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*The Criminalisation of
Transgender People and
its Impacts*

The Human Dignity Trust

The Human Dignity Trust works with LGBT activists around the world to defend human rights in countries where private consensual sexual activity between adults of the same sex is criminalised. In collaboration with local partners and lawyers, we support strategic litigation to challenge laws that persecute people on the basis of their sexual orientation and/or gender identity.

Working with our Legal and Bar Panels, a network of 25 of the world's leading law firms and eminent barristers, we have mobilised more than £12 million of pro bono technical legal assistance to support local activists, civil society organisations and decriminalisation efforts across five continents.

Local activists always lead and inform our work. They set the pace, to ensure that legal interventions are timely, and help to drive wider calls for change. Conscious that together we are stronger, we build highly-skilled international teams by matching the global resources of our Legal and Bar Panels with the expertise of local lawyers and activists, who join forces to support interventions in key legal cases.

Since 2015, the Trust has also analysed the need and options for legislative reform of a broad range of sexual offences and related laws that discriminate against LGBT people and other marginalised groups, and provides technical assistance upon request to governments seeking to reform such laws.

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

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Glossary

The terminology used to describe and discuss gender identity is determined by historical, cultural, religious and political influences. This report uses the terms transgender and gender diverse as a starting point, as they are the most widely established terms within international literature. However, we are aware that the language used in this publication is borne out of a Western perspective, and have accordingly sought to acknowledge this by referring to culturally relevant terms where appropriate.

Cisgender describes people with a gender identity that matches the gender that is culturally affiliated with the sex assigned to them at birth. It is a term often used to describe people who are not transgender or gender diverse.

Gender Affirming Treatment refers to any of a number of gender affirming interventions, including hormone replacement therapy, surgery, hair removal, interventions for the modification of speech and communication, and behavioural adaptations such as genital tucking or packing, or chest binding. These procedures have been defined as medically necessary by the World Professional Association for Transgender Health.¹ While not all transgender or gender diverse individuals seek gender affirming treatment, those who do can encounter significant barriers in accessing appropriate care.

Gender Expression refers to external manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behaviour, voice, or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture. Typically, people seek to make their gender expression align with their gender identity, regardless of the sex they were assigned at birth.

Gender Identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.²

1 WPATH, *Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.*, 21 December 2016. Available at: http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1352&pk_association_webpage=3947.

2 *The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2007. Available at: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

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Gender Diverse is an umbrella term used to encompass some of the wide variety of gender identities and expressions, particularly those in the global south and east that are not represented within the term ‘transgender’.

Gender Non-conforming describes people who do not conform to societal gender norms. They may or may not identify as the sex assigned to them at birth.

Legal Gender Recognition refers to the legal recognition of a person’s gender identity in official documentation, such as passports and driving licenses. When a transgender or gender diverse person’s official documentation does not reflect their gender identity, it typically causes significant impediments to their daily lives. Incongruent documentation and personal records can potentially exclude transgender or gender diverse people from health services, the right to vote or freedom of movement. In addition, documents that disclose that someone is transgender or gender diverse often lead to discrimination in vital interactions such as enrolling in school, applying for jobs, renting accommodation, or opening a bank account.

LGBT is an acronym for Lesbian, Gay, Bisexual and Transgender.

Misgendering can be understood as referring to someone (often a transgender or gender diverse person) using a word, especially a pronoun or form of address, that does not correctly reflect their gender.

Sex describes the classification of people as male, female or intersex based on a combination of bodily characteristics including: chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics. At birth, infants are assigned a sex, usually based on the appearance of their external reproductive organs only.

Sex Assigned at Birth refers to the process by which individuals are assigned a sex when they are born depending on the appearance of their external genitalia. A person’s assigned sex may not conform with their gender identity, which develops over time.

Sex Worker describes a person who receives money or goods in exchange for sexual services.

Sexual Orientation describes an individual's capacity for enduring physical, romantic and/or emotional attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. Gender identity and sexual orientation are not the same. Transgender and gender diverse people's sexual orientation is as diverse as that of cisgender people and they may identify as heterosexual, bisexual, gay or lesbian.³

Transgender is an umbrella term for people whose gender identity differs from the gender that is culturally affiliated with the sex assigned to them at birth. This includes people who present themselves or identify differently from the cultural gender expectations of the sex assigned to them at birth, including all of those who intend to undergo, are undergoing, or have undergone gender affirming treatments as well as those who will not undergo medical treatments. A person's gender identity is independent from their sexual orientation. Just as a cisgender person can be lesbian, gay, bisexual or heterosexual, so can a transgender or gender diverse person. Trans is often used as shorthand for transgender.

Trans Man refers to a man who was assigned female at birth or a trans person with a male gender identity.

Trans Woman refers to a woman who was assigned male at birth or a trans person with a female gender identity.

³ Ibid. This list is not exhaustive.

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Executive Summary

Key Findings:

- Trans and gender diverse people are criminalised globally in a variety of ways. This criminalisation is complex, multifaceted and occurs across all regional, religious and cultural borders.
- Laws that are used to criminalise trans and gender diverse people are broad and often used in conjunction with one another, not only to arrest and detain trans and gender diverse people but to limit their access to rights and justice and otherwise control and punish them.
- These laws are both a product of, and a contributory factor to, more widespread transphobia.
- The criminalisation of trans and gender diverse people also dissuades them from openly revealing their gender identities and/or presenting their gender expression. This serves to create barriers to accessing basic civil rights such as education, employment, housing and health.
- Historically, most research into the relationship between the law and LGBT people has focused on the experience of cisgender gay and bisexual men. In part this is because of the structural dominance of cisgender men within the LGBT movement; in part it is due to the complexity of the relationship between the law and trans and gender diverse people. While the criminalisation of same-sex activity is relatively direct, there is a suite of laws that are used in varying ways to criminalise trans and gender diverse people.
- This report aims to contribute to addressing this gap in the knowledge base by providing a comprehensive analysis of how trans and gender diverse people are targeted by some of these laws, namely: (1) the criminalisation of the gender expression of trans and gender diverse people; (2) the misuse of public order, vagrancy and misdemeanour offences; (3) the criminalisation of consensual same-sex intimacy; and (4) police abuses even in the absence of any specific offence (please see the table below).
- Regardless of the legislative framework, state actors and law enforcement officials routinely operate outside of the law to violate the rights of transgender and gender diverse people. In multiple studies from the Americas, Africa and Asia, overwhelming majorities of trans and gender diverse people report experiencing harassment, violence and abuse from state officials and identify them as the main agent of their discrimination. The abuse reported by trans and gender diverse people includes blackmail, extortion, public humiliation, and physical and sexual violence. This occurs both in countries where there are laws that are routinely used to criminalise trans and gender diverse people and in countries that lack such criminalising provisions.
- The vast majority of these laws originate from British colonial penal codes, with others originating in Islamic Sharia law.

- Despite the universally recognised right of each person to equal protection of the law, some of the most basic human rights of trans and gender diverse people (such as their right to life, freedom of expression and the highest possible standard of health and access to appropriate healthcare) are violated by state and non-state actors worldwide.
- The use of inappropriate limitations on rights based on “morality”, “common interest”, “cultural values” and the “general welfare” of society, coupled with the lack of any consistent global approach to applying international human rights law to trans and gender diverse people, has resulted in the erratic and fragmented protection of trans and gender diverse people’s human rights worldwide.
- Laws that are used to criminalise the trans and gender diverse population must be repealed, or amended to explicitly ensure that they cannot be applied to discriminate against trans and gender diverse people. In parallel, it is imperative that states help to tackle and rebalance political and public attitudes and prejudices towards trans and gender diverse people.

Criminalisation of gender expression	Misuse of public order, vagrancy and misdemeanour offences	Criminalisation of consensual same-sex intimacy	Police abuses in the absence of any specific offence
<ul style="list-style-type: none"> • Gender expression is the external manifestation of one’s gender identity. • At least 15 jurisdictions across Africa, Asia and the Middle East impose criminal sanctions against people whose gender expression does not align with their sex as assigned at birth, using laws that criminalise so-called ‘cross-dressing’, disguise, impersonation and/or imitation. • Dependant on jurisdiction, both trans men and trans women are criminalised by these laws. • These laws originate from either British colonial penal codes or Islamic Sharia law. • The language used in these provisions is typified by that in Guyana’s Criminal Law (Offences) Act (declared unconstitutional in 2018) which sanctioned anyone who “being a man, in any public way or public place, for any improper purpose, appears in female attire; or being a woman... for any improper purpose, appears in male attire”. 	<ul style="list-style-type: none"> • There is substantial evidence that public order, vagrancy and misdemeanour offences are used by state actors in Africa, Asia, Europe, the Caribbean, Central America and the Middle East excessively and arbitrarily against trans and gender diverse people in public spaces. • There is evidence that at least 26 states use public order offences to criminalise trans and gender diverse people. • In the majority of jurisdictions, public order offences find their origin in British colonial legislation. Worryingly, there are attempts to introduce new public order laws designed specifically to target trans and gender diverse people (such as the recent so-called ‘Bathroom Bills’ in the United States). • Law enforcement officers often use public order offences in conjunction with laws that criminalise sex work to target trans and gender diverse people, and trans women in particular, due to their perceived or actual participation in the sex industry. 	<ul style="list-style-type: none"> • As of May 2019, 73 jurisdictions criminalise private, consensual same- sex activity between adults (approximately 40% of all countries and 70% of Commonwealth countries). The majority of these criminal laws originate from British colonial penal codes. Others originate in Islamic Sharia law. • In at least 9 of these countries there is evidence of their use to criminalise trans and gender diverse people. This is indicative of how sexual orientation and gender identity and expression are conflated. • The misuse of such legislation can result in trans and gender diverse people hiding their gender identity and being unable to present their gender expression, due to fear of criminal prosecution as highly visible members of the LGBT community. 	<ul style="list-style-type: none"> • There is a substantial body of evidence showing that trans and gender diverse people face abuse from law enforcement officials, regardless of the legislative framework. • Even where law enforcement officials have access to laws to target and harass trans and gender diverse people, there is evidence they often act without any reference to the law. Abuses reported include blackmail, extortion, public humiliation, and physical and sexual violence. The perpetrators rarely, if ever, face any consequences. • Multiple studies from the Americas, Africa and Asia find that overwhelming majorities of trans people report experiencing harassment, violence and abuse from law officials and identify them as the main agent of their discrimination. • Discriminatory and violent policing perpetuates amongst the trans community a lack of faith in officials and mistrust in the criminal justice system. In turn this serves to create barriers to support and justice.

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1. Introduction

This report analyses the history, extent and nature of laws around the world which, through their existence and/or application, criminalise transgender and gender diverse people. The purpose of this report is to identify these laws, highlight particular examples of their enforcement, and examine how their mere existence renders trans and gender diverse people criminals by virtue of their gender identity and/or gender expression. The report also explores how these laws, through their existence and/or application, violate international human rights standards and norms.

Historically, much of the research focusing on the relationship between the law and lesbian, gay, bisexual and trans (LGBT) people has tended to treat LGBT people as a homogenous group, without affording particular recognition and consideration to the different lived experiences of members within that group. As noted in the Human Dignity Trust's *Breaking the Silence* Report,⁴ which focused on the criminalisation of cisgender lesbian and bisexual women, the existing legal analyses and case law have predominantly focused on the impact of discriminatory laws on cisgender gay and bisexual men. Trans and gender diverse people are often particularly vulnerable to harassment, discrimination and violence from both state and non-state actors, and are uniquely impacted by multiple types of criminalising laws. Accordingly, this report, much like *Breaking the Silence*, aims to provide a contribution towards filling the gap in research on the specific ways that trans and gender diverse people are criminalised and both the overlapping and unique impacts of such discriminatory laws on them.

This report builds upon existing research into the experiences of trans people and the law. Important research has been undertaken on this issue. Notably, research from Transgender Europe (TGEU), through their Transrespect versus Transphobia Worldwide (TVT) project, maps legal gender recognition, anti-discrimination, hate crime and asylum legislation, criminalisation, prosecution and state-sponsored discrimination on a global basis.⁵ Additionally, the International Lesbian, Gay, Bisexual, Trans and Intersex Association's (ILGA) Gender Identity and Gender Expression programme produces an annual Trans Legal Mapping Report – a compilation of laws and policies affecting trans and gender diverse people's ability to change their sex/gender markers and names on official documents.⁶

⁴ Human Dignity Trust, *Breaking the Silence: Criminalisation of Lesbians and Bisexual Women and its Impacts*, 2016. Available at: http://www.humandignitytrust.org/uploaded/Library/Other_Material/Breaking_the_Silence-Criminalisation_of_LB_Women_and_its_Impacts-FINAL.pdf.

⁵ TGEU, *Trans Respect versus Transphobia: Legal and Social Mapping*. Available at: <https://transrespect.org/en/research/legal-social-mapping/> and TGEU, *Trans Respect versus Transphobia: Trans Murder Monitoring*. Available at: <https://transrespect.org/en/research/trans-murder-monitoring/>.

⁶ International Lesbian, Gay, Bisexual, Trans and Intersex Association: Chiam, Z., Duffy, S. and González Gil, M., *Trans Legal Mapping Report 2017: Recognition before the law* (Geneva: ILGA, November 2017). Available at: <https://ilga.org/trans-legal-mapping-report>.

The UNDP's 'Being LGBTI in Asia and the Pacific' programme has also explored the marginalisation, discrimination and stigma faced by trans people in the region and has comprehensively documented the state of legal gender recognition in a number of Asia-Pacific countries.⁷

By uniquely focusing on an in-depth analysis of criminal laws globally, this report complements existing research. Rather than looking at positive legislation, such as gender recognition and anti-discrimination laws, this research offers a detailed examination of several forms of negative legislation that still exist in much of the world. Such legislation can itself, or through its application and enforcement, constitute a violation of international human rights standards, and can foster and enable a wide range of other violations of the human rights of trans and gender diverse people. The removal of laws that criminalise transgender and gender diverse people is a natural precursor to the introduction of positive measures to afford them legal recognition and protect them from discrimination and hate crimes.

While the research presented in this report serves to demonstrate that trans people in every region of the world are subject to criminalisation, it does not purport to be exhaustive. There are undoubtedly limitations in evidencing the discriminatory application of facially neutral laws. This is due both to the reluctance of states and media to accurately report the criminalisation of trans people and to the chronic under-resourcing of trans and gender diverse activists and organisations to monitor, record and compile data on the human rights violations faced by trans people.⁸ There is an urgent need to resource trans and gender diverse organisations and activists who are best placed to monitor and record accurate data on the experiences of trans and gender diverse people. Their ability to comprehensively document the damaging impact of criminalisation can then inform and support efforts to remove or amend these laws, and address their harmful application, to ensure the full enjoyment of rights for trans and gender diverse people globally.

As with all research into the situation of LGBT people globally, there are considerable cultural, societal and linguistic diversities in understanding lived experiences. Indeed, across countries and cultures, there is a wide range of gender identities, expressions and presentations. Many cultures and faiths, both historically and currently, celebrate a diversity of gender experiences. There are a number of examples of different cultural roles for individuals that fall outside of or transgress gender binaries: the Polynesian fa'afafine and mahu; the Tongan leitis; the takataapui of the Maori culture in New Zealand; the khanith and mukhannath of the Arabian Peninsula; the muxe of Mexico;

⁷ UNDP, *Being LGBTI in Asia and the Pacific*. Available at: <http://www.asia-pacific.undp.org/content/rbap/en/home/operations/projects/overview/being-lgbt-in-asia.html>.

⁸ GATE, *The State of Trans Organizing: Understanding the needs and priorities of a growing but under-resourced movement*, 2017. Available at: <https://transactivists.org/the-state-of-trans-organizing-report-2017/>.

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waria in Indonesia; the Two-Spirit people of the Native North Americans (including the nadle of the Navajo and the winkte of the Lakota); and the tidaweena of the Orinoco Delta in Venezuela. Another important example is the Hijra, who exist in large numbers in India and Bangladesh. While many of these historically, culturally and geographically diverse identities share characteristics with Western perspectives of being transgender, it is important not to read this range of culturally specific identities and practices as being transferable for, or directly consonant with, contemporary, western transgender identities.

While criminalisation is not the only component in the discrimination and marginalisation faced by transgender and gender diverse people, it is an important one. The enduring existence of these laws represents a failure on the part of states to comply with their international and domestic legal obligations to remove structural barriers that restrict transgender and gender diverse people from fully enjoying their fundamental human rights. Moreover, criminalisation dissuades trans and gender diverse people from disclosing their identities to their communities by perpetuating stigma and societal prejudice. Criminalising identity, and the expression of that identity, legitimises and bolsters violence, repression and extortion by state and non-state actors against the trans community. It also deters trans people from availing themselves of the protection of the law for fear of arrest or mistreatment by law enforcement officials. Labelling trans and gender diverse people as criminals also creates significant barriers to their enjoyment of basic social and economic rights, such as the right to education, employment, housing and health.

