounge policies under fire', *T&T Guardian* (15 December 2015), available <http://www.guardian.co.tt/news/2015-12-14/aria-lounge-policies-under-fire>.

¹²³ *Henry and Edwards v Jamaica* (no. 87).

¹²⁴ Kyle Knight, 'Indonesia Dodges a Bullet, but Moral Panic About Sexuality Persists', *Human Rights Watch* (9 January 2018), available <https://www.hrw.org/news/2018/01/09/indonesia-dodges-bullet-moral-panic-about-sexuality-persists#:~:text=In%20September%2C%20police%20in%20West,arrested%20more%20than%2050%20people>.

¹²⁵ Human Rights Watch and Iraqueer, *Everyone Wants Me Dead* (no. 7).

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

In Grenada, a 22-year-old lesbian was spending the afternoon on the beach with her girlfriend when construction workers yelled homophobic abuse at the couple and threatened them with a piece of wood.¹²⁶

In March 2015, a group of women perceived to be lesbians were confronted by a mob during a private birthday party near Accra, Ghana, and “pelted with human faeces”.¹²⁷

Lesbians and bisexual women are among the most vulnerable members of the LGBT community to violence in the private sphere and to sexual violence in particular.

Discriminatory social attitudes and harmful gender norms that determine women’s lives—in particular, being defined by their reproductive role—expose lesbians and bisexual women to heightened levels of abuse that often go unreported and unpunished. In Sri Lanka, a lesbian who came out at work was physically and verbally abused and sexually harassed by a colleague and supervisor:

*...her supervisor took her to Kurunegala to give a work presentation and told her that they would be staying in a hotel overnight. When they arrived, she learned that her supervisor had only booked one room for the two of them. Throughout the entire day she became scared and fearful. When they were in the hotel room, her supervisor tried to grab her and force himself on her, despite her telling him to stay away. The supervisor insisted that he could “fix her”.*¹²⁸

A lesbian in India reported the particularly barbaric violence used by her husband in killing her female lover and then raping her:

*Just a month back Mou was stabbed to death by some miscreant hired by my husband. He had come to know everything. He could not cause any harm to me because of fear of public scandal ... that fateful night that Mou was killed ... my husband raped me ... At the time of putting force on me for sexual intercourse, my husband depicted to me how Mou was killed.*¹²⁹

¹²⁶ Human Rights Watch, *I Have to Leave to Be Me* (no. 7).

¹²⁷ GhanaWeb, ‘Homophobic residents flood town with posters of alleged lesbians’ (7 March 2015), available <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Homophobic-residents-flood-town-with-posters-of-alleged-lesbians-349426>.

¹²⁸ Equal Ground and Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law, Questioning/Queer (LGBTIQ) Persons: Joint Submission for the 4th Cycle Universal Periodic Review of Sri Lanka (8 July 2022), para 35, available https://www.upr-info.org/sites/default/files/country-document/2023-03/JS2_UPR42_LKA_E_Main.pdf.

¹²⁹ National Alliance of Women, *India Second NGO Shadow Report on CEDAW* (no. 53), p. 207.

A Burundian woman said:

*I had two male friends who tried to rape me because I am a lesbian and they didn’t like that. They knew that I had never slept with a man and they were curious to know if I was still a virgin. They tried to take me by force. But they couldn’t, because I was stronger than them.*¹³⁰

In many societies, the prevalence of gender-based violence, including sexual violence, puts lesbians and bisexual women at particular risk of harm at the hands of non-state actors. This includes being subjected to retaliatory violence by husbands, former partners, other family members or members of the community, or to the practice of so-called ‘corrective rape’.¹³¹ ‘Corrective rape’ is a misnomer for the targeted rape of lesbians and bisexual women, including by family and community members, with the stated aim of ‘correcting’ the victim’s sexual orientation. This homophobic hate crime is purportedly justified and excused by the perceived deviancy of the victim and the belief held by certain men in that society that they have an entitlement to control her.

The targeted rape of lesbians and bisexual women is reported to be common in several countries, including India, Cameroon, Kenya, Zimbabwe, Jamaica, Uganda and South Africa. In Kenya in May 2022, a 25-year-old non-binary lesbian was murdered and was missing for several days before their body was found.¹³² An autopsy report revealed that they had been raped, strangled, stabbed several times in the neck and eyes and that their legs had been broken. In Cape Town, South Africa, a 25-year-old lesbian was violently gang-raped by three men to “correct her of her sexual orientation.”¹³³ One study reported that, on average, 10 women are ‘correctively’ raped in South Africa each week.¹³⁴

In 2012, three lesbian women were brutally attacked and sexually assaulted in Nairobi, with the perpetrators saying they were going to “*funza* the lesbians *adabu*” (teach the lesbians a lesson) for behaving like men and taking up the role of men in sex.¹³⁵ More recent reports evidence the continued incidence of so-called ‘corrective rapes’ in Kenya.¹³⁶

¹³⁰ Human Rights Watch, *Forbidden: Institutionalizing Discrimination Against Gays and Lesbians in Burundi* (July 2009), p. 18, available <http://www.refworld.org/docid/4a76ab762.html>.

¹³¹ UN High Commissioner for Refugees, *UNHCR Guidance Note* (no. 77).

¹³² Tafi Mhaka, ‘Homophobia: Africa’s moral blind spot’, *Aljazeera* (6 May 2022), available <https://www.aljazeera.com/opinions/2022/5/6/homophobia-africas-moral-blind-spot>.

¹³³ Human Rights Watch, *Human Rights Watch Submission to the Special Rapporteur on Violence Against Women* (22 May 2020), available <https://www.hrw.org/news/2020/05/22/human-rights-watch-submission-un-special-rapporteur-violence-against-women>.

¹³⁴ Kammila Naidoo, ‘Sexual Violence and “Corrective Rape” in South Africa’, *8 Global Dialogue Magazine of International Sociology* (22 March 2018); Waruguru Gaiho, ‘Curing Corrective Rape: Socio-Legal Perspectives on Sexual Violence Against Black Lesbians in South Africa’, *William and Mary Journal of Race, Gender and Social Justice* (vol. 28, February 2022), p. 335, available <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1573&context=wmjow>.

¹³⁵ Dan Littauer, ‘Three Kenya lesbians sexually assaulted in beer bottle attack’, *GayStarNews* (21 August 2012), extract available <http://www.npwj.org/content/Three-Kenya-lesbians-sexually-assaulted-beer-bottle-attack.html>.

¹³⁶ Catrina Stewart, ‘Kenya’s long, painful road to gay equality: Homosexual acts are still illegal even if being gay is not’, *The Independent* (6 June 2015), available <https://www.independent.co.uk/news/world/africa/kenya-s-long-painful-road-to-gay-equality-10302743.html>.

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN



Lesbians and bisexual women fleeing persecution in their own countries often find themselves at risk again in the countries where they have sought protection. For example, NGOs reported five cases of so-called ‘corrective rape’ of lesbians or transgender men who were refugees in Uganda between June and November 2011 alone.¹³⁷ In 2018, it was reported that the UN had moved LGBT refugees to safe houses following attacks in Kenyan refugee camps, including beatings with wooden sticks and iron bars.¹³⁸ In Malawi, where LGBT refugee identities are discovered, they are at risk of rape, blackmail, eviction from refugee camps and revocation of their refugee status.¹³⁹

One study in India found that 78 per cent of lesbians surveyed had experienced some form of violence, most of it within the family, or had felt suicidal.¹⁴⁰ A 2020 study in Kenya found that one in four lesbians had been sexually assaulted in the previous year; this was more than triple the percentage of women in the general population.¹⁴¹

¹³⁷ Human Rights First, *The Road to Safety. Strengthening Protection for LGBTI Refugees In Uganda and Kenya* (2012), p. 7, available https://humanrightsfirst.org/wp-content/uploads/2022/12/2012_HRF_Road-to-Safety-Strengthening-Protection-LGBTI-Refugees-Uganda-Kenya.pdf.

¹³⁸ Nita Bhalla, ‘UN moves LGBT+ refugees to safe houses after Kenya camp attack’, *Reuters* (13 December 2018), available <https://www.reuters.com/article/kenya-lgbt-refugees-idAFL3N1YH3GX>.

¹³⁹ Nyasa Rainbow Alliance and others, *Civil Society Report on LGBTI Rights (Contribution to the List of Issues Prior to Reporting)* (March 2021), para 1.3, available https://ccprcentre.org/files/documents/INT_CCPR_ICJ_MWI_44094_E.pdf.

¹⁴⁰ Bina Fernandez and N.B. Gomathy, *The Nature of Violence Faced By Lesbian Women in India*, 2003, Research Centre on Violence Against Women, Mumbai, pp. 50-59, available at http://download.tiss.edu/fap/RCI-VAW/RCI-VAW_Publications/The_Nature_of_violence_faced_by_Lesbian_women_in_India.pdf.

¹⁴¹ Equality and Justice Alliance, *Hate Crimes against the LGBT Community in the Commonwealth: A Situational Analysis* (Human Dignity Trust, March 2020), p. 24, available https://www.humandignitytrust.org/wp-content/uploads/resources/2020-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth_A-Situational-Analysis.pdf.

An Ethiopian lesbian was imprisoned in the family home and beaten by her brothers on account of her sexual orientation.¹⁴²

Yet many lesbians and bisexual women do not report these crimes for fear of the stigma or retribution they will face,¹⁴³ and those who do report them often do not have their cases investigated by law enforcement officials. In 2021, it was reported that a lesbian in Tunisia was homophobically abused by a police officer. When she reported this abuse at the local police station, she was arrested herself and charged with insulting a police officer, drunkenness, and causing embarrassment and disruption. She was sentenced to six months’ detention and was further harassed by police while in custody.¹⁴⁴ One Sri Lankan woman who was being harassed by her brother because of her sexuality did not report this to police for fear of further harassment.¹⁴⁵

In a report from Malawi, a lesbian who was cohabiting with her partner was reported to the police by her partner’s father on the basis that she had abducted a child. On her first night in detention, police abused and repeatedly raped her. She did not report this for fear of losing her job.¹⁴⁶

In one Kenyan study of nearly 1,000 LGBT people, it was found that, in the previous 12 months, 53 per cent of respondents had been physically assaulted, yet only 29 per cent of that group had reported the physical assault to the police.¹⁴⁷

According to one report from Cameroon, a woman who told a man that she was a lesbian was raped by him and then warned that if she dared to take any action against him, he would report her as a lesbian to the police. She reported the rape to police anyway; her assailant denied the charge and told the police that she was a lesbian. The police released the alleged perpetrator without charge after a few hours.¹⁴⁸

In August 2013, two lesbians from Jamaica were granted asylum in Canada after a series of persecutory events, including a rape by two male intruders who broke into their home, shouting that there should be a man living in the house. Police refused to investigate the crime, instead telling the women they deserved it for living the gay lifestyle.¹⁴⁹

¹⁴² Human Rights First, *The Road to Safety* (no. 137), p. 8.

¹⁴³ GALCK, *Research on the Lived Experiences* (no. 70), p. 24.

¹⁴⁴ Meriem Mahdhi, ‘A Cop Harassed Her For Being a Lesbian. When She Complained, She Was the One Arrested’, *Vice* (5 May 2021) available <https://www.vice.com/en/article/v7eebm/a-cop-harassed-her-for-being-a-lesbian-when-she-complained-she-was-the-one-arrested>.

