

# BREAKING THE SILENCE

Criminalisation of Lesbians and  
Bisexual Women and its Impacts

# What is the Human Dignity Trust?

The Human Dignity Trust is an organisation made up of international lawyers supporting local partners to uphold human rights and constitutional law in countries where private, consensual sexual conduct between adults of the same sex is criminalised.

Legal provisions that criminalise lesbian, gay, bisexual and transgender (LGBT) people put them beyond the protection of the law, fostering a climate of fear and violence. These provisions also violate constitutional and international human rights law, including a person's right to dignity, equality and privacy.

Same-sex sexual conduct between consenting adults in private continues to be criminalised in 78 jurisdictions around the world. In most of these jurisdictions, the prescribed maximum punishment is a lengthy prison sentence. A few jurisdictions still retain the death penalty.

The Trust provides pro bono technical legal assistance and advisory services at the request of, and in collaboration with, local activists, their lawyers and other human rights defenders, who wish to use the courts to challenge these persecutory laws.

Our website offers a wide range of material on key issues relevant to laws that criminalise and persecute LGBT people: [www.humandignitytrust.org](http://www.humandignitytrust.org)

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# Overview

- Consensual same-sex sexual conduct is criminalised in 78 jurisdictions worldwide or about 40 per cent of all countries, including 80 per cent of Commonwealth countries. Most of these criminal laws stem from British colonial rule. Others are founded in Sharia law.
- Of these 78 jurisdictions, at least 44 (56 per cent) criminalise same-sex conduct between women. Even in jurisdictions that clearly or likely do not criminalise women, lesbians and bisexual women have been subjected to arrest or threat of arrest.
- At least ten countries that previously only criminalised male same-sex sexual conduct have recently expanded their criminal codes to encompass sexual conduct between women.
- The criminalisation of lesbians and bisexual women is often amplified by other criminal laws that have a disproportionate impact on women, such as laws criminalising adultery, abortion and prostitution and laws that permit child marriage and rape within marriage.
- Countries that criminalise homosexuality in any form rank substantially lower in global indices of gender equality than countries that do not criminalise homosexuality. Improved gender equality is thus a positive indicator for abolishing criminalisation of homosexuality.
- Criminalisation, however framed, fosters a climate of State-sanctioned homophobia, 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 men, because of the intersection between their gender and sexual orientation. They can be particularly vulnerable to certain forms of control and abuse given the fact that women 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 into 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.
- Women in such marriages are likely to have significantly less control over their own bodies and sexuality than gay men who enter sham heterosexual marriages, and 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 the beliefs of some men around male entitlement over the maintenance of 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.
- Criminalisation of homosexuality undermines the rights of lesbians and bisexual women to privacy, equality, dignity, 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, which virtually all criminalising countries have ratified.
- Much of the research, advocacy and legal discourse around the criminalisation and persecution of LGBT people worldwide has to date inadvertently focussed on the situation of gay and bisexual men. This means that the unique situation of lesbians and bisexual women 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 have a lower level of influence and agency in reform efforts in many societies.
- Therefore, legal and political efforts to tackle the global persecution of LGBT people need to ensure that responses are tailored to address the needs and circumstances of the entire LGBT community, including lesbians and bisexual women.

# I. Purpose of this Briefing Note

This Briefing Note considers the history, extent and nature of laws criminalising consensual sexual intimacy between women, and the homophobia anti-LGBT criminal laws of all varieties foster and perpetuate against lesbians and bisexual women as a particular group.<sup>1</sup>

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 in respect of 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 of the legal analyses and case law to date, for example, have been centred primarily on the criminalisation of gay and bisexual men and all of the horrors that has enabled in various regions of the world. As a result, there remains a dearth of disaggregated data and legal analyses relevant to the particular experiences of others within the group, which in turn means that the range of legal and other responses to LGBT criminalisation and persecution has been incomplete.

This note aims to provide a contribution towards 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, and detailed input from and consultation

with leading lesbian human rights activists, women's human rights academics and human rights lawyers around the world.

Female adult same-sex sexual conduct is criminalised in many jurisdictions, though as the analysis below will show a precise number is difficult to quantify. In other jurisdictions, 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 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 sexual minorities, they also suffer persecution and rights violations in different ways or to different degrees than 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 an economic imperative, they 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.

<sup>1</sup> For brevity, we use the terms lesbians and bisexual women here to refer both to women who self-identify as lesbian or bisexual and other women who have or desire sexual intimacy with women but who may not self-identify as such. All such women are potentially subject to the persecution and human rights violations that criminalisation of same-sex sexual relations and other forms of State-sanctioned homophobia enable.

As with many violations of women's human rights, these violations often occur in the private sphere, away from public view, and are therefore seemingly invisible. Amongst others, this in turn reduces the visibility of lesbian 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 in the direction and framing of research and advocacy efforts.

Lesbians and bisexual women are also often excluded within mainstream interpretive and legal frameworks generated by the women's human rights movement, where there is an underlying assumption of heterosexuality. All of these factors can have significant consequences for the focus of human rights defenders, researchers and lawyers. Importantly, this also impacts on the allocation of funding that supports human rights work globally.

This Briefing Note 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 experienced by them 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.

Criminalisation of consensual adult same-sex intimacy is at its core a denial of full citizenship of LGBT people.<sup>2</sup> 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."<sup>3</sup> Such outlawing is the most direct way a State can exclude people from society and render them susceptible to all manner of abuse from all walks of life across the legal, social, cultural, religious and political spectra.

Nonetheless, while this Briefing Note focuses particularly on countries that criminalise same-sex sexual conduct, it is important to note that even in jurisdictions where such conduct is not criminalised there may be high levels of violence, discrimination and marginalisation of lesbians and bisexual women and other sexual minorities, often with no or insufficient State protection. 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 Briefing Note can be read together or independently. Section 2 summarises the range of legal provisions that are used to criminalise same-sex sexual conduct. It also outlines some of the relevant history that is important to an understanding of how these laws developed, often in ways that are distinct as between the criminalisation of male and female same-sex sexual 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 homophobia 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 going forward.

<sup>2</sup> H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A feminist perspective*, Juris Publishing, 2000, p. 128.

<sup>3</sup> *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 April 2016, there are 78 jurisdictions worldwide that criminalise consensual adult same-sex sexual conduct. Most of these jurisdictions inherited these laws either directly or indirectly from Britain during the 19<sup>th</sup> and early 20<sup>th</sup> centuries, and the continuing significance of British colonialism in the existence of these persecutory laws cannot be understated. Others are rooted in Islamic Sharia law. The extent and origins of the criminalisation of lesbians and bisexual women, however, are different in certain key respects from those for gay and bisexual men, 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 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 adult 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 homosexuality. While an analysis of those laws is outside the scope of this Briefing Note, future 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.**

## 2.1 Express criminalisation of lesbians and bisexual women

Consensual sexual conduct between women is criminalised through the statutory penal codes of 34 jurisdictions, either by express mention of female conduct,<sup>4</sup> by using gender neutral language applicable to both male and female same-sex conduct,<sup>5</sup> by reference to specific sexual acts that can be done between women

<sup>4</sup> Gambia [Criminal Code 1965 (as amended in 2005) – s. 147(2)]; 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)].

<sup>5</sup> Antigua and Barbuda [Sexual Offences Act, 1995 – s. 15]; Barbados [Sexual Offences Act, 1992 – s. 12]; Bhutan [Penal Code 2004, s. 213]; Botswana [Penal Code, 1998 – s. 167]; Dominica [Sexual Offences Act, 1998 – s. 14]; Libya [Penal Code, 1953 (as amended by Law 70 of 1973) – s. 408(4)]; Malaysia [Penal Code, 1998 – s. 377D]; 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]; 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]; Trinidad & Tobago [Sexual Offences Act 1986, Consolidated Version 2000 – s. 16]; Uganda [Penal Code Act, 1950 (Chapter 120) (as amended) – s. 148].

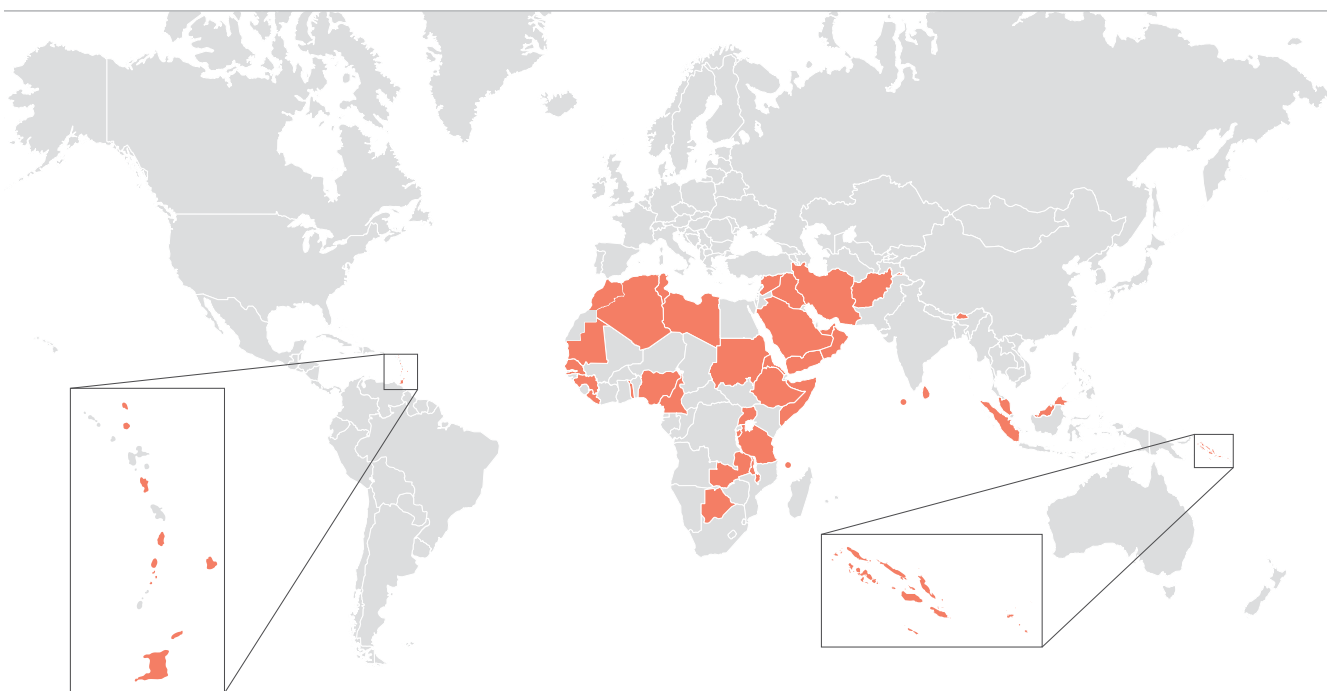
such as vaginal-oral sex<sup>6</sup> or vaginal sex with objects,<sup>7</sup> or by reference to all 'homosexual' acts or acts with someone of the 'same sex'.<sup>8</sup>

Female same-sex sexual conduct is also criminalised in most jurisdictions where Sharia law is applied in addition to or in the absence of a statutory criminal provision. According to the International Lesbian and Gay Association, this includes Afghanistan, Indonesia (the Aceh Province and South Sumatra), Malaysia (several states), Maldives, Nigeria (the 12 Northern states), Qatar, Saudi Arabia and United Arab Emirates.<sup>9</sup> Additionally, in countries such as Iraq and Syria where the rule of law is weak and certain regions of the State are governed by

non-State actors including Sharia judges who impose Sharia law,<sup>10</sup> lesbians and bisexual women are *de facto* criminalised and actively being targeted. Scholars of Islamic law report that *sihaq* or *musahaqa* (female same-sex sexual acts) is forbidden in all major schools of Islamic law.<sup>11</sup>

**Together, these express and *de facto* laws equate to at least 44 jurisdictions that criminalise lesbians and bisexual women, or 56 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 illustrated below in Figure A.