One case that is demonstrative of the suffering compounded by criminalisation is that of Dwayne Jones, a gender non-conforming 17-year-old from Jamaica. The case attracted national and international attention and a closer scrutiny of Jamaica's human rights record in protecting the rights of LGBT people. In 2013, Dwayne, who had already been forced out of his home and bullied at school for not conforming to gender norms, attended a party presenting as a woman. When a group at the party discovered Dwayne was assigned male at birth, they proceeded to beat, stab and shoot him, and then run him over with a car. Dwayne died as a result of the injuries inflicted on him. Jamaica's Justice Minister, Mark Golding, condemned the killing and demanded an end to "*depraved acts of violence against individuals*".⁹ Unfortunately, this story is by no means unique.

“The enduring existence of these laws represents a failure on the part of states to comply with their international and domestic legal obligations...”

⁹ Jamaica Observer, 'Police: Arrest soon in cross-dresser's death', 14 August 2013. Available at: http://www.jamaicaobserver.com/news/Police--Arrest-soon-in-cross-dresser-s-death_14870714.

Globally, criminalising laws send a message that it is acceptable to discriminate against and harm transgender and gender diverse people merely because of their gender identity or expression. Criminalisation, then, fosters a climate in which both state and non-state actors are able to violate the rights of trans people with impunity.

This report should not be taken as a definitive statement about the criminalisation, persecution and experiences of transgender and gender diverse people. The relationship between this particular group and the criminal law is complex and a variety of legal prohibitions are employed, in conjunction and in isolation, in the policing of transgender and gender diverse identities, expressions and bodies. Notably, trans and gender diverse people who work as sex workers, or are suspected of doing so, are disproportionately affected by laws criminalising sex work. The absence of laws that allow transgender and gender diverse people to have their gender recognised detrimentally affects their socio-economic well-being by preventing them from accessing essential services. It also leaves them vulnerable to harassment, arrest and prosecution by state authorities, particularly in countries with criminalising provisions formulated by reference to ‘impersonation’, as their gender identity and expression is not reflected in their identification documents.¹⁰ It is thus vital that in addition to the repeal of laws criminalising trans people, laws are introduced to facilitate legal gender recognition to ensure that all trans and gender diverse people are able to live fulfilled and dignified lives. Beyond legal gender recognition there is significant social stigma that states have a responsibility to address to ensure that transgender and gender diverse people are able to fully enjoy their rights to housing, education, health and employment without discrimination. This report does not purport to address the entire range of laws that restrict and limit the rights of transgender and gender diverse people.

Instead, this report gives particular consideration to three illustrative areas of criminalisation affecting transgender and gender diverse people: the criminalisation of gender expression, for example ‘personation’ and so-called ‘cross-dressing’ laws (Section 2.1); public order, vagrancy, loitering and misdemeanour offences where transgender and gender diverse people are targeted (Section 2.2); and, laws criminalising consensual same-sex activity where transgender and gender diverse people are targeted (Section 2.3). The report will also address the alarmingly widespread and systematic abuses committed with impunity against transgender and gender diverse people by state actors, in the absence of any purported legal basis or justification (Section 3).

10 For example, in Sri Lanka, Section 399 of Sri Lanka’s Penal Code ‘Cheating by personation’, is used to target trans people - see Case Study 5 and Annex 1.

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2. The criminalisation of transgender and gender diverse people globally

*“In a climate of criminalisation, where law enforcement agencies themselves perpetrate violence with impunity, it is not surprising that violence against transgender people is underreported and inadequately investigated”.*¹¹

There are no laws that criminalise the existence of transgender and gender diverse people per se, insofar as no states have enacted legislative provisions to stipulate that the very fact of being transgender is an offence. However, many states either have laws that explicitly criminalise the expression or activities of trans and gender diverse people, or laws that are otherwise silent on trans people but are misused by state officials to target them. As indicated above, the extent to which gender identity and expression are criminalised will be considered in three distinct but intersecting sections: (1) the criminalisation of gender expression; (2) public order, vagrancy and misdemeanour offences that are used to target trans people; and (3) laws criminalising consensual same-sex conduct that are used to target trans people. Each section will consider the scope of these laws and will provide case studies of particular countries to illustrate their application and impact in practice. The report will also address the ways in which state authorities harass, extort, and commit violence against trans and gender diverse people with impunity, without any purported justification in law.

While this report gives consideration to the above forms of criminalisation in three distinct sections, the practical reality is that these various legal prohibitions are often used against trans and gender diverse people in tandem.¹² Laws that explicitly criminalise gender expression (the outward manifestations of a person’s gender identity) may appear to be the clearest and most direct legal prohibition applied to transgender and gender diverse people. In reality, however, they are just one component of a suite of

¹¹ Asia-Pacific Trans Network, *Transgender Day of Remembrance 2015* (2015), p.5. Available at: <http://www.weareaptn.org/wp-content/uploads/2017/10/transgender-day.pdf>.

¹² See Case Study 6.

laws that criminalise transgender and gender diverse people and deny them the ability to live freely as themselves. It is, therefore, only through the removal or amendment of all such laws that the full enjoyment of the rights of trans and gender diverse people can be realised.

“Transgender persons will remain criminals . . . The police will use other laws existing in the country to harass such persons”.¹³

2.1 Criminalising the gender expression of transgender and gender diverse people

At least 15 jurisdictions impose criminal sanctions against people whose gender expression does not align with their sex as assigned at birth.¹⁴ A variety of laws are used to criminalise certain gender expressions that are seen to transgress deeply entrenched gender norms. These laws represent a fundamental violation of the rights of trans and gender diverse people to dignity and autonomy. The policing of gender expression criminalises trans and gender diverse people for no other reason than their self-expression. Moreover, the criminalisation of gender expression allows states to effectively criminalise the identity of trans and gender diverse people, as a person’s gender identity and the manner in which it is outwardly manifested are inextricably linked. While gender identity and gender expression are fundamentally related, a trans or gender diverse person’s gender expression is more readily discernible than their gender identity and therefore more easily targeted by law enforcement apparatus.

The majority of countries that criminalise gender expression do so through legal provisions framed in the language of ‘cross-dressing’. However, other countries have formulated legal provisions by reference to ‘impersonation’ or ‘disguise’. While this latter form of criminalisation is often framed with the intention of protecting spaces in societies that are strictly segregated along gender lines, such provisions are often misused to target trans women and trans men.

¹³ EQUAL GROUND, *Analysing the Culture of Transphobia: The Situational Assessment on Stigma, Discrimination and violence faced by Transgender Persons in Sri Lanka*, (Report, 2014), p.68. Available at: <https://equalgroundsrilanka.blog/wp-content/uploads/2017/12/Analysing-the-Culture-of-Transphobia.pdf>.

¹⁴ Brunei, The Gambia, Indonesia, Jordan, Kuwait, Lebanon, Malawi, Malaysia, Myanmar, Nigeria, Oman, Saudi Arabia, South Sudan, Sri Lanka, United Arab Emirates. See Annex 1 for the full text of provisions criminalising gender expression.

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In a somewhat unique formulation, Malawi makes provision in its Penal Code for the criminalisation of “every male person who wears the hair of his head in such a fashion as, when he is standing upright, the main line of the bottom of the mass of hair (other than hair growing on his face or on the nape of his neck) lies below an imaginary line drawn horizontally around his head at the level of the mouth” (see Annex 1). All such laws are mobilised by state actors to criminalise gender expression.

Many of the laws criminalising gender expression are worded using language similar to that found in the Syariah Penal Code of Brunei:

*“Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable excuse is guilty of an offence and shall be liable on conviction to a fine not exceeding B\$1,000, imprisonment for a term not exceeding 3 months or both”.*¹⁵

As can be seen in Annex 1, laws criminalising the gender expression of transgender and gender diverse people exist in jurisdictions across Africa, Asia, and the Middle East.

At least 15 jurisdictions criminalise the gender expression of trans and gender diverse people.



Trans men are often the less visible victims of laws and attitudes that regulate gender expression. The patriarchal nature of many societies significantly restricts the ability of people who are assigned female at birth to live lives that are economically, socially or personally autonomous. In the absence of such autonomy, the ability of trans men to live and dress in a manner consistent with their gender identity is severely curtailed. Their gender expression is strictly policed, not only by the authorities, but by families, communities and wider society.

2.1.1 Criminalisation of “cross-dressing”

At least nine countries across Africa, Asia and the Middle East criminalise gender expression through language akin to “cross-dressing”.¹⁶ There are two principal historical sources of such laws. In the cases of the Gambia and South Sudan, these laws were inherited from British colonial rulers who exported the sumptuary laws that were used to control attire according to occupation, class and gender, resting on

¹⁵ Brunei Syariah Penal Code 2013, Section 198. Available at: http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/s069.pdf.

¹⁶ Brunei, The Gambia, Indonesia, Kuwait, Malaysia, Nigeria, Oman, Saudi Arabia, South Sudan.

a largely Christian ideal of social propriety and morality.¹⁷ In a contemporary context, these laws are used to target transgender and gender diverse people whose gender identity and expression are perceived to undermine or threaten a societal order that is deeply rooted in gender binaries and a conservative Christian morality. In the case of Brunei, Indonesia, Malaysia, Nigeria, Oman and Saudi Arabia, these laws instead find their origin in Sharia Law.

A 2018 judgment of the Caribbean Court of Justice confirmed that these types of provisions represent fundamental violations of human rights. It struck out section 153(1)(xlvii) of Guyana’s Summary Jurisdiction (Offences) Act, which until recently sanctioned anyone who “*being a man, in any public way or public place, for any improper purpose, appears in female attire; or being a woman... for any improper purpose, appears in male attire*”.¹⁸

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Summary Jurisdiction (Offences) Act, Chapter 8:02

Section 153(1)(xlvii) of the **Summary Jurisdiction (Offences) Act** lists various minor offences which include “*wearing of female attire by man; wearing of male attire by woman*”. The law states that this is an offence when conducted “*in any public way or place, for any improper purpose*”.¹⁹

Section 166 of the **Summary Jurisdiction (Offences) Act** provides that “*every person who (a) being a male person, knowingly lives wholly or in part on the earnings of prostitution; or (b) being a male person, in any public place persistently solicits or importunes for immoral purposes; or (c) loiters about, or importunes any person in any street or other public place for the purpose of prostitution, shall be liable, on summary conviction – (i) in the case of a first conviction, to a fine not less than fifteen thousand dollars nor more than thirty thousand dollars or to imprisonment for eighteen months, and (ii) in the case of a second or subsequent conviction, to imprisonment for three years, and if the offender is male, he shall in addition, be liable to a whipping or a flogging*”.²⁰

¹⁷ International Commission of Jurists, *SOGI Casebook (2009)*, Chapter VII. Available at: <https://www.icj.org/sogicasebook-introduction/chapter-seven-gender-expression-and-cross-dressing/>.

¹⁸ Laws of Guyana, Summary Jurisdiction (Offences) Act, Chapter 8:02, Section 153(1)(xlvii). Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_summ.pdf.

¹⁹ Ibid.

²⁰ Ibid., Section 166.

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Section 153(1)(xlvii) has been frequently used to arrest transgender persons who, variously, were taken to court, prosecuted and convicted of the offence; forced to bribe police to avoid going to jail; and/or forced to perform sexual acts on law enforcement agents whilst in custody.²¹ Alternatively, transgender persons were arrested under the ‘cross-dressing’ offence above, pleaded guilty and received a fine. Transgender persons are also arrested for loitering under **Section 166(c)**, which carries a fine for a first conviction and a custodial sentence for subsequent convictions. Notably, male offenders may also be whipped or flogged under this provision. In a 2011 survey of five Guyanese transgender women, all but one reported that they had been charged under Section 153(1)(xlvii) and had received fines ranging from GY\$7,000 to GY\$19,500 (approx. US\$33.50 – US\$93.50). In the same survey, one of the interviewed trans women reported an incident where she had been “*beaten with rope, embarrassed in front of others at the police station, stamped on, dragged through the drains, taken outside to clean the station yard*”. This individual further reported that she had money stolen from her by the police, passers-by and other persons at the police station, and that she had been sexually assaulted by the police.²² Such experiences demonstrate the broader harmful impact of these criminalising provisions, beyond simply arrest, prosecution and conviction. The existence and enforcement of these laws serves to perpetuate and legitimise a climate of harassment, abuse and violence towards trans and gender diverse people.

A report examining the social impact of laws affecting LGBT people in Guyana found that the majority of LGBT individuals interviewed were reluctant to report crimes against them, for fear that charges would be brought against them because of their sexual orientation or gender identity.²³ Criminalisation places trans and gender diverse people outside the protection of the law and denies them any recourse to justice for the harm perpetrated against them.

Other LGBT individuals reported being harassed, threatened and arrested by the police for “*loitering*”. Transgender individuals also report being arrested and held in custody for crimes which are unrelated to their gender identity. A 2015 Amnesty International report cites one example of a 17-year-old Indo-Guyanese trans woman who was arrested and held for three months before being told what crime she was being charged with (the report does not indicate for which offence she was ultimately charged).²⁴

²¹ Carrico, C., *Collateral Damage: The Social Impact of Laws Affecting LGBTQI Persons in Guyana*, University of West Indies, March 2012, pp.15-16. Available at: <http://ufdcimages.uflib.ufl.edu/AA/00/01/08/68/00001/CollateralDamage-TheSocialImpactofLawsAffectingLGBTPersonsInGuyana.pdf>.

²² *Ibid.*, p.16.

²³ *Ibid.*, pp.16-17. See also Amnesty International, *Guyana: Insufficient Action of Long-Standing Human Rights Concerns*, Amnesty International Submission to the UN Universal Periodic Review, January 2015, p.7. Available from: <https://www.amnesty.org/download/Documents/4000/amr350012014en.pdf>.

²⁴ *Ibid.*

In 2006, a trans sex worker was fined for vagrancy under the Summary Jurisdiction (Offences) Act and for wearing female attire contrary to Section 153(1)(xlvi) of the Act. Each offence carried a fine of GY\$5,000 (approx. US\$25). Similarly, between 6 and 10 February 2009, Guyanese police detained at least eight people (some more than once), charging seven individuals with “cross-dressing” under Section 153(1)(xlvi). The acting Chief Magistrate fined the detainees GY\$7,500 each (approx. US\$37.50), and in court told them that they were not women, but men – exhorting them to “go to church and give [their] lives to Christ”.²⁵

The abuse of this provision against the trans community was challenged in court, and in September 2013, the Guyanese High Court confirmed in *Quincy McEwan et al. v. AG of Guyana* that “it is not a criminal offence for a male to wear female attire and for a female to wear male attire in a public way or place, under Section 153(1)(xlvi). It is only if such an act is done for an improper purpose that criminal liability attaches”. On this basis, it was determined by the Court that the provision “does not proscribe transgender dressing per se (where such conduct is not for an improper purpose)”.²⁶ However, the Court rejected the various arguments put forward by the applicants to challenge the constitutionality of the provision itself – namely that the provision violates the prohibitions against gender discrimination and freedom of expression under Articles 149(2) and 146(1) respectively of the Constitution of Guyana.²⁷ Following a judgment of the Court of Appeal in February 2017, re-affirming the High Court’s view that s.153(1)(xlvi) did not violate Constitutional anti-discrimination protections and proposing that the vaguely-worded requirement of “improper purpose” should simply be judged on a case-by-case basis,²⁸ an appeal of the ruling was heard at the Caribbean Court of Justice in June 2018. The appellants – four trans individuals and the Society Against Sexual Orientation Discrimination (SASOD) – argued that the mere existence of Section 153(1)(xlvi) still left them open to arrest, as the meaning and scope of ‘improper purpose’ had not been elucidated in the initial ruling.²⁹ In November 2018, the Caribbean Court of Justice ruled in favour of the appellants, determining that the law was “unconstitutionally vague, violated the appellants’ right to protection of the law and was contrary to the rule of law”.³⁰ It was accordingly declared null and void.

²⁵ Human Rights Violations of Lesbian, Bisexual, and Transgender (LBT) People in Guyana: A Shadow Report, Submitted for Consideration at the 52nd Session of the Committee on the Elimination of Discrimination Against Women, 10 July 2012, p.5. Available at: https://www2.ohchr.org/english/bodies/cedaw/docs/ngos/guyanalgbtsubmission_for_the_session.pdf.

²⁶ *Quincy McEwan & et al. v. Attorney General of Guyana* (6 September 2013), High Court of the Supreme Court of Judicature, pp.26-27 per Chief Justice Chang. Available at: <http://ufdc.ufl.edu/AA00016900/00001/pdf>.

²⁷ *Ibid.*, p.27.

²⁸ Press Release available at: <http://www.u-rap.org/web2/index.php/component/k2/item/64-press-release-mcewan-et-al-v-attorney-general-of-guyana-court-of-appeal-decision> - see also summary of Court of Appeal ruling in paras. 21-27 of CCJ judgment, available at: <http://www.ccj.org/wp-content/uploads/2018/11/2018-CCJ-30-AJ2-mod.pdf>.