¹⁴⁵ Equal Ground and Centre for International Human Rights Northwestern Pritzker School of Law, *Violations by Sri Lanka of the rights of lesbian, bisexual, transgender, and queer (LBTQ) women under the Convention on the Elimination of All Forms of Discrimination against Women* (January 2023), para 2.6, available https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=Z2evgg/KQitPmEcSGMucoAXe/dkihbHJNoBLEo1nGgn0+n0309o51vXZlxDln+E4eVMKWGfAgSXj/GwFS41Vw==.

¹⁴⁶ Nyasa Rainbow Alliance and others, *Civil Society Report on LGBTI Rights* (no. 139), para 3.1.

¹⁴⁷ Equality and Justice Alliance, *Hate Crimes against the LGBT Community in the Commonwealth* (no. 141), p. 24.

¹⁴⁸ Colin Stewart, ‘Corrective rape’ in Cameroon: 4 women, 5 rapists, 0 arrests’, *76crimes* (11 February 2015), available <http://76crimes.com/2015/02/11/corrective-rape-in-cameroon-4-women-5-rapists-0-arrests/>.

¹⁴⁹ Interview by HDT, December 2013.

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

A leading activist in Namibia reported that “[l]esbians in Namibia often face threats of rape from men seeking to ‘cure’ them,” adding: “if lesbians try to go to the police, they say ‘you asked for it’ and dockets go missing.”¹⁵⁰

In many countries, including India, for example, most cases of so-called ‘corrective rape’ are believed to be arranged or carried out by family members, which also inhibits women from reporting these crimes. A lesbian from Cameroon, who was able to seek asylum in France, reported how she had been chained to a wall and brutally raped by a man whom her family had forced her to marry after discovering she was a lesbian.¹⁵¹ According to one source, “[v]ictims find it traumatising to speak of their brothers/cousins turning rapists and prefer to delete the incident from their memories and cut off ties with their families. Which is why such cases almost never get reported.”

The rapist is usually a relative who is handpicked by the victim’s parents, and “it’s like a ‘disciplining project’ designed to ‘cure’ and ‘correct’ the homosexual.”¹⁵²

In countries where same-sex sexual conduct is criminalised, lesbians and bisexual women are even less likely to report the circumstances of their rape for fear not only of family reprisals but of state enforcement of the criminal law or police re-victimisation. In Sri Lanka, a lesbian who was a victim of attempted rape reported this to the police. The police used her status as a lesbian to refuse to investigate the allegation, instead threatening to take legal action against her if she did not end her illegal relationship with another woman.¹⁵³ Cameroonian victims of sexual assault explained that they did not report their rape to the authorities because they feared being discovered as lesbians and arrested under the law that criminalises all same-sex sexual relations.¹⁵⁴

The testimony of a Burundian woman described her being assaulted, threatened with murder and locked in a room by a man who wished to pursue her female partner. She stated:

*I went to the tribunal [court] to file a complaint, and they said, “Yes, that man is at fault.” Then I started to worry that the man could talk about the relationship I had with the girl, and I let it go.*¹⁵⁵

It is difficult for all LGBT people to access justice when abuses are committed against them. For lesbians and bisexual women, this can be compounded by the

¹⁵⁰ Gender Research and Advocacy Project and Legal Assistance Centre, *Namibian Law on LGBT Issues* (2015), p. 83, available http://www.lac.org.na/projects/grap/Pdf/LGBT_mono.pdf.

¹⁵¹ Thomas Reuters Foundation, ‘Lesbian “witches” chained and raped by families in Cameroon’, *Reuters* (2 October 2018), available <https://www.reuters.com/article/us-cameroon-lgbt-rape-idUSKCN1MC001>.

¹⁵² Rupaim Jain, ‘Parents use “corrective rape” to “straighten” en gays’, *The Times of India* (1 June 2015), available <http://timesofindia.indiatimes.com/life-style/relationships/parenting/Parents-use-corrective-rape-to-straighten-gays/articleshow/47489949.cms>.

¹⁵³ Equal Ground and CIHR, *Questioning/Queer (LGBTIQ) Persons* (no. 128), para 14.

¹⁵⁴ Human Rights Watch, *Criminalising Identities* (no. 73), p. 41.

¹⁵⁵ Human Rights Watch, *Forbidden* (no. 130).

multiple forms of discrimination they face both as women and as members of sexual minorities. As the UN CEDAW Committee noted in 2015 in its General Recommendation 33 on Access to Justice:

*Discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women. Grounds for intersecting or compounded discrimination may include ... identity as a lesbian, bisexual or transgender woman or intersex person. These intersecting factors make it more difficult for women from those groups to gain access to justice.*¹⁵⁶

The CEDAW Committee again noted this important compounding effect in the landmark 2022 case in which it found that Sri Lanka’s law criminalising same-sex intimacy between females is in violation of CEDAW:

*The author claims that, in addition to the stereotypes she has had to face as a woman, the authorities have subjected her to harmful stereotyping and accusations on account of being lesbian, including the accusation that she spreads paedophilia. She also claims that the criminalization of same-sex sexual activity by women legitimizes societal prejudice and gender stereotypes, including through the threats and harassment she receives. ... the State party has neither effectively refuted the author’s allegations nor indicated any measures taken to eliminate the prejudices to which she has been exposed as a woman, lesbian and activist. Therefore, the Committee finds that the State party has breached its obligations under article 5 (a), read in conjunction with article 1, of the Convention.*¹⁵⁷

In some instances, the identification of a woman as a lesbian has been held to be a mitigating factor in the sentencing of her attacker. In Iran and Jordan, so-called ‘honour killings’ have been distinguished from murder and perpetrators have received reduced sentences, or been acquitted, when invoking a defence that they killed their relative, perceived to be gay or lesbian, to preserve family honour.¹⁵⁸ In one instance in Jordan in 2019, a father received a reduced prison sentence after killing his daughter who was a lesbian.¹⁵⁹ One study from the Asia-Pacific region, on violence against women in general, noted that:

¹⁵⁶ UN CEDAW Committee, *General Recommendation 33* (no. 119), para. 8.

¹⁵⁷ *Flamer-Caldera v Sri Lanka*, (CEDAW/C/81/D/134/201, 23 March 2022), para 9.4, available <https://www.humandignitytrust.org/wp-content/uploads/resources/CEDAW-C-81-D-134-2018-English-clean-copy.pdf>.

¹⁵⁸ Mai Sato and Christopher Alexander, *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty* (Monash University, February 2021), p. 18, available https://bridges.monash.edu/articles/report/State-Sanctioned_Killing_of_Sexual_Minorities_Looking_Beyond_the_Death_Penalty/14069318.

¹⁵⁹ *Ibid*, p. 61; Legislative changes has since amended this provision and limited it exclusively to circumstances where an offender kills his wife or relative, or the lover ‘in a state of adultery or illegitimate bed.’

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

*in the case of lesbian women in particular, their gender identity and/or sexual orientation can become a mitigating factor in the punishment of the perpetrator [of family violence]. Furthermore, in many cases, violence against [lesbian, bisexual and trans] women is socially and culturally justified in the name of protecting families' reputations as well.*¹⁶⁰

3.2.4 Family control and lack of physical and sexual autonomy

As women, lesbians and bisexual women face particular societal pressures and heightened forms of control and abuse from family members, including in respect of marriage, child-rearing expectations, social life, and general personal autonomy.

According to a report by the United Nations High Commissioner for Refugees (UNHCR), lesbians are even more likely than gay men to feel obliged to conform outwardly to familial and societal expectations by, for instance, marrying someone of the opposite sex.¹⁶¹

In some cultures, women are seen as the bearers of family 'honour', and any deviations they make from social and family expectations can result in their murder. In 2018, the UN Human Rights Council reported attempts at 'social cleansing', 'honour' killings and 'conversion therapy' perpetrated against women at the hands of their families.¹⁶²

In Afghanistan, when a lesbian was found with her partner, her uncle stated that he would kill her to "get rid of this shame." Her parents refused her uncle and cousin's demands to kill her and engaged her to a man who didn't know she was a lesbian. One of her cousins told her husband she was a lesbian and now she suffers physical abuse from her husband daily and fears he will kill her.¹⁶³ In another example, a Barbadian lesbian married a man thinking "my family would appreciate this." She reported:

*I didn't want to be with him, after five years I decided to break it off. My family knew I was unhappy – they would rather have me unhappy with a male than happy with a woman. [They] felt it would ruin their reputation.*¹⁶⁴

In a report on the experiences of queer women in Morocco, one activist highlighted that "women are often forced to marry if they are found to have engaged in relations with another woman," and that "the aim is to appease the neighbourhood and society and ensure the incident is forgotten."¹⁶⁵

¹⁶⁰ Asia Pacific Forum on Women, Law and Development, *Summary Report of the Asia Pacific Regional Consultation with the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences: 'Multiple Dimensions of Equality for Women'* (2011), p. 18, available <http://apwld.org/wp-content/uploads/2013/10/SRVAW-2010-Different-but-not-Divided-Web-Resolution.pdf>.

¹⁶¹ UN High Commissioner for Refugees, *UNHCR Guidance Note* (no. 77), p. 9.

¹⁶² Equality and Justice Alliance, *Hate Crimes against the LGBT Community in the Commonwealth* (no. 141), p. 27.

¹⁶³ Human Rights Watch, *Even If You Go to the Skies* (no. 7), p. 14-15.

¹⁶⁴ Human Rights Watch, *I Have to Leave to Be Me* (no. 7), p. 31-32.

¹⁶⁵ Outright International and Arab Foundation, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa: Case Studies from Jordan, Lebanon, Morocco and Tunisia*, (New York, 2018) p. 36, available https://outrightinternational.org/sites/default/files/2023-09/Activism_Resilience_MENA_EN%20%281%29.pdf.

In January 2016, it was reported that a Somali human rights activist was forced to flee her country after she discovered that her family had decided to kill her when an acquaintance outed her as a lesbian.¹⁶⁶

A lesbian in Burundi reported:

*When I was 27 or 28, my family kicked me out of the house for a year. They told me I should marry, and said that if I didn't change, I should go. Men used to come by my house and ask my mother and brother for permission to marry me. These men knew that I was a lesbian, but they thought I could be forced.*¹⁶⁷

Similarly, a woman from Bangladesh reported that when she revealed to her parents that she was a lesbian, they forced her into a marriage with a man, who then abused her.¹⁶⁸ In Cameroon, an activist confirmed "[t]here is a forced bisexuality here. Many lesbians are forced to get married and have children."¹⁶⁹

A Sri Lankan lesbian couple lived together and looked after the ailing mother of one of the women. When the mother passed away, the woman's brother forced her to marry a man by threatening to take away all the property that had been bequeathed to her if she did not agree to a heterosexual marriage. This took such a toll on her girlfriend that the girlfriend later took her own life.¹⁷⁰

Women also typically face significant family and societal pressure to bear children, and risk losing those children in the event that their same-sex sexuality is revealed or they pursue a same-sex relationship. This pressure and control often comes from the entire family unit, giving lesbians and bisexual women no avenues for support.

In Kenya, lesbians and bisexual women:

*are expected to continue with the family lineage which means getting married and bearing children to honour and reproduce the family. Those who do not conform to this expectation are ostracised by both their families and the society at large forcing them to engage in harmful coping mechanisms which include substance abuse and dissociation of body and mind to handle the trauma of sexual interaction with a man.*¹⁷¹

¹⁶⁶ Stewart, 'Young Somali activist sentenced to death for being a lesbian' (no. 98).

