



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

*Second Edition*



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## THE HUMAN DIGNITY TRUST

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

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

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

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



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

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





# PURPOSE OF THIS REPORT

Research and activism on criminalisation often treat LGBT people as a homogenous group. Almost all the legal analyses and decriminalisation cases to date have been focused on the experience of men. Breaking the Silence does something different by focusing on the criminalisation of female same-sex intimacy.

The second edition of this report is an updated version of the original published in 2016. Breaking the Silence focuses on the experiences of lesbians and bisexual women because of the specific ways in which the law criminalises intimacy between females. The criminalisation of transgender and gender diverse people is the focus of a separate report, Injustice Exposed.

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





# HISTORY AND STATUS OF CRIMINALISATION OF LESBIANS AND BISEXUAL WOMEN

## Jurisdictions that Criminalise

As of November 2024, consensual same-sex sexual conduct is criminalised in more than 60 jurisdictions worldwide, including more than 50 per cent of Commonwealth nations. Of these jurisdictions, at least 40 (more than 60 per cent) criminalise same-sex sexual conduct between females. Most of these criminal laws originate from British colonial rule. Others are founded in Sharia law (Islamic law).

At least 12 countries that previously only criminalised male same-sex sexual conduct later expanded their criminal codes to include sexual conduct between females. Three of those have since decriminalised all same-sex sexual conduct.

## Recent Developments in (De-)criminalisation

Several countries have eradicated laws that criminalised same-sex sexual activity between women since the first edition of this report was published in 2016, including Trinidad and Tobago in 2018, Bhutan in 2021, Antigua and Barbuda in 2022, Barbados in 2022 and Dominica and Namibia in 2024.

Worryingly, in the same period, other countries have introduced new laws criminalising same-sex sexual activity between females: Chad in 2017 and Brunei in 2019. New criminalising provisions and other regressive legislation are also in contemplation or about to be enacted in several countries in Central and West Africa.

## How lesbian and bisexual women are criminalised

Countries that criminalise female same-sex intimacy either ban all sexual activity between persons of the same sex or use specific references to female same-sex sexual intimacy or acts that could be done between females.

Some states use formulations that were developed in Britain and put in place during British colonial rule, such as ‘gross indecency’ or ‘unnatural offences’. These provisions originally only applied to men. However, in several countries, they were later extended or interpreted broadly to include same-sex intimacy between women, for instance in Sri Lanka, Malaysia, Botswana, Malawi and The Gambia.<sup>1</sup> In other jurisdictions, it has been confirmed or is likely that the provisions continue to apply only to men, particularly the ‘unnatural offences’ provisions. Other formulations

<sup>1</sup> Page 20 of report.

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include ‘lesbianism’ and the criminalisation of specific sexual acts that would be practised in female same-sex intimate relationships.

Female same-sex sexual conduct is also criminalised in most countries where Islamic law is applied, usually in addition to a statutory criminal law, for instance in Iran, Mauritania and Yemen.<sup>2</sup> In Saudi Arabia, female same-sex intimacy is criminalised only through Islamic law, without any other legal provision.<sup>3</sup>

In many criminalising countries, the formulations are vague enough that, whilst technically they should only apply to males, there has been uncertainty as to their full application. Courts in some countries have differed in their interpretation of the provisions as applying or not to females, leaving lesbian and bisexual women in a sort of legal limbo. There are only 14 jurisdictions where the explicit wording of the law clearly directly targets only male same-sex sexual conduct, including Guyana, Kuwait, Jamaica, Sierra Leone, Zimbabwe and Papua New Guinea, although that does not mean lesbians and bisexual women are not at risk of arrest and human rights violations.<sup>4</sup>

<sup>2</sup> Pages 21 to 22 of report.

<sup>3</sup> Page 16 of report.

<sup>4</sup> Page 27 of report.



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# PERSECUTION AND HUMAN RIGHTS ABUSES FACED BY LESBIANS AND BISEXUAL WOMEN

Criminalisation of consensual sexual intimacy fosters and enables a wide range of human rights abuses against women that are both similar to and distinct from those faced by men.

Criminalisation promotes a climate of state-approved stigma, resulting in discrimination, abuse and violence against the entire LGBT community (even where only male same-sex intimacy is criminalised). Maintaining these laws is a violation of human rights in itself, but also allows human rights to be violated in other ways, such as by encouraging discrimination against the LGBT community.