²⁹ Guyana Times, *CCJ to hear cross dressing appeal case today*, 28 June 2018. Available at: <https://guyanatimesgy.com/ccj-to-hear-cross-dressing-appeal-case-today>.

³⁰ Caribbean Court of Justice, “*CCJ Declares Guyana’s Cross-Dressing Law Unconstitutional*”, 13 November 2018. Available at: <http://www.ccj.org/wp-content/uploads/2018/11/CCJ-Rules-Guyana-Cross-Dressing-Law-Constitutional.pdf> - full judgment available at: <http://www.ccj.org/wp-content/uploads/2018/11/2018-CCJ-30-AJ2-mod.pdf>.

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The criminalisation of gender expression under such “cross-dressing” provisions is, in many countries, rooted in Sharia Law – applied in addition to or in the absence of a statutory criminal provision. For example, section 198(1) of Brunei’s Syariah Penal Code Order 2013, which sanctions “*any man who dresses and poses as a woman*” and “*any woman who dresses and poses as a man*”, is broadly used to harass transgender people. Those convicted under this provision are liable to face a fine of up to B\$1,000, imprisonment of up to three months, or both.³¹ The impact of this provision is far-reaching – applicable to trans women, trans men and any gender diverse or gender non-conforming person who is a citizen or non-citizen, including migrant workers.³²

Saudi Arabia has no written law addressing gender identity and expression. Nevertheless, principles of uncodified Islamic law are used to harass transgender and gender diverse people. The state has a long history of strictly enforcing dress and behavioural codes through its religious police, the Committee for the Promotion of Virtue and Prevention of Vice. The gender expression of trans and gender diverse people can come into conflict with these dress and behavioural codes. It is not only Saudi nationals who are subject to arrest by the religious police; in February 2017, religious police arrested 35 Pakistani citizens who were visiting the state, including a number of trans women.³³ It was reported that two of them, both Pakistani nationals, died in detention. Qamar Naseem of the Blue Veins group in Saudi Arabia stated that “*gender fluid people are treated badly, sometimes flogged, and if someone is arrested on the same law for a second time they can be executed*”.³⁴

In Nigeria, under the Sharia Penal Codes of ten of its states, “*any male person who dresses or is attired in the fashion of a woman in a public place...*” is a “*vagabond*” and, if convicted, may face up to one year imprisonment or up to thirty lashes.³⁵ Notably, in two of these states, Kano and Katsina, “*any female person who dresses or is attired in the fashion of man in a public place*” is also considered a “*vagabond*”.³⁶ Trans women, trans men and any gender diverse or gender non-conforming person can be targeted by these laws.

³¹ Syariah Penal Code Order (2013), Section 198(1); Pursuant to Section 198(2) of the Code, should the ‘cross-dressing’ be done for an immoral purpose, the punishment is a fine of up to B\$4,000, imprisonment of up to one year, or both. Available at: http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/s069.pdf.

³² IGLHRC, *Discrimination and Violence Against Women in Brunei Darussalam on the Basis of Sexual Orientation and Gender Identity*, (Report, November 2014), p.4. Available at: https://www.outrightinternational.org/sites/default/files/Brunei1014WCover_0.pdf.

³³ Human Rights Watch, *World Report 2018: Saudi Arabia* (2018). Available at: <https://www.hrw.org/world-report/2018/country-chapters/saudi-arabia>.

³⁴ Peter Walker, ‘Two transgender Pakistanis “tortured to death” in Saudi Arabia’, *The Independent*, 3 March 2017. Available at: <https://www.independent.co.uk/news/world/middle-east/transgender-pakistani-saudi-arabia-tortured-death-amna-meeno-11-custody-lgbt-rights-human-a7607446.html>.

³⁵ Philip Ostien (ed), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (2007, Spectrum Books). Available at <http://www.sharia-inafrica.net/pages/publications/sharia-implementation-in-northern-nigeria.php>.

³⁶ Ibid.

A number of Islamic codes have been enacted in Indonesia to criminalise violations of Sharia law, including Qanun 11/2002, which prohibits, among other things, violations of Islamic dress requirements (see Case Study 12).

All of the nine countries in which “cross-dressing” laws are maintained criminalise trans women. In these jurisdictions, any person assigned male at birth who appears in clothing considered to be a woman’s is subject to criminal sanctions. In addition, trans men or, specifically, any person assigned female at birth who appears in clothing considered to be male, are criminalised in at least six countries: Brunei, Kuwait, Saudi Arabia, two Nigerian states, parts of Indonesia and three Malaysian states. It is important to note that even where the laws criminalising gender expression do not capture the entire trans community, the mere fact of criminalisation serves to perpetuate stigma, discrimination and violence against all trans and gender diverse people.

Case Study 2: Criminalisation of Gender Expression - The Gambia

Section 166 (Idle and disorderly persons) and Section 167 (Rogues and vagabonds) of the Gambian Criminal Code (Act No. 25 of 1933), as amended by the Gambian Criminal Code (Amendment) Act 2014

Section 166(3) (Idle and disorderly persons) of the **Gambian Criminal Code** provides that “every person who in any public place conducts himself in a manner likely to cause a breach of the peace [...] shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one month or to a fine not exceeding two pounds or to both”. **Section 167 (Rogues and vagabonds)**, as amended by the **Gambian Criminal Code (Amendment) Act 2014**, further provides that any male person who “dresses or is attired in the fashion of a woman” in a public place shall be deemed a “rogue and vagabond”, guilty of a misdemeanour and subject to up to five year’s imprisonment, a fine of D20,000, or both.³⁷

On 6 April 2012, 18 men and two women were arrested and charged with an “attempt to commit unnatural offences”.³⁸ The arrests occurred at a fitness centre at Kololi village, approximately 18 kilometres outside the capital Banjul. The act in question involved holding a purportedly indecent dance ceremony for tourists, with the defendants dressing in attire considered to be appropriate only for women. The defendants were further charged with conspiring to commit a felony by financing an occasion in which

³⁷ Finnish Immigration Service, *Status of LGBTI People in Cameroon, Gambia, Ghana and Uganda* (2015), p.38. Available at: https://migri.fi/documents/5202425/5914056/64429_Status_of_LGBTI_people_in_Cameroon_Gambia_Ghana_and_Uganda_3.12.2015.pdf/678747c6-1b6f-477a-be13-984a62908e47; The Point, *Criminal Code Act amended ‘to reflect political realities’*, 17 April 2013. Available at: <http://thepoint.gm/africa/gambia/article/criminal-code-act-amended-to-reflect-political-realities/>.

³⁸ Some reports suggest a varying number of defendants, including only 18 male defendants. Some reports state that the previous charge was that of “indecent practices”. See Colin Stewart, *Dancing in Gambia: 18 gays, 2 lesbians face felony charges*, 20 April 2012. Available at: <https://76crimes.com/2012/04/20/dancing-in-gambia-18-gays-2-lesbians-face-felony-charges/>.

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an indecent act was about to be committed. They were jailed for more than a month before being released on bail.³⁹ It is reported that the President at the time, Yahya Jammeh, endorsed the arrests.⁴⁰

While it remains unclear in the reporting whether the individuals arrested identified as trans, the prosecution made reference to the nature of the defendants' clothing as evidence of "unnatural acts". All of the defendants pleaded not guilty. During the court proceedings in April 2012, a police detective testified that he had been dispatched by his superiors "to go to the tourist area where 'some group of people alleged to be homosexuals' were organising a program". He further testified that he was surprised to see "the accused before me dressed as female, dancing and moving as women. I then used my digital camera and took pictures of the scene".⁴¹

A Paris-based reporter provided an alternative account of events, observing that "in early April there was a private party at a major luxury hotel in which the dress code for men was transvestite [sic]. Someone took photos. Somehow the photos ended up with the police and 18 men and two women were arrested and charged [...] The owner of the hotel was not arrested. Less than two weeks later he was beaten to a pulp and flown to Germany to be hospitalised. Two of his employees were arrested for the assault but no motive has been given".⁴²

Following various delays, the prosecution withdrew the charges in August 2012 on the grounds that there was insufficient evidence.⁴³

A 2007 amendment in Kuwait criminalises "imitating the appearance of a member of the opposite sex". This was introduced in response to growing concerns as to the apparent spread of gender expressions that challenged traditional binary gender roles.

³⁹ Colin Stewart, *Another delay in Gambian 'homosexual dance' trial*, 14 July 2012. Available at: <https://76crimes.com/2012/07/14/another-delay-in-gambian-homosexual-dance-trial/> and Colin Stewart, *40 days in jail without trial for 20 in 'homosexual dance'*, 16 May 2012. Available at: <https://76crimes.com/2012/05/16/40-days-in-jail-without-trial-for-20-in-homosexual-dance/>.

⁴⁰ Ibid.

⁴¹ See n.38 above.

⁴² Colin Stewart, *40 days in jail without trial for 20 in 'homosexual dance'*, 16 May 2012. Available at: <https://76crimes.com/2012/05/16/40-days-in-jail-without-trial-for-20-in-homosexual-dance/>.

⁴³ Ibid. See also US State Department, *The Gambia 2012 Human Rights Report*, p.28. Available at: <https://www.state.gov/documents/organization/204335.pdf>.

Case Study 3: Criminalisation of Gender Expression - Arab Gulf States

Following an amendment in 2007 by the Kuwaiti Government, **Article 198** of the **Kuwaiti Penal Code** provides that “Any person...imitating the appearance of a member of the opposite sex, shall be subject to imprisonment for a period not exceeding one year or a fine not exceeding one thousand dinars [approximately US\$3,500]”.⁴⁴ This amended provision has resulted in the arrest and detention, as well as the torture and sexual abuse, of hundreds of trans women across Kuwait at the hands of the police.⁴⁵

The amendment and resultant wave of arrests were prompted by a growing concern on the part of lawmakers in the region at the perceived increase in *boyat* (the English word “boy” coupled with the Arabic feminine noun plural ending), a social phenomenon whereby people who had been assigned female at birth would display traditionally masculine traits in their dress or behaviour, thereby challenging traditional gender norms, regardless of whether they identified as straight lesbian, transgender or otherwise.⁴⁶

This concern subsequently spread to other countries in the Arab Gulf, notably manifesting itself in the form of a 2009 public awareness campaign spearheaded by the Dubai government – “Excuse Me, I am a Girl” – that cautioned against “masculine” behaviour in women and sought to steer United Arab Emirates (UAE) women towards femininity. The campaign went so far as to deploy plain-clothes policewomen in shopping malls to identify violations of female dress codes.⁴⁷ Abu Dhabi was quick to follow, issuing a “code of ethics” for visitors (in twelve languages) “to ensure that tourists fully adhere to local rules and regulations, and do not upset the traditional and cultural values”. The code included, among other things, provision for “respectful clothing” and specifically stated “no cross-dressing”.⁴⁸

In 2011 the Dubai Police launched campaigns to address, among other things, “transsexuality” and *boyat*. The Director of the Criminal Awareness Department of Dubai Police remarked that “the important issue is that along with the launch of the campaign, warnings have to be set for such activities and clear punishments have to be put in place”.⁴⁹ Thus,

⁴⁴ Kuwait Criminal Code, Article 198. Available at: http://gulfmigration.org/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20Obligations/2.1%20Penal%20Law_AR.pdf; see also Human Rights Watch, *Kuwait: Halt Dress-Code Crackdown*, 31 March 2008. Available at: <https://www.hrw.org/news/2008/03/30/kuwait-halt-dress-code-crackdown>.

⁴⁵ Rasha Moumeh, ‘The Gulf’s Gender Anxiety’, *The Guardian*, 6 July 2011. Available at: <https://www.theguardian.com/commentisfree/2011/jul/06/gulf-gender-anxiety-transgender>.

⁴⁶ Brian Whitaker, ‘Transgender issues in the Middle East’, *Medium*, 6 July 2016. Available at: https://medium.com/@Brian_Whit/transgender-issues-in-the-middle-east-1-crossing-lines-2cbfbbd29e93.

⁴⁷ *Ibid.*

⁴⁸ Nissar Hoath, ‘Ethics guide for Abu Dhabi tourists’, *Khaleej Times*, 5 July 2012. Available at: <https://www.khaleejtimes.com/article/20120705/ARTICLE/307059860/1002>.

⁴⁹ Awad Mustafa, ‘Cross-dressing women targeted in Dubai campaign’, *The National*, 1 June 2011. Available at: <https://www.thenational.ae/uae/cross-dressing-women-targeted-in-dubai-campaign-1.415782>.

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even in countries without explicit provisions in their Penal Codes criminalising gender expression that is perceived to undermine gender binaries and religious precepts, state authorities can effectively criminalise such expression through other means.

A significant crack-down on *boyat* occurred in Saudi Arabia in 2013, when members of the Commission for the Promotion of Virtue and Prevention of Vice, supported by the civil police, raided a hotel party in the city of Khobar and arrested many of the attendees. According to the authorities, the gathering had been organised under the guise of a graduation party, with approximately 100 young women in attendance, but included a contest for the best-looking *boya* (singular of *boyat*). It was reported that the two individuals responsible for organising the party were arrested, albeit most of the attendees were released.⁵⁰

On 9 August 2017, Emirati police in Abu Dhabi arrested two Singaporean nationals – a cisgender man and a trans woman – in a shopping mall and charged them both with violations of **Article 359** of the **UAE Federal Penal Code** (which prohibits those assigned male at birth from dressing in traditionally female apparel in order to enter into an area reserved solely for women),⁵¹ as well as **Article 58** of the **Emirate of Abu Dhabi’s local penal code** (which broadly prohibits “violation of public morals”).⁵² Despite the limited application of Article 359 to areas reserved solely for women, both Singaporean nationals were convicted under this provision and later deported. It is reported that they were sentenced to a year in prison for “being disguised in women’s dress”, “attempting to resemble women” and “violation of public morals by being in a public place appearing as women”.⁵³ This case serves to illustrate that narrowly-framed provisions are being applied more broadly in practice to criminalise forms of gender expression that are perceived to undermine societal gender norms.

“...even in countries without explicit provisions in their Penal Codes criminalising gender expression that is perceived to undermine gender binaries and religious precepts, state authorities can effectively criminalise such expression through other means”.

⁵⁰ Emirates247.com, *Tomboy’ pageantry raided; energy drinks seized*, 10 June 2013. Available at: <https://www.emirates247.com/news/region/tomboy-pageantry-raided-energy-drinks-seized-2013-06-10-1.509776>.

⁵¹ Federal Law No. 3 of 1987, Penal Code, Article 359. Available at: <https://www.adjd.gov.ae/sites/Authoring/AR/ELibrary%20Books/E-Library/PDFs/Penal%20Code.pdf>.

⁵² Emirate of Abu Dhabi Penal Code, Article 58. Available from: <https://www.adjd.gov.ae/sites/Authoring/AR/ELibrary%20Books/E-Library/LocalPublications/Local.AbuDhabi.Penal.Code/HTML5/index.html>.

⁵³ Human Rights Watch, *UAE: Stop Policing Gender Expression*, 7 September 2017. Available at: <https://www.hrw.org/news/2017/09/07/uae-stop-policing-gender-expression>.

While in custody, the accused were held in a cell referred to as the “*Detainees’ Apartment*”, both before their trial and following their conviction. A nurse and other inmates informed them that this was where “*effeminate*” detainees were held. A number of the other detainees in the Detainees’ Apartment were being held under the same charges – consisting of cisgender men and trans women from the UAE, Morocco and the Philippines – most of whom said that they had been arrested solely for “*looking feminine*”.⁵⁴ Whilst these two accused Singaporean nationals reportedly had not suffered any physical or verbal abuse from the police and prison guards while in detention, the prison guards had ransacked their luggage, thrown out the trans woman’s hormone pills, and shaved both of their heads. The trans woman recounted that, “*Shaving my head – that was the most devastating part for me*”.⁵⁵

Case Study 4: Customary and Statutory Law - Malaysia

State Sharia law enactments

Malaysia is one of the countries in which transgender and gender diverse people can be arrested simply for wearing clothing deemed not to be appropriate for their assigned sex. Under state Sharia law enactments, applicable to the majority Muslim population, all 13 states and the Federal Territory prohibit “*any male person who, in any public place, wears a woman’s attire and poses as a woman*”, while three states also prohibit “*any female person who, in any public place, wears a man’s attire and poses as a man*”.⁵⁶ Four states have afforded legal authority to fatwas against “*pengkid*”, a colloquial term for trans masculine identities.⁵⁷

Numerous transgender women have been convicted under these laws

In November 2014, the Malaysian Court of Appeal held that one such law, Section 66 of Negeri Sembilan’s state Sharia enactment, violated the rights of transgender citizens

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Pahang, Perlis and Sabah criminalise: “*Any female person who, in any public place, wears a man’s attire and poses as a man*” - see Asia Pacific Transgender Network, *Legal Gender Recognition in Malaysia: A Legal & Policy Review in the Context of Human Rights*, 2017, p.58. Available at: http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/Malaysia-APT_N_Publication_OnlineViewing.pdf.