¹⁶⁷ Human Rights Watch, *Forbidden* (no. 130), p. 7.

¹⁶⁸ *M. I. v. Sweden*, UN Human Rights Committee (Communication No. 2149/2012, U.N. Doc. CCPR/C/108/D/2149/2012, 2013).

¹⁶⁹ Amnesty International, *Making love a crime* (no. 80), p. 52.

¹⁷⁰ Equal Ground, *Human Rights Violations against LGBT People in Sri Lanka* (no. 101), p. 13.

¹⁷¹ GALCK, *Research on the Lived Experiences* (no. 70), p. 34.

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

A lesbian in Cameroon reported:

My brothers told my children's fathers that I was a lesbian. Immediately a family meeting was convened, and it was decided that I should not bring the children up. I had no say, because I am a lesbian. So the children now live with their respective fathers ... I still try to contact my children to visit them, but the fathers deny me visits.¹⁷²

It is common for all people within the LGBT community to enter heterosexual relationships and marriages as a social imperative rather than a free choice. As one civil society report noted: *“Consistently, men and women we interviewed mentioned having a partner of the opposite sex to ‘cover up’ and avoid stigma, discrimination, and violence within their family and community.”¹⁷³*

However, the implications are often very different for lesbians and bisexual women than for gay and bisexual men. While the psychological trauma of ‘hiding’ within society by conforming to such social expectations is harmful to all LGBT people, for lesbians and bisexual women the impacts can go significantly deeper. In societies that privilege males, women may have little or no control over their sexuality and bodies, with their husbands exercising control over sex in the relationship. Indeed, in many countries, including 29 Commonwealth countries (54%), men are lawfully entitled to rape their wives, including through the use of force.¹⁷⁴ Unlike gay and bisexual men, who have greater autonomy over whether and when to have sexual relations inside a sham heterosexual marriage and can more easily pursue sexual relations with other men outside the marriage due to their free, autonomous movement within social and public spaces, women are unlikely to have the same degree of control, and are effectively subjected to a lifetime of permissible, condoned, invisible sexual assault by their husbands.

It is a major, unaddressed dimension of LGBT persecution that lesbians often have no choice but to marry men and endure sexual relationships with their husbands, which effectively means a lifetime of invisible, undocumented rape.

¹⁷² Human Rights Watch, *Criminalising Identities* (no. 73), p. 2.

¹⁷³ Ibid, p. 5.

¹⁷⁴ Human Dignity Trust, *Changing Laws, Changing Lives* (Online tool, last updated 4 February 2024) available <https://www.humandignitytrust.org/reform/>; Antigua and Barbuda, The Bahamas, Bangladesh, Barbados, Brunei, Botswana, Dominica, The Gambia, Ghana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Mauritius, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Seychelles, Sri Lanka, Uganda, Tanzania, Tuvalu, Vanuatu.

In India, for example, a detailed report on the impact of state-sanctioned homophobia on lesbians and bisexual women noted that:

[i]n a society where women are often socialized into the eventuality of heterosexual marriage, most lesbian and bisexual women cannot even imagine the possibility of two women loving each other and living together. In the case of lesbian women who have no choice but to marry, the sexual relationship with their husbands is often nothing short of marital rape.¹⁷⁵

Research in Bangladesh, India and Nepal found that a higher proportion of lesbians in heterosexual marriages face more physical violence than lesbians who were not married.¹⁷⁶

These are major, unaddressed dimensions within both the established understanding of LGBT persecution as well as the development of legal and social responses to this persecution to date.

Furthermore, because of the patriarchal nature of many societies, lesbians and bisexual women—as with all women in such societies—have less ability to meet other women and form independent relationships free of their male family members’ control. As noted in one study on Africa:

Lesbians and bisexual women enjoy less autonomy and greater scrutiny from family, friends and neighbours which makes it difficult for them to be out and about and meet other women. One lesbian Muslim activist in Cape Town told Amnesty International: “It is a very patriarchal society. Gay men have more freedom and rights than lesbians. If you know from an early age you are gay, you have more freedom to experiment, you won’t need to have a chaperone, you can come home at any time. As a woman, you have to be accompanied by men. There are many more restrictions for Muslim women.”¹⁷⁷

3.2.5 Discrimination in education, employment, health and housing

Lesbians and bisexual women also face discrimination in education, employment, health care and housing on the basis of their sexual orientation. These forms of social and economic exclusion and marginalisation are common to all LGBT people, although lesbians and bisexual women may experience some of them in a different way.

For example, a pansexual woman in Kenya and a group of her friends were accused of having group sex when they went to the school’s computer lab to use the internet. She was labelled as a lesbian before a disciplinary committee because of her gender

¹⁷⁵ National Alliance of Women, *India Second NGO Shadow Report on CEDAW* (no. 53), p. 207.

¹⁷⁶ s Rashid, N. Daruwalla, M. Puri et al., *Count Me In! research report: violence against disabled, lesbian, and sex-working women in Bangladesh, India, and Nepal*, (CREA, 2012), available https://www.academia.edu/38549346/count_me_in_research_report_on_violence_against_disabled_lesbian_and_sex_working_women_in_bangladesh_india_and_nepal.

¹⁷⁷ Amnesty International, *Making love a crime* (no. 80), p. 49.

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN



expression—wearing sports clothes—and was suspended from school. She said of the experience: *“I have to fight all the trauma that was attached to what they thought I was, before I could get to accepting who I am.”*¹⁷⁸

In another instance in Kenya, a rumour circulated about one young woman kissing another. They were humiliated in a school assembly and later suspended.¹⁷⁹ Similarly:

[t]here have been a number of reported cases of Kenyan girls who have been perceived as acting “too masculine” and as a result have been expelled from their schools or beaten up by other students. In Cameroon, girls and young women

¹⁷⁸ Khatondi Soita Wepukhulu, ‘LGBTIQ students kicked out of school in East Africa are fighting back’, *Open Democracy* (11 February 2022), available <https://www.opendemocracy.net/en/5050/lgbtiq-students-kicked-out-of-school-in-east-africa-are-fighting-back/>.

¹⁷⁹ *Ibid.*

*suspected of lesbian sexual activity have been expelled from their secondary schools, sometimes after being forced to denounce their peers.*¹⁸⁰

A study from the Asia-Pacific region likewise notes that *“[lesbian, bisexual and trans] women have had their contracts terminated or were forced to resign for the sole reason of their gender identity or sexual orientation.”*¹⁸¹

In Kenya, it is reported that women whose appearance is more masculine were particularly affected by denials of employment opportunities. For instance, one woman who attended job interviews in a suit rather than a dress was refused interviews and was told she could not take other jobs if she was unwilling to wear a dress.¹⁸²

In Uzbekistan, a lesbian working as a school teacher was fired because parents and the school director did not want a masculine-presenting woman, who might be a lesbian, to teach their children.¹⁸³

Female sports figures are often affected by immediate public assumptions that women playing sport must be lesbians, and they can be under heightened scrutiny as a result. They can be subjected to summary dismissal from sports teams, including at the national level, if they are suspected of being or discovered to be lesbian.¹⁸⁴

Evictions or refusal of accommodation are also common in many countries when the sexual orientation of LGBT tenants is discovered or suspected. This can be particularly acute for lesbians and bisexual women who do not conform to gender-stereotyped forms of dress, since they are more visible in the community.¹⁸⁵

In the realm of health, lesbians and bisexual women face obvious and extreme health risks posed by rape and other forms of targeted violence, and by the general lack of autonomy over sexual and reproductive choices. They can also face unique forms of discrimination in access to health care services. For example, a study from Guyana indicated that sexual minority women felt health care professionals pathologized them, and they feared disclosing their sexual orientation to them.¹⁸⁶

¹⁸⁰ Rashid, Daruwalla, Puri et al., *Count Me In!* (no. 176), p. 48. See also Maureen Kakah, ‘Students expelled on lesbianism claim sue school, say their rights violated’, *Daily Nation* (28 May 2015), available <http://www.nation.co.ke/counties/nairobi/lesbianism-claim-students-sue-St-Georges-school/-/1954174/2732084/-/sapcek/-/index.html>.

¹⁸¹ Asia Pacific Forum on Women, *Summary Report* (no. 160).

¹⁸² GALCK, *Research on the Lived Experiences* (no. 70), p. 37.

¹⁸³ ECOM, *Human Rights Violations of Trans* People in Uzbekistan* (June 2020), available https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fICO%2fUZB%2f42605&Lang=en.

¹⁸⁴ Amnesty International, *Making love a crime* (no. 80), p. 48, 51.

¹⁸⁵ GALCK, *Research on the Lived Experiences* (no. 70), p. 25.

¹⁸⁶ Billy A. Caceres et al, ‘A scoping review of sexual minority women’s health in Latin America and the Caribbean’, *International Journal of Nursing Studies* (vol 94:85-97, June 2019), available <https://www.sciencedirect.com/science/article/abs/pii/S002074891930032X?via%3Dihub>.

3. PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

One study from Kenya revealed that:

*“research participants all spoke of cases in which [lesbian, bisexual and queer] women were discriminated against by health care providers or were refused services in government hospitals,” and that many such women “would rather avoid seeking medical services at all than risk having their privacy breached by medical professionals” when they sought advice related to their sexual health.*¹⁸⁷

The societal pressures on women, particularly in respect of dependence on their families, social and economic limitations and the imperative to marry into a heterosexual union, as well as physical and sexual violence, can place unique psychological stresses on young lesbians and bisexual women that can lead to suicide.

3.2.6 Suicide

One result of a sustained experience of these kinds of human rights violations, and of persistent control, isolation and violence, is that some people choose to end their own lives. All LGBT people are at heightened risk of suicide due to the immense stigma, isolation and discrimination they face in many societies. The societal pressures on women, particularly in respect of dependence on their families, social and economic limitations and the imperative to marry into a heterosexual union, as well as physical and sexual violence, can place unique psychological stresses on young lesbians and bisexual women that can lead to suicide.

In Uzbekistan, a 20-year-old lesbian woman committed suicide when her parents rejected her because of her sexuality and attempted to force her to marry a man. Her parents and the authorities agreed to register her death as a heart attack.¹⁸⁸

In Kenya in July 2012, a woman committed suicide after her parents held her hostage and arranged for an older male relative to rape her repeatedly in an attempt to impregnate her and ‘cure’ her of her sexual orientation.¹⁸⁹

¹⁸⁷ GALCK, *Research on the Lived Experiences* (no. 70), pp. 28-29.

¹⁸⁸ ECOM, *Human Rights Violations of Trans* People in Uzbekistan* (no. 183).

¹⁸⁹ GALCK, *Research on the Lived Experiences* (no. 70), pp. 26-27.

A 2014 study of five Asian countries—Japan, Malaysia, Pakistan, Philippines and Sri Lanka—indicated that many lesbians and bisexual women saw suicide as a way to escape the violence in their lives:

*“Suicide or attempted suicide by [lesbian, bisexual and trans] people in Asia was a relatively common, or at least consciously considered, response to the nexus of hetero-normativity and patriarchal structures of power operating inside and outside the home.”*¹⁹⁰

Another report the same year noted the high rate of suicide among lesbians reported in Sri Lanka.¹⁹¹

In order to prevent such tragic and needless loss of life, states must take a holistic approach to understanding and addressing the multi-faceted reasons that people attempt suicide, including by breaking down the barriers, such as structural legal barriers to social acceptance of LGBT people.