**Figure A: Countries that criminalise lesbians and bisexual women**



<sup>6</sup> Liberia [New Penal Law, Volume IV, Title 26, Liberian Code of Laws Revised, 1978 – ss. 14.74 and 14.79].

<sup>7</sup> Gambia [Criminal Code 1965 (as amended in 2005) – s. 144(2)(b)].

<sup>8</sup> Algeria [Penal Code, 1966 – s. 338]; Burundi [Penal Code, 2009 – Art. 567]; Cameroon [Penal Code, 1965/1967 (as amended in 1972) – s. 347 bis]; 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]; Morocco [Penal Code, 1962 – s. 489]; Oman [Penal Code, 1974 – s. 223]; 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]; St Vincent and the Grenadines [Criminal Code, 1990 – s. 148]; Togo [Penal Code, 1980 – s. 88].

<sup>9</sup> A. Carroll and L.P. Itaborahy, *State-Sponsored Homophobia*, 10<sup>th</sup> Edition, 2015, International Lesbian and Gay Association. Brunei Darussalam may also be implementing Sharia law including against same-sex sexual conduct.

<sup>10</sup> Ibid.

<sup>11</sup> See for example Sara Omar 'Perceptions of Liwat (Sodomy) and Sihaq (Tribadism) in Islamic Jurisprudence', in *Islamic Law and Society*, Vol. 19, 2012, pp. 222–256. 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', in *Fordham International Law Journal*, Vol. 37:1, 2013.

Of the jurisdictions that criminalise lesbians and bisexual women through statutory penal codes, 16 use 'gross indecency' or 'serious indecency' provisions, either expressly by reference to females or through the use of gender-neutral language.<sup>12</sup> 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.<sup>13</sup> There was an attempt in England and Wales through the Criminal Law Amendment Bill 1921 to add a provision on gross indecency between females,<sup>14</sup> but the amendment was shelved due to fears of the provision being used for blackmail<sup>15</sup> and because it was argued that there was not 'one scintilla of evidence that there is any widespread practice of this kind of vice.'<sup>16</sup> 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 Britain.

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. However, even Sudanese criminal law was British-based between 1899 and 1983,<sup>17</sup> when the first non-colonial Penal Code of Sudan was established.

The extension of the British formulation to include female same-sex sexual conduct largely occurred subsequent to the abolition of British rule. Some States initially had male-only gross indecency provisions,

Although the global trend is towards decriminalisation, ten jurisdictions that previously only criminalised gay and bisexual men have recently amended their laws for the first time to include criminalisation of women.

however they later amended their penal codes 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. This has also occurred in at least one jurisdiction using a non-British criminal formulation, namely Kano State in Nigeria, where an amendment was made to the State Penal Code in 2014 to add a new offence of 'lesbianism', with a punishment of 14 years imprisonment.<sup>18</sup>

Thus, although the global trend is towards decriminalising both male and female homosexuality, with 45 jurisdictions decriminalising either through legislative repeal or the courts in the last 30 years,<sup>19</sup> the same period has also seen at least ten jurisdictions that previously only criminalised male liaisons amend their laws to include for the first time new criminal sanctions of lesbians and bisexual women.<sup>20</sup>

<sup>12</sup> Antigua and Barbuda, Barbados, Botswana, Dominica, Gambia, Malawi, Malaysia, Solomon Islands, Saint Lucia, Sri Lanka, St Vincent and the Grenadines, Sudan, Tanzania, Trinidad and Tobago, Uganda, Zambia.

<sup>13</sup> 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, however it was generally understood to refer to any sexual intimacy between males including acts that fell short of penetrative sex.

<sup>14</sup> "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.

<sup>15</sup> HC Deb vol. 145 cols. 1801-1802, 4 August 1921.

<sup>16</sup> HL Deb vol. 43 at 574-575, 15 August 1921.

<sup>17</sup> El Bushra Mohamed El Amin, "The Criminal Justice System of the Republic of Sudan" in *The Protection of Human Rights in African Criminal Proceedings*, 1995, p. 232.

<sup>18</sup> 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.

<sup>19</sup> 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).

<sup>20</sup> Trinidad and Tobago (1986); Solomon Islands (1990); Barbados (1992); Sri Lanka (1995); Botswana (1998); Malaysia (1998); The Gambia (2005); Zambia (2005); Malawi (2011); Nigeria (Kano State) (2014). Bahamas also did so in 1989, though all anti-LGBT criminal laws were later repealed in 1991.

Ironically, such amendments are often made on the inaccurate premise of ensuring non-discrimination in the State's treatment of male and female homosexuals. For example, in *Kanane v The State*,<sup>21</sup> a Botswana court found that a gross indecency law that only applied to male homosexuals, and not female homosexuals, was discriminatory, but that the discrimination was rectified when the provision was made gender-neutral. Similarly, in *DPP v Bowie*,<sup>22</sup> 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.

Countries that expressly criminalise lesbians and bisexual women but which do not use the 'gross 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, the Islamic Penal Code of Iran provides that '*Musaheqeh* is defined as where a female person puts her sex organ on the sex organ of another person of the same sex,'<sup>23</sup> which **carries a punishment of 100 lashes.**<sup>24</sup> **The death sentence applies upon a fourth conviction.**<sup>25</sup> The death penalty applies to male same-sex conduct in certain additional circumstances.<sup>26</sup> 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].<sup>27</sup> In Yemen, homosexual acts between women are defined as 'sexual stimulation by rubbing' and the penalty for 'premeditated commission' is up to three years of 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 'deviate sexual intercourse' which is defined to include, amongst others, 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'. Bhutan broadly criminalises 'sodomy or any other sexual conduct against nature'. A number of African countries such as Algeria, Burundi, Cameroon, Comoros, Ethiopia, Eritrea, Guinea, Morocco, Senegal and Somalia, as well as Oman, simply criminalise any sexual conduct between persons of the same sex.<sup>28</sup>

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.'<sup>29</sup>

<sup>21</sup> 2003, 2 BLR 67 (Court of Appeal).

<sup>22</sup> *Director of Public Prosecutions v Noel Bowie* [1988] Solomon Islands Law Reports 113.

<sup>23</sup> Islamic Penal Code, 2013, s. 238 (available at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>).

<sup>24</sup> Ibid., s. 239.

<sup>25</sup> Ibid., Chapter Six.

<sup>26</sup> Ibid., ss. 234 and 236.

<sup>27</sup> Mauritania Penal Code, 1984, s. 308.

<sup>28</sup> See Appendix A.

<sup>29</sup> The French version of the same provision uses the word '*la sodomie*', which implies that lesbians and bisexual women are not subject to the French version of the law. Tactical Technology Collective and Front Line Defenders, *Security In-A-Box: Tools and Tactics for the LGBT Community in the Arab Region*, May 2013, p. 20, available at [https://securityinabox.org/sbox/pdfs/cf-lgbt-arabic\\_en.pdf](https://securityinabox.org/sbox/pdfs/cf-lgbt-arabic_en.pdf).

### 2.2 Unnatural offences

Lesbians and bisexual women may also be at direct risk in other jurisdictions which maintain another vague nineteenth century British formulation of criminalisation that 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<sup>30</sup> 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 23 jurisdictions<sup>31</sup> maintain such provisions. In most cases it is clear or likely that this type of provision only captures penile penetrative intercourse, putting gay and bisexual men at particular risk of arrest.

The interpretation of these vaguely worded criminal provisions in most cases rests on an historical understanding of ‘carnal knowledge’,<sup>32</sup> meaning sexual intercourse, and ‘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 whereas 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 India,<sup>33</sup> 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.<sup>34</sup> One Indian case, *Khanu v Emperor* (1925),<sup>35</sup> found in *obiter* that lesbian conduct would not be captured by s. 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.”

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.<sup>36</sup>

However, despite the fact that s. 377 does not apply to female same-sex sexual conduct, there have been reports of the law being used against women. For example, in 1999 a woman was reportedly arrested and jailed under s. 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

<sup>30</sup> Several states with ‘carnal knowledge’ offences also have other anti-LGBT offences which apply to lesbians and bisexual women: e.g. Botswana, Malawi, Tanzania, and Uganda (gross indecency), and Togo (homosexuality), Gambia (express reference to female same-sex acts), and Nigeria (Sharia law in Northern states, ‘lesbianism’ in Kano State Penal Code).

<sup>31</sup> Angola [Penal Code, 1886 (as amended in 1954) – s. 71(4)]; Bangladesh [Penal Code, 1860 – s. 377]; Belize [Criminal Code, 2000 – s. 53]; Botswana [Penal Code, 1998 – s. 16]; 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]; India [Penal Code, 1860 – s. 377]; Kenya [Penal Code, 2003 – s. 162]; Lebanon [Penal Code, 1943 – s. 534]; Malawi [Penal Code – s. 153]; Myanmar [Penal Code, 1860 – s. 377]; Nauru [Criminal Code, 2011 – s. 208]; Nigeria [Criminal Code Act, 1990 – s. 214]; Pakistan [Penal Code, 1860 – s. 377]; Seychelles [Criminal Code, 1955, s. 151]; Somalia [Penal Code, Legislative Decree No. 5/1962.2 – s. 409]; South Sudan [Penal Code, 2008 – s. 248]; 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 1950 (Chapter 120) (as amended) – s. 145].