⁵⁷ Ibid.

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to life and personal liberty, equality, freedom from gender discrimination, freedom of movement, and freedom of speech, assembly, and association, protected under the Constitution of Malaysia. However, this judgment was subsequently overturned on technical grounds by the Federal Court, Malaysia's highest court.⁵⁸

Malaysian police officers have also arrested a number of trans women under an overly vague provision of the secular federal criminal code that prohibits “*public indecency*” and applies to people of all religious backgrounds.⁵⁹

These criminalising provisions have fuelled stigmatisation of transgender and gender diverse people in Malaysia and created an environment in which prejudice and discrimination against this group, including within education, employment and health care settings, is commonplace. This is exacerbated by the actions of public institutions and government ministries, which perpetuate the belief that gender and sexual diversity are to be prevented and controlled.⁶⁰

The resulting denial of basic rights and access to essential services means that transgender and gender diverse people in Malaysia frequently suffer socio-economic deprivation. Moreover, the significant obstacles faced by the trans community in accessing public healthcare have contributed to greater HIV prevalence, despite the government of Malaysia's recognition of transgender people as an at-risk population in the fight against HIV and AIDS.⁶¹

Furthermore, there is evidence that trans women, in particular, experience oppressive and discriminatory treatment from police officers and Islamic religious officers. These state actors arbitrarily detain trans women, stop them at unauthorised roadblocks, question them with sexual undertones, and humiliate, intimidate and threaten them. Such treatment has the effect of discouraging trans women from going to the police or seeking legal remedies, even when they fall victim to violence, for fear of being ridiculed and further harassed by the authorities.⁶²

58 Human Rights Watch, *Malaysia: Court Ruling Sets Back Transgender Rights*, 8 October 2015. Available at: <https://www.hrw.org/news/2015/10/08/malaysia-court-ruling-sets-back-transgender-rights>.

59 Human Rights Watch, “*I’m Scared to be a Woman*”: *Human Rights Abuses Against Transgender People in Malaysia*, September 2014. Available at: https://www.hrw.org/sites/default/files/reports/malaysia0914_ForUpload.pdf.

60 Human Rights Watch, *Letter to the Malaysian Minister of Health “Re: Video Competition on “Gender Dysphoria” Promotes Stigma and Discrimination*, 6 June 2017. Available at: https://www.hrw.org/sites/default/files/supporting_resources/letter_malaysia_lgbt.pdf; Justice For Sisters, *Open letter: Education institutions must be safe spaces for all students*, 23 March 2018. Available at: <https://justiceforsisters.wordpress.com/2018/03/23/open-letter-education-institutions-must-be-safe-spaces-for-all-students/>.

61 See n.59 above.

62 OutRight Action International, *Violence: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia*, 2014, p.14 & 16. Available at: <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>.

In addition to the criminalisation of transgender people, a fatwa issued in 1982 by the National Fatwa Council prohibits Muslims from undergoing gender affirming surgery and prevents Muslim medical institutions from providing such surgeries.⁶³ The resulting lack of access to such gender affirming treatments in Malaysia (even for non-Muslims) means any transgender persons who wish to undergo such procedures (and can afford it) must travel abroad. Either way, this fatwa represents another layer of state sanctions against trans and gender diverse people.

2.1.2 Impersonation

Impersonation laws exist across numerous jurisdictions in order to protect citizens from fraud, theft, embezzlement and various other deceitful acts that may cause them harm. However, these laws are also used to unjustly and arbitrarily target trans and gender diverse people who, simply by virtue of their gender expression, are considered to be ‘impersonating’ another. Such has been the experience of trans people in Sri Lanka, who have been targeted on numerous occasions under Section 399 of Sri Lanka’s Penal Code (‘cheating by personation’).⁶⁴ Despite the provision making no reference to sex or gender, nor it being judicially interpreted as such, police continue to rely on Section 399 to arrest members of the trans community.⁶⁵

Case Study 5: Criminalisation of Gender Expression - Sri Lanka

Section 399 and Section 402 of the Penal Code (Ordinance No. 2 of 1883)

Section 399 of the **Penal Code** provides that “A person is said to ‘cheat by personation’ if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is”. **Section 402** of the **Penal Code** further provides that “whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both”.

It is reported that Section 399 of the Penal Code has been utilised by police to arrest members of the trans community, on the mistaken belief that measures taken by trans persons to express a gender identity that differs from the sex they were assigned at

⁶³ See n.59 above. Appendix II – available here: https://features.hrw.org/features/HRW_reports_2014/Im_Scared_to_Be_a_Woman/appendix_2.html.

⁶⁴ Penal Code (Ordinance No.2 of 1883) as amended by Penal Code (Amendment) Act, No. 22 of 1993 and Penal Code (Amendment) Act, No. 16 of 2006, Section 399. Available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

⁶⁵ Women’s Support Group, *Not Gonna Take It Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka*, 2014, p32. Available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>.

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birth are driven by malicious intent to deceive others.⁶⁶ In a 2014 report from EQUAL GROUND, several local lawyers articulated the view that encompassing gender expression within the scope of ‘personation’ under Section 399, in order to target trans people, is a “*misinterpretation of the law*”.⁶⁷

Nevertheless, there is substantial research to indicate that Section 399 is being used in this way. In a 2016 report, Human Rights Watch interviewed two trans women from Colombo and Jaffna who were explicitly told they were being arrested for cheating by personation.⁶⁸ A 2014 report by the Women’s Support Group at the International Centre for Ethnic Studies in Colombo similarly cited “*several cases of ‘impersonation’ and ‘misrepresentation’ brought to court, where women were discovered to be ‘disguised’ as men and their ‘true sexual identity’ exposed to the public. Similarly, transwomen [sic] have also been arrested for ‘misleading the public’*”.⁶⁹ Further, Ajith Rohana, a senior superintendent of Colombo-North, acknowledged to Human Rights Watch that Section 399 was occasionally used to arrest transgender people, who would be “*taken to a police station for questioning and held there for five to six hours*”, with some suffering verbal abuse from the police.⁷⁰ One case study, cited in a 2015 EQUAL GROUND report, refers to a trans man in Galle who was, at the time of publication, being sued for marrying a woman on the basis that he was regarded as cheating by personation as a man.⁷¹ The existence of Section 399, and the vague manner in which it has been drafted, would seem to give the police the confidence to target the trans community. According to one lawyer, “*(f)irst [the police officers] arrest the persons, and then look for the legal sections to file the law suit*”.⁷²

66 Human Rights Watch, “*All Five Fingers Are Not the Same*”: *Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka*, August 2016, p.16. Available at: https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf.

67 EQUAL GROUND, *Analyzing the Culture of Transphobia: The Situational Assessment on Stigma, Discrimination and violence faced by Transgender Persons in Sri Lanka*, 2014, p.65. Available at: <https://equalgroundsrilanka.blog/wp-content/uploads/2017/12/Analysing-the-Culture-of-Transphobia.pdf>.

68 See n.66 above.

69 See n.65 above.

70 See n.66 above.

71 EQUAL GROUND, *Looking at the discrimination faced by LGBT persons in Sri Lanka*, 2015, p.30. Available at: <https://malpethi.files.wordpress.com/2015/05/looking-at-the-discrimination-faced-by-lgbt-persons-in-sl.pdf>.

72 See n.67 above, p.68.

The misuse of these Penal Code provisions renders trans people particularly vulnerable to harassment and abuse by state and non-state actors, whilst dissuading them from reporting such abuse to the police.⁷³ The 2016 Human Rights Watch Report documents a trans woman who, on two separate occasions, was violently assaulted by different groups of men. In the first instance, she was attacked in her home – beaten, held down and her hair cut. In the second instance, she was chased and beaten in the street by a group of men whilst soliciting for sex work. As she fled the men, she sought and was denied protection in Thalwatta police station. She later regained consciousness, to find herself only in her underwear. She remarked to Human Rights Watch: “*What’s the point in telling the police? We asked them to save us. They refused to save us*”. This sentiment was echoed by another trans woman who was beaten by police officers in Borella.⁷⁴

Six transgender individuals interviewed by EQUAL GROUND similarly indicated that they “*were not confident to go to the police or to make a police complaint when they had faced issues relating to physical assault, attempted rape, blackmail, kidnapping and attempted abduction [...] due to the transphobic culture in Sri Lanka*”.⁷⁵

There is also evidence that trans people in Sri Lanka are arrested, inter alia, under the Vagrants Ordinance (see Annex 1).⁷⁶

In Uganda, Section 381(1) of the Penal Code criminalises “*Any person who, with intent to defraud any person, falsely represents himself or herself to be some other person, living or dead, commits a misdemeanour*”. There is evidence that this provision is frequently used to arrest trans people (see Case Study 6).

Whilst this research could find no further use of impersonation laws to target trans people in other jurisdictions, historically, the offence of ‘personating a female’ has been enforced in Samoa where, until 2013, people could be arrested for ‘personating a female’ under Section 58N of the Crimes Ordinance 1961.⁷⁷

⁷³ See n.66 above, p.34-35.

⁷⁴ Ibid., p.35.

⁷⁵ See n.67 above, p.72.

⁷⁶ See n.66 above.

⁷⁷ This was repealed by *The Crimes Act 2013*, Section 224. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93579/124323/F-1523655815/WSM93579%202015.pdf>; N.B. Samoa also recognises aggravated crimes motivated by hostility towards the victim’s sexual orientation or gender identity under s.7(1)(h) of the *Sentencing Act 2016*. Available at: <http://www.palemene.ws/new/wp-content/uploads/01.Acts/Acts%202016/Sentencing-Act-2016-Eng.pdf>.

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2.1.3 Disguise

'Disguise' laws are used in four jurisdictions in the Middle East and Asia. Under Article 307 of the Penal Code of Jordan,⁷⁸ Article 521 of the Penal Code of Lebanon,⁷⁹ and Article 359 of the Penal Code of the United Arab Emirates⁸⁰ any male who “disguises” himself as female and enters into a place reserved for women is guilty of an offence. While such legislation is framed to protect female only spaces in certain strictly segregated areas in Muslim communities, the widespread lack of awareness of trans and gender diverse identities, compounded by inaccurate representations of trans people across social and political spectra, results in the perception that trans women are in ‘disguise’ and so are captured by these provisions. The application of these provisions to this particular group has been documented. In 2015, the Civil Society Knowledge Centre published narratives from five trans women in Lebanon who described the high risk of arrest for trans women under Article 521 and public order offences.⁸¹ In addition to being harassed and arrested under Article 521, there is also evidence of Lebanese authorities utilising Articles 531 and 532 of the Penal Code of Lebanon, which criminalise acts of indecency in public places, to target trans and gender diverse people.⁸²

In Myanmar, Section 35(c) of the Police Act 1945 states, “any person found between sunset and sunrise having his face covered or otherwise disguised who is unable to give a satisfactory account of himself...may be taken into custody by any police-officer without a warrant, and shall be punishable on conviction with imprisonment for a term which may extend to three months”.⁸³ A Myanmar LGBT organisation, Colours Rainbow, reported in 2016 that this provision was used in conjunction with Section 30(c) of the Rangoon Police Act 1899, both of which provide the police with broad powers of seizure and imprisonment without warrant or justification, in order to “harass, arrest, detain, imprison and extort gay and transgender individuals living in Myanmar”.⁸⁴

⁷⁸ Jordanian Penal Code (No. 16 of 1960), Article 307 – see Annex 1.

⁷⁹ Lebanon Penal Code (Legislative Decree No. 340 of 1943), Article 521 – see Annex 1.

⁸⁰ United Arab Emirates Penal Code (Law No. 3 of 1987), Article 359 – see Annex 1.

⁸¹ Ahmad J Saleh, Adriana A Qubaia, *Transwomen’s Navigation of Arrest and Detention in Beirut: A Case Study (En-Ar)*, Civil Society Knowledge Center, Lebanon Support, 2015-01-01, p.7. Available at: <https://civilsociety-centre.org/pdf-generate/29155>.

⁸² Ibid.

⁸³ Police Act 1945, Section 35(c) and Rangoon Police Act 1899, Section 30(c) – see Annex 1.

⁸⁴ Colours Rainbow, *Facing 377: Discrimination and Human Rights Abuses Against Transgender, Gay and Bisexual Men in Myanmar* (Report, February 2016), p.16. Available at: <http://equalitymyanmar.org/book/wp-content/uploads/2015/02/AnnualReport-rainbow.pdf>.

In July 2013, the Asian Human Rights Commission reported on an attack on a group of cisgender gay men and transgender women in Mandalay, committed by approximately 20 men, some of whom were plain-clothes police. The victims of the attack were physically assaulted, stripped and handcuffed before being taken into custody in the Mandalay Regional Police headquarters, where the verbal, physical and sexual assaults continued. In the case of at least two of the victims, bribes of approximately US\$420 were extorted by the police. Further to this, some of the victims were forced to sign pledges before their release that they would “*not go to public places as before or wear women’s clothing*”.⁸⁵

2.2 Public order, vagrancy and misdemeanour offences used to target transgender and gender diverse people

There is substantial evidence to indicate that public order, vagrancy and misdemeanour offences are used excessively and arbitrarily against trans and gender diverse people in public, preventing them from moving freely and safely in such spaces.

The use of these offences to target the trans community is not limited to a particular country, continent or region; it is remarkably prevalent across all regions of the world. In at least 26 countries, there is evidence that public order, vagrancy and misdemeanour offences have been utilised to harass, arrest and prosecute trans people.⁸⁶ In Africa, at least 11 countries have been found to enforce this type of law; in Asia, at least seven countries; in Eastern Europe, at least two countries; in the Caribbean, at least one country; in Central America, at least two counties; and in the Middle East, at least two countries.

These laws range from “*indecent acts*”⁸⁷ and “*offending modesty*”⁸⁸ to “*hooliganism*”,⁸⁹ “*vagrancy*”⁹⁰ and “*disobedience to lawful demands of a police officer*”.⁹¹

⁸⁵ Asian Human Rights Commission, *BURMA: Police torture of gay and transgendered people*, 22 July 2013. Available at: http://www.genocidewatch.org/images/Burma_2013_07_22_Police_torture_gay_and_transgender.pdf; Alice Muthoni Murage and Ohnmar Nyunt (Alison), *LGBTI people in Myanmar: second-class citizens*, Heinrich Böll Foundation, 1 June 2017. Available at: <https://www.boell.de/en/2017/05/24/second-class-citizens>; Portia Larlee, ‘Police violence against LGBT’s exposed’, *Mizzima Business Weekly*, 4 December 2014. Available at: <http://www.pressreader.com/myanmar/mizzima-business-weekly/20141204/281977490946660/TextView>.

⁸⁶ Azerbaijan, Bangladesh, Botswana, Brunei, Cambodia, the Gambia, Georgia, Guatemala, Guyana, Honduras, Indonesia, Lebanon, Lesotho, Malawi, Malaysia, Mali, Morocco, Namibia, Saudi Arabia, Sri Lanka, Tajikistan, Tunisia, Uganda, United Arab Emirates, Zambia, Zimbabwe; see Annex 1 for the full text of these provisions.

⁸⁷ For example: *Botswana Penal Code 1964*, Section 176 (Common Nuisance), Section 179(e) (Idle and Disorderly Persons) and Section 182 (Rogues and Vagabonds) and *Malawi Penal Code*, ss.180(d) and 184(1)(c). See Annex 1.

⁸⁸ For example: *Codigo Penal de Guatemala Articulo 489 (De Las Faltas Contra Las Buenas Costumbres)* – English translation: *Guatemala Penal Code 1973, Article 489 (Offences Against Morals)*.

⁸⁹ For example: *Administrative Offences Code of Georgia*, Article 166.

⁹⁰ For example: *Sri Lanka’s Vagrants Ordinance (No. 4 of 1841)*. Available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Vagrants_Ordinance.pdf.

⁹¹ For example: *Administrative Code of Azerbaijan*, Article 535(1) (Disobedience to Lawful Demands of a Police Officer).