¹⁹⁰ G. Poore, ‘Violence against Lesbians, Bisexual Women and Transgender People in Asia: A Five Country Study’ in IGLHRC, *Violence through the Lens of Lesbians, Bisexual Women and Trans People in Asia* (March 2014), available <https://outrightinternational.org/our-work/human-rights-research/violence-through-lens-lesbians-bisexual-women-and-trans-people-asia>.

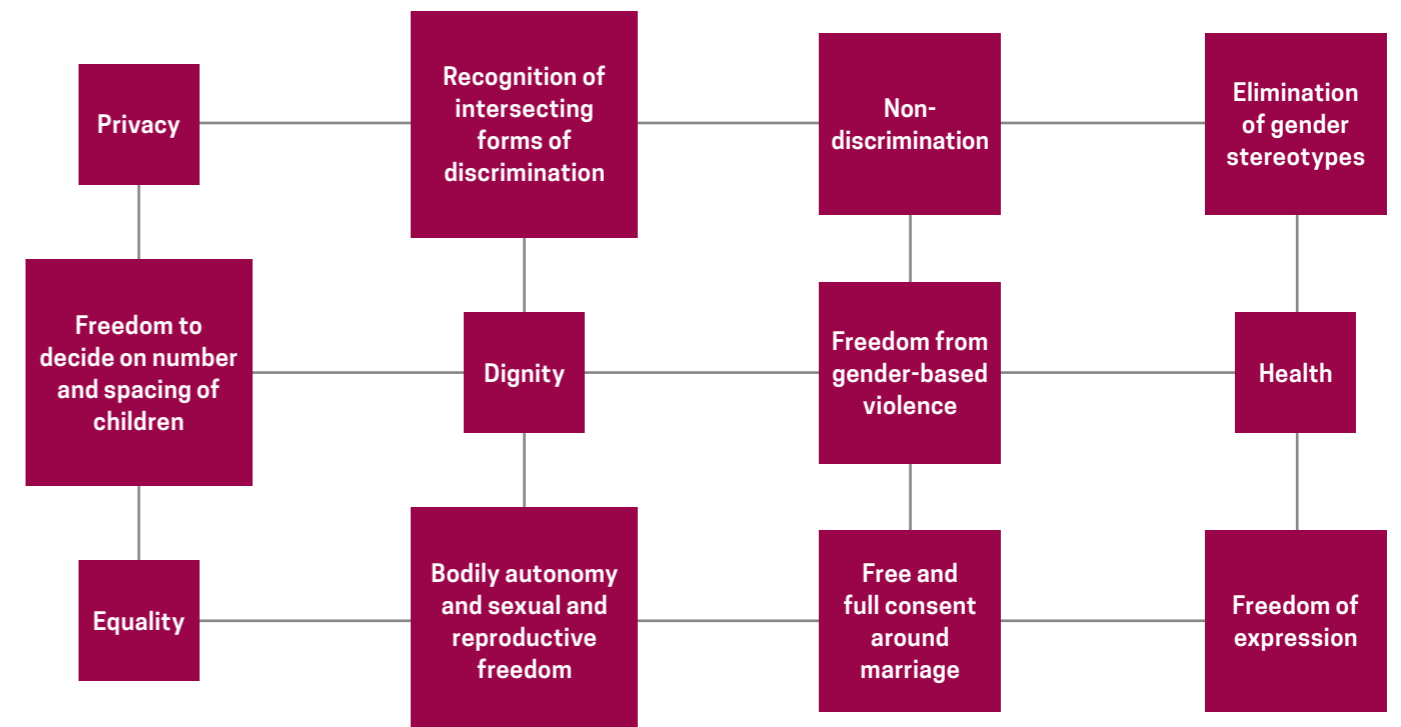
¹⁹¹ Women’s Support Group, ‘Not Gonna Take It Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka’, in IGLHRC, *Violence through the lens of lesbians, bisexual women and trans people in Asia* (March 2014), p. 202, available <https://outrightinternational.org/our-work/human-rights-research/violence-through-lens-lesbians-bisexual-women-and-trans-people-asia>. For similar stories from India, see Fernandez and Gomathy, *The Nature of Violence Faced By Lesbian Women in India* (no. 52) Annex 1, p. 121.



4. HUMAN RIGHTS LAW

A multitude of human rights norms, which states are obliged to respect, protect and fulfil, are violated by the maintenance of laws criminalising lesbians and bisexual women, only a brief summary of which is given here. The relevant rights are expressed in most national constitutions, as well as in myriad international human rights treaties to which most criminalising states are party. Almost all countries that criminalise lesbians and bisexual women, for example, are party to CEDAW, and most have ratified other relevant human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and/or a regional treaty such as the African Charter on Human and Peoples' Rights (ACHPR) or the American Convention on Human Rights (ACHR).

Figure D: Human rights of lesbians and bisexual women that are violated by criminalisation of same-sex sexual conduct



As mentioned earlier, the mere fact of consensual same-sex sexual conduct being criminalised violates the rights to privacy, dignity, equality, non-discrimination and freedom of expression, among others. In addition, states have a positive duty to prevent and prosecute gender-based violence against women, including by taking all necessary legislative and other measures. By maintaining any form of criminal law that fosters and enables violence against lesbians and bisexual women, directly or indirectly, whether such laws are enforced in practice or not, states are in breach of their obligation. This includes physical, sexual and psychological violence, whether by state or non-state actors.

4. HUMAN RIGHTS LAW

All forms of gender-based violence against women and girls are violations of the right to non-discrimination on grounds of sex or gender.¹⁹² Violence and the many other forms of discrimination against lesbians and bisexual women outlined in this report constitute discrimination both on grounds of sex and on grounds of sexual orientation. States are obliged to legally recognise and prohibit these intersecting forms of discrimination, and to pursue by all appropriate means a policy to eliminate discrimination against women that identifies women who may suffer from various forms of intersectional discrimination.¹⁹³ For example, in its 2021 Concluding Observations on Maldives, the CEDAW Committee urged the state to: *“Adopt all necessary measures, including temporary special measures, to combat the intersectional discrimination that disadvantaged groups of women encounter, such as migrant women, women with disabilities, lesbian, bisexual and transgender women and intersex persons...”*

Furthermore, international human rights law (together with many domestic constitutions) protects the right of women and men of marriageable age to marry and found a family, and provides that:

*“[n]o marriage shall be entered into without the free and full consent of the intending spouses.”*¹⁹⁴ *Women are guaranteed the right “freely to choose a spouse and to enter into marriage only with their free and full consent” and ‘to decide freely and responsibly on the number and spacing of their children.’*¹⁹⁵

These provisions should assure women of the right to choose whether to marry or have children at all. However, this right cannot be viably realised if the state creates or sanctions an environment in which lesbians effectively have no choice but to marry into a heterosexual union, often enduring in silence everything that that entails. The maintenance of legal, social and cultural systems and structures that prohibit or prevent lesbians and bisexual women from choosing their own intimate partners and living independently of and on an equal footing with male power structures represents a failure by states to fulfil their human rights obligations towards lesbian and bisexual citizens.

¹⁹² UN CEDAW Committee, *General Recommendation 19 on Violence Against Women* (1992), available [https://www.oursplatform.org/resource/cedaw-committee-general-recommendation-no-19-violence-women/#:~:text=Violence%20Against%20Women-,CEDAW%20Committee%3A%20General%20Recommendation%20No.19%20on%20Violence%20Against%20Women&text=This%20General%20Recommendation%20by%20the,and%20negatively%20impacts%20women%20globally;Organisation%20of%20American%20States,Inter-American%20Convention%20on%20the%20Prevention,%20Punishment%20and%20Eradication%20of%20Violence%20Against%20Women%20\(1994\),available%20https://www.oas.org/juridico/english/treaties/a-61.html;Council%20of%20Europe,Convention%20on%20combating%20violence%20against%20women%20\(no.8\).](https://www.oursplatform.org/resource/cedaw-committee-general-recommendation-no-19-violence-women/#:~:text=Violence%20Against%20Women-,CEDAW%20Committee%3A%20General%20Recommendation%20No.19%20on%20Violence%20Against%20Women&text=This%20General%20Recommendation%20by%20the,and%20negatively%20impacts%20women%20globally;Organisation%20of%20American%20States,Inter-American%20Convention%20on%20the%20Prevention,%20Punishment%20and%20Eradication%20of%20Violence%20Against%20Women%20(1994),available%20https://www.oas.org/juridico/english/treaties/a-61.html;Council%20of%20Europe,Convention%20on%20combating%20violence%20against%20women%20(no.8).)

¹⁹³ UN CEDAW Committee, *General Recommendation 28* (no. 76), para 18 and 26.

¹⁹⁴ For example, *International Covenant on Civil and Political Rights*, article 23(2) and (3), available <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹⁹⁵ *UN Convention on the Elimination of all Forms of Discrimination Against Women*, article 16(1)(b) and (e), available <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm#:~:text=French%2C%20Russian%20%2C%20Spanish-,The%20Convention%20on%20the%20Elimination%20of%20All%20Forms%20of%20Discrimination,bill%20of%20rights%20for%20women..>

Women have the right to choose whether to marry, and this right cannot be viably realised where the State creates or sanctions an environment in which lesbian women effectively have no choice but to marry into a heterosexual union, enduring in complete silence everything that that entails.

Moreover, the complete lack of bodily autonomy and sexual and reproductive freedom that is inherent in a socially mandated heterosexual union is a violation of a woman’s right to an adequate standard of physical and mental health. Article 12 of both the International Covenant on Economic, Social and Cultural Rights and CEDAW guarantee this right, as do regional human rights instruments such as the American Convention on Human Rights¹⁹⁶ and the African Charter on Human and Peoples’ Rights.¹⁹⁷ The CEDAW Committee, which authoritatively interprets and monitors the implementation of CEDAW by states, has interpreted the right to health to include *“the right to bodily autonomy” and to encompass ‘sexual and reproductive freedom.’*¹⁹⁸ In 2021, the UN Special Rapporteur on the right to health stated that:

*The key principles that shape human rights, especially non-discrimination, equality and privacy, as well as the integrity, autonomy, dignity and well-being of individuals, especially in relation to sexual and reproductive health rights, are integral to the realization of the right to health.*¹⁹⁹

One UN Special Rapporteur on Violence against Women has described sexuality rights as a constellation of existing rights, including:

*[t]he right to information, based upon which one can make informed decisions about sexuality; the rights to dignity, to privacy and to physical, mental and moral integrity in realising a sexual choice; and the right to the highest standard of sexual choice.*²⁰⁰

¹⁹⁶ Article 10.

¹⁹⁷ Article 16.

¹⁹⁸ *Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights*, Beyond 2014 ICPD review (10-28 February 2014), available <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/Statements/SRRH26Feb2014.pdf>.

¹⁹⁹ UN Special Rapporteur on the Right to Health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health* (16 July 2021, A/76/172), para 1, available <https://www.ohchr.org/en/documents/thematic-reports/a76172-report-special-rapporteur-right-everyone-enjoyment-highest>.

²⁰⁰ R. Coomaraswamy, ‘Reinventing International Law: Women’s Rights as Human Rights in the International Community’, *Edward A. Smith Visiting Lecture Harvard Law School* (1997).

4. HUMAN RIGHTS LAW

Importantly, states that have ratified CEDAW are obliged:

to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

The stereotyped roles to which lesbians and bisexual women do not conform are at the heart of the persecution and human rights violations they face.