As voiced by the Constitutional Court of South Africa:

*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... a significant group of the population is, because of its sexual nonconformity, persecuted, marginalised and turned in on itself.*<sup>6</sup>

## Intersection between Criminalisation and Gender Discrimination

Lesbians and bisexual women experience human rights violations in ways both similar to and different (or to different degrees) from gay and bisexual men, because of the connections between their sex, gender and sexual orientation.

The criminalisation of lesbians and bisexual women is often compounded by other criminal laws that have a disproportionately severe impact on women and girls, such as laws criminalising adultery, abortion and sex-work, and laws that allow child marriage and rape within marriage. They can be particularly vulnerable to certain forms of control and abuse, given the fact that women and girls in many countries continue to be oppressed by male-dominated societies.

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>6</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; page 31 of full report.



*There is a strong association between how well a country performs in terms of gender equality and whether it criminalises same-sex intimacy. Countries that criminalise consensual same-sex intimacy rank lower in global indicators of gender equality than countries that do not.*

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—even in countries that do not have laws specifically against female same-sex sexual conduct.

In August 2022, for example, it was reported that a case had been filed against a 22-year-old lesbian woman in Sri Lanka when she told her parents about her sexual orientation.<sup>7</sup> Also in Sri Lanka, a lesbian couple was arrested and held by police after the father of one of the women objected to the relationship.<sup>8</sup> In both cases, the authorities ordered the women to see a psychiatrist for evaluation.<sup>9</sup>

In Malaysia in 2018, a Sharia court ordered a lesbian couple to be caned after they were caught having sex in a car.<sup>10</sup>

In The Gambia, three women were arrested on 13 November 2018. They were detained, beaten and threatened with rape by security forces. They were also told that if they did not ‘confess’ to the charges of homosexuality, a device would be forced into their anus or vagina to ‘test’ their sexual orientation.<sup>11</sup>

<sup>7</sup> Newswire, 'Wattala court dismisses case filed against a lesbian' (2 August 2022), page 36 of report.  
<sup>8</sup> Newswire, 'Indo-Lanka lesbian love: Couple held in SL' (27 June 2022), page 36 of report.  
<sup>9</sup> Page 36 of report.  
<sup>10</sup> Hannah Ellis-Petersen, 'Malaysia accused of "state-sponsored homophobia" after LGBT crackdown', The Guardian (22 August 2018), available <https://www.theguardian.com/world/2018/aug/22/malaysia-accused-of-state-sponsored-homophobia-after-lgbt-crackdown>; page 37 of report.  
<sup>11</sup> Amnesty International UK, 'Gambia's latest anti-gay Bill' (12 January 2018), available <https://www.amnesty.org.uk/gambia-anti-gay-bill>; page 37 of report.

Physical and Sexual Violence

Lesbians and bisexual women are particularly vulnerable to violence, control and abuse within their own families and by people they know. They often experience targeted rape, through which abusers claim 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. If they do report, the crimes are often not investigated.

Although significantly under-reported, the targeted rape of lesbians and bisexual women has been shown to be common in several countries, including India, Cameroon, Kenya, Zimbabwe, Jamaica, Uganda and South Africa.<sup>12</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>13</sup> Another study in Kenya found that one in four lesbians had been sexually assaulted in the previous year; this was three times more than the general population.<sup>14</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>15</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>16</sup>

<sup>12</sup> Page 43 of report.  
<sup>13</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>14</sup> Equality and Justice Alliance, Hate Crimes against the LGBT Community in the Commonwealth: A Situational Analysis (Human Dignity Trust, March 2020), p. 24, available <https://www.humandignitytrust.org/wp-content/uploads/resources/2020-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth-A-Situational-Analysis.pdf>; page 44 of report.  
<sup>15</sup> Human Rights Watch, Forbidden: Institutionalizing Discrimination Against Gays and Lesbians in Burundi (July 2009), p. 18, available <http://www.refworld.org/docid/4a76ab762.html>; page 43 of report.  
<sup>16</sup> Gender Research and Advocacy Project and Legal Assistance Centre, Namibian Law on LGBT Issues (2015), p. 83, available [http://www.lac.org.na/projects/grap/Pdf/LGBT\\_mono.pdf](http://www.lac.org.na/projects/grap/Pdf/LGBT_mono.pdf); page 46 of report.