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The language used in these provisions, especially in Penal Codes with colonial origins, is typified by the provisions contained in the Botswana Penal Code:

Botswana Penal Code: Idle and disorderly persons and rogues and vagabonds

Section 179, “Idle and disorderly persons”

“Any person who... (b) wanders or places himself in any public place for the purpose of begging, or causes or procures or engages any child to do so;
(d) publicly conducts himself in a manner likely to cause a breach of the peace;
(e) without lawful excuse does any indecent act;
(f) in any public place solicits for immoral purposes
is guilty of an offence and liable to a fine not exceeding P10 or to imprisonment for a term not exceeding one month, or to both and on a second conviction to imprisonment for a term not exceeding three months and on any subsequent conviction thereof to a term of imprisonment not exceeding one year”.⁹²

Section 182, “Rogues and vagabonds”

“A person who...
(c) is found in or about any premises or in any road or highway or any place adjacent thereto or in any public place, for any unlawful purpose shall be guilty of an offence and shall be liable on a first conviction thereof to imprisonment for a term not exceeding three months and on a second or subsequent conviction thereof to imprisonment for a term not exceeding one year”.⁹³

As with other laws used to persecute LGBT people in general and transgender and gender diverse people specifically, many such public order, vagrancy and misdemeanour offences find their origins in the British colonial era.⁹⁴ In Africa in particular, the laws were used to protect the ruling white colonial elite with the aim of controlling rather than protecting those subject to them.⁹⁵ Vagrancy laws, for example, are rooted in England’s Vagrancy Act of 1824, which was created “for the suppression of vagrancy and punishment of idle and disorderly persons, rogues and vagabonds, and incorrigible rogues, in

⁹² See Annex 1.

⁹³ Ibid. See also SALC, *Laws and Policies Affecting Transgender Persons in Southern Africa* (July 2016) pp.21-22 on the use of such provisions to target trans persons. Available at: <http://www.southernafricallitigationcentre.org/wp-content/uploads/2017/08/Transgender-rights-in-Botswana.pdf>.

⁹⁴ Louise Ehlers, “Rogues” and “Vagabonds” No More: Ending Africa’s Imperial Legacy of Absurd Petty Offences’, *Open Society Foundations*, 3 February 2017. Available at <https://www.opensocietyfoundations.org/voices/rogues-and-vagabonds-no-more-ending-africa-s-imperial-legacy-absurd-petty-offences>.

⁹⁵ Lukas Muntingh and Kristen Petersen, *PUNISHED FOR BEING POOR: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences*, CSPRI Report, 2015, p.40. Available at: <https://acjr.org.za/resource-centre/punished-for-being-poor-evidence-and-arguments-for-the-decriminalisation-and-declassification-of-petty-offences>.

England”.⁹⁶ The Act sought to address certain groups and behaviours deemed by English authorities at the time to be socially undesirable – including sex workers, people without means of subsistence and without access to steady support, people without work or who refused or neglected to work, beggars, fortune tellers operating on the street, and people who committed indecent exposure.⁹⁷ The aim of the Act was to increase the state’s ability to regulate public spaces and public behaviour, which was part of a broader trend of legislation oriented towards an expansion of state authority over personal conduct.⁹⁸ Under the Act, anyone begging, sleeping rough, appearing to be engaged with sex work or committing other acts deemed reflective of a “*disreputable mode of life*” could be convicted as an “*idle and disorderly person*” and thereby punished with up to one month of hard labour.⁹⁹ Those found to have re-offended, or to have committed any of the numerous other acts listed under the legislation could be convicted as a “*rogue and vagabond*” and punished with up to three months of hard labour.

The generality and wide range of behaviour criminalised by the Act shaped vagrancy laws into the twenty-first century and, significantly, the Act itself served as a model for similarly broad criminalisation of “*vagrancy*” throughout Britain’s colonies. By the late 1800s, English criminal law had been embedded into legal systems across the British Empire. Examples range from the Bengal Vagrancy Act and the Bombay Beggary Prevention Act, which mirror the English Act’s distinctions between “*idle and disorderly persons*”, “*rogues and vagabonds*”, and “*incorrigible rogues*”; Zambia’s Penal Code, which remains in effect, renders any “*idle or disorderly person*” (including “*every person who, without lawful excuse, publicly does any indecent act*”) liable to a month in prison; and the 1899 Sudanese Penal Code, which codified and criminalised seven types of “*vagabonds*”, one of them being the “*catamite*” - defined as a “*any male person who 1) dresses or is attired in the fashion of a woman in a public place or 2) practises sodomy as a means of livelihood or as a profession*”.¹⁰⁰ Consequently, provisions of the English Vagrancy Act are replicated in the Penal Codes of numerous states, with many such countries, particularly those in Africa, having never amended or repealed these provisions.¹⁰¹

⁹⁶ Vagrancy Act of 1824, Preamble. Available at: https://www.legislation.gov.uk/ukpga/1824/83/pdfs/ukpga_18240083_en.pdf.

⁹⁷ Ibid., Sections III-IV.

⁹⁸ Michal Shapira, *Indecently Exposed: The Male Body and Vagrancy in Metropolitan London before the Fin de Siecle*, Gender & History, Vol.30 No.1 March 2018, p.55. Available at: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1468-0424.12338>.

⁹⁹ Lionel Rose, *Rogues and Vagabonds: The Vagrant Underworld in Britain, 1815-1985* (London: Routledge, 1988).

¹⁰⁰ Human Rights Watch. “This Alien Legacy: The Origins of ‘Sodomy’ Laws in British Colonialism.” (2008). Available at: <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>; C. Lennon & M. Waites, *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth*, School of Advanced Study, University of London, London, 2013. Available at: <https://commonwealth.sas.ac.uk/resources/publications/house-publications/lgbt-rights-commonwealth>.

¹⁰¹ Southern African Litigation Centre, *No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi*, June 2013, p.25-28. Available at: <https://acjr.org.za/resource-centre/no-justice-for-the-poor>.

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Of the eleven countries in Africa where there is evidence of the use of public order provisions against trans and gender diverse people, at least five still retain laws imposed many decades ago by British colonisers: Botswana, the Gambia, Malawi, Uganda and Zambia. In a study by OutRight Action International into the treatment of lesbian and bisexual women and trans people in Asia, it was found that public order, vagrancy and loitering laws were used to target lesbian and bisexual women and trans persons in four of the five countries examined.¹⁰²

In practice, these vaguely worded laws are plainly susceptible to arbitrary application and, when coupled with discriminatory policing, leave trans people vulnerable to harassment, arrest and detention by law enforcement authorities.

In at least 26 countries, public order offences are used to criminalise trans people.



These “petty offences” are not only used to target transgender and gender diverse people, but also other vulnerable groups. Indeed, the Civil Society Prison Reform Initiative (CSPRI) reported that the enforcement of certain offences, such as ‘loitering’ and being a “rogue” or “vagabond”, is “*disproportionately experienced by the poor and marginalised populations, including persons with disabilities*”.¹⁰³

The use of public order offences to criminalise trans and gender diverse people cannot be considered in a vacuum. Such provisions are not employed in isolation. Instead, state authorities use them in conjunction with a variety of laws to harass and detain members of the trans community.

¹⁰² Malaysia, Pakistan, the Philippines and Sri Lanka (not Japan) - see OutRight Action International, *Violence Against Lesbian, Bisexual Women and Transgender People in Asia*, May 2014, p.28. Available at: <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>.

¹⁰³ Lukas Muntingh and Kristen Petersen, *Punished for Being Poor: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences* (CSPRI Report, 2015), p.4. Available at: <https://acjr.org.za/resource-centre/punished-for-being-poor-evidence-and-arguments-for-the-decriminalisation-and-declassification-of-petty-offences>.

Case Study 6: The use of multiple laws to target trans people - Uganda

Sections 145, 146, 148, 167 and 381 of the Penal Code

Section 145 of the **Penal Code** provides that “Any person who: (a) has carnal knowledge of any person against the order of nature; (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life”. **Section 146** of the **Penal Code** provides that any person attempting to commit an offence listed under Section 145 is liable to imprisonment for seven years.¹⁰⁴

Section 148 of the **Penal Code** makes provision for the criminalisation of “any act of gross indecency”, punishable by imprisonment for seven years.¹⁰⁵

Section 167 of the **Penal Code** criminalises those deemed to be “idle and disorderly persons” – encompassing a range of offences, including persons who publicly conduct themselves in a manner likely to cause a breach of the peace or who publicly do indecent acts, punishable with imprisonment for three months and/or a fine. Further provision is made for more serious punishment (imprisonment for seven years) for prostitutes behaving in a “disorderly or indecent manner in any public place”, any person who “publicly does any indecent act”, or a person who “in any public place solicits or loiters for immoral purposes”. **Section 168** of the **Penal Code** provides for further custodial sentences for “rogues and vagabonds”, namely for those already convicted under Section 167 who reoffend and in various other circumstances, including any “person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose”.

Section 381(1) of the **Penal Code** provides that “(a)ny person who, with intent to defraud any person, falsely represents himself or herself to be some other person, living or dead, commits a misdemeanour”.¹⁰⁶

Despite the above provisions not explicitly seeking to control or prohibit transgender and gender diverse identity or expression, many trans people in Uganda face harassment, societal stigma, emotional distress and discrimination, fuelled in part by the existence and operation of such laws. For instance, Section 167 (*Idle and disorderly persons*) is utilised by law enforcement officials to arrest and charge transgender individuals in

¹⁰⁴ See Annex 1.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

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Uganda. Section 381(1) (*Personation*) is also often used for this purpose, whether alternatively or in tandem with Section 167.¹⁰⁷

One example of these provisions being interchangeably employed is that of Brenda, a transgender woman who was arrested in 2014 for “*impersonating a woman*” contrary to Section 381, despite her lack of intent to defraud. Brenda reports that, once arrested, she was strip-searched and groped to identify her genitals and subjected to repeated physical assaults. Although Article 23(4) of the Constitution of the Republic of Uganda requires all suspects to be brought before a magistrate within 48 hours of their arrest, Brenda spent four days at the Central Police Station prior to appearing before a magistrate. The excessive length of Brenda’s pre-trial detention is consistent with findings of the consortium on monitoring violations based on sex discrimination, gender identity, and sexual orientation that half of the arrests of trans people in Uganda in 2014 involved detention of the suspect in excess of the 48 hours.¹⁰⁸ Brenda, who is HIV-positive, also alleged that she was refused access to her medication during the period of her illegal detention and that she was required to represent herself during her hearing as a result of her lawyer being given inaccurate information by the Ugandan Police.

Although Brenda was arrested under Section 381 (*Personation*) of Uganda’s Penal Code, the charge was subsequently changed to Section 168 (*Idle and disorderly persons*). This change might be attributable to the inability to prove Brenda’s intent to defraud under Section 381. Brenda was released on bail after two weeks, but during her imprisonment she was beaten and verbally abused by the wardens.¹⁰⁹ It is unclear whether the charges were dropped, or whether the prosecution continued. Brenda’s case is not unusual, with the Consortium estimating that at least one-third of the arrests they reviewed in 2014 involved a suspect that was arrested, detained (often for a period exceeding 48 hours), and released without charge.¹¹⁰

Reports also suggest that both cisgender men and transgender women are subject to accusations of consensual same-sex conduct, prohibited under Section 145 (*Unnatural offences*) and/or Section 148 (*Indecent practices*) of the Penal Code. Further, there is evidence that those arrested under these laws are subjected to forced anal examinations. The cases are subsequently dismissed before reaching trial. Human Rights Watch reports that in 2015, a transgender woman, named in the report as Chloe, and her cisgender male partner, were turned into the police by an antagonistic mob who accused

107 Human Rights Watch, *Uganda: Anti-Homosexuality Act’s Heavy Toll*, 14 May 2014. Available at: <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>.

108 The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation, *Uganda Report of Violations Based on Gender Identity and Sexual Orientation*, 2015, p.27. Available at: https://www.outrightinternational.org/sites/default/files/15_02_22_lgbt_violations_report_2015_final.pdf.

109 See n.107 above.

110 See n.108 above, p.25.

them of being homosexual. Upon arrest the police beat Chloe and performed forced anal examinations on both her and her partner.¹¹¹ These examinations have been recognised, both internationally¹¹² and by domestic courts elsewhere in the region,¹¹³ as constituting torture or cruel, inhuman or degrading treatment or punishment, which is prohibited under **Article 24** of the **Constitution of the Republic of Uganda**.¹¹⁴

Public order offences combine with laws that criminalise sex work to target trans people, and transgender women in particular, due to their perceived or actual participation in the sex industry (see Case Study 9). Transgender people thus remain particularly vulnerable to harassment, arrest and prosecution under public order offences, both because of their status as trans people and because, due to the social and familial stigma that criminalisation reinforces, they are more likely be economically marginalised and/or engage in sex work to earn a living.

Evidence suggests that transgender and gender diverse people are more likely to have engaged in sex work than the general population. Research from the United States, where the evidential base is more developed, reveals that 12% of trans people have engaged in sex work at some point in their lives. For black trans women that figure rises to 42%.¹¹⁵ Even when a trans person is not engaged in sex work, evidence indicates that state authorities make use of such public order offences to target them as sex workers (see Case Study 8).

The laws that regulate and criminalise sex work are complex. Mapping produced by the Institute of Development Studies has identified 11 main approaches to criminalising and regulating sex work, intersecting with nine different characteristics.¹¹⁶ While it is beyond the scope of this report to replicate this mapping as it pertains directly to trans people, it is clear from such research and from other existing literature that for many trans people their criminalisation is closely related to the criminalisation of sex work. In a number of cases the harassment, arrest, detention and prosecution of transgender and gender diverse people by state authorities occurs on the basis of their actual or perceived engagement in sex work.

¹¹¹ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions*, July 2016, p.9. Available at: https://www.hrw.org/sites/default/files/report_pdf/globalgbtanalexams0716web.pdf.

¹¹² UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/31/57)* (5 January 2016), para. 36. Available at: <https://undocs.org/A/HRC/31/57>.

¹¹³ Human Dignity Trust, *Kenya Appeal Court rules forced medical examinations unlawful*. Available at: <http://www.humandignitytrust.org/pages/NEWS/News?NewsArticleID=576> – see full judgment: http://www.humandignitytrust.org/uploaded/COI_Appeal_Judgment.pdf.

¹¹⁴ “No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment”. Available at: <https://ulii.org/ug/legislation/consolidated-act/0>.

¹¹⁵ National Center for Trans Equality, *2015 U.S. Trans Survey*, 2015, p.159. Available at: <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹¹⁶ Cheryl Overs, *Map of Sex Work Law*, Institute of Development Studies, 2017. Available from: <http://spl.ids.ac.uk/sexworklaw>.

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Case Study 7: Public Order, Vagrancy and Misdemeanour Offences - Georgia

Articles 166 and 173 of the Administrative Offences Code of Georgia

Article 166 of the **Administrative Offences Code of Georgia** (Petty Hooliganism) stipulates that people may be detained and arrested if they swear in public places, harass citizens or do other such acts that disrupt the public order and peace of citizens. The offence encompasses all ‘disorderly conduct’ and carries a fine of up to GEL 100 (approx. US\$40) or up to 15 days’ imprisonment. Various reports indicate that the broadness of this regulation has been used to criminalise members of the transgender community in Georgia.¹¹⁷

Article 173 of the **Administrative Offences Code of Georgia** (failure to obey a police officer) stipulates that people may be detained and arrested if they do not comply with a lawful order or demand of a law enforcement officer, military service person, officer of the Special State Protection Service or enforcement police officer or for the commission of any other illegal act against such persons.

On 13 July 2016, in a pedestrianised area of central Tbilisi, police arrested three trans women. Police filed a report based on Article 166 of the Administrative Offences Code of Georgia. The women were represented in court by a lawyer from the Women’s Initiatives Supporting Group. In their statement, the women submitted that they did not agree with the police report and denied committing any of the offences mentioned in it. They further submitted that they had called the police themselves in order to report a man that was verbally abusing one of them.

The court held that the man who had verbally abused one of the arrested trans women was guilty of petty hooliganism under Article 166 of the Administrative Offences Code and dismissed the administrative case against the trans women on the basis that there was insufficient evidence to suggest an offence had been committed.¹¹⁸

Despite this victory, the Women’s Initiatives Supporting Group reports that police in Georgia generally do not respond to reported cases of sexual harassment of LGBT people in public spaces, and where they do, arrest of the victimised person is common. One example cited by the Human Rights Education and Monitoring Center (EMC) involved a trans man who was subject to physical abuse and told EMC that “if you know anything

¹¹⁷ WISG, *Unidentified Violence: Litigation Report* (2017), p.129. Available at: http://women.ge/data/docs/publications/WISG-Unidentified_Violence_2017.pdf.

¹¹⁸ *Ibid.*, p.130-131.