In the first decision of its kind, the CEDAW Committee found, in 2022 in *Flamer-Caldera v Sri Lanka*,²⁰¹ that the criminalisation of lesbians and bisexual women violated the CEDAW Convention. The claimant or ‘author’ of the case was a prominent lesbian civil society leader who had been subjected to various forms of discrimination, including threats of violence, as a result of her sexual orientation. The law being challenged in the case criminalised acts of ‘gross indecency’, whether between males or females. The Committee found multiple violations:

- The State Party breached the author’s rights under article 2(a) and (d)–(g), as the criminalisation of same-sex sexual activity between women compounds discrimination, including by placing them under constant threat of arrest, detention and investigation.²⁰²
- The State Party breached the author’s rights under article 2(c)–(f), as criminalisation of same-sex activity between women exacerbates and condones forms of gender-based violence against women, including vilification, harassment, coercion and threats; and death or physical, sexual, psychological or economic harm.²⁰³
- The State Party breached the author’s rights under article 5(a) by failing to eliminate the prejudice and stereotypes to which she has been exposed, including authorities subjecting her to harmful stereotyping and accusatory campaigns on account of being a lesbian. The Committee noted that criminalisation legitimises societal prejudice and gender stereotypes and that decriminalisation is essential to combating such stereotypes.²⁰⁴
- The State Party breached the author’s rights under article 7(c) by failing to protect her against harassment, abuse and threats she received when trying to participate in promoting the rights of LGBT people in Sri Lanka. The Committee stated that

²⁰¹ *Flamer-Caldera v Sri Lanka* (no. 157).

²⁰² *Ibid*, para 9.2

²⁰³ *Ibid*, para 9.3.

²⁰⁴ *Ibid*, para 9.4.

the authorities had done the converse by frequently threatening the author and placing the human rights organisation she led under surveillance.²⁰⁵

- The State Party breached the author’s rights under article 15(1), as criminalisation renders her unable to report threats and harassment for risk of being arrested. States are obliged to ensure that women have access to protection and remedies and the State failed to guarantee this.²⁰⁶
- The State Party breached the author’s rights under article 16, as criminalisation has meant that finding a partner has been difficult and she has had to hide her relationships for risk of being investigated and prosecuted. The Committee reiterated that, whatever the form of a family, the treatment of women in the family must accord with the principles of equality and justice for all.²⁰⁷

In its decision, the Committee urged Sri Lanka to decriminalise consensual same-sex sexual conduct between women having passed the age of consent.²⁰⁸ It also called on the state to provide, *inter alia*: protection against gender-based violence; adequate protection, support systems and remedies for LBT women who are victims of discrimination; and effective civil and criminal remedies.²⁰⁹

This decision has implications for all 40 countries globally that criminalise consensual, female same-sex intimacy, and lays further groundwork for domestic courts and legislatures to eradicate these laws.

At the time of publication, a Private Member’s Bill seeking the decriminalisation of all consensual same-sex intimacy in Sri Lanka was before Parliament. An attempt to have the Bill declared incompatible with the Sri Lankan Constitution was strongly rejected by the Supreme Court in April 2023.²¹⁰

²⁰⁵ *Ibid*, para 9.5.

²⁰⁶ *Ibid*, para 9.6.

²⁰⁷ *Ibid*, para 9.7.

²⁰⁸ *Ibid*, para 11(b)(i).

²⁰⁹ *Ibid* para 11(b)(ii)–(iv). With regard to the specific context of the author, the Committee called on the State to take immediate action against the threats and abuse she experienced, to take steps to ensure that her organisation can carry out activism safely, and to provide her with appropriate reparation (para 11(a)(i)–(iii)).

²¹⁰ SC SD No. 13/2023



5. ISSUES WITH RESEARCH AND DATA COLLECTION

All of the above serves to illustrate the urgency of addressing the criminalisation and persecution of lesbians and bisexual women as a discrete and central part of wider LGBT legal, research and advocacy efforts globally.

Since the first edition of this report in 2016, research on LGBT people, and the specific experiences of lesbian and bisexual women, has developed. The inclusion of lesbians and bisexual women in research has been driven by a growth in activism. As Astraea noted in its 2020 report on LBQ activism:

The research shows that LBQ activism is growing all over the world. These vibrant groups are determinedly doing their work with intense commitment and very little money, often in quite harsh and repressive circumstances... They are, however, also struggling. LBQ groups are under-resourced and under-staffed, and they have weak safety nets. They organize intersectionally but are typically funded through narrowly defined portfolios. They envision creating long-term structural and systemic change, but are principally funded with short-term, often project-based grants.²¹¹

Astraea reported that, generally, groups focusing on lesbian, bisexual and queer women have small, community-funded budgets. It highlighted that only one quarter of interviewed donors' grants went to groups outside North America, Europe and Central Asia. This demonstrates the lack of resourcing for groups in other regions, and the difficulty faced by those groups in conducting research and knowledge production.²¹²

Some global organisations, such as ILGA World, continue to gather disaggregated data on the experiences of lesbian and bisexual women, particularly in order to make recommendations made by UN treaty bodies to states on how to protect such women.²¹³ In 2016, UN Women and Outright International published a report on 'Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons' in South East Asia.²¹⁴ UN Women has also carried out a mapping of country situations and offered support for follow-up of treaty bodies' and Universal Periodic Review recommendations.²¹⁵ UK-based organisation Stonewall increased

²¹¹ L Saleh and N Sood, *Vibrant Yet Under-Resourced: The State of Lesbian, Bisexual and Queer Movements* (Astraea Lesbian Foundation for Justice and Mama Cash, 22 June 2020), p. 72, available <https://fundlbq.org>.

²¹² *Ibid.*, p. 73.

²¹³ K Kirichenko, *United Nations Treaty Bodies: References to sexual orientation, gender identity, gender expression and sex characteristics: Annual Report 2019* (ILGA World, July 2020).

²¹⁴ Athena Nguyen, *Summary of Proceedings: Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* (UN Women and Outright International, 2016), available <https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2016/05/LBTI-web-final.pdf>.

²¹⁵ UN, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, (A/HRC/35/36, 19 April 2017), para 48, available <https://digitallibrary.un.org/record/1301206?ln=en>.



Photo opposite:
Oluwaremilekun Makinde,
a Nigerian LGBT activist
and human rights lawyer

efforts to address the rights of lesbian and bisexual women (as well as trans people) globally by introducing the ‘Out of the Margins’ project.²¹⁶

In 2023, Human Rights Watch published ‘This is Why We Became Activists’, a groundbreaking report which explores the various ways in which the discrimination experienced by lesbian, bisexual and queer women in a range of dimensions prevents them from accessing the full range of human rights to which they are entitled.²¹⁷

While the case law relevant to lesbians and bisexual women has been improved significantly by virtue of *Henry and Edwards v Jamaica*²¹⁸ and *Flamer-Caldera v Sri Lanka*,²¹⁹ there is still a long way to go in all forms of legal and social research and advocacy.

There are a variety of reasons why, prior to these cases, the integration of lesbian and bisexual women’s experiences had not featured as prominently as it should in legal interventions to address LGBT persecution. These include a lack of disaggregated data and research, underreporting of female-specific violations, particularly in the areas of violence and family-related coercion, and the relative lack of visibility and voice of lesbians and bisexual women in legal, social, religious and political structures that have the power and capacity to effect change.

5.1 Research limitations

There remains a limited amount of disaggregated data and information that focuses not only on the general situation of all LGBT people but also on the unique experiences of the constituent sub-groups within that population.

In many countries, in order to effectively undertake research specific to lesbian and bisexual women’s experiences and needs, distinct methods are required to ensure such women can be reached. Gay and bisexual men are often more visible and accessible to researchers, and information gathered through standard research methods can thus become skewed towards their experiences. In contrast, and for a variety of reasons, lesbians and bisexual women are often the least visible within the LGBT community, not least because they are more likely to stay hidden within heterosexual marriages as a means of remaining invisible and thus ‘safe’.²²⁰ The Eurocentralasian Lesbian Community noted:

One of the results of the complex entanglements between misogyny, sexism and homophobia... is also that lesbians’ needs and experiences are often

²¹⁶ Stonewall, *Out of the Margins: A Global LBT+ Rights Project*, available <https://www.stonewall.org.uk/our-work/campaigns/out-of-the-margins-global-lbt-rights-project>.

²¹⁷ Erin Kilbride, ‘This Is Why We Became Activists’: *Violence Against Lesbian, Bisexual and Queer Women and Non-Binary People* (Human Rights Watch, 2023) available <https://www.hrw.org/report/2023/02/14/why-we-became-activists/violence-against-lesbian-bisexual-and-queer-women-and-non>.

²¹⁸ *Henry and Edwards v Jamaica* (no. 87).

²¹⁹ *Flamer-Caldera v Sri Lanka* (no. 157).

²²⁰ Human Rights First, *The Road to Safety* (no. 137), p. 13.

5. ISSUES WITH RESEARCH AND DATA COLLECTION

*underrepresented, marginalized and overlooked in the women's rights movement, the LGBTI movement, the human rights movement, as well as within different national and international policy contexts.*²²¹

Likewise, LGBT human rights defenders take tremendous personal risks by the very nature of their work, and this can make data collection of any kind very difficult. For women, the risks are amplified by both their sex/gender and their sexuality. The risks they take are illustrated in *Flamer-Caldera v Sri Lanka*, in which the head of the leading LGBT human rights organisation in Sri Lanka described her daily experience of threats of violence and the need for constant security surveillance as a prominent, female human rights defender. The Committee outlined precautions taken by the author of the complaint:

*She has been targeted as the most prominent defender of the human rights of lesbian, gay, bisexual, transgender and intersex persons in Sri Lanka, in addition to the precautions she has to take as a woman. Thus, she has put in place security protocols for her protection and that of her family, organizes events in safe spaces and ensures that the location of her work is not made public. Given her activism and known sexual orientation, she fears falling victim to the continuing practice of 'white van disappearances'.*²²²

LGBT organisations in many countries like Sri Lanka have been threatened and harassed by state authorities and have had their workshops and other activities curtailed.²²³ In 2002, lesbian rights activist FannyAnn Eddy founded the Sierra Leone Lesbian and Gay association, the first LGBT organisation in the country, but was brutally murdered in 2004 when at least four men broke into the organisation's office and gang-raped and stabbed her.²²⁴ In Cameroon, leading activist Eric Lembembe similarly was also murdered,²²⁵ compelling the Special Rapporteur for Human Rights Defenders of the African Commission on Human and Peoples' Rights to release a statement recognising the "repeated threats and intimidation" faced by those working for the protection of gay and lesbian rights.²²⁶ The high-profile murders of LGBT rights defenders and activists in socially conservative countries have a chilling effect on LGBT activism and on efforts by LGBT organisations to conduct research.

In many countries, LGBT organisations also face state pressure, with groups reporting difficulties in registering their organisations with the relevant government authorities, seriously inhibiting the role they can play in research, data collection and advocacy

²²¹ Eurocentralasian Lesbian Community, *The Hidden Factor: A Gender Analysis of Lesbian's Struggles* (March 2021), p. 2 available <https://europeanlesbianconference.org/wp-content/uploads/2021/03/ELC-submission-UN-IE-SOGI.pdf>.

²²² *Flamer-Caldera v Sri Lanka* (no. 157), para 3.3.

²²³ *Flamer-Caldera v Sri Lanka* (no. 157), para 9.5.

²²⁴ Human Rights Watch, 'Sierra Leone: Lesbian Rights Activist Brutally Murdered', (2004), available <http://www.hrw.org/news/2004/10/05/sierra-leone-lesbian-rights-activist-brutally-murdered>.