Family Control and Lack of Physical and Sexual Autonomy

The economic disadvantage many women experience, combined with societal demands to marry and start a traditional family, creates a strong pressure for many lesbians and bisexual women to enter into heterosexual unions. In some countries, lesbians and bisexual women may be forced into a heterosexual marriage when their sexuality is revealed to their family.

In a report on the experiences of queer women in Morocco, one activist highlighted that “women are often forced to marry if they are found to have engaged in relations with another woman,” and that “the aim is to appease the neighbourhood and society and ensure the incident is forgotten.”<sup>17</sup>

In Afghanistan, when a lesbian woman was found with her partner, her uncle stated that he would kill her to “get rid of this shame”. Her parents refused to kill her and instead engaged her to a man who did not know she was a lesbian. One of her cousins told her husband she was a lesbian and she now suffers physical abuse from her husband daily and fears he will kill her.<sup>18</sup>

In Cameroon, an activist confirmed: “There is a forced bisexuality here. Many lesbians are forced to get married and have children.”<sup>19</sup>

A Sri Lankan lesbian couple lived together and looked after the ill 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 left to her by her mother if she did not agree. This took such a toll on her girlfriend that the girlfriend later took her own life.<sup>20</sup>

Women in such marriages are likely to have significantly less control over their own bodies than gay and bisexual men who enter sham heterosexual marriages, and such women may also have little control over their sexual and reproductive health and choices. They may be forced, in effect, to suffer a lifetime of invisible and undocumented sexual abuse.

<sup>17</sup> Outright International and Arab Foundation, Activism and Resilience: LGBTQ Progress in the Middle East and North Africa: Case Studies from Jordan, Lebanon, Morocco and Tunisia, (New York, 2018) p. 36, available [https://outrightinternational.org/sites/default/files/2023-09/Activism\\_Resilience\\_MENA\\_EN%20%281%29.pdf](https://outrightinternational.org/sites/default/files/2023-09/Activism_Resilience_MENA_EN%20%281%29.pdf); page 48 of report.

<sup>18</sup> Human Rights Watch, Even If You Go to the Skies, We’ll Find You (January 2022) available, [https://www.hrw.org/sites/default/files/media\\_2022/01/afghanistan\\_lgbt0122\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/media_2022/01/afghanistan_lgbt0122_web_0.pdf), p. 14-15; page 48 of report.

<sup>19</sup> Amnesty International, Making love a crime: Criminalization of Same-Sex Conduct in Sub-Saharan Africa (AFR 01/001/2013, 25 June 2013), available <https://www.amnesty.org/en/documents/afr01/001/2013/en/>, p. 52; page 49 of report.

<sup>20</sup> Equal Ground, Human Rights Violations against LGBT People in Sri Lanka: A Shadow Report (October 2014), available [https://www.ecoi.net/en/file/local/1205025/1930\\_1413374965\\_int-cpr-css-lka-18258-e.pdf](https://www.ecoi.net/en/file/local/1205025/1930_1413374965_int-cpr-css-lka-18258-e.pdf), p. 13; page 49 of report.

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

*[i]n a society where women are often socialized into the eventuality of heterosexual marriage, most lesbian and bisexual women cannot even imagine the possibility of two women loving each other and living together. In the case of lesbian women who have no choice but to marry, the sexual relationship with their husbands is often nothing short of marital rape.*<sup>21</sup>

Discrimination in Education, Employment, Health and Housing

Lesbians and bisexual women also face discrimination in education, employment, health and housing, making them more economically dependent on male relatives.

A study from the Asia-Pacific region 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>22</sup>

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>23</sup>

<sup>21</sup> National Alliance of Women, India Second NGO Shadow Report on CEDAW (November 2006), available [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), p. 207; page 51 of report.

<sup>22</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) available <http://apwld.org/wp-content/uploads/2013/10/SRVAV-2010-Different-but-not-Divided-Web-Resolution.pdf>; page 53 of report.

<sup>23</sup> GALCK, Research on the Lived Experiences (no. 70), pp. 28-29; page 54 of report.



Mental Health and Suicide

The combined 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.