*about criminal investigation, you will understand that I am the victim here; but they altered the statement to say that I was a perpetrator”.*¹¹⁹

Further, LGBT people are often the victims of illegal detention based solely on their sexual orientation and/or gender identity. The majority of the victims of such arbitrary detention are transgender women, who state that when they protest police inaction in response to reported cases of violence, the police arrest them under Article 166 on the grounds of petty hooliganism or resistance to a legal order.¹²⁰ Throughout 2016, the Women’s Initiatives Supporting Group received numerous requests for assistance from trans women who had been arrested and unlawfully detained by police after having initially reported attacks or transphobic speech against them.¹²¹

Article 166 has also been utilised as a lenient punishment for the perpetrators of hate crimes against LGBT people, demonstrating a reluctance on the part of the state to strongly condemn such discriminatory behaviour. On 17 May 2013 (International Day against Homophobia and Transphobia), the organisations Identoba and Women’s Initiatives Supporting Group were unable to organise a peaceful demonstration due to the violence from counter-demonstrators mobilised by the Georgian Orthodox Church.¹²² Such violence included the leaders of the counter-demonstration breaking through the police cordon and violently attacking the minibus containing demonstrators, as well as attacks on individual members of the LGBT community, both during and after the event.¹²³ The state failed to take measures to secure a safe environment for the demonstration. Further, following an investigation, only four perpetrators of the violence were detained under Article 166 and Article 173 of the Administrative Code, and the court only imposed a modest fine of 100 GEL (approx. US\$37.31) for ‘petty hooliganism’ in all four cases.¹²⁴ Similar experiences in 2012 had prompted successful litigation before the European Court of Human Rights, on the basis that the failure of the police to protect demonstrators from the violence of the counter-demonstrators and properly investigate such violence violated the peaceful demonstrators’ rights under the European Convention on Human Rights.¹²⁵ Identoba and other organisations subsequently made submissions to the Committee of Ministers calling on the Georgian authorities to

¹¹⁹ Lika Jalagania, *Legal Situation of LGBTI Persons in Georgia*, Human Rights Education and Monitoring Center, 2016, p.27. Available at: https://ge.boell.org/sites/default/files/emc_legal_situation_of_lgbti_persons_in_georgia_eng.pdf.

¹²⁰ See n.117 above, p.128.

¹²¹ Ibid.

¹²² See n.119 above, p.34.

¹²³ Ibid.

¹²⁴ WISG, *Discrimination and Hate Crimes against LGBT persons*, 2015, p.133. Available at: http://women.ge/data/docs/publications/WISG_discrimination_and_hate_crime_against_lgbt_persons_KA_EN_2015.pdf.

¹²⁵ *Identoba v. Georgia*, ECtHR, 12 May 2015. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-154400%22%5D%7D>.

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properly implement the Court’s judgment.¹²⁶ The view of transgender support groups in Georgia is that state policy on hate crimes is ineffective and negligent, and contributes to a lack of trust in law enforcement officials.¹²⁷

Case Study 8: Public Order, Vagrancy and Misdemeanour Offences - Namibia

The Combating of Immoral Practices Act 1980

The Combating of Immoral Practices Act 1980 prohibits the vague offence of committing an immoral act. This legislation criminalises, under **Section 7(b)**, any person who “wilfully and openly exhibits himself in an indecent dress or manner at any door or window or within view of any public street or place or in any place to which the public have access”, while **Section 8** prohibits the “committing of immoral acts”.¹²⁸

While there is no evidence of these laws being used to charge or prosecute trans people in Namibia, transgender individuals report that the provisions enable police and other state actors to act with impunity in their harassment of the transgender community.¹²⁹ In 2017, a trans woman reported that she was unlawfully arrested and assaulted by police officers. Plain-clothed police officers apprehended the woman and forced her into a police van, where they proceeded to physically assault her, while hurling insults at her. Upon arrival at the police station the police continued to beat her, in full view of the public and a CCTV camera. She was not charged with any offence and the police officers responsible were never charged, despite the footage of the assault.

Another trans woman observed that, under the Combating of Immoral Practices Act: “We experience daily discrimination and the Act does not enable laws, policies and frameworks, that protects [sic] our lives, promote our rights, health, safety and security needs and hold perpetrators accountable. Our right of freedom is limited as well as freedom of speech and expression, it fuels gross violations of our rights ... contributes to correctional rape, coercion to have sexual encounters with men who we don’t choose to have sex with...The Act demoralizes our dignity, pride, sameness that we share as Namibians”.¹³⁰

¹²⁶ Available at: https://www.ilga-europe.org/sites/default/files/Attachments/2016_11_identoba_wisg_ai_ie_submission_government_response_dh-dd20161303e.pdf.

¹²⁷ See n.119 above, p.24.

¹²⁸ See Annex 1. See also SALC, *Laws and Policies Affecting Transgender Persons in Southern Africa* (July 2016), p.35 on the use of such laws to target trans people. Available at: <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Transgender-Rights-Booklet.pdf>.

¹²⁹ Erna Keulder, “Whose Body Is It?": *Commercial Sex Work and The Law in Namibia*, Austrian Development Cooperation, 2002, p.16. Available at: <http://www.lac.org.na/projects/grap/Pdf/commsex.pdf>.

¹³⁰ Human Dignity Trust interviews with Namibian trans women (22 June 2018).

Trans people are often targeted by the police for participating in sex work. Whilst sex work itself is not illegal in Namibia, both the Combating of Immoral Practices Act and municipal regulations relating to loitering, trespassing, public nuisance and public order are often used to criminalise sex workers.¹³¹ There is very little evidence that these laws are ever applied to prosecute sex workers in court.¹³² However, in practice these laws are applied in a discriminatory manner to target transgender sex workers. For example, in Windhoek, this selective application of municipal regulations is effectively used as a form of police harassment of trans people.¹³³

One account of such harassment was provided by a trans sex worker who remarked that: *“They [the police] are inhuman and treat us badly. They use swear words against us. The municipal police are also our clients, but we are afraid to bring this out in public. They claim that it is their job to arrest us because we are busy with ‘dirty’ work...The Special Field Force beat me up once. I went to the police station to open a case but was informed that I cannot open a case against the Special Field Force”*.¹³⁴

Transgender sex workers have reported that the police do not take them seriously or assist them when they report rape or other violent crimes,¹³⁵ with a number of trans women also reporting that they have been raped whilst detained in male cells following their arrest.¹³⁶

In Zambia, Section 178 (Idle and Disorderly Persons) of the Penal Code criminalises *“every person who, without lawful excuse, publicly does any indecent act, and every person who publicly conducts himself in a manner likely to cause a breach of the peace”*. Transgender people are reportedly harassed under these provisions.¹³⁷ Trans and gender diverse people who work as sex workers are often arrested under Section 181(d) for being *“a rogue and vagabond”*, despite sex work itself not being a criminal offence.¹³⁸

131 Merab Kambamu Kiremire, *Prostitution in Windhoek, Namibia, An exploration of poverty*, 2007, p.4. Available at: https://www.nid.org.na/images/pdf/analysis_views/Prostitution_in_Windhoek.pdf.

132 UNAIDE, *Sex Work and HIV in Namibia: Review of the literature and current programmes*, 2011, p.13-14. Available at: http://www.nswp.org/sites/nswp.org/files/Literature_Review.pdf.

133 Suzanne LaFont & Dianne Hubbard, *Unravelling Taboos: Gender and Sexuality in Namibia*, 2007, p.123. Available at: <http://www.lac.org.na/projects/grap/Pdf/unravellingt.pdf>.

134 See n.129 above, p.111.

135 SALC, *Laws and Policies Affecting Transgender Persons in Southern Africa*, 2016, p.36. Available at: <https://www.southernafricallitigationcentre.org/wp-content/uploads/2017/08/Transgender-Rights-Booklet.pdf>.

136 *Ibid.*, p.36.

137 *Ibid.*, p.47.

138 *Ibid.*

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There is evidence that in Bangladesh, *hijras* have been arrested under Section 54 of the Code of Criminal Procedure. This provision lists nine circumstances in which police officers may arrest an individual without a warrant.¹³⁹ The broadly-framed first circumstance enables the police to arrest “any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned”.¹⁴⁰ The Bangladesh Legal Aid and Services Trust (BLAST) has remarked that Section 54 is “often abused at the whim of law enforcers” with arrests being “politically motivated” and often “simply to take bribes”.¹⁴¹ Such abuse on the part of the police prompted litigation, resulting in the High Court issuing a directive on the amendment and proper exercise of Section 54.¹⁴² In particular, the Court recommended that the language of the first circumstance be made more rigorous and precise, replacing inter alia “has been concerned in any cognizable offence” with “against whom there is a definite knowledge about his involvement in any cognizable offence”.¹⁴³ The High Court judgment, and its various directions, were subsequently upheld by the Supreme Court.¹⁴⁴

Article 200 of the Revised Philippine Penal Code, which provides that “the penalties of *arresto mayor* and *public censure* shall be imposed upon any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code”, is similarly utilised by “unscrupulous law enforcers to extort from and harass LGBT people”.¹⁴⁵ The broadly-framed nature of this provision allows law enforcement officials to detain and threaten LGBT individuals,¹⁴⁶ and effectively penalises gender non-conformity.¹⁴⁷ In Malaysia, trans people are targeted, inter alia, under Section

139 Available at: http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75§ions_id=14518; see also UK Home Office, *Country Policy and Information Note – Bangladesh: Sexual orientation and gender identity* (September 2017), paras 2.3.7 & 4.6.2. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660538/Bangladesh_-_SOGI_-_CPIN_-_v3.0_-_Nov_2017_.pdf.

140 See Annex 1.

141 The Daily Star, ‘Sexual minorities being harassed’, 12 December 2014. Available at: <https://www.thedailystar.net/sexual-minorities-being-harassed-54988>.

142 *BLAST and others v. Bangladesh and others*, Writ Petition No. 3806 of 1998, High Court Division of the Supreme Court of Bangladesh. Available at: <https://www.blast.org.bd/content/judgement/55-DLR-363.pdf>.

143 *Ibid.*, p.21.

144 The Daily Observer, ‘15 directives sustained: Sections 54 and 167 to be amended soon’, 2 June 2016. Available at: <http://www.observerbd.com/2016/06/02/154261.php>.

145 USAID and UNDP, “*Being LGBT in Asia: the Philippines Country Report*”, 2014, p.22. Available at: http://www.ph.undp.org/content/dam/philippines/docs/Governance/Philippines%20Report_Final.pdf; http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf.

146 OutRight Action International (previously the International Gay and Lesbian Human Rights Commission), *Human Rights Violations on the Basis of Sexual Orientation, Gender Identity and Homosexuality in the Philippines*”, October 2012, p.5. Available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/iglhrc_philippines_hrc106.pdf.

147 OutRight Action International (previously the International Gay and Lesbian Human Rights Commission), *Violence Against Lesbians, Bisexual Women and Transgender People in Japan, Malaysia, Pakistan, Philippines and Sri Lanka*. Available at: https://www.outrightinternational.org/sites/default/files/Philippines_Fact_Sheet.pdf.

21 of the Minor Offences Act 1955, which criminalises drunken, disorderly and indecent behaviour in public.¹⁴⁸ Azerbaijan criminalises ‘hooliganism’ under Article 221 of the Criminal Code, which encompasses actions that are deemed to disrupt the “social order” and “expressing obvious disrespect for a society”.¹⁴⁹ In recent years, members of the LGBT community have been targeted by police as part of a crackdown.¹⁵⁰

Similarly, in Tajikistan police arrested more than 500 individuals in 2015 as part of a crackdown on “immoral behaviour”. While some were suspected of being sex workers, many were detained solely on suspicion of being LGBT. Tajikistan decriminalised same-sex intimacy in 1998 with the introduction of its new Criminal Code (see Annex 1), but societal attitudes towards LGBT people remain hostile and harassment, arrest and extortion by the police is reportedly commonplace.¹⁵¹ The new Code contains various public order provisions relating, among other things, to “hooliganism” and to “prostitution”, utilised by the police to target members of the LGBT community.

In Morocco, Article 483 of the Penal Code (see Annex 1) criminalises any act of “obscenity in a public place”, punishable with one month to two years imprisonment. In June 2015, authorities reportedly arrested several transgender individuals in Agadir, and charged them with both a “breach of public decency” as well as “homosexuality”.¹⁵² Similarly, Article 226 of Tunisia’s Penal Code criminalises “Any person who publicly affronts moral values or public decency through their actions or words, or intentionally offends others in a morally reprehensible manner”, punishable with imprisonment for six months and a fine of 1,000 dinars.¹⁵³ In November 2016, a trans woman was arrested during a Halloween party for dressing as a woman, and upon being questioned by the police and informing them she considers herself a woman, she was arrested under charges of “public indecency” and taken to the police station where she was reportedly subjected to torture, humiliation and taunting.¹⁵⁴ She was later released, but at her court appearance in January 2017 was charged with, among other things, “harm to good morals and ostentatious demonstration of behaviour contrary to modesty”.¹⁵⁵

¹⁴⁸ See Annex 1. and OutRight Action International (previously the International Gay and Lesbian Human Rights Commission), Violence: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia (Report, 2014), p.132. Available at <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>.

¹⁴⁹ See Annex 1.

¹⁵⁰ Shaun Walker, ‘Outcry as Azerbaijan police launch crackdown on LGBT community’, The Guardian, 28 September 2017. Available at: <https://www.theguardian.com/world/2017/sep/28/azerbaijan-police-crackdown-lgbt-community>.

¹⁵¹ Shawn M. Gaylord, ‘Eye on LGBTQI Human Rights in Tajikistan’, Human Rights First, 12 January 2016. Available at: <https://www.humanrightsfirst.org/blog/eye-lgbt-human-rights-tajikistan>.

¹⁵² Larbi Arbaoui, ‘Morocco Reportedly Arrests 20 Homosexuals in Agadir’, Morocco World News, June 21, 2015. Available at: <https://www.morocroworldnews.com/2015/06/161349/morocco-reportedly-arrests-20-homosexuals-in-agadir/>.

¹⁵³ See Annex 1.

¹⁵⁴ “Tunisian judge jails trans woman pending indecency trial,” 76Crimes, January 19, 2017, available at: <https://76crimes.com/2017/01/19/tunisian-judge-jails-trans-woman-pending-indecency-trial/>.

¹⁵⁵ Michaela Morgan, ‘The 19-year-old Tunisian has been sentenced to four months for wearing women’s clothing’. January 26, 2017, SBS News, available at: <https://www.sbs.com.au/topics/sexuality/agenda/article/2017/01/26/tunisian-teen-imprisoned-being-transgender>.

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In at least two countries there have been efforts to introduce new public order laws designed specifically to target trans people. The city of Pariaman in Indonesia, for example, introduced regulations in November 2018 targeting LGBT people who “*disturb the public order*” (see Case Study 12).

In the United States there have been several iterations of so-called ‘Bathroom Bills’ across the country over the past few years. These Bills have sought to prohibit any person from using a public bathroom or changing room that does not align with the sex they were assigned at birth; effectively criminalising trans and gender diverse people who use public facilities according to their gender identity. In the state of Wyoming, for example, two Republican members of the House of Representatives attempted to pass House Bill 244 in 2017. This would have made the use of a public bathroom or changing facility that does not correspond to your sex assigned at birth an act of public indecency. Trans people convicted under this legislation could have been incarcerated for up to six months and/or fined US\$750 simply for using the bathroom that corresponded to their gender identity. Section 1(a) of the Bill stated that “*a person is guilty of public indecency if, while in a public place where he may reasonably be expected to be viewed by others, he: ... (iv) knowingly uses a public bathroom or changing facility designated to be used by a specific sex which does not correspond to the person’s sex identified at birth by the person’s anatomy*”.¹⁵⁶ House Bill 244 failed to pass.¹⁵⁷

Case Study 9: Public Order, Vagrancy and Misdemeanour Offences - Honduras

Law of Police and Social Coexistence

Article 99 of the **Law of Police and Social Coexistence, Decree 266-2001** provides that police may arrest “*vagabonds*” – a term encompassing “*street people, scoundrels, street prostitutes, drug addicts, drunkards, and gamblers*”.¹⁵⁸ **Article 142** of the **Law of Police and Social Coexistence** gives police the authority to arrest anyone who exhibits behaviour that “*goes against modesty, good manners and public morals*”.¹⁵⁹ The law does not define these terms, nor does it provide guidance on what violates public morality. Additionally, there is no jurisprudence that provides guidance on how to interpret the law.

¹⁵⁶ Available at: <https://legiscan.com/WY/text/HB0244/id/1480362/Wyoming-2017-HB0244-Introduced.pdf>.

¹⁵⁷ <https://legiscan.com/WY/bill/HB0244/2017>.

¹⁵⁸ Law of Police and Social Coexistence, Decree 226-2001, Article 99. Available (in Spanish) at: [https://www.tsc.gob.hn/web/leyes/Ley%20de%20Policia%20y%20de%20Convivencia%20Social%20\(actualizada-07\).pdf](https://www.tsc.gob.hn/web/leyes/Ley%20de%20Policia%20y%20de%20Convivencia%20Social%20(actualizada-07).pdf).

¹⁵⁹ Ibid.

The discretionary power afforded to police officers to interpret and enforce the vaguely worded provisions of the Law of Police and Social Coexistence has led to the abuse and arbitrary detention of transgender and gender diverse people across Honduras, especially those who engage, or are perceived to engage, in sex work.¹⁶⁰ Such is the view of the Inter-American Commission on Human Rights, which reported that trans people are at risk of abuse and arbitrary arrest by the police under these provisions.¹⁶¹

In 2008 and 2009, Human Rights Watch conducted a survey of 35 transgender people in Honduras – reporting that nearly every interviewee had suffered harassment or physical violence at the hands of local police, often under the pretext of the Law of Police and Social Coexistence.