²²⁵ BBC, 'Cameroon's Eric Lembembe: Gay Rights Activist Murdered' (2013), available <http://www.bbc.co.uk/news/world-africa-23331832>.

²²⁶ Special Rapporteur for Human Rights Defenders, *Press release on the murder of defender of human rights Eric Ohena Lembembe*, (African Commission on Human and Peoples' Rights, 25 July 2013), available <https://achpr.au.int/fr/news/press-releases/2013-07-26/communique-de-presse-sur-lassassinat-du-defenseur-des-droits-de>.

related to LGBT people.²²⁷ A report by Astraea found that, there are 55 countries in which, organisations cannot register as LGBT organisations.²²⁸ In April 2019, Tanzania's NGO registrar revoked LGBT-inclusive health organisation CHESA's registration certificate for "promoting unethical acts."²²⁹ Ugandan LGBT organisation Sexual Minorities Uganda (SMUG) was banned by Uganda's National Bureau for NGOs for not having officially registered with it, yet previously the registrar had refused to approve SMUG's name as it would be "undesirable".²³⁰ In Uganda, a training and advocacy workshop of LGBT activists was disbanded by the government's Minister of Ethics and Integrity, with this action later upheld by the domestic trial court.²³¹ In 2017, in Tanzania, the authorities arrested two activists for leading a training on LGBT identities and rights.²³² In another incident in September 2017, police in Zanzibar, Tanzania, arrested 20 people at a workshop organised by a community-based organisation on HIV prevention and treatment for "promoting homosexuality".²³³ In 2023, 17 men and seven women were arrested at a seminar held by an HIV/AIDS organisation in Burundi and subsequently charged with offences related to the practice and incitement of same-sex intimacy.²³⁴ Uganda's Anti-Homosexuality Act of 2023 has introduced a penalty of up to 20 years' imprisonment to anyone advocating for LGBT+ rights.

Other countries have adopted laws that curtail the freedom of association of LGBT organisations directly, criminalising their activities and halting any research and advocacy efforts they were involved in.²³⁵ The Special Rapporteur for Human Rights Defenders under the African Commission on Human and Peoples' Rights has criticised these government policies for undermining the role of human rights defenders, in contravention of the ACHPRI,²³⁶ and the African Commission itself issued a Resolution urging states to ensure an enabling environment for LGBT human rights defenders to carry out their work.²³⁷

²²⁷ See, for instance, a US Department of State report on Afghanistan: 'Organizations devoted to protecting the freedom of LGBT persons remained underground because they could not be legally registered', in Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Afghanistan*, US Department of State (2014). See also *Eric Gitari v NGO Board* [2015], Petition 440 of 2013, High Court of Kenya at Nairobi and *Attorney General of Botswana v Rammoge and others*, 16 March 2016, Botswana Court of Appeal, which illustrate the legal lengths some LGBT NGOs need to go to just to have their organisations registered by the State.

²²⁸ Saleh and Sood, *Vibrant Yet Under-Resourced* (no. 211), p. 37.

²²⁹ Human Rights Watch, *If We Don't Get Services, We Will Die* (no. 7), p. 54.

²³⁰ Oryem Nyeko, 'Uganda Bans Prominent LGBTQ Rights Group', *Human Rights Watch* (12 August 2022), available <https://www.hrw.org/news/2022/08/12/uganda-bans-prominent-lgbtq-rights-group>.

²³¹ The Africa Report, *Uganda: Gay Advocacy Group Loses Court Battle With Ethics Minister*, (2014), <https://www.theafricareport.com/4271/uganda-gay-advocacy-group-loses-court-battle-with-ethics-minister/>. The case is under appeal.

²³² Human Rights Watch, *If We Don't Get Services, We Will Die* (no. 7), p. 16.

²³³ *ibid.*, p. 104.

²³⁴ RFI, 'Burundi charges 24 people with 'homosexual practices' in anti-gay crackdown' (2023), available <https://www.rfi.fr/en/africa/20230309-burundi-charges-24-people-with-homosexual-practices-in-anti-gay-crackdown>.

²³⁵ For example, the Nigerian Same-Sex Marriage (Prohibition) Act 2013, Section 5(2) states that 'A person who registers, operates or participates in gay clubs, societies, and organisations ... commits an offence and is liable on conviction to a term of 10 years imprisonment; Ghana's *Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021*, available <https://www.parliament.gh/docs?type=Bills&OT&filter=family>.

²³⁶ 'Press Release on the Implication of the Same Sex Marriage [Prohibition] Act 2013 on Human Rights Defenders in Nigeria' (2014), available <https://achpr.au.int/en/news/press-releases/2014-02-06/press-release-implication-same-sex-marriage-prohibition-act-2013>.

²³⁷ African Commission on Human and Peoples' Rights, *Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April to 12 May 2014.

5. ISSUES WITH RESEARCH AND DATA COLLECTION

5.2 Underreporting

In addition to the lack of empirical study dedicated to lesbians' and bisexual women's experiences of persecution, public statistics on incidences of violence suffered by women more generally remain under-developed. In its 2017 General Comment on gender-based violence, the CEDAW Committee called on states to do more to promote reporting within their legislative frameworks, policies and programmes. It urged states to repeal laws that prevent or deter women from reporting gender-based violence, such as laws allowing dual arrests in cases of domestic violence, and to create awareness-raising programmes that encourage the reporting of violence.²³⁸

Even where statistics on violence against women are gathered, they tend to presume heterosexuality and therefore disaggregated data on violence against lesbians and bisexual women is typically not available at all. In some reports, reasons for underreporting of violence by LGBT people as a whole are considered. ILGA World reported that LGBT people may not report because of fear of reprisals, lack of access to legal services, running the risk of being re-victimised, and the threat of being 'outed'.²³⁹ This combination of low reporting and incomplete research protocols makes a quantitative analysis of the relationship between sex/gender, sexuality and violence virtually impossible.

Further, as noted in section 3.2.3, above, physical and sexual violence against women is notoriously underreported, and this can be exacerbated for lesbians and bisexual women.

In 2014, a comparative report on violence against lesbian, bisexual and trans women in Asia²⁴⁰ identified four reasons for the underreporting of acts of criminal violence:

Non-application of protective laws: Where the law prohibits discrimination against marginalised and vulnerable populations, these laws usually do not extend protections to lesbians, bisexual women and trans people. For instance, laws meant to protect women from domestic and sexual violence are often not applicable to lesbians, bisexual women and trans people who are similarly victimised. This is the case even when the law recognises de facto (i.e., non-married) couples.

Fear: Even in cases where protective laws may be applicable to lesbians, bisexual women and trans people, victims fear reporting violence because their experience with police and law-enforcement tells them that such reporting invites mistreatment—in the form of humiliation, rejection, discrimination, or possibly even criminalisation for being a lesbian or bisexual woman or transgender person.²⁴¹

Stigma: The social stigma that continues to be associated with non-conforming sexual orientation, gender identity and gender expression also means that many

²³⁸ CEDAW, *General recommendation No. 35* (no. 9), para 29(c)(iii) and 30(b)(ii).

²³⁹ Botha, *Our identities under arrest* (no. 6), p. 16.

²⁴⁰ Poore, *Violence against Lesbians, Bisexual Women and Transgender People in Asia* (no. 190).

²⁴¹ This point has also been noted by the UN Special Rapporteur on Violence against Women in a report on India: UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to India* (HRC/26/38/Add.1, 6, 1 April 2014), para 19.

organisations whose mandates focus on human rights, workers' rights, and women's rights, as well as other more mainstream issues, distance themselves from lesbian, bisexual and trans issues and rights.

Societal attitudes: The relentless pressure of compulsory heterosexuality, along with gender-based discrimination and violence, creates a vicious cycle of victim isolation, self-blame for the violence, absence of redress, internalised homophobia or transphobia, and perpetrator impunity.

The maintenance of a law criminalising same-sex sexual conduct means that LGBT people are unable to access the myriad legal protections that cisgendered heterosexual people enjoy. LGBT people are disempowered to report crimes for fear of being re-victimised. Even where it is ambiguous whether lesbians and bisexual women are criminalised, or where it is clear that only male same-sex sexual conduct is captured by the law, lesbians and bisexual women will be highly unlikely to seek and obtain legal redress for violence committed against them.

5.3 Lack of voice and agency

Lesbians and bisexual women in many countries have much less visibility and voice in advocacy, law reform and social and religious structures at both the domestic and international level, including at the highest levels. They therefore have less involvement, control and agency over change efforts, which is reflected in the focus of global research and advocacy. As one report notes:

“[p]ositions of power, even within the LGBTQI movement, are rarely given to [lesbian, bisexual or queer] identifying women, further reducing their visibility.”²⁴² This, it goes on to say, may in part be due to the “emphasis by [non-governmental organisations] and international donors on ‘men who have sex with men’ in attempts to curb the HIV/AIDS crisis” which “boosted the development of a vast infrastructure of organisations and services for gay men while largely ignoring [lesbian, bisexual and queer] women.”²⁴³

Women's relative under-representation is caused by a complex web of factors that includes general social dominance by men in many societies, women's inability to participate equally in public functions due to the unequal sharing of family responsibilities between women and men, and safety issues that are unique to women and make it harder for them to function in high-risk environments.

Addressing problems of under-representation in particular countries or regions thus depends on broader efforts to eliminate discrimination against all women in society, as well as the conscientious effort of those involved in the human rights movement to take extra measures to ensure that lesbians' and bisexual women's issues feature more prominently in their work.

²⁴² GALCK, *Research on the Lived Experiences* (no. 70), p. 18.

²⁴³ *Ibid.*



6. CONCLUSION

Lesbians and bisexual women experience human rights violations at the hands of both the state and private individuals, who, in many instances, act with impunity. Some of these violations overlap with the persecution faced by gay and bisexual men and trans people, while other violations are experienced by lesbians and bisexual women in a different way or to a different degree.

Lesbians and bisexual women are criminalised in many jurisdictions around the world. They experience physical and sexual violence as a direct result of both their sex and sexual orientation, are kept under the particularly tight control of their families and communities, have uniquely limited opportunities and safe spaces to express their identities, are often marginalised both within and outside the LGBT and women's human rights movements, and are excluded from participating on an equal footing in local and global social and legal reform efforts.

Decriminalisation remains an important step for lesbians and bisexual women, not only in those countries where they are or may be captured by the criminal law, but also because the maintenance of any form of anti-LGBT laws fosters and perpetuates generalised homophobia, harming the entire LGBT community.²⁴⁴ While encouraging progress has been made, legal interventions to achieve decriminalisation still need to better integrate and reflect the overlapping and differential impact of these criminal laws on lesbians and bisexual women. This will help strengthen the legal and judicial discourse by better highlighting the multiplicity of ways in which criminalisation creates a breeding ground for multiple human rights abuses, which in turn cause families, societies and nations significant unnecessary division, anguish and suffering.

At the same time, eliminating other related human rights violations that occur regardless of the scope or status of the criminal law, including generalised gender discrimination and gender-based violence against women and girls, are equally central to ending the persecution of lesbians and bisexual women.

This report has sought to bring together some of the information and research that exists on lesbian and bisexual women's experiences of persecution globally in order to contribute to change. While it provides a summary of available anecdotes from around the world, there is a clear lack of systematic, disaggregated data collection and targeted research relevant to the persecution of lesbians and bisexual women. More work and support akin to the great strides made in *Henry and Edwards v Jamaica* and *Flamer-Caldera v Sri Lanka* are needed to continue to reverse the prior virtual absence

²⁴⁴ National Coalition for Gay and Lesbian Equality v. Minister of Justice (no. 69).