<sup>32</sup> As with gross indecency, the English origins of this concept would not have captured female (or in this case even male) sexual acts. In the 1861 Act, male homosexual conduct is criminalised under sections 61 and 62 on “buggery”, and is never referred to as “carnal knowledge”.

<sup>33</sup> Replacing the previous statutory provision they had introduced in 1828 criminalising ‘the abominable crime of buggery’.

<sup>34</sup> 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.

<sup>35</sup> AIR 1925 Sind 286.

<sup>36</sup> Some jurisdictions, including India, 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.

on bail.<sup>37</sup> **This illustrates the very real risk that women can face from incorrect application of an out-dated and vaguely worded law.**

Further, according to one Indian non-governmental organisation, “[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.”<sup>38</sup>

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<sup>39</sup> requires there to be penile-anal penetration.<sup>40</sup> This applies equally to heterosexual and homosexual penile-anal intercourse,<sup>41</sup> with female same-sex sexual acts only being captured under the separate gross indecency provision.<sup>42</sup> 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.’<sup>43</sup>

In contrast, The Gambia has a broad statutory definition that includes all homosexual conduct. Art. 144(2) of the Criminal Code<sup>44</sup> 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. ”

In Bhutan, the Penal Code proscribes ‘sodomy or any other sexual conduct that is against the order of nature’. 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.’<sup>45</sup>

A High Court 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”’.<sup>46</sup> While the application to lesbians and bisexual women was not in issue in that case, this would seem to go against the historical intention discussed above, and illustrates again the potential risk that this vague criminal language can pose for lesbians and bisexual women who may live in uncertainty about the reach or application of these archaic provisions.

<sup>37</sup> 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](http://download.tiss.edu/fap/RCI-VAW/RCI-VAW_Publications/The_Nature_of_violence_faced_by_Lesbian_women_in_India.pdf).

<sup>38</sup> National Alliance of Women, *India Second NGO Shadow Report on CEDAW*, November 2006, p. 208, available at [http://pldindia.org/wp-content/uploads/2013/06/CEDAW\\_-\\_Second-Shadow\\_report\\_2006.pdf](http://pldindia.org/wp-content/uploads/2013/06/CEDAW_-_Second-Shadow_report_2006.pdf).

<sup>39</sup> Penal Code, 1998, section 164.

<sup>40</sup> *Gaoote v State* (1991) B.L.R 325 (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).

<sup>41</sup> Daniel David Ntanda Nsereko, *Criminal Law in Botswana*, 2011, Wolters Kluwer, pp. 237–38.

<sup>42</sup> Penal Code, 1998, section 167.

<sup>43</sup> Lillian Tibatemwa-Ekirkubanza, *Criminal law in Uganda: Sexual Assaults and Offences Against Morality* Fountain Series in Law and Business Studies, 2005, p 47.

<sup>44</sup> 1965 (as amended in 2005).

<sup>45</sup> Penal Code, 1980, s. 88.

<sup>46</sup> *Ali Abdi Shabura v Republic*, Criminal Appeal 90 of 2007 (involving sodomy of young boys).

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 ...<sup>47</sup>”

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.<sup>48</sup>”

This was echoed in a recent 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.<sup>49</sup>”

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

### 2.3 Express male-only criminalisation

Finally, there are 21 jurisdictions where the explicit wording of the law directly targets only male same-sex sexual conduct,<sup>50</sup> either by virtue of 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 consistent reality for gay and bisexual men in these jurisdictions. In one further jurisdiction, Egypt, although there is no express criminalisation of same-sex sexual conduct, debauchery and prostitution laws are used to target gay and bisexual men.<sup>51</sup>

Anti-gay laws, 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 virtue of their non-conformity with heterosexual norms. Anti-gay laws, 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.

<sup>47</sup> Judgment on Article 534 of the Lebanese Penal Code, 28 January 2014 (translated from Arabic).

<sup>48</sup> *National Coalition for Gay and Lesbian Equality v. Minister of Justice*, 6 BHRC 127 (CC, 1998); 1998 (12) BCLR 1517 (CC), paras. 108-109.

<sup>49</sup> Gay and Lesbian Coalition of Kenya (GALCK), Research on the Lived Experiences of Lesbian, Bisexual and Queer Women in Kenya, 2016, p. 38, available at [https://issuu.com/galckkenya/docs/research\\_on\\_the\\_lived\\_experiences\\_o](https://issuu.com/galckkenya/docs/research_on_the_lived_experiences_o).

<sup>50</sup> Cook Islands, Gaza (Occupied Palestinian Territories), Guyana, Jamaica, Kiribati, Kuwait, Mauritius, Namibia, Nauru, Papua New Guinea, St Kitts and Nevis, Samoa, Seychelles, Sierra Leone, Singapore, Swaziland, Tonga, Turkmenistan, Tuvalu, Uzbekistan, Zimbabwe.

<sup>51</sup> Above note 9 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 Briefing Note, 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 laws. In many countries that have never criminalised homosexuality, or which have long ago eliminated such laws, lesbians and bisexual women are far from safe from violence, discrimination and coercive control, 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:

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“ 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.<sup>52</sup> ”

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#### 3.1 The link between gender and sexuality

At the outset, the links between gender inequality and discrimination on the basis of sexuality 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 lesbians and bisexual women in particular their subordinated position in society as women, particularly in traditional male-dominated societies, largely dictates the types of marginalisation and human rights violations to which they are subjected. The significance of entrenched

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<sup>52</sup> Human Rights Watch, *Criminalising Identities: Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity*, 2010, p. 5 (available at <https://www.hrw.org/sites/default/files/reports/cameroon1010web.pdf>).

societal subordination of women on the nature, extent and degree to which lesbians and bisexual women 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 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.<sup>53</sup> ”

This, combined with generalised oppression of LGBT people, creates a particularly lethal combination. As one court put it:

“ [d]iscrimination 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.<sup>54</sup> ”

This 'intersection' between discrimination on grounds of gender and discrimination on grounds of sexual

orientation has been recognised at the international level. The body that oversees implementation of the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) — the CEDAW Committee — 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. 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.<sup>55</sup> ”

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.<sup>56</sup> ”

<sup>53</sup> Above note 2 p. 4.

<sup>54</sup> *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 at <http://www.unhcr.org/refworld/docid/47fdb5b0.html>. See also, RRT Case No.071862642 [2008] RRTA 40, 19 February 2008 (RRT of Australia), available at <http://www.unhcr.org/refworld/docid/4811a7192.html>.

<sup>55</sup> 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*, 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.

<sup>56</sup> UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity*, Geneva, 21 November 2008, p. 9.

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

While lesbians and bisexual women in many countries are at risk of State action 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.

They are perpetually enveloped in social, political, legal and institutional constructs that were not created by or for them and that keep them out of reach of autonomy, assistance or agency. 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.<sup>57</sup> 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 death of a spouse.<sup>58</sup> 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.

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 homosexuality may be based on a belief that it subverts the natural order, a belief also deemed immoral by most 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 patriarchy and conservative religious mores and structures acting as the gate-keepers of both. Importantly, this means that the societies that oppose homosexuality are also often those in which strong views are held about the role of men and women in society. As Amnesty International noted:

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“ Lesbians 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.”<sup>59</sup>

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It is not surprising, then, that countries that have attained greater gender equality are also less homophobic. For instance, the Gender Gap Index (GGI),<sup>60</sup> 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

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<sup>57</sup> SF Joireman, 'The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property Rights and Customary Law' in *World Development*, 2008.

<sup>58</sup> E. Braunstein and N. Folbre, 'To Honor and Obey: Efficiency, Inequality, and Patriarchal Property Rights' in *Feminist Economics*, 2001, Vol. 7, No. 1.

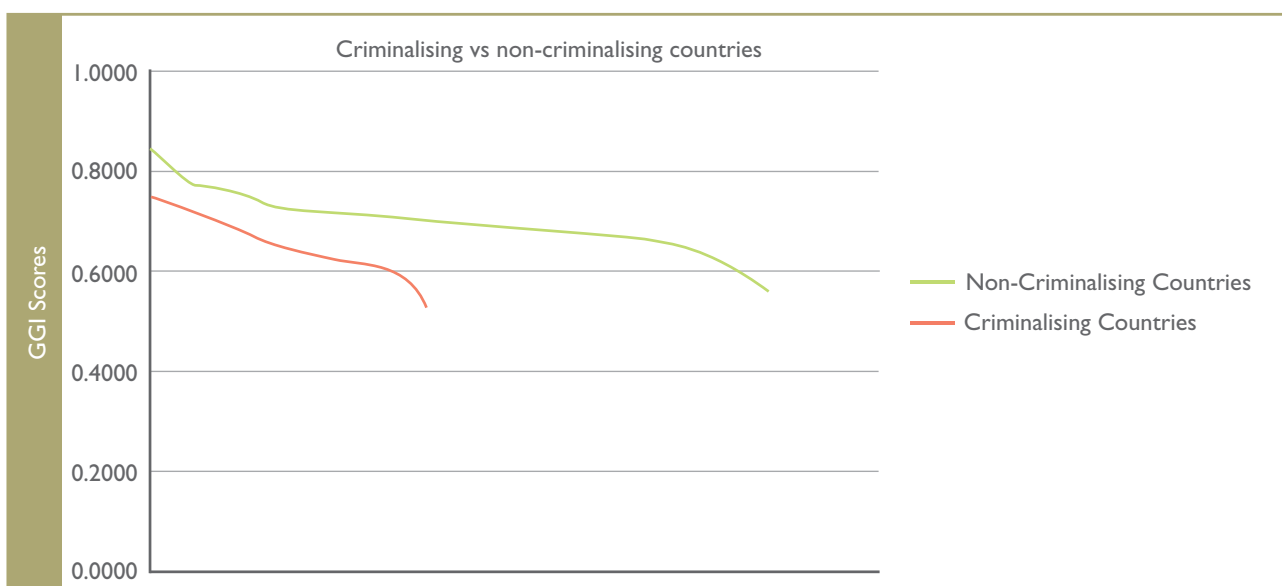
<sup>59</sup> Amnesty International, *Making love a crime: Criminalization of Same-Sex Conduct in Sub-Saharan Africa*, 25 June 2013, AFR 01/001/2013, p. 47, available at <https://www.amnesty.org/en/documents/afr01/001/2013/en/>.

<sup>60</sup> World Economic Forum, *Global Gender Gap Report 2014*, available at <http://reports.weforum.org/global-gender-gap-report-2014/>.