Human Rights Watch’s report made reference, among numerous examples, to Dita, a 49-year-old trans woman who irons, cleans and teaches crafts for a living. Dita reported that: *“Police stop me. They just say, ‘you are from the Maya’ [a sex work area near Hotel Maya in Tegucigalpa] and they hit me and shove me into the police car. They take me to the police station. They disregard my explanations that I am not a sex worker and they just tell me, ‘In with you for 24 hours!’ This happened last three weeks ago... I was coming from having a beer and I stopped a taxi. I got in and just as we were going around the park a police officer stopped us. The policeman screamed and called for backup saying that the taxi driver was my client and I was trying to steal from him! He took me to the Manchén police station and left me there for 24 hours”*.¹⁶²

The report noted that Dita had been frequently arrested by the police because of her gender identity and generally identified a correlation between the arbitrary arrests of transgender people and the wide discretion afforded to the police under the Law of Police and Social Coexistence – noting that its “vaguely worded” provisions “*all but invite arbitrary enforcement by the police*”.¹⁶³

The situation has apparently worsened since the 2009 Honduran coup d’état. Non-governmental organisations reported discovery of a clandestine prison used by municipal police to “disappear” individuals, including transgender persons.¹⁶⁴

¹⁶⁰ REDLACTRANS, *Human Rights Violations of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama* (2016), p.49. Available at: <http://redlactrans.org.ar/site/wp-content/uploads/2013/05/ReportREDLACTRANS.pdf>.

¹⁶¹ IACHR, *Situation of Human Rights in Honduras*, 31 December 2015, para. 133. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>; see also IACHR, *Annual Report on Honduras*, 2013, para. 427. Available at: <http://www.oas.org/en/iachr/docs/annual/2013/docs-en/AnnualReport-Chap4-Honduras.pdf>.

¹⁶² Human Rights Watch, “Not Worth a Penny”, *Human Rights Abuses against Transgender People in Honduras*, 29 May 2009. Available at: <https://www.hrw.org/report/2009/05/29/not-worth-penny/human-rights-abuses-against-transgender-people-honduras>.

¹⁶³ *Ibid.*

¹⁶⁴ Human Rights Watch, *Honduras, Events of 2009*. Available at: <https://www.hrw.org/news/2009/08/25/honduras-rights-report-shows-need-increased-international-pressure>.

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In July 2012, a Specialist in Public Health and a transgender human rights defender who has experienced police violence further observed that “... I myself have witnessed many other police attacks but I’m also afraid to report them. This is what the police call ‘social cleansing’. According to them, it’s because there are lots of complaints against transgender women doing sex work”.¹⁶⁵

2.3 The criminalisation of consensual same-sex activity and its effect on transgender and gender diverse people

As of May 2019, there are 73 jurisdictions worldwide – 40 per cent of all countries – that criminalise private, consensual same-sex sexual activity between adults.¹⁶⁶ Thirty-six of the 53 Commonwealth member countries criminalise same-sex intimacy.¹⁶⁷ In all of the 73 jurisdictions, consensual male same-sex activity is criminalised, either de facto or through express legal provisions, and in at least 45 of those (60 per cent) consensual female same-sex activity is also criminalised.¹⁶⁸

Consensual same-sex sexual activity is criminalised through statutory penal codes and/or through religious and customary laws, including Sharia law. A significant proportion of those jurisdictions that criminalise through penal codes have inherited these laws from British colonisation.¹⁶⁹ The language of these criminalising provisions is sometimes explicit, referring to specific sexual acts that include “buggery” or “sodomy”, or to “homosexual acts” or “lesbianism”.¹⁷⁰ However, criminalisation is also achieved through the interpretation of more vaguely worded provisions such as those prohibiting acts of “gross indecency” or “carnal knowledge against the order of nature”.¹⁷¹

Laws criminalising same-sex intimacy contribute to the marginalisation and persecution of all LGBT people, by perpetuating stigma and societal prejudice. They can be used as a legitimising tool for harassment and abuse by state and non-state actors. Even in jurisdictions that only explicitly criminalise consensual male same-sex conduct, all members of the LGBT community are adversely impacted in innumerable and varying

¹⁶⁵ REDLACTRANS, International Aid Alliance, *The Night is Another Country: impunity and violence against transgender women human rights defenders in Latin America*, 2012, p.15. Available at: https://www.aidsalliance.org/assets/000/000/405/90623-Impunity-and-violence-against-transgender-women-human-rights-defenders-in-Latin-America_original.pdf?1405586435.

¹⁶⁶ This includes, The Cook Islands, Gaza (Palestine) and the State of Aceh (Indonesia); see Annex 1 for full text of criminalising provisions.

¹⁶⁷ Additionally, the Cook Islands (New Zealand Associate) criminalises consensual same-sex intimacy between men. For more information see: <https://www.humandignitytrust.org/country-profile/cook-islands>.

¹⁶⁸ See n.4 above. N.B. since its publication, Angola and Trinidad & Tobago have decriminalised same-sex intimacy.

¹⁶⁹ *Ibid.*, p.8.

¹⁷⁰ The Penal Decree (Amendment) Act 2004 of Zanzibar, Section 145 – full provision in Annex 1, Tanzania.

¹⁷¹ See Annex 1 for the various provisions criminalising consensual same-sex intimacy.

ways. In Liberia, for example, which criminalises “*deviate sexual intercourse*” under Section 14.74 of the Penal Code (see Annex 1 for full provision), a group of transgender individuals were harassed and attacked by police officers in September 2016. The officers approached them at a place where trans persons were known to congregate and, after interrogating them about whether they were selling drugs (which none were), the officers reportedly told them they were “*the ones spoiling the country*”.¹⁷² The officers then beat them, confiscated their phones and jewelry, and demanded money from them.¹⁷³

The criminalisation of same-sex intimacy can have a pernicious impact on transgender and gender diverse people by fostering a broader climate of fear and stigmatisation that extends beyond cisgender lesbian, gay and bisexual people. Additionally, in legal systems that do not afford recognition to the gender identity of trans and gender diverse people, sexual activity between a trans woman and a cisgender man or a trans man and cisgender woman is regarded as same-sex intimacy and as such, is captured by criminalisation. This is demonstrative of the ways in which state actors and wider society conflate sex and gender and struggle with identities and expressions which are deemed to undermine or threaten deeply-rooted gender binaries. Often, the visibility of transgender and gender diverse people leaves them especially vulnerable to being targeted by these laws.

There is evidence to indicate that in at least nine of the jurisdictions criminalising consensual same-sex intimacy, trans people have been arrested, harassed and prosecuted using these laws.¹⁷⁴ In Turkmenistan, enabled by Section 135 of the Penal Code which criminalises “*homosexual acts*” (defined as “*sexual intercourse between men*”), Ashgabat police interrogated and abused a transgender woman in May 2017, threatening to kick her in the groin “*to check whether the person they detained was a male or a female*”.¹⁷⁵ The abuse was recorded on video, which documented the police further humiliating, insulting, and swearing at the victim, as well as forcing her to strip naked and bend over so as to inspect her genitals.¹⁷⁶

172 Stop AIDS in Liberia, Transgender Network of Liberia et. al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (April 2017), p.3. Available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBR/INT_CCPR_ICO_LBR_27270_E.pdf; see also The Fund for Global Human Rights, Strategic Litigation Consultative Meeting Report, Monrovia, Liberia (31 March 2017), p. 9.

173 Ibid.

174 Cameroon, Egypt, Malawi, Tanzania, Uganda, Zambia, Indonesia, Malaysia, Lebanon; In India, there is evidence from the 1884 case *Queen Empress v. Khairati* that a Hijra was arrested and prosecuted under s.377 of the Penal Code, however no later reported cases have been found. In September 2018, the Supreme Court held s.377, to the extent that it criminalises same-sex intimacy, to be unconstitutional.

175 RadioFreeEurope/RadioLiberty, ‘Video appears to show Turkmen police shaming transgender woman’, 17 May 2017. Available at: <https://www.rferl.org/a/turkmenistan-police-shame-transgender-in-video/28493834.html>.

176 Ibid.

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In Uzbekistan, similar instances of abuse have been recorded. Article 120 of Uzbekistan's Criminal Code criminalises "*Homosexual acts... defined as the gratification of a man's sexual drive with another man without the use of force*",¹⁷⁷ which authorities have used to target transgender people. For example, a trans woman was detained four times between 2014 and 2017 in Tashkent by Uzbek police and security forces; each time, they interrogated her to disclose the identity of other members of the LGBT community, and when she refused, she was brutally beaten to the point of being unable to move.¹⁷⁸

In Zimbabwe, Section 73 of the Criminal Code criminalises same-sex intimacy between men, defined as "*Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act*".¹⁷⁹ This provision, combined with the absence of a framework for legal gender recognition, serves to dehumanise trans people and leave them vulnerable to ill-treatment, arrest and prosecution.¹⁸⁰

The actual number of countries that utilise laws criminalising same-sex activity to target trans and gender diverse people is, however, likely to be far higher than this. Data and evidence of these arrests and abuse is sparse and difficult to obtain. Identifying a definitive number is challenging for a number of reasons, as discussed in Section 4 of this report.

There is evidence that at least 9 countries use laws that prohibit same-sex activity to criminalise trans people. The real figure is likely much higher.



¹⁷⁷ See Annex 1.

¹⁷⁸ Alyksandra Dynko & Tony Wesolowsky, 'Transgender woman says jail awaits in Uzbekistan, seeks asylum in Belarus', RadioFreeEurope/RadioLiberty, 7 January 2018. Available at: <https://www.rferl.org/a/uzbekistan-transgender-woman-asylum-belarus/28961587.html>; Labrys Kyrgyzstan et al., *The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Uzbekistan: A Shadow Report* (March 2010). Available at: <https://www.osce.org/cio/68798?download=true>.

¹⁷⁹ See Annex 1.

¹⁸⁰ Sexual Rights Centre, GALZ & COC Netherlands, *Joint Submission to the Universal Periodic Review of Zimbabwe*, October 2016, p.2-3. Available at: https://www.upr-info.org/sites/default/files/document/zimbabwe/session_26_-_november_2016/js5_upr26_zwe_e_main.pdf.

Case Study 10: Criminalisation of Same-Sex Intimacy - Cameroon

Cameroon Criminal Code 1965 and 1967, as amended in 1972, Article 347-1 bis

“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”.

English translation: “Whoever has sexual relations with a person of the same sex shall be punished with imprisonment for six months to five years and a fine of 20,000 to 200,000 Francs CFA”.

In 2017, at least eight LGBT people remained imprisoned in Cameroon under Article 347 bis and more than 500 other cases of human rights violations relating to homosexuality have been documented, including 27 arbitrary arrests.¹⁸¹ While many of the arrests are of LGB people, Article 347-1 bis is also frequently invoked against transgender people.

For example, on 26 July 2011, three people were stopped by the police and their identification requested. Two of the three were transgender women, Jonas and Franky.¹⁸² They did not have their identification on their person, and when the police saw that they were trans women, all three were arrested for violating Article 347-1 bis. Police claimed that they were “groping each other’s genitals” in the car, a claim which they deny.¹⁸³

On 22 November 2011, Jonas, Franky and Hillaire were tried and convicted under Article 347-1 bis and each sentenced to five years in prison and a fine of 200,000 CFA. The judgment given was overtly transphobic and homophobic, with the High Court judge remarking that “a normal man doesn’t wear skirts, doesn’t drink Bailey’s whiskey, and doesn’t wear a weave”, and concluding that they were homosexual men and guilty under Article 347-1 bis.¹⁸⁴

On 7 January 2013, following nearly a year and a half of imprisonment, the Central Region Appeals Court overturned the conviction due to a lack of evidence.¹⁸⁵ Human Rights Watch observed that “this case looks like an ideologically motivated attack on sexual and gender minorities, based on a discriminatory law, and should never have been in the courts

¹⁸¹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2017: Cameroon* (US Department of State), p.31. Available at: <https://www.state.gov/documents/organization/277223.pdf>.

¹⁸² Jonas K and Franky D, Central Appeals Court, High Court of Yaounde-Ekounou, judgment of 22 November 2011, No. 1892/COR.

¹⁸³ Human Rights Watch, *Cameroon: Drop Charges Against 2 Transgender Youth - Prosecution Based Solely on Bias, Not Evidence*, 17 May 2013. Available at: <https://www.hrw.org/news/2013/05/17/cameroon-drop-charges-against-2-transgender-youth>.

¹⁸⁴ Human Rights Watch, *Guilty by Association: Human Rights Violations in the Enforcement of Cameroon’s Anti-Homosexuality Law*, 21 March 2013, p.17. Available at: <https://www.hrw.org/report/2013/03/21/guilty-association/human-rights-violations-enforcement-camerouns-anti>.

¹⁸⁵ Eric O. Lembembe, ‘LGBTI Africa: Cameroon’s “Gay Scare”’, *The Independent*, 17 July 2013. Available at: <https://independent.org/2013/07/lgbti-africa-camerouns-gay-scare/>.

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to begin with”.¹⁸⁶ Soon after their release, Jonas and Franky were chased by an angry mob and were forced to go into hiding.¹⁸⁷ Later that year they were also attacked in a local market, and when they approached the police for assistance, they were arrested and spent three days in custody before being released.¹⁸⁸

Just three days after the conviction was overturned, the Public Prosecutions Office of the Central Appeals Court filed a motion to challenge the decision.¹⁸⁹ Five human rights organisations wrote to the Prosecutor General requesting that this motion be revoked and the prosecution be discontinued.¹⁹⁰ In February 2015, it was reported that despite the Prosecutor referring the case to the Supreme Court, no hearing date had been set, and the waiting time for a hearing can be up to ten years.¹⁹¹

LGBT organisations report that arbitrary arrests of LGBT people under Article 347-1 bis are common in Cameroon.¹⁹² The use of Article 347-1 bis to target trans people, in addition to those suspected of being engaged in same-sex sexual activity, is indicative of the way in which gender identity and expression can be misunderstood and conflated with sexual orientation in Cameroon and in many other countries.

In many contexts, trans people are misgendered by state actors and by wider society. As such, where a trans man is in a relationship with a cisgender woman, their relationship is considered by the state to be between two women and any sexual intimacy is consequently deemed illegal same-sex conduct. Without legal recognition of their gender, heterosexual trans people are often subject to laws criminalising same-sex activity and are unable to fully enjoy the rights and legal protections that accurate identity documentation would help to ensure.

In 2015, a Zambian transgender woman, Hatch Bril, was arrested, prosecuted and sentenced to 15 years imprisonment for her relationship with a cisgender man who

¹⁸⁶ See n.183 above.

¹⁸⁷ CAMFAIDS, The Advocates for Human Rights, REDHAC and ADEFHO, 'Report on the Violation of Rights on the Basis of Sexual Orientation and Gender Identity in the Republic of Cameroon' (ACHPR, 54th Ordinary Session, August 2013), p.26. Available at: https://www.theadvocatesforhumanrights.org/uploads/cameroon_african_commission_lgbt_rights_october_2013.pdf; Colin Stewart, 'Jonas and Franky, freed but now in hiding', Erasing 76 Crimes, 28 January 2013. Available at: <https://76crimes.com/2013/01/28/jonas-and-franky-freed-but-now-in-hiding/>.

¹⁸⁸ *Ibid.*, p.36.

¹⁸⁹ See n.183 above.

¹⁹⁰ Alternatives-Cameroun, ADEFHO, CAMFAIDS, Human Rights Watch, and ILGA, 'Letter to the Prosecutor General of the Appeals Court', 17 May 2013. Available at: <https://www.hrw.org/news/2013/05/17/cameroon-letter-prosecutor-general-central-appeals-court>.

¹⁹¹ The Observatory, *Cameroon: Homophobia and Violence against the Defenders of the Rights of LGBTI Persons*, (Report, February 2015), p.14. Available at: https://www.fidh.org/IMG/pdf/report_cameroon_lgbti_eng_final.pdf.