6. CONCLUSION

of lesbians and bisexual women within legal and judicial analyses and narratives, particularly around the impacts of criminalisation of same-sex sexual conduct.

Legal efforts must continue to be stepped up to round out the picture of LGBT persecution and ensure that interventions and responses address the full spectrum of needs and circumstances of all constituent members of the LGBT population.

Appendix A: Countries where female same-sex intimacy is criminalised*

Country	Source of criminalisation	Text of provisions
Afghanistan	Penal Code 2017 Sharia law	645. Musahaqah A person who commits “musahaqah” with another person, each of the former shall be sentenced to small imprisonment, not exceeding one year. [Unofficial translation.] Article 130 of the Constitution allows for the implementation of Sharia law, which prohibits same-sex sexual activity in general. The maximum penalty is death and is applicable in cases of sex between men or sex between women. Following the Taliban takeover in 2021, reports suggest that the Taliban is taking a strict interpretation of Sharia law, under which same-sex sexual activity is punishable by death. ²⁴⁵
Algeria	Penal Code 1966, Article 338	338. Any person guilty of a homosexual act shall be punished with imprisonment of between two (2) months and two (2) years and a fine of between five hundred (500) and two thousand (2,000) Algerian dinar. [Unofficial translation from French.]
Brunei	Syariah Penal Code Order 2013, section 92 Musahaqah	92. (1) Any Muslim woman who commits musahaqah is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or combination of any two of the punishment. (2) Any non-Muslim woman who commits musahaqah with a Muslim woman is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or a combination of any two of the punishment. (3) In this section, “mu-sahaqah” means any physical activities between a woman and another woman which would amount to sexual acts if it is done between a man and a woman, other than penetration.
Burundi	Penal Code 2009, Article 567	567. Whoever has sexual relations with someone of the same sex shall be punished with imprisonment for three months to two years and pay a fine of fifty thousand to one hundred thousand francs or one of these penalties. [Unofficial translation from French.]
Cameroon	Penal Code 2016 ²⁴⁶ , Article 347-1	347-1. Any person who has sexual relations with a person of the same sex shall be punished with imprisonment from six months to five years and a fine of 20,000 to 200,000 francs. [Unofficial translation from French.]
Chad	Penal Code 2017, Article 354	354. Anyone who has sexual relations with persons of the same sex is liable to imprisonment for three months to two years and a fine of between 50,000 and 500,000 francs. [Unofficial translation from French.]

²⁴⁵ Human Rights Watch, *Even If You Go to the Skies, We'll Find You* (no. 7).

²⁴⁶ Relating to the Penal Code, Law No. 2016/007 (12 July 2016).

Country	Source of criminalisation	Text of provisions
Comoros	Penal Code 1995, Article 318(3)	318. (3) Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this code, whoever commits an improper or unnatural act with a person of the same sex will be punished by im-prisonment of between one and five years and by a fine of 50,000 to 1,000,000 francs. [Unofficial translation from French.]
Dominica	Sexual Offences Act 1998, section 14 as amended by Sexual Offences (Amendment) Act 2016, section 7	14. (1) Any person who commits an act of gross indecency with another person is guilty of an offence and liable on conviction to imprisonment— (a) if the complainant is a person sixteen years of age or more, for twelve years; (2) Subsection (1) does not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent. ... (4) In this section “gross indecency” means- (a) an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs, breasts or anus for the purpose of arousing or gratifying sexual desire;
Eritrea	Penal Code 2015, Article 310	310. (1) A person who performs with a person of the same sex an act corresponding to the sexual act, or any other indecent sexual act, is guilty of homosexual conduct, a Class 7 serious offence, punishable with a definite term of imprisonment of not less than 5 years and not more than 7 years.
Ethiopia	Criminal Code 2004, Article 629	629. Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment.
The Gambia	Criminal Code 1934, as amended by Criminal Code (Amendment) Act, No 8 of 1965 and Criminal Code (Amendment) Act, No 3 of 2005, Sections 144(2)(b) and (c) and 147(2) and (3)	144. (1) Any person who— (a) has carnal knowledge of any person against the order of nature; or ... (c) permits any person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for a term of 14 years. (2) In this section- “carnal knowledge of any person against the order of nature” includes- (a) carnal knowledge of the person through the anus or the mouth of the person; (b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and (c) committing any other homosexual act with the person. 147. (2) Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, is guilty of a felony and liable to imprisonment for a term of five years. (3) In this section — “act of gross indecency” includes any homosexual act.

Country	Source of criminalisation	Text of provisions
Guinea	Penal Code 2016, Article 274	274. Any immodest or unnatural act committed with an individual of their own sex or with an animal is punished by imprisonment of 6 months to 3 years and a fine of 500,000 to 1,000,000 Guinean francs or one of these two penalties only. [Unofficial translation from French.]
Indonesia (Aceh Province and South Sumatra)	Aceh Regulation (No. 6/2014) Article 64 South Sumatra Provincial Ordinance on the Eradication of Immoral Behaviour (No. 13/2002), Articles 5 and 10	64. (1) Every person who deliberately commits Jarimah Musahaqah is threatened with ‘Uqubat Ta’zir at most 100 (a hundred) lashes or a fine of at least 1,000 (one thousand) grams of pure gold or a maximum of 100 (one hundred) months in jail. (2) Any person who repeats the act as referred to in paragraph (1) is threatened with ‘Uqubat Ta’zir 100 (a hundred) lashes which may be increased by a fine of at most 120 (one hundred and twenty) grams of pure gold and/or imprisonment of at most 12 months. 5. Prohibition on immorality Any person referred to in Article 3 [individuals, entrepreneurs, leaders of government/private institution in the territory of South Sumatra province] is prohibited from: (a) committing anything leading to immoral actions [including ‘lesbianism’ per Article 2(2)]; (b) committing any actions that incite other persons to participate in immoral actions; (c) protecting and/or facilitating the continuity of immoral actions. 10. Criminal sanction (2) Any person who commits immorality which has not been regulated in other laws and regulations, based on the Ordinance, are subject to: (i) imprisonment for a minimum of 60 days and a fine amounting to at least Rp2 million or (ii) imprisonment for a maximum 180 days and a fine amounting to maximum Rp5 million. [Unofficial translation from Indonesian.]
Iran	Penal Code 2013, Articles 237-240 Musahaqah	237. Other homosexual acts Same-sex intimacy between men and between women other than ‘liwat’ or ‘tafkhez’, such as ‘kissing or touching as a result of lust’, is punishable with 31-74 lashes. 238. Musahaqah is defined as where a female person puts her sex organ on the sex organ of another person of the same sex. 239. The hadd punishment for musahaqah shall be one hundred lashes 240. Regarding the hadd punishment for musahaqah, there is no difference between the active or passive parties or between Muslims and non-Muslims, or between a person that meets the conditions for ihsan and a person who does not, and also whether or not [the offender] has resorted to coercion. [Unofficial translation from Farsi.]

Country	Source of criminalisation	Text of provisions
Iraq	Penal Code 1969, Article 401 Sharia law (some regions) Law No. 8 of 1988 (as amended) [English translation not available at time of publication] Anti-Prostitution and Homosexuality Law 2024 (amendment to the Anti-Prostitution Law No. 8 of 1988), Articles 1, 2, 3, 5, 6 and 7 [English translation not available at time of publication]	401. Any person who commits an immodest act in public is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 50 dinars or by one of those penalties. [Unofficial translation from Arabic.] There have been numerous reports of non-state actors claiming to be enforcers of Sharia ordering the executions of men and women for same-sex intimacy. ²⁴⁷ 1. The following expressions have the meanings assigned to them: 1.2. Homosexuality is the practice of any of the following forms of behaviour: Sexual relations between two people of the same sex, a male and a male, or female and a female... 6.1. Anyone who has a homosexual relationship shall be punished by imprisonment for a period of no less than ten years and no more than fifteen years. [Unofficial translation from Arabic].
Liberia	New Penal Law, Volume IV, Title 26, Liberian Code of Laws Revised 1978, sections 14.74 and 14.79	14.74. A person who engages in deviate sexual intercourse under circumstances not stated in Section 14.72 or 14.73 has committed a first degree misdemeanour. 14.79 (a) "Sexual intercourse," occurs upon penetration, however slight; ejaculation is not required; (b) "Deviate sexual intercourse" means sexual contact between human beings who are not husband and wife or living together as man and wife though not legally married, consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and vulva; (c) "Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying sexual desire.
Libya**	Penal Code 1953 (as amended by Law 70 of 1973), Articles 407(4) and 408(4)	407. Illicit sexual intercourse (4) If anyone has sexual intercourse with a person with that person's consent, both he and his partner shall be punished by imprisonment for a period not exceeding five years. 408. Indecent Acts (4) Whoever commits an indecent act with a partner with his consent will be punished with his partner with imprisonment.
Malawi	Penal Code 1930 (as amended 2011), section 137A	137A. Any female person who, whether in public or private, commits any act of gross indecency with another female shall be guilty of an offence and liable to a prison term of five years.
Malaysia	Penal Code 1998, section 377D Several states apply Sharia law, for example the Sharia penal law in the state of Pulau Pinang, Article 26	377D. Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years. 26. Any woman who commits <i>musahaqah</i> is guilty of an offence and on conviction is liable to a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding three years or whipping not exceeding six strokes or to any combination thereof. [Unofficial translation from the Malay.]

²⁴⁷ Human Rights Watch and Iraqueer, *Everyone Wants Me Dead* (no. 7).

Country	Source of criminalisation	Text of provisions
Maldives	Penal Code 2014, sections 411(a) (2) and 412	411. (a) Unlawful Intercourse. A person commits an offense if: ... (2) he engages in sexual intercourse with a person of the same sex. The sanctions in the section range from Class 1 misdemeanours to Class 3 felonies that carry imprisonment of between six months and eight years. An additional punishment of 100 lashes is provided for in 411(d): (d) Additional Punishment Authorized. In addition to the punishment authorized under Chapter 90, to impose the penalty imposed under Islamic Sharia, an additional punishment of 100 lashes is authorized for the offense. 411(f) defines "Same-sex intercourse" as "(A) Insertion by a man his sexual organ or any object into the anus of another man for sexual gratification. Or the insertion into another man's mouth the penis of a man or (B) Insertion of a woman's organ or any object into the vagina or anus of another woman for sexual gratification." 412. Unlawful sexual contact (c) Prohibition. "Prohibited sexual contact" means indecent acts other than the offenses prescribed under Section 411 (a) of this Code, with a person of same sex, or with a person of the opposite sex other than with a person to whom he is married, or with an animal, for obtaining sexual gratification. The offences range from Class 1 misdemeanours to Class 3 felonies that carry a prison sentence of between six months and eight years.
Mauritania	Penal Code 1983, Article 308	308. Any adult Muslim man who commits an indecent act or an act against nature with an individual of his sex will face the penalty of death by public stoning. If it is a question of two women, they will be punished as prescribed in article 306, first paragraph [a sentence of between three months to two years imprisonment and a fine of 5000 to 60,000 UM. [Unofficial translation from French.]
Morocco	Penal Code 1962, section 489	489. Any person who commits lewd or unnatural acts with an individual of the same sex shall be punished with a term of imprisonment of between six months and three years and a fine of 120 to 1,000 dirhams, unless the facts of the case constitute aggravating circumstances. [Unofficial translation from Arabic.]
Nigeria	Kano State Penal Code (Amendment no. 12) 2014, sections 4 and 5 [Amending sections 284 and 285 of the Kano State Penal Code Cap 105 1991] Sharia law (12 northern States)	4. (2) Any woman who has a feeling of love for another woman or girl and went ahead to employ the means of satisfying that passion either through bodily contact or otherwise with or without her consent in order to derive sexual pleasure is said to have committed lesbianism and shall be punished with imprisonment for a term of fourteen years and shall be liable to a fine of Fifty Thousand Naira (n50,000). 5. Whoever (a) commits an act of gross indecency upon the person of another ... is said to have committed an offence and shall be punished with imprisonment for fourteen years and shall be liable to a fine of Fifty Thousand Naira (n50,000) ... Same-sex intimacy between women is also criminalised under Sharia law in 12 Nigerian states.