Figure B, a comparison of GGI scores for countries that criminalise homosexuality versus those that do not criminalise homosexuality (in any form) illustrates that there is a significant correlation between gender inequality and the criminalisation of homosexuality. Countries that do not criminalise homosexuality (male and/or female) average 0.729 on the 2014 GGI scale. Countries that do criminalise homosexuality (male and/or female) average 0.652 on the scale.

Countries with greater gender equality are less likely to criminalise homosexuality.

**Figure B: 2014 Gender Gap Index scores for criminalising versus non-criminalising countries\***



\*See full list of GGI scores in Appendix B.

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 impact of economic impoverishment on lesbians and bisexual women in systems that presume women will always be attached to and financially dependent on men is the likelihood that they will be financially unable to

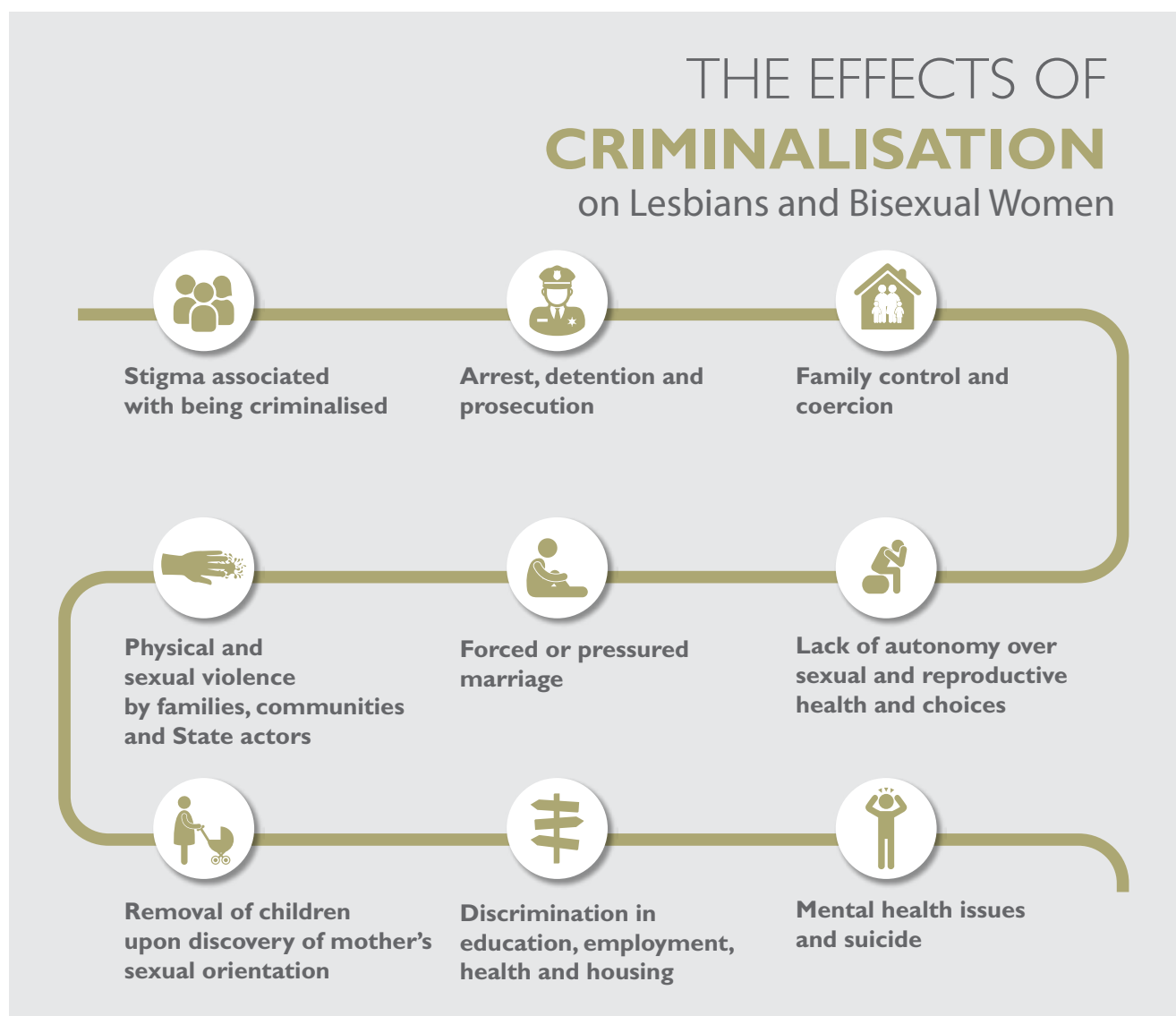
remain 'single' or pursue romantic relationships with other women. Therefore, it is often an economic imperative that they enter into an opposite-sex relationship and depend on a man for their survival, as well as their social acceptance. The disadvantage they suffer on account of being women thus informs why lesbians and bisexual women may appear less visible in such societies, and why they make ostensibly 'free' decisions to enter into opposite-sex relationships.

### 3.2 Human rights abuses

Lesbians and bisexual women face a wide range of human rights abuses. These include abuses by State actors such as through the maintenance of anti-LGBT criminal laws and physical and sexual violence by public authorities, and abuses by non-State actors such as through 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 into 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 same-sex sexual relations between women exists, and 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, non-discrimination and human dignity, and may engage other rights and freedoms such as the right to health, freedom from inhuman and degrading treatment and freedom of association and expression.** These are discussed in detail in other HDT Briefing Notes, 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:

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“ The effect is that all homosexual desire is tainted, and the whole gay and lesbian community is marked with deviance and perversity.<sup>61</sup> ”

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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 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.<sup>62</sup>

The pernicious and widespread impact of anti-LGBT 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.’<sup>63</sup> This situation affects the members of the LGBT community in different ways. Homophobia is strengthened by these laws, putting ‘women who do have sex with women, or women who do not conform to a more feminine gender identity at risk’.<sup>64</sup>

Regardless of the breadth and scope of anti-LGBT criminal laws, the mere fact of criminalising consensual same-sex sexual conduct between adults 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 minorities are subjected to generalised forms of discrimination, marginalisation and violence and where they cannot form and nurture loving, open relationships of their choosing.

<sup>61</sup> Above note 48.

<sup>62</sup> Information obtained by HDT from the ‘Rainbow Railroad’, which assists LGBT people to escape and seek asylum from countries that persecute based on sexual orientation and gender identity.

<sup>63</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/III.144 Doc. 12, 10 August 2012, para. 271.

<sup>64</sup> *Ibid.*, at para. 287.

### 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.

For instance, in 2014, 26 people were reportedly arrested in a raid in Nigeria on suspicion of being lesbians,<sup>65</sup> a lesbian couple was arrested in Malaysia after a police raid on their room,<sup>66</sup> a lesbian couple was arrested at a guest house in Sri Lanka,<sup>67</sup> and two lesbians in Cameroon were convicted and sentenced to four months in prison plus fines and costs.<sup>68</sup> Previously in Cameroon, 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,<sup>69</sup> ten lesbians were arrested and detained in 2012,<sup>70</sup> a lesbian couple was arrested and convicted and another convicted lesbian had as of 2015 served three years of a five-year sentence and remains in prison.<sup>71</sup>

In 2013, Senegalese police arrested five women suspected of being lesbian who were celebrating a birthday in a restaurant, including the assistant-director of a lesbian human rights NGO.<sup>72</sup> The women were later released for lack of evidence.<sup>73</sup> A senior figure at the NGO said that whereas in past years it was primarily gay men that were targeted:

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“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.”<sup>74</sup>

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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 were jailed.<sup>75</sup>

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.<sup>76</sup> 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.<sup>77</sup> As noted earlier, Lebanese courts have applied criminal prohibitions against lesbians.<sup>78</sup>

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<sup>65</sup> Nigerian Watch, 'Delta State police arrest 26 people suspected of being lesbians in Asaba swoop', 2 June 2014, available at <http://www.nigerianwatch.com/news/4531-delta-state-police-arrest-26-people-suspected-of-being-lesbians-in-asaba-swoop>.

<sup>66</sup> Andrew Loh, 'M'sian lesbian couple arrested after sex toys found in hotel raid', 2 September 2014, The Online Citizen, available at <http://www.theonlinecitizen.com/2014/09/msian-lesbian-couple-arrested-after-sex-toys-found-in-hotel-raid/>.

<sup>67</sup> Equal Ground, Human Rights Violations against LGBT People in Sri Lanka: A Shadow Report, October 2014, p.6, available at [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT\\_CCPR\\_CSS\\_LKA\\_18258\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_CSS_LKA_18258_E.pdf).

<sup>68</sup> Colin Stewart, 'Cameroon sentence: 4 months for lesbian activity', 5 May 2014, Erasing 76 Crimes, available at <http://76crimes.com/2014/05/05/cameroon-sentence-4-months-for-lesbian-activity>.

<sup>69</sup> Above note 52 p. 4.

<sup>70</sup> Simon Tomlinson, 'Ten women arrested in Cameroon for being lesbian', 24 February 2012, Mail Online, available at <http://www.dailymail.co.uk/news/article-2105855/Ten-women-arrested-Cameroon-lesbian.html>.

<sup>71</sup> Information obtained from their legal counsel in Cameroon, Alice Nkom.

<sup>72</sup> Colin Stewart, 'Senegal police arrest 5 alleged lesbians', 12 November 2013, Erasing 76 Crimes, available at <http://76crimes.com/2013/11/12/senegal-police-arrest-5-alleged-lesbians/>.

<sup>73</sup> Robbie Corey-Boulet, 'Accused Lesbians in Senegal Freed for Lack of Evidence', 20 November 2013, Voice of America, available at <http://www.voanews.com/content/accused-lesbians-in-senegal-freed-for-lack-of-evidence/1793998.html>.

<sup>74</sup> Above note 72.

<sup>75</sup> Ibid.

<sup>76</sup> Above note 67 p. 5.

<sup>77</sup> Colin Stewart, 'Dancing in Gambia: 18 gays, 2 lesbians face felony charges', 20 April 2012, Erasing 76 Crimes, available at <http://76crimes.com/2012/04/20/dancing-in-gambia-18-gays-2-lesbians-face-felony-charges/>.

<sup>78</sup> Above note 47.

In some jurisdictions, the impact of enforcement of these laws can be extreme. In Iran, for instance, although accurate data is difficult to obtain, some human rights activists estimate that since the onset of the Islamic revolution there have been over 4,000 cases of execution of homosexuals, both male and female.<sup>79</sup> Lesbians and bisexual women are also subjected to flogging as a result of being convicted of *mosaheqeh*,<sup>80</sup> or 'lesser moral offences' stemming from their homosexuality or perceived homosexuality.