A 2014 study of five Asian countries—Japan, Malaysia, Pakistan, Philippines and Sri Lanka—indicated that many lesbians and bisexual women saw suicide as a way to escape the violence in their lives.<sup>24</sup>

<sup>24</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 <https://outrightinternational.org/our-work/human-rights-research/violence-through-lens-lesbians-bisexual-women-and-trans-people-asia>; page 55 of report.





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# HUMAN RIGHTS LAW

The criminalisation of consensual same-sex intimacy violates the rights of lesbians and bisexual women to privacy, equality, dignity, freedom of expression, physical and sexual autonomy, freedom from violence, an adequate standard of health, and removal of gender stereotypes. It also violates their right to full and free consent around marriage and to decide on the number and spacing of children.

Criminalisation violates various international treaties, including the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), to which virtually all criminalising countries are party.

## Flamer-Caldera v Sri Lanka

A major step, building on the first edition of this report, was the ground-breaking 2022 decision by the United Nations CEDAW Committee (which oversees the implementation of CEDAW) in *Flamer-Caldera v Sri Lanka*. The Committee found that laws criminalising female same-sex intimacy violate CEDAW—in other words, that these laws discriminate against women in an unlawful way and should be abolished.

The claimant in the case, Rosanna Flamer-Calder, is a prominent lesbian civil society leader in Sri Lanka who had experienced various forms of discrimination, including threats of violence, because of her sexual orientation.<sup>25</sup> The Committee outlined actions taken by her to protect herself and her family:

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

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<sup>25</sup> Pages 60 to 61 of report.

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# HUMAN RIGHTS LAW

The Committee found multiple violations of CEDAW in her case. Specifically, it found that Sri Lanka breached her rights under:

- Article 2(a) and (d)–(g), as the criminalisation of same-sex sexual activity between women compounds discrimination, including by putting them under constant threat of arrest, detention and investigation.
- Article 2(c)–(f), as criminalisation exacerbates and condones forms of gender-based violence against women, including vilification, harassment, coercion and threats, and death or physical, sexual, psychological or economic harm.
- Article 5(a), by failing to eliminate the prejudice and stereotypes to which she has been exposed, including authorities subjecting her to harmful stereotyping and accusatory campaigns on account of being a lesbian. The Committee noted that criminalisation legitimises societal prejudice and gender stereotypes and that decriminalisation is essential to combating such stereotypes.
- Article 7(c), by failing to protect her against harassment, abuse and threats she received when trying to participate in promoting the rights of LGBT people in Sri Lanka. The Committee stated that the authorities had done the converse by frequently threatening Flamer-Caldera and placing the human rights organisation she led under surveillance.
- Article 15(1), as criminalisation renders her unable to report threats and harassment for risk of being arrested. States are obliged to ensure that women have access to protection and remedies and the State failed to guarantee this.
- Article 16, as criminalisation has meant that finding a partner has been difficult and she has had to hide her relationships for risk of being investigated and prosecuted. The Committee reiterated that, whatever the form of a family, the treatment of women in the family must accord with the principles of equality and justice for all. <sup>26</sup>

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<sup>26</sup> Pages 60 to 61 of report



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The *Flamer-Caldera* decision is a strong and important message to governments around the world: the criminalisation of female same-sex intimacy is a violation of international human rights law. Any country that claims to respect women's rights must respect the rights of all women, including lesbians and bisexual women. reiterated that, whatever the form of a family, the treatment of women in the family must accord with the principles of equality and justice for all.



# ISSUES WITH RESEARCH AND DATA COLLECTION

Much of the research, advocacy and legal discussion on the criminalisation and oppression of LGBT people worldwide has 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. The *Flamer-Caldera* decision by the UN CEDAW Committee represents one major milestone, but there is still a long way to go before women’s experiences under criminalisation and their agency and participation in decriminalisation efforts is where it should be.

Research and disaggregated data on women’s experiences is still lacking, although there have been improvements since the first edition of this report. Lesbians and bisexual women are still often less visible to researchers. Many instances of violence against women in the home go unreported, and women in general have a lower level of influence on reform efforts in many societies.

Legal and political efforts to tackle the criminalisation of LGBT people must do much more to ensure that responses are tailored to the needs of the entire LGBT community, including lesbians and bisexual women.



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