Country	Source of criminalisation	Text of provisions
Oman	Penal Code 2018, section 262	262. Whoever engages in lustful acts with a person of the same sex shall be punished by imprisonment for a period no less than (6) six months and not exceeding (3) three years.
Qatar	Penal Code 2004, Article 296(4) Sharia law	296. Whoever commits the following offences shall be punished with imprisonment for a term of no less than one year and no more than three years:... (4) Inducing or seducing a male or a female in any way to commit illegal or immoral actions. Qatar also operates an uncodified criminal code based on Sharia law. Under this framework, any sex outside marriage is illegal.
Saint Lucia	Criminal Code 2004, section 132	132. (1) Any person who commits an act of gross indecency with another person commits an offence and is liable on conviction on indictment to imprisonment for ten years or on summary conviction to five years. (2) Subsection (1) does not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent. ... (4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.
Saint Vincent and the Grenadines	Criminal Code 1988, section 148	148. Any person, who in public or private, commits an act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years.
Saudi Arabia	Sharia law	Saudi Arabia operates an uncodified criminal code based on Sharia law. Under this framework, any sex outside marriage is illegal.
Senegal	Penal Code 1965, Article 319	319. ...Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 francs. If the act was committed with a person below the age of 21, the maximum penalty will always be applied. [Unofficial translation from French.]
Solomon Islands	Penal Code 1996, section 162	162. Any person who, whether in public or private - (a) commits any act of gross indecency with another of the same sex; (b) procures another of the same sex to commit any act of gross indecency; or (c) attempts to procure the commission of any act of gross indecency by persons of the same sex shall be guilty of a felony and be liable to imprisonment for five years.

Country	Source of criminalisation	Text of provisions
Somalia	Penal Code, Legislative Decree No. 5/1962.2, Article 409 Sharia law	409. Whoever has carnal intercourse with a person of the same sex shall be punished, where the act does not constitute a more serious crime, with imprisonment from three months to three years. Where the act committed is an act of lust different from carnal intercourse, the punishment imposed shall be reduced by one-third. Somalia also operates an uncodified criminal code based on Sharia law. Under this framework, any sex outside marriage is illegal.
Sri Lanka	Penal Code 1883 (as amended by the Penal Code (Amendment) Act No. 22 of 1995), section 365A	365A. Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both...
Sudan	Criminal Act 1991, section 151	151. Whoever commits an act of gross indecency upon the person of another person or any sexual act which does not amount to Zina or Sodomy shall be punished with not more than forty lashes and shall also be liable for imprisonment for a term which may not exceed one year or fine.
Syria	Penal Code 1949, Article 520	520. Any unnatural sexual intercourse shall be punished with a term of imprisonment of up to three years. [Unofficial translation from Arabic.]
Tanzania	Penal Code 1945 (as amended by the Sexual Offences Special Provisions Act 1998), section 138A Zanzibar Penal Code of 1934, as amended in 2004, sections 4, 153 and 154	138A. Any person who, in public or private commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable on conviction to imprisonment for a term of not less than one year and not exceeding five years or to a fine not less than one hundred thousand shillings and not exceeding three hundred thousand shillings; ... 4. In this act, unless the context otherwise requires: “gross indecency” means any sexual act that falls short of actual intercourse and may include masturbation and physical contact or indecent behaviour without any physical contact. 153. Any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand shillings. 154. Any person who, in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, is guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding two hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries physical or psychological caused to that person.

Country	Source of criminalisation	Text of provisions
Togo	Penal Code 2015, Articles 392, 393	392. Any immodest or unnatural act committed with an individual of the same sex constitutes an outrage to good morals. [Unofficial translation from French.] 393. Any person who commits an offense against good morals is punished by a prison sentence of one (01) to three (03) years and a fine of one million (1,000,000) to three million (3,000,000) CFA francs or one of these two penalties. [Unofficial translation from French.]
Tunisia	Penal Code 1913, Article 230	230. Homosexual acts between males or females, that are not covered in any of the other previous articles, are punished with imprisonment for three years. [Unofficial translation from Arabic.]
Uganda	Penal Code Act 1950 (Chapter 120) as amended, section 148 Anti-Homosexuality Act 2023, sections 2 and 3	148. Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years. 2. The offence of homosexuality (1) A person commits the offence of homosexuality if the person performs a sexual act or allows a person of the same sex to perform a sexual act on him or her. (2) A person who commits the offence of homosexuality is liable, on conviction, to imprisonment for life. (3) A person who attempts to perform a sexual act in the circumstances referred to in subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years. 3. Aggravated homosexuality (1) A person who commits the offence of homosexuality in any of the circumstances specified in subsection (2), commits the offence of aggravated homosexuality and is liable, on conviction, to suffer death. (2) The circumstances referred to in subsection (1) are where – ... (d) the offender is a serial offender.
United Arab Emirates	Federal Penal Code 1987, Article 356 Sharia law	Article 356 criminalises ‘voluntary debasement’, punishable with a minimum sentence of six months of imprisonment. This provision captures same-sex intimacy but can only be enforced at the instigation of a husband or male guardian of a participant. UAE also operates an uncodified criminal code based on Sharia law. Under this framework, any sex outside marriage is illegal and could attract the death penalty.
Yemen	Penal Code 1994, Article 268	268. Homosexuality between women is defined as sexual stimulation by rubbing. The penalty for premeditated commission shall be up to three years of imprisonment; where the offence has been committed under duress, the perpetrator shall be punishable with up to seven years detention.

Country	Source of criminalisation	Text of provisions
Zambia	Penal Code (as amended by Act No. 15 of 2005), section 158(2)	158. (2) Any female who, whether in public or private, commits any act of gross indecency with a female child or person, or procures a female child or person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with himself [sic] or with another female child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

* Note: the Court of Appeal in Botswana in 2021 upheld a 2019 High Court decision decriminalising ‘carnal knowledge against the order of nature’. It found, however, that a separate provision, s 167, criminalising ‘gross indecency’, which criminalises both male and female same-sex sexual conduct, was not properly before the court, and that provision was therefore re-instated and technically remains in force. However, its constitutional validity is in significant doubt by virtue of the Court of Appeal judgment. See <https://www.humandignitytrust.org/wp-content/uploads/resources/2021.11.29-AG-Botswana-v-Motshidiemang.pdf>. We have not included Botswana in this Appendix as a result, but this remains under review while the status of s 167 of the Botswana Penal Code is determined. Section 167 reads: “Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence.”

** Note: criminalisation of same-sex sexual conduct is widely assumed in Libya and there are reports of harassment and arrests under public indecency, ‘prostitution’ and ‘infidelity’ laws; but the definition of sexual activity for the purposes of Articles 407 and 408 appear to be confined to activity between a man and a woman.

Appendix B: 2023 Gender Gap Index scores for criminalising versus non-criminalising countries²⁴⁸

Countries that do not criminalise any same-sex sexual conduct	GGI Score
Iceland	0.912
Norway	0.879
Finland	0.863
New Zealand	0.856
Sweden	0.815
Germany	0.815
Nicaragua	0.811
Lithuania	0.800
Belgium	0.796
Ireland	0.795
Rwanda	0.794
Latvia	0.794
Costa Rica	0.793
United Kingdom	0.792
Philippines	0.791
Albania	0.791
Spain	0.791
Moldova	0.788
South Africa	0.787
Switzerland	0.783
Estonia	0.782
Denmark	0.780
Mozambique	0.778
Australia	0.778
Chile	0.777
Netherlands	0.777
Slovenia	0.773
Canada	0.770
Barbados	0.769
Portugal	0.765
Mexico	0.765
Peru	0.764
Argentina	0.762
Cabo Verde	0.761
Serbia	0.760
France	0.756
Belarus	0.752

Countries that do not criminalise any same-sex sexual conduct	GGI Score
Colombia	0.751
United States	0.748
Luxembourg	0.747
Austria	0.740
Singapore	0.739
Ecuador	0.737
Madagascar	0.737
Suriname	0.736
Honduras	0.735
Lao PDR	0.733
Croatia	0.730
Bolivia	0.730
Brazil	0.726
Panama	0.724
Poland	0.722
Armenia	0.721
Kazakhstan	0.721
Slovakia	0.720
Botswana	0.719
Bulgaria	0.715
Ukraine	0.714
Uruguay	0.714
El Salvador	0.714
Montenegro	0.714
Malta	0.713
Viet Nam	0.711
North Macedonia	0.711
Thailand	0.711
Georgia	0.708
Italy	0.705
Mongolia	0.704
Dominican Republic	0.704
Lesotho	0.702
Israel	0.701
Kyrgyzstan	0.700
Bosnia and Herzegovina	0.698
Romania	0.697

²⁴⁸ World Economic Forum, *Global Gender Gap Report 2023* (no. 81).

Countries that do not criminalise any same-sex sexual conduct	GGI Score
Belize	0.696
Paraguay	0.695
Cambodia	0.695
Greece	0.693
Timor-Leste	0.693
Azerbaijan	0.692
Mauritius	0.689
Hungary	0.689
Czech Republic	0.685
Bhutan	0.682
Republic of Korea	0.680
Cyprus	0.678
China	0.678
Vanuatu	0.678
Burkina Faso	0.676
Tajikistan	0.672
Bahrain	0.666
Nepal	0.659
Guatemala	0.659
Angola	0.656
Fiji	0.650
Côte d'Ivoire	0.650
Maldives	0.649
Japan	0.647
Jordan	0.646
India	0.643
Turkey	0.638
Niger	0.622
Benin	0.616
Democratic Republic of the Congo	0.612
Mali	0.605

Countries that criminalise same-sex sexual conduct in some form	GGI Score
Namibia	0.802
Jamaica	0.779
Burundi	0.763
Liberia	0.760
Zimbabwe	0.746
Eswatini	0.745
Tanzania	0.740
Bangladesh	0.722
United Arab Emirates	0.712
Ethiopia	0.711
Kenya	0.708
Uganda	0.706
Zambia	0.699
Indonesia	0.697
Togo	0.696
Cameroon	0.693
Brunei	0.693
Ghana	0.688
Malaysia	0.682
Senegal	0.680
Malawi	0.676
Sierra Leone	0.667
Comoros	0.664
Sri Lanka	0.663
The Gambia	0.651
Kuwait	0.651
Myanmar	0.650
Tunisia	0.642
Nigeria	0.637
Saudi Arabia	0.637
Lebanon	0.628
Qatar	0.627
Egypt	0.626
Morocco	0.621
Guinea	0.617
Oman	0.614
Pakistan	0.575
Iran	0.575
Algeria	0.573
Chad	0.570
Afghanistan	0.405



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