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 a lesbian was arrested and jailed under the 'carnal knowledge' provision despite the fact that that provision, based on case law, only applies to male sexual conduct.<sup>81</sup> 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.<sup>82</sup> 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.”<sup>83</sup>

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 only two lawyers who will defend clients charged under section 347 bis 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 homosexuals are arrested, they struggle to find lawyers to take their case at all.<sup>84</sup>

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

Another factor that is unique to lesbians and bisexual women is that women are disproportionately criminalised in several other ways, often related to sexual and reproductive rights. Lesbians and bisexual women may confront risks in several of these in parallel. The UN CEDAW Committee has recognised that women are 'disproportionately criminalized owing to their situation or status, such as being involved in prostitution, 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.'<sup>85</sup> As lesbians and bisexual women may be isolated from family and social structures because of their sexual orientation, limited economic opportunities may force them into sex work, which is often criminalised. They may fall pregnant through sex work, targeted rape or a forced marriage and seek an abortion in a context where abortion is criminalised. And they may be accused of adultery – which in many jurisdictions is only an offence for women – if they seek to engage in an intimate same-sex relationship of their choosing

<sup>79</sup> 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*, available at <http://www.iranhrdc.org/english/publications/legal-commentary/I000000102-the-execution-of-women-in-iranian-criminal-law.html>.

<sup>80</sup> See text corresponding to note 24 above.

<sup>81</sup> Above note 37.

<sup>82</sup> Tris Reid-Smith, 'Bangladesh jails 'married' lesbian couple', 1 October 2013, GayStarNews, available at <http://www.gaystarnews.com/article/bangladesh-jails-married-lesbian-couple011013>. See also Steve Williams, 'Bangladesh Arrests Gay Couples and Threatens Supporters', 4 October 2013, care2, available at <http://www.care2.com/causes/bangladesh-arrests-gay-couples-and-threatens-supporters.html>.

<sup>83</sup> Above note 49 p. 25.

<sup>84</sup> Above note 73.

<sup>85</sup> UN CEDAW Committee, *General Recommendation 33 on women's access to justice*, 3 August 2015, para. 49.

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 of these discriminatory laws.<sup>86</sup>

### 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 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 State enforcement of the law 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 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 sexuality.<sup>87</sup> 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, for example, as occurred when females dressed in trousers and flat dress shoes were treated as male customers by a

night club that permitted free entry to females only,<sup>88</sup> 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.** Her experience in Jamaica made it clear to her that lesbians could not trust the authorities for protection, and the known perpetrator was never prosecuted. She experienced multiple other forms of threatened violence and discrimination before and after the shooting, and eventually fled to the Netherlands where she was recognised as a refugee on the basis of her sexual orientation.<sup>89</sup>

Any number of incidents are possible in between these two extremes. For example, 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”.<sup>90</sup>

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.

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 as being defined by their reproductive role, expose lesbians and

<sup>86</sup> Ibid, para. 51(I).

<sup>87</sup> See for example GALCK, above note 49, pp. 23-24.

<sup>88</sup> Shereen Ali, ‘Aria Lounge policies under fire’ in *T&T Guardian*, 15 December 2015 available at <http://www.guardian.co.tt/news/2015-12-14/aria-lounge-policies-under-fire>.

<sup>89</sup> She is in the process of making a claim to the Inter-American Commission on Human Rights, alongside a gay male Jamaican asylum seeker, to argue that Jamaica’s anti-gay laws and lack of State protection for all sexual minorities violate their fundamental human rights: *Henry v Jamaica*, pending before the Inter-American Commission on Human Rights. See <http://humandignitytrust.org/pages/OUR%20WORK/Cases/Jamaica>.

<sup>90</sup> StarrFMonline.com, ‘Ghana: Homophobic residents flood town with posters of alleged lesbians’, 7 March 2015, available at <http://m.starrfmonline.com/1.2020285>.

bisexual women to heightened levels of abuse that often go unreported and unpunished. A lesbian woman 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.<sup>91</sup> ”

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.<sup>92</sup> ”

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 rapes'.<sup>93</sup> '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 justified and excused because of 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 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.<sup>94</sup> Another Kenyan woman reported that after revealing her sexuality to four male college friends and having them over for drinks to celebrate her coming out, she offered to drive them home to the house of one of the men. 'One of them grabbed me from behind,' she explained, 'and then they started ripping my clothes apart. That's when they raped me, in my own car.' Soon after she was raped again by an unknown group of boys on campus.<sup>95</sup>

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, five cases of so-called 'corrective rape' of lesbians or transgender male refugees in Uganda were reported by non-governmental organisations between June and November 2011 alone.<sup>96</sup>

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.<sup>97</sup> An Ethiopian lesbian was imprisoned in the family home and beaten by her brothers on account of her sexual orientation.<sup>98</sup>

<sup>91</sup> Above note 38 p. 207.

<sup>92</sup> Human Rights Watch, *Forbidden: Institutionalizing Discrimination Against Gays and Lesbians in Burundi*, July 2009, p. 18, available at <http://www.refworld.org/docid/4a76ab762.html>.

<sup>93</sup> UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity*, Geneva, 21 November 2008.

<sup>94</sup> Dan Littauer, 'Three Kenya lesbians sexually assaulted in beer bottle attack', 21 August 2012, GayStarNews, available at <http://www.gaystarnews.com/article/three-kenya-lesbians-attacked-and-sexually-assaulted-beer-bottle-attack210812/#gs.RIADfcU>.

<sup>95</sup> Arusha Topazzini 'Coming out in Kenya', August 2009, Red Pepper, available at <http://www.redpepper.org.uk/Coming-out-in-Kenya/>. See also 'In Austria, support group forms for LGBT refugees', 31 August 2011, LGBT Asylum News (translated from article in *dieStandard* by Sandra Ernst Kaiser) available at <http://madikazemi.blogspot.co.uk/2011/09/corrective-rape-issue-in-kenya.html>.

<sup>96</sup> Human Rights First, *The Road to Safety: Strengthening Protection for LGBTI Refugees In Uganda and Kenya*, 2012, p. 7, available at [http://www.humanrightsfirst.org/wp-content/uploads/pdf/RPP-The\\_Road\\_to\\_Safety.pdf](http://www.humanrightsfirst.org/wp-content/uploads/pdf/RPP-The_Road_to_Safety.pdf), p. 7.

<sup>97</sup> Above note 37.

<sup>98</sup> Above note 96 p. 8.

Yet many lesbians and bisexual women do not report these crimes for fear of the stigma or retribution they will face,<sup>99</sup> and those who do report them often do not have their cases investigated by law enforcement officials. 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 homosexuality 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.<sup>100</sup>

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.<sup>101</sup>

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.'<sup>102</sup>

In India, as in many countries, 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. 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 that is handpicked by the victim's parents, and 'it's like a "disciplining project" designed to "cure" and "correct" the homosexual.'<sup>103</sup>

In countries where their sexual identity is criminalised by the State, 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. 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.<sup>104</sup>

In Botswana, the International Commission of Jurists (ICJ) found that:

‘...lesbians will not ordinarily report incidents of sexual violence or domestic violence for fear of being identified as homosexual by the authorities. On the rare occasions when lesbian women do report sexual assault, they often conceal their sexual orientation. This means that any hate crime dimension to the crime, for example where the woman's sexual orientation is a factor leading to the violence, is missing from any investigation or prosecution.’<sup>105</sup>

The testimony of a Burundian woman echoes this sentiment when she describes being assaulted, threatened with murder and locked in a room by a man who wished to pursue her female partner. She states, '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.'<sup>106</sup>

One study from the United States, where homosexuality was only decriminalised nationally in 2003 by virtue of a Supreme Court decision,<sup>107</sup> indicates that lesbians and bisexual women are at even greater risk of domestic

<sup>99</sup> See for example GALCK, above note 49, p. 24.

<sup>100</sup> Colin Stewart, 'Corrective rape' in Cameroon: 4 women, 5 rapists, 0 arrests' 11 February 2015, Erasing 76 Crimes, available at <http://76crimes.com/2015/02/11/corrective-rape-in-cameroon-4-women-5-rapists-0-arrests/>.

<sup>101</sup> Interview by HDT's Legal Director, Téa Braun, December 2013.

<sup>102</sup> Gender Research and Advocacy Project and Legal Assistance Centre, *Namibian Law on LGBT Issues*, 2015, p. 83, available at [http://www.lac.org.na/projects/grap/Pdf/LGBT\\_mono.pdf](http://www.lac.org.na/projects/grap/Pdf/LGBT_mono.pdf).

<sup>103</sup> Rupaim Jain, 'Parents use 'corrective rape' to 'straight'en gays', 1 June 2015, *The Times of India*, available at <http://timesofindia.indiatimes.com/life-style/relationships/parenting/Parents-use-corrective-rape-to-straighten-gays/articleshow/47489949.cms>.

<sup>104</sup> Above note 52 p. 41.

<sup>105</sup> International Commission of Jurists (ICJ), *Women's Access to Justice in Botswana: Identifying the Obstacles & Need for Change*, 19 November 2013, ISBN: 92-9037-159-5, Para 4.1.1, p. 50, available at: <http://www.refworld.org/docid/530f05e24.html>.

<sup>106</sup> Above note 92.

<sup>107</sup> Above note 3.

violence than straight women, with bisexual women facing the highest rates of violence, including domestic violence and rape, of all women surveyed.<sup>108</sup> Because most surveys on violence against women do not disaggregate on the basis of sexual orientation or other factors, this type of data is rarely available elsewhere.

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 multiple forms of discrimination they face both as women and as 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.”<sup>109</sup>

In some instances, the identification of a woman as lesbian has been held to be a mitigating factor in the sentencing of her attacker. One study from the Asia-Pacific region, on violence against women in general, noted that:

“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.”<sup>110</sup>

### 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 social expectations by, for instance, marrying someone of the opposite sex.<sup>111</sup> 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 murder. For example, 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.<sup>112</sup>

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.”<sup>113</sup>

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.<sup>114</sup> In Cameroon an activist confirmed:

“There is a forced bisexuality here. Many lesbians are forced to get married and have children.”<sup>115</sup>

<sup>108</sup> Anna North, ‘Bisexual Women Almost Twice As Likely To Be Abused As Straight Women’, 25 January 2013, BuzzFeed, available at <http://www.buzzfeed.com/annanorth/bisexual-women-almost-twice-as-likely-to-be-abused#.nkzbGbDRR>.

<sup>109</sup> UN CEDAW Committee, *General Recommendation 33 on women’s access to justice*, 3 August 2015, para. 8.

<sup>110</sup> 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 at <http://apwld.org/wp-content/uploads/2013/10/SRVAV-2010-Different-but-not-Divided-Web-Resolution.pdf>.

<sup>111</sup> UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity*, 21 November 2008, Geneva, p. 9.

<sup>112</sup> Catrina Stewart, ‘Young Somali activist sentenced to death for being a lesbian’, 30 January 2016, *The Independent*, available at <http://www.independent.co.uk/news/world/africa/young-somali-activist-sentenced-to-death-for-being-a-lesbian-a6844216.html>.

<sup>113</sup> Above note 92 p. 7.

<sup>114</sup> *M. I. v. Sweden*, UN Human Rights Committee, Communication No. 2149/2012, U.N. Doc. CCPR/C/108/D/2149/2012, 2013.

<sup>115</sup> Above note 59 p. 52.

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 committed suicide.<sup>116</sup>

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 honor 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.”<sup>117</sup>

One 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.”<sup>118</sup>

It is common for all people within the LGBT community to enter into heterosexual relationships and marriages, typically 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.”<sup>119</sup>

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 the same for all LGBT people, for lesbians and bisexual women the impacts can go significantly deeper. In societies which privilege men, 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 over half of the Commonwealth, men are lawfully entitled to rape their wives including through the use of force.<sup>120</sup> 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.

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

<sup>116</sup> Above note 67 p. 13.

<sup>117</sup> Above note 49 p. 34.

<sup>118</sup> Above note 52 p. 2.

<sup>119</sup> Ibid., p. 5.

<sup>120</sup> Téa Braun, 'Dark Side of the Moon: The Legacy of British Sexual Offences Laws in the Commonwealth', presentation to Legal and Judicial Legacies of Empire Conference, 17 June 2014, available at [http://www.humandignitytrust.org/uploaded/Library/Other\\_Material/British\\_colonial\\_sexual\\_offences\\_legacy-Téa\\_Braun.pdf](http://www.humandignitytrust.org/uploaded/Library/Other_Material/British_colonial_sexual_offences_legacy-Téa_Braun.pdf).

“ [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.<sup>121</sup> ”

Research in Bangladesh, India and Nepal found that a higher proportion of lesbians in heterosexual marriages faced physical violence than lesbians who were not married.<sup>122</sup>

These are major, unaddressed dimensions of LGBT persecution and 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 by 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.”<sup>123</sup> ”

### 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 real or perceived 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:

“ [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 suspected of lesbian sexual activity have been expelled from their secondary schools, sometimes after being forced to denounce their peers.<sup>124</sup> ”

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.<sup>125</sup> ”

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.<sup>126</sup>

Female sports figures are often affected by immediate public assumptions that women playing sport must be

<sup>121</sup> Above note 38 p. 207.

<sup>122</sup> S. Rashid, N. Daruwalla, M. Puri et al. (2012), *Count Me In! research report: violence against disabled, lesbian, and sex-working women in Bangladesh, India, and Nepal*, 2012, CREA, available at <http://www.creaworld.org/sites/default/files/The%20Count%20Me%20In%20Research%20Report.pdf>.

<sup>123</sup> Above note 59 p. 49.

<sup>124</sup> Above note Ibid., p. 48. See also Maureen Kakah, ‘Students expelled on lesbianism claim sue school, say their rights violated’, 28 May 2015, Daily Nation, available at <http://www.nation.co.ke/counties/nairobi/lesbianism-claim-students-sue-St-Georges-school/-/1954174/2732084/-/sapcek/-/index.html>.

<sup>125</sup> Above note 110.

<sup>126</sup> Above note 49 p. 37.

lesbian, 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.<sup>127</sup>

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.<sup>128</sup>

Lesbians and bisexual women similarly face unique challenges in accessing proper health care. In addition to the obvious health risks posed by rape and other forms of targeted violence, and by the general lack of autonomy over sexual and reproductive choices, lesbians and bisexual women can face discrimination in access to health care services. For example, 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.<sup>129</sup>

### 3.2.6 Suicide as an additional impact

One result of a sustained experience of these kinds of human rights violations and of persistent control, isolation and violence is that 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 add unique psychological stresses on young lesbians and bisexual women that can lead to suicide.

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.<sup>130</sup>

A 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:

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“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.”<sup>131</sup>

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A high level of lesbian suicides has been reported in Sri Lanka, for example. In July 2005, two 15-year-old girls hugged each other and leapt in front of a train. In August 2002, a teenage lesbian couple took their own lives by hanging themselves from a tree. A suicide note read, ‘Since we cannot live together, we will die together.’ In October 2001, bystanders discovered the bodies of a lesbian couple washed up on a beach. The hands of the two women had been tied together with cloth. There were no signs of foul play, and a police investigation led to the discovery of love letters between the young couple.<sup>132</sup>

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

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<sup>127</sup> Above note 59 pp. 48, 51.

<sup>128</sup> Above note 49 p. 25.

<sup>129</sup> Ibid. pp. 28-29.

<sup>130</sup> Ibid. pp. 26-27.

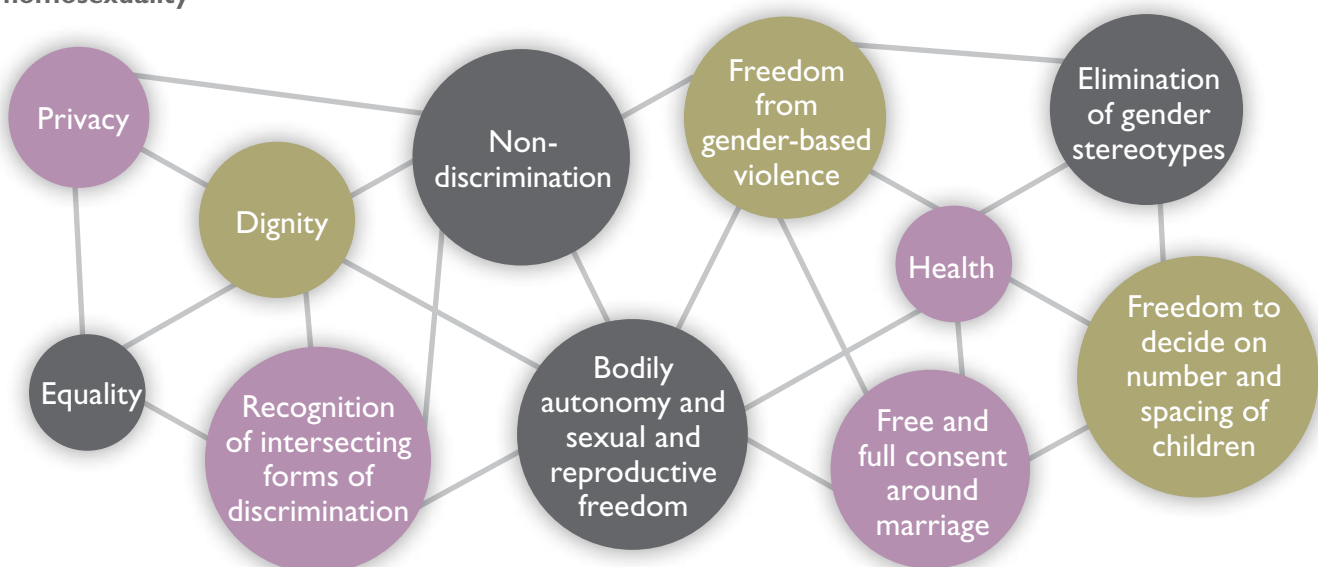
<sup>131</sup> G. Poore, ‘Violence against Lesbians, Bisexual Women and Transgender People in Asia: A Five Country Study’ in IGLHRC, *Violence through the Lens of Lesbians, Bisexual Women and Trans People in Asia*, March 2014, available at [https://www.outrightinternational.org/sites/default/files/LBT\\_ForUpload0614.pdf](https://www.outrightinternational.org/sites/default/files/LBT_ForUpload0614.pdf).

<sup>132</sup> Women’s Support Group, ‘Not Gonna Take It Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka’, in *Violence through the lens of lesbians, bisexual women and trans people in Asia*, March 2014, IGLHRC, p. 202, available at [https://www.outrightinternational.org/sites/default/files/LBT\\_ForUpload0614.pdf](https://www.outrightinternational.org/sites/default/files/LBT_ForUpload0614.pdf). For similar stories from India see above note 35 Annex I, p. 121.

## 4. Violations of human rights law

A multitude of human rights and fundamental freedoms which States are obliged to respect, protect and fulfil are violated by virtue of the maintenance of laws criminalising lesbians and bisexual women, only a brief summary of which is outlined 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. Virtually 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 homosexuality**



As mentioned earlier, the mere fact of criminalising consensual adult same-sex sexual conduct violates the rights to privacy, dignity and non-discrimination, among others, as outlined in other HDT Briefing Notes. 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 or not such laws are enforced in practice, States are in breach of their obligation. This includes physical, sexual and psychological violence whether by State or non-State actors.

All forms of gender-based violence against women are violations of the right to non-discrimination on grounds of sex or gender.<sup>133</sup> Violence against lesbians and bisexual women and many of the other forms of discrimination they face as identified in this Briefing Note constitute discrimination both on grounds of sex or gender and discrimination 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 amongst others identifies women who may suffer from various forms of intersectional discrimination.<sup>134</sup>

<sup>133</sup> UN CEDAW Committee, *General Recommendation 19 on Violence Against Women*, 1992; Organisation of American States, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, 1994; Council of Europe, *Convention on preventing and combating violence against women and domestic violence*, 2011.

<sup>134</sup> 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, paras. 18 and 26.

Furthermore, international human rights law (and 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.'<sup>135</sup> 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.'<sup>136</sup> While these provisions do not guarantee any right to same-sex marriage, they do assure women of the right to choose whether, when and with whom to marry. 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 complete silence everything that that entails. The maintenance of legal, social and cultural systems and structures which 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.

Women have the right to choose whether, when and with whom 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, and the CEDAW Committee, which authoritatively interprets and monitors the implementation of CEDAW by States, has recently interpreted the right to health to include 'the right to bodily autonomy' and to encompass 'sexual and reproductive freedom.'<sup>137</sup>

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

‘the 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.’<sup>138</sup>

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.

<sup>135</sup> For example, International Covenant on Civil and Political Rights, Article 23(2) and (3).

<sup>136</sup> UN Convention on the Elimination of all forms of Discrimination Against Women, Article 16(1)(b) and (e).

<sup>137</sup> *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.

<sup>138</sup> R. Coomaraswamy, 'Reinventing International Law: Women's Rights as Human Rights in the International Community', Edward A. Smith Visiting Lecture, Harvard Law School, 1997.

## 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.

Amnesty International has noted:

“Much of the focus of LGBTI advocacy ... has been on decriminalization of consensual same-sex conduct, and has inadvertently focused on gay men and men who have sex with men, often to the exclusion of lesbians and bisexual women, as well as transgender and intersex individuals. There are human rights violations particular to lesbians and bisexual women which need to be effectively addressed by human rights organizations, governments and civil society.”<sup>139</sup>

There are a variety of reasons why the integration of lesbian and bisexual women’s experiences has 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 area of violence and family-related coercion and a 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 focus not only on the general situation of all LGBT people but also on the unique experiences of the constituent sub-groups within that community.

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 will often be 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 most invisible within the LGBT community, not least because they are more likely to stay hidden within heterosexual marriages as a means of remaining invisible and ‘safe’.<sup>140</sup>

Likewise, LGBT human rights defenders take tremendous personal risks and this can make data collection of any kind very difficult. For women, the risks are amplified given both their sex and sexuality. 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.<sup>141</sup> In Cameroon, leading activist Eric Lembembe was similarly murdered,<sup>142</sup> compelling the Special Rapporteur for Human Rights Defenders of the

<sup>139</sup> Above note 59 p. 48.

<sup>140</sup> Above note 96 p. 13.

<sup>141</sup> Human Rights Watch, ‘Sierra Leone: Lesbian Rights Activist Brutally Murdered’, 2004, available at <http://www.hrw.org/news/2004/10/05/sierra-leone-lesbian-rights-activist-brutally-murdered>.

<sup>142</sup> BBC, ‘Cameroon’s Eric Lembembe: Gay Rights Activist Murdered’, 2013, available at <http://www.bbc.co.uk/news/world-africa-23331832>.

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.<sup>143</sup> The high-profile murders of LGBT rights defenders and activists in socially conservative countries have a chilling effect on LGBT activism and efforts by LGBT organisations to conduct research. In Sri Lanka, LGBT organisations have been threatened and harassed by State authorities and have had their workshops and other activities curtailed.<sup>144</sup>

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 related to LGBT people.<sup>145</sup> In Uganda, a training and advocacy workshop of LGBT activists was disbanded by the government's Minister of Ethics and Integrity, and this action was upheld by the domestic trial court.<sup>146</sup> Other countries have recently 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.<sup>147</sup> The African Commission on Human and Peoples' Rights' Special Rapporteur for Human Rights Defenders has criticised these government policies for undermining the role of human rights defenders, in contravention of the ACHPR,<sup>148</sup> 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.<sup>149</sup>

## 5.2 Underreporting

In addition to the lack of dedicated empirical study focused on lesbian and bisexual women's experiences of persecution, **public statistics on incidences of violence suffered by women more generally are notoriously under-developed.** For instance, the UN Secretary General recognised in his 2006 'In-Depth Study on All Forms of Violence Against Women' that:

6 Estimates of the prevalence of sexual violence by non-partners are difficult to establish, because in many societies, sexual violence remains an issue of deep shame for women and often for their families. Statistics on rape extracted from police records, for example, are notoriously unreliable because of significant underreporting.<sup>150</sup>

**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 are typically not available at all.** This combination of low reporting and incomplete research protocols makes a quantitative analysis of the relationship between sex, 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

<sup>143</sup> 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 at <http://www.achpr.org/fr/press/2013/07/d170/>.

<sup>144</sup> Above note 67 pp. 7-8.

<sup>145</sup> See for instance, a recent US 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.

<sup>146</sup> The Africa Report, Uganda: Gay Advocacy Group Loses Court Battle With Ethics Minister, 2014, <http://www.theafricareport.com/East-Horn-Africa/uganda-gay-advocacy-group-loses-court-battle-with-ethics-minister.html>. The case is under appeal.

<sup>147</sup> 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.'

<sup>148</sup> 'Press Release on the Implication of the *Same Sex Marriage [Prohibition] Act* 2013 on Human Rights Defenders in Nigeria', 2014, available at <http://www.achpr.org/press/2014/02/d190/>.

<sup>149</sup> 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.

<sup>150</sup> A/61/122/Add. I at p. 41.

violence against lesbian, bisexual and trans women in Asia<sup>151</sup> identified four reasons for the underreporting of acts of criminal violence:

- 1) *Non-application of protective laws*: Where the law prohibits discrimination against marginalised and vulnerable populations, these laws usually do not extend protections to lesbian, bisexual and trans people. For instance, laws meant to protect women from domestic violence and sexual violence are often not applicable to lesbian, bisexual and trans people who are similarly victimised. This is the case even when the law recognises *de facto* (i.e., non-married) couples.
- 2) *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 such reporting invites mistreatment – in the form of humiliation, rejection, discrimination, or possibly even criminalisation for being lesbian, bisexual or transgender.<sup>152</sup>
- 3) *Stigma*: The social stigma that continues to be associated with non-conforming sexual orientation, gender identity and gender expression also means that many 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.
- 4) *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 penal code provision criminalising homosexuality means that LGBT people are unable to access the myriad legal protections that heterosexuals 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 recent report notes, '[p]ositions of power, even within the LGBTIQ movement, are rarely given to [lesbian, bisexual or queer] identifying women, further reducing their visibility.'<sup>153</sup> 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.'<sup>154</sup>

Women's relative under-representation can be caused by a complex web of factors that includes social dominance by men generally 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 issues 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 lesbian and bisexual women's issues feature more prominently in their work.

<sup>151</sup> Above note 131.

<sup>152</sup> 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, 1 April 2014, A/HRC/26/38/Add.1, 6, para 19.

<sup>153</sup> Above note 49 p. 18.

<sup>154</sup> 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 are acting with impunity. Some of these violations overlap the persecution faced by gay and bisexual men and other members of the LGBT community, whilst 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, and are often marginalised both within and outside the LGBT and women's human rights movements and 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, impacting the entire LGBT community.<sup>155</sup> Legal interventions to achieve decriminalisation, however, 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 cost families, societies and nations significant unnecessary divisions, anguish and suffering.

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

This Briefing Note 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. Whilst 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. There is also a virtual absence 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 need 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 the constituent members of the LGBT community.

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<sup>155</sup> Above note 48.

### Appendix A: Countries where lesbians and bisexual women are criminalised

	Country	Source of criminalisation	Text of provisions
1.	Afghanistan	Sharia Law	
2.	Algeria	Penal Code 1966, s. 338	<p>338. <i>Tout coupable d'un acte d'homosexualité est puni d'un emprisonnement de deux (2) mois à deux (2) ans et d'une amende de cinq cents (500) à deux mille (2.000) DA.</i></p> <p>[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].</p>
3.	Antigua and Barbuda	Sexual Offences Act 1995, s. 15	<p>15(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment-</p> <p>(a) for ten years, if committed on or towards, a minor under sixteen years of age.</p> <p>(b) for five years, if committed on or towards a person sixteen years of age or more.</p> <p>(2) Subsection (1) does not apply to an act of serious indecency committed in private between</p> <p>(a) a husband and his wife; or</p> <p>(b) a male person and a female person each of whom is sixteen years of age or more.</p> <p>(3) An act of "serious indecency" is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.</p>
4.	Barbados	Sexual Offences Act 1992, s. 12	<p>12. (1) A person who commits an act of serious indecency on or towards another or incites another to commit that act with the person or with another person is guilty of an offence and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years.</p> <p>...</p> <p>(3) An act of "serious indecency" is an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.</p>

	Country	Source of criminalisation	Text of provisions
5.	Bhutan	Penal Code 2004, s. 213	213. A defendant shall be guilty of the offence of unnatural sex, if the defendant engages in sodomy or any other sexual conduct that is against the order of nature.
6.	Botswana	Penal Code 1998, s. 167	167. 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.
7.	Burundi	Penal Code 2009, s. 567	<p>567. <i>Quiconque fait des relations sexuelles avec la personne de même sexe est puni d'une servitude pénale de trois mois à deux ans et d'une amende de cinquante mille francs à cent mille francs ou d'une de ces peines seulement.</i></p> <p>[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.]</p>
8.	Cameroon	Penal Code 1967 (as amended in 1972), s. 347 bis	<p>347bis. <i>Est puni d'un emprisonnement de six mois à cinq ans et d'une amende de 20.000 à 200.000 francs toute personne qui a des rapports sexuels avec une personne de son sexe.</i></p> <p>[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.]</p>

	Country	Source of criminalisation	Text of provisions
9.	Comoros	Penal Code 1995, s. 318(3)	<p>318. (3) <i>Sans préjudice des peines plus graves prévues par les alinéas qui précèdent ou par les articles 320 et 321 du présent code, sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 50 000 à 1 000 000 francs, quiconque aura commis un acte impudique ou contre nature avec un individu de son sexe.</i></p> <p>[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 imprisonment of between one and five years and by a fine of 50,000 to 1,000,000 francs.]</p>
10.	Dominica	Sexual Offences Act 1998, s. 14	<p>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 for five years.</p> <p>(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.</p> <p>...</p> <p>(4) In this section "gross indecency" is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of genital organs for the purpose of arousing or gratifying sexual desire.</p>
11.	Eritrea	Penal Code 1957, s. 600(1)	<p>600. (1) Whosoever performs with another person of the same sex an act corresponding to the sexual act, or any other indecent act, is punishable with simple imprisonment.</p>
12.	Ethiopia	Criminal Code 2004, s. 629	<p>629. Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment.</p>

	Country	Source of criminalisation	Text of provisions
13.	The Gambia	Criminal Code 1965 (as amended 2005), ss. 144(2)(b) and (c) and 147(2) and (3)	<p>144. (1) Any person who.</p> <p>(a) has carnal knowledge of any person against the order of nature; or</p> <p>(b) has carnal knowledge of an animal; or</p> <p>(c) permits any person to have carnal knowledge of him or her against the order of nature;</p> <p>is guilty of a felony and is liable to imprisonment for a term of 14 years.</p> <p>(2) In this section “carnal knowledge of any person against the order of nature” includes –</p> <p>(a) carnal knowledge of the person through the anus or the mouth of a person;</p> <p>(b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and</p> <p>(c) committing any other homosexual act with the person.</p> <p>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.</p> <p>(3) In this section — “act of gross indecency” includes any homosexual act.</p>
14.	Guinea	Penal Code 1998, s. 325	<p>325. Any indecent act or act against nature committed with an individual of the same sex will be punished by six months to three years of imprisonment and a fine of 100,000 to 1,000,000 Guinean francs...</p>
15.	Indonesia (Aceh Province and South Sumatra)	Sharia Law	

	Country	Source of criminalisation	Text of provisions
16.	Iran	Islamic Penal Code 1991 (as amended 2012), ss. 127-133	<p>127. Mosaheqeh (lesbianism) is homosexuality of women by genitals.</p> <p>128. The ways of proving lesbianism in court are the same by which the homosexuality (of men) is proved.</p> <p>129. Punishment for lesbianism is hundred (100) lashes for each party.</p> <p>130. Punishment for lesbianism will be established vis-a-vis someone who is mature, of sound mind, has free will and intention. Note: In the punishment for lesbianism, there will be no distinction between the doer and the subject as well as Muslim or non-Muslim.</p> <p>131. If the act of lesbianism is repeated three lashes and punishment is enforced each time, death sentence will be issued the fourth time.</p> <p>132. If a lesbian repents before the giving of testimony by the witnesses, the punishment will be quashed; if she does so after the giving of testimony, the punishment will not be quashed.</p> <p>133. If the act of lesbianism is proved by confession of the doer and she repents accordingly, the Sharia judge may request the leader to pardon her.</p> <p>134. If two women not related by consanguinity stand naked under one cover without necessity, they will be punished to less than hundred lashes (Ta'azir). In the case of its repetition as well as the repetition of punishment, hundred lashes will be hit the third time.</p>
17.	Iraq	Sharia Law (some regions)	

	Country	Source of criminalisation	Text of provisions
18.	Liberia	New Penal Law, Volume IV, Title 26, Liberian Code of Laws Revised 1978, ss. 14.74 and 14.79	<p>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.</p> <p>14.79</p> <p>a) Sexual intercourse, occurs upon penetration, however slight; ejaculation is not required;</p> <p>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;</p> <p>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.</p>
19.	Libya	Penal Code 1953 (as amended by Law 70 of 1973), s. 408(4)	408. (4) Whoever commits an indecent act with a partner with his consent will be punished with his partner with imprisonment.
20.	Malawi	Penal Code 1930 (as amended 2011), s. 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.
21.	Malaysia	Penal Code 1998, s. 377D	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.

	Country	Source of criminalisation	Text of provisions
		Malaysia devolves its penal law to Malay states which may choose to implement Sharia law. Several states apply Sharia law, for example the Sharia penal law in the state of Pulau Pinang, Art. 26.	<p>26. <i>Mana-mana orang perempuan yang melakukan musahaqah adalah melakukan suatu kesalahan dan apabila disabitkan boleh didenda tidak melebihi lima ribu ringgit atau dipenjarakan selama tempoh tidak melebihi tiga tahun atau disebat tidak melebihi enam sebatan atau dihukum dengan mana-mana kombinasi hukuman itu.</i></p> <p>[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.]</p>
22.	Maldives	Sharia Law	
23.	Mauritania	Penal Code 1984, s. 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].
24.	Morocco	Penal Code 1962, s. 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.

	Country	Source of criminalisation	Text of provisions
25.	Nigeria	Kano State Penal Code (Amendment No. 12) 2014, ss. 4 and 5 [Amending ss. 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) ...
26.	Oman	Penal Code 1974, s. 223	223. Anyone who commits erotic acts with a person of the same sex shall be sentenced to imprisonment from six months to three years. The suspects of homosexual or lesbian intercourse shall be prosecuted without a prior complaint, if the act results in a public scandal. The suspects of lesbian intercourse among ascendants, descendants or sisters shall only be prosecuted upon a complaint from a relative or a relative by marriage forth-degree removed.
27.	Qatar	Sharia Law	
28.	Saint Lucia	Criminal Code 2004, s. 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.

	Country	Source of criminalisation	Text of provisions
29.	Saint Vincent and the Grenadines	Criminal Code 1990, s. 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.
30.	Saudi Arabia	Sharia Law	
31.	Senegal	Penal Code 1965, s. 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.
32.	Solomon Islands	Penal Code 1996, s. 162 (as amended by Act 9 of 1990, s. 2)	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.
33.	Somalia	Penal Code, Legislative Decree No. 5/1962.2, s. 409	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.

	Country	Source of criminalisation	Text of provisions
34.	Sri Lanka	Penal Code (as amended by the Penal Code (Amendment) Act No. 22 of 1995), s. 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...
35.	Sudan	Penal Code 1991, s. 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.
36.	Syria	Sharia Law (some regions)	
37.	Tanzania	<p>Penal Code 1945 (as amended by the Sexual Offences Special Provisions Act 1998), s. 138A</p> <p>Zanzibar Penal Code of 1934, as amended in 2004, ss. 4, 153 and 154</p>	<p>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; ...</p> <p>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.</p> <p>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.</p>

	Country	Source of criminalisation	Text of provisions
			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.
38.	Togo	Penal Code 1980, s. 88	<p>88. Sera puni d'un emprisonnement d'un à trois ans et d'une amende de 100 000 à 500 000 francs quiconque aura commis un acte impudique ou contre nature avec un individu de son sexe.</p> <p>[Any person who commits an imprudent act or an act against nature with someone of the same sex shall be punished with imprisonment of one to three years and a fine of 100,000 to 500,000 francs.]</p>
39.	Trinidad and Tobago	Sexual Offences Act 1986 (Consolidated Version 2000), s. 16	<p>16. (1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment—</p> <p>...</p> <p>(b) if committed on or towards a person sixteen years of age or more for five years.</p> <p>(2) Subsection (1) does not apply to an act of serious indecency committed in private between—</p> <p>(a) a husband and his wife; or</p> <p>(b) a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act.</p>

	Country	Source of criminalisation	Text of provisions
			(3) An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.
40.	Tunisia	Penal Code (Arabic version), s. 230	230. [ <i>Translation from Arabic</i> ] Homosexual acts between males or females, that are not covered in any of the other previous articles, are punished with imprisonment for three years.
41.	Uganda	Penal Code Act 1950 (Chapter 120) as amended, s. 148	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.
42.	United Arab Emirates	Sharia Law	
43.	Yemen	Penal Code 1994, s. 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.
44.	Zambia	Penal Code (as amended by Act No. 15 of 2005), s. 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 [ <i>sic</i> ] 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.

### Appendix B: 2014 Gender Gap Index scores for criminalising versus non-criminalising countries

Countries that do not criminalise homosexuality	GGI Scores
Iceland	0.8594
Finland	0.8453
Norway	0.8374
Sweden	0.8165
Denmark	0.8025
Nicaragua	0.7894
Rwanda	0.7854
Ireland	0.7850
Philippines	0.7814
Belgium	0.7809
Switzerland	0.7798
Germany	0.7780
New Zealand	0.7772
Netherlands	0.7730
Latvia	0.7691
France	0.7588
South Africa	0.7527
Canada	0.7464
United States	0.7463
Ecuador	0.7455
Bulgaria	0.7444
Slovenia	0.7443
Australia	0.7409
Moldova	0.7405
United Kingdom	0.7383
Mozambique	0.7370
Luxembourg	0.7333
Spain	0.7325
Cuba	0.7317
Argentina	0.7317
Belarus	0.7300
Bahamas	0.7269
Austria	0.7266

Countries that criminalise homosexuality	GGI Scores
Burundi	0.7565
Barbados	0.7289
Malawi	0.7281
Kenya	0.7258
Namibia	0.7219
Tanzania	0.7182
Trinidad and Tobago	0.7154
Botswana	0.7129
Jamaica	0.7128
Singapore	0.7046
Zimbabwe	0.7013
Guyana	0.7010
Bangladesh	0.6973
Senegal	0.6912
Dominican Republic	0.6906
Sri Lanka	0.6903
Uganda	0.6821
Swaziland	0.6772
Indonesia	0.6725
Brunei Darussalam	0.6719
Belize	0.6701
Ghana	0.6661
Maldives	0.6557
Mauritius	0.6541
Malaysia	0.6520
Liberia	0.6461
Kuwait	0.6457
India	0.6455
United Arab Emirates	0.6436
Qatar	0.6403
Nigeria	0.6391
Bhutan	0.6364

Countries that do not criminalise homosexuality	GGI Scores
Lesotho	0.7255
Portugal	0.7243
Madagascar	0.7214
Mongolia	0.7212
Kazakhstan	0.7210
Lithuania	0.7208
Peru	0.7198
Panama	0.7195
Costa Rica	0.7165
Cape Verde	0.7133
Colombia	0.7122
Serbia	0.7086
Croatia	0.7075
Ukraine	0.7056
Poland	0.7051
Bolivia	0.7049
Lao PDR	0.7044
Thailand	0.7027
Estonia	0.7017
Israel	0.7005
Chile	0.6975
Kyrgyz Republic	0.6974
Italy	0.6973
Macedonia, FYR	0.6943
Brazil	0.6941
Romania	0.6936
Honduras	0.6935
Montenegro	0.6934
Russian Federation	0.6927
Vietnam	0.6915
Mexico	0.6900
Paraguay	0.6890

Countries that criminalise homosexuality	GGI Scores
Zambia	0.6364
Angola	0.6311
Tunisia	0.6272
Algeria	0.6182
Ethiopia	0.6144
Oman	0.6091
Egypt	0.6064
Saudi Arabia	0.6059
Mauritania	0.6029
Guinea	0.6005
Morocco	0.5988
Lebanon	0.5923
Iran, Islamic Rep.	0.5811
Syria	0.5775
Pakistan	0.5522
Yemen	0.5145

Countries that do not criminalise homosexuality	GGI Scores
Uruguay	0.6871
Albania	0.6869
El Salvador	0.6863
Georgia	0.6855
Venezuela	0.6851
China	0.6830
Guatemala	0.6821
Slovak Republic	0.6806
Greece	0.6784
Hungary	0.6759
Azerbaijan	0.6753
Cyprus	0.6741
Czech Republic	0.6737
Malta	0.6707
Tajikistan	0.6654
Armenia	0.6622
Japan	0.6584
Cambodia	0.6520
Suriname	0.6504
Burkina Faso	0.6500
Nepal	0.6458
Korea, Rep.	0.6403
Fiji	0.6286
Bahrain	0.6261
Turkey	0.6183
Jordan	0.5968
Côte d'Ivoire	0.5874
Mali	0.5779
Chad	0.5764



# BREAKING THE SILENCE

Criminalisation of Lesbians and Bisexual Women and its Impacts

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