¹⁹² Alternatives-Cameroun et al., 'The Violations of the Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in Cameroon' (October 2017), p.10. Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CMR/INT_CCPR_CSS_CMR_29079_E.pdf.

claimed she had deceived him into thinking he was having sex with a cisgender woman.¹⁹³ She was prosecuted under Section 155 of the Zambian Penal Code which provides that “any person who has carnal knowledge of any person against the order of nature... commits a felony and is liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life”.¹⁹⁴ The conviction generated a spate of transphobic media coverage, misgendering Hatch Bril by describing her as a “fake woman” and “a male hairdresser who had been posing as a woman”.¹⁹⁵

Between October 2013 and March 2017, at least 232 gay men and trans women were arrested under Egypt’s “practicing debauchery” law,¹⁹⁶ which is used to criminalise consensual adult same-sex conduct.¹⁹⁷ This crackdown has become increasingly systematic and strategic in its approach. So-called ‘Morality Police’ in Egypt have used a variety of illegal and malicious methods to build a case against trans women; notably, through fake accounts on LGBT dating websites and mobile applications.¹⁹⁸ Further, in 2017 the Egyptian parliament considered legislation to explicitly criminalise homosexuality amid an anti-LGBT crackdown.¹⁹⁹

Human Rights Watch has reported that in Tanzania, trans people have similarly been targeted under laws criminalising same-sex activity.²⁰⁰ For example, in 2015, a trans man and his cisgender female partner were arrested on suspicion of violating the law against same-sex conduct after their neighbours informed the police that they suspected the couple were married and engaged in a same-sex relationship. There are no further reports to indicate whether the couple were charged and prosecuted under these provisions.²⁰¹

¹⁹³ See n.111 above, p.58.

¹⁹⁴ See Annex 1.

¹⁹⁵ Elizabeth Chatuvela, ‘Fake Woman Convicted of Sodomy’, Zambia Daily Mail, 31 October 2015. Available at: <https://www.daily-mail.co.zm/fake-woman-convicted-sodomy/>; Roberto Igual, ‘Zambian Hairdresser Faces 15 Years in Jail for Sodomy’, Mamba Online, 3 November 2015. Available at: <http://www.mambaonline.com/2015/11/03/zambian-hairdresser-faces-15-years-jail-sodomy/>.

¹⁹⁶ See Annex 1.

¹⁹⁷ Egyptian Initiative for Personal Rights, *The Trap: Punishing Sexual Difference in Egypt* (Report, November 2017). Available at: https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf;

¹⁹⁸ *Ibid.*, p.11.

¹⁹⁹ Amnesty International, ‘Egypt: Draft bill to criminalize same-sex relations amid unprecedented homophobic crackdown’, 9 November 2017. Available at: <https://www.amnesty.org/en/latest/news/2017/11/egypt-draft-bill-to-criminalize-same-sex-relations-amid-unprecedented-homophobic-crackdown/>.

²⁰⁰ Neela Ghoshal and Kyle Knight, ‘It’s time to create a world that recognises the rights of transgender people’, *The Guardian*, 13 February 2016. Available at: <https://www.theguardian.com/global-development-professionals-network/2016/feb/13/its-time-to-create-a-world-that-recognises-the-rights-of-transgender-people>.

²⁰¹ MPact Global Action for Gay Men’s Health and Rights (formerly MSMGF), ‘Tanzania: Trans man, wife arrested on gay-sex charges’, 30 January 2015. Available at: <http://msmgf.org/tanzania-trans-man-wife-arrested-on-gay-sex-charges/>; originally reported in Colin Stewart, ‘Tanzania: Trans man, wife arrested on gay-sex charges’, *Erasing 76 Crimes*, 30 January 2015. Available at: <http://76crimes.com/2015/01/30/tanzania-trans-man-wife-arrested-on-gay-sex-charges>.

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Case Study 11: Criminalisation of Same-Sex Intimacy - Malawi

Penal Code, Chapter 7:01, Laws of Malawi (amended 2011)

Section 137A, Indecent practices between females

The new Section 137A, captioned “*Indecent practices between females*”, provides that 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.²⁰²

Section 153, Unnatural offences

“Anyone who –
(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of any animal; or
(c) permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment”.

Section 154, Attempt to commit unnatural offences

“Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment”.

Section 156, Indecent practices between males

“Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment”.

The criminalisation of sexual activity between men under Section 156 and the crime of ‘Unnatural Offences’ in Section 153 were enacted in the early 1960s. In 2011, Malawi adopted Section 137A, which criminalises sex between women.²⁰³ During a period in which the global trend has been towards decriminalisation, this expanded criminalisation was a concerning backwards step by Malawian lawmakers and authorities.

²⁰² See Annex 1.

²⁰³ Ibid.

On 27 December 2009, Tiwonge Chimbalanga Kachepa, a transgender woman, and her cisgender male partner Steven Monjeza Soko were arrested and charged under Sections 153, 154 and 156 of the Penal Code.²⁰⁴ The couple had held an engagement party a day earlier, and media reports had alerted police to the event taking place.²⁰⁵ The couple were convicted on 18 May 2010 on all three charges. In sentencing, Judge Nyakwawa Usiwa-Usiwa illustrated the vitriol that can be directed at trans and gender diverse people. He said, *“I will give you a scarring sentence so that the public be protected from people like you, so that we are not tempted to emulate this horrendous example”*. He continued, *“to me this case counts as the worst of its kind and carries a sense of shock against the morals of Malawi. Let posterity judge this judgment”*.²⁰⁶ Steven and Tiwonge were given the maximum sentence under Section 153, namely 14 years’ hard labour.²⁰⁷

On 29 May 2010, under increasing international scrutiny²⁰⁸ and after a meeting with then UN Secretary-General Ban Ki-moon, Malawian President Mutharika pardoned them. In doing so, he stated, *“I have done this on humanitarian grounds, but this does not mean that I support this”*.²⁰⁹

In 2012, Malawian Justice Minister Ralph Kasambara announced a moratorium on laws criminalising same-sex activity while Parliament debated repealing such provisions.²¹⁰ In July 2014, Solicitor General Janet Chikaya-Banda re-affirmed the moratorium to the UN Human Rights Committee, pending the review of a constitutional challenge of the laws by the Centre for the Development of People and the Malawi Law Society before the High Court.²¹¹ However, news reports from April 2018 suggest that Sections 156 and 153 are still being used to arrest and harass people.²¹²

²⁰⁴ OutRight Action International (formerly IGLHRC), CEDEP and CHRR, *Shadow Report on the Implementation of the ICCPR in Malawi*, 25 October 2011, p.7. Available at: <https://www.outrightinternational.org/sites/default/files/540-1RR.pdf>.

²⁰⁵ Louise Price, ‘The treatment of homosexuality in the Malawian justice system: *R v. Steven Monjeza Soko and Tiwonge Chimbalanga Kachepa*’ (2011) *African Human Rights Law Journal*, 524-533, 526. Available at: <http://www.scielo.org.za/pdf/ahrj/v10n2/11.pdf>.

²⁰⁶ *R v. Soko and Another*, Blantyre Magistrate’s Court, 20 May 2010. Available at: <https://malawilii.org/node/4837>.

²⁰⁷ *Ibid.*

²⁰⁸ Various human rights organisations called for their release; Amnesty International, ‘Standing Up for LGBT Rights in Malawi’. Available at: <https://www.amnestyusa.org/standing-up-for-gay-rights-in-malawi/>.

²⁰⁹ Reuters, ‘Malawi leader meets Ban Ki-moon and pardons gay couple’, 29 May 2010. Available at: <https://www.reuters.com/article/us-malawi-gay/malawi-leader-meets-ban-ki-moon-and-pardons-gay-couple-idUSTRE64S18P20100529>.

²¹⁰ Godfrey Mapondera & David Smith, ‘Malawi suspends anti-gay laws as MPs debate repeal’, *The Guardian*, 5 November 2012. Available at: <https://www.theguardian.com/world/2012/nov/05/malawi-gay-laws-debate-repeal>.

²¹¹ Human Rights Watch, ‘Malawi: Moratorium on Anti-Gay Arrests Reaffirmed’, 21 December 2015. Available at: <https://www.hrw.org/news/2015/12/21/malawi-moratorium-anti-gay-arrests-reaffirmed>.

²¹² Colin Stewart, ‘Malawi: Trying to elude moratorium on anti-gay arrests’, *Erasing 76 Crimes*, 27 April 2018. Available at: <https://76crimes.com/2018/04/27/malawi-trying-to-elude-moratorium-on-anti-gay-arrests/>.

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While the criminalisation of consensual same-sex activity can result in the arrest and prosecution of trans and gender diverse people, the mere existence of such laws can also render them invisible. In environments where trans and gender diverse identities are routinely conflated with gay or lesbian identities, trans people may hide their gender identity and feel unable to present their gender expression because of the threat of laws criminalising same-sex activity, particularly where their gender identity makes them more visible targets of abuse.

Case Study 12: Criminalisation of Same-Sex Intimacy - Indonesia

Sex between consenting adults of the same sex is not criminalised in the Indonesian Penal Code. However, the country has a decentralised legal system and two provinces, Aceh and South Sumatra, criminalise private same-sex activity between consenting adults through their local ordinances.

Provincial Ordinance on the Eradication of Immoral Behaviour (No.13/2002) in South Sumatra

This classifies same-sex conduct as “*immoral behaviour*” along with sex work, adultery, gambling and drinking alcohol.²¹³

City Ordinance on the Prevention, Eradication and Prosecution of Social Ills (No.9/2010) in Padang Panjang, West Sumatra

This regulation provides that “*homosexual and lesbian*” relationships are prohibited and persons “*offering themselves for homosexual and lesbian relationships either with or without payment*” are committing an offence.²¹⁴

The Aceh Islamic Criminal Code (Qanun Jinayat), Aceh Regulation No. 6/2014

On 23 October 2015, a provincial regulation came into effect enforcing Islamic Sharia law. The law applies to local residents and foreigners in the province. The law stipulates a punishment of 100 lashes and/or up to eight years in prison for:

- **Article 63**
The crime of *Liwat* (male penetration)
- **Article 64**
The crime of *Musahaqah* (female same-sex sexual activity)²¹⁵

²¹³ UNDP, *Being LGBT in Asia: Indonesia Country Report* (Bangkok, 2014), p.22. Available at: http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-indonesia-country-report-english.pdf

²¹⁴ *Ibid.*, p.23.

²¹⁵ See Annex 1.

These provincial laws are not only used against cisgender lesbian, bisexual and gay people, but overwhelmingly against transgender and gender diverse people, in what Acehese police have called a bid to get “*rid of all transgender people from Aceh*”.²¹⁶

On 27 January 2018, police raided five hair salons and arrested 12 people. Three cisgender male hair salon customers were quickly released. However, nine transgender women employed at the salons were arrested and subjected to ill-treatment and humiliating practices in detention, which arguably amounted to inhuman, degrading treatment and even torture.²¹⁷ Among other things, the women were forced into mock military training by officers attempting to make them “*manlier*”.²¹⁸ Further, it was reported that police demanded that they take off their clothes, and forcibly shaved their hair to make them “*look masculine*”.²¹⁹ In response to the reports, Indonesia’s police chief announced that there would be an investigation into the detention.²²⁰

In March 2018, a vigilante raid on a hair salon led to the arrest of four people, two of whom were trans women, who were accused by the Sharia police (*wilayahul hisbah*) of same-sex conduct. Such accusations were purported to be based upon “evidence” that included condoms and “transaction money”.²²¹ All four detainees were held in Sharia police custody pending a trial in a religious court. There are no further reports detailing whether the trial has taken place.²²²

Trans people in Indonesia are also targeted on the basis of their gender expression and identity; notably under Qanun 11/2002, which is among five laws enacted between 2002 and 2004 that criminalise violations of Sharia law and contain Islamic dress requirements.²²³ Transgender women have been singled out under these provisions.²²⁴ In 2010, the head of the *Wilayahul Hisbah* (the Islamic religious police force in Aceh)

216 Amnesty International, ‘Indonesia: Police must protect - not attack - transgender women living under threat in Aceh’, 14 February 2018. Available at: <https://www.amnesty.org/en/latest/news/2018/02/indonesia-police-must-protect-not-attack-transgender-women-living-under-threat-in-aceh>.

217 Human Rights Watch, ‘Indonesia: Four Arrested for Same-Sex Conduct’, 2 April 2018. Available at: <https://www.hrw.org/news/2018/04/02/indonesia-four-arrested-same-sex-conduct>.

218 See n.216 above.

219 Ibid.

220 Reuters, ‘Indonesian police investigate detention of transgender women in Aceh’, 2 February 2018. Available at: <https://www.reuters.com/article/us-indonesia-lgbt/indonesian-police-investigate-detention-of-transgender-women-in-aceh-idUSKBN1FM10V>.

221 See n.217 above.

222 Hoti Simanjuntak, ‘Man, transgender person nabbed in Aceh for allegedly having sex’, The Jakarta Post, 14 March 2018. Available at: <http://www.thejakartapost.com/news/2018/03/14/man-transgender-person-nabbed-in-aceh-for-allegedly-having-sex.html>.

223 See Annex 1; Dr R. Michael Feener, *Sharia and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia* (OUP, 2013), p.143.

224 Human Rights Watch, *Policing Morality: Abuses in the Application of Sharia in Aceh, Indonesia*, December 2010, p.56. Available at: <https://www.hrw.org/sites/default/files/reports/indonesia1210WebVersionToPost.pdf>.

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broadcasted his view on transgender women stating, “we consider them men, and they should dress accordingly”.²²⁵ The city of Pariaman passed a broadly-framed regulation in November 2018 banning “acts that are considered LGBT”.²²⁶ In remarking on the new law, the head of the local legislature stated that “same-sex LGBT and transgender people will be subject to sanctions and fines if they disturb the public order”.²²⁷

Research conducted by LGBT organisation Arus Pelangi highlights the extent of harm suffered by LGBT people in Indonesia. In 2013, they reported that 89.3 per cent of LGBT Indonesians have experienced violence.²²⁸ The vitriol directed towards LGBT people stems not only from the laws criminalising consensual same-sex activity or gender expression and identity, but from the anti-LGBT rhetoric articulated by public officials. Indonesia’s National Commission on Human Rights, Komnas HAM, has observed that “public anti-LGBT campaigns are increasing, encouraged by anti-LGBT public comments, including ministry representatives and members of Parliament”.²²⁹

225 Dewi Kurniawati, ‘Acehnese Gays Face Climate of Fear and Abuse’, *The Jakarta Globe*, 18 August 2010. Available at: <https://jakartaglobe.id/archive/acehnese-gays-face-a-climate-of-fear-and-abuse>.

226 Agence France Presse, ‘Indonesian city to fine LGBT residents for disturbing public order’, *The Guardian*, 30 November 2018. Available at: <https://www.theguardian.com/world/2018/nov/30/indonesian-city-to-fine-lgbt-residents-for-disturbing-public-order>.

227 Ibid.

228 Arus Pelangi, *Summary of Recommendations for Indonesia*, (UPR Submission, 27 April 2017). Available at: https://ilga.org/downloads/summary_Indonesia_UPR27.pdf.

229 Indonesia National Commission on Human Rights (or ‘Komnas HAM’), *Submission to Universal Periodic Review of Indonesia*, May 2017. Available at: https://www.upr-info.org/sites/default/files/document/indonesia/session_27_-_may_2017/komnas_ham_upr27_idn_e_main_rev.pdf.

3. Police impunity

*“What’s the point in telling the police? We asked them to save us. They refused to save us”.*²³⁰

Globally, transgender and gender diverse people suffer intimidation, violence and abuse at the hands of an array of perpetrators. TGEU reported the murder of 2,609 trans and gender diverse people in 71 countries between January 2008 and September 2017.²³¹ Whilst all members of the LGBT community experience brutality, transgender people, particularly those who are sex workers, are at a particularly high risk of extreme and sometimes deadly violence.²³²

Alarming, among the worst abusers of transgender and gender diverse people are state authorities including law enforcement officials. In 2015, TGEU identified the police as among the top five perpetrators of transphobic hate crimes.²³³ All too often, those with a profound obligation to protect the population are the ones discriminating against trans and gender diverse people and subjecting them to harassment, abuse and violence.

As discussed in the sections above, police often make use of vaguely worded legal provisions, including various public order offences, to target trans and gender diverse people. Further, the authorities repeatedly harass, arrest and/or detain transgender people under the guise of ‘cracking down’ on sex work and drug use. However, accounts from across all regions of the world notably indicate that, in many cases, the authorities target trans people without any purported legal grounding. This occurs both in countries where there are laws that are routinely used to criminalise trans and gender diverse people and in countries that lack such criminalising provisions. All too often, law enforcement officials act with complete impunity in their harassment of transgender and gender diverse people, with the victims having no recourse to the law for protection. These encounters often involve physical and psychological

²³⁰ See n.66 above, p.35.

²³¹ Trans Respect versus Transphobia Worldwide (Trans Murder Monitoring project), *Trans Day of Remembrance (TDoR) 2017: 325 trans and gender-diverse people reported murdered in the last year* (Press Release, 14 November 2017). Available at: <https://transrespect.org/en/tmm-update-trans-day-remembrance-2017>.

²³² UN Free & Equal, *Factsheet: Homophobic and transphobic violence*. Available at: <https://www.unfe.org/wp-content/uploads/2017/05/Homophobic-and-Transphobic-Violence.pdf>.

²³³ TGEU, *For the Record: Documenting Violence Against Trans People* (Report, September 2015). Available at: https://tgeu.org/wp-content/uploads/2013/11/TGEU_protrans_publication_1_Nov.pdf.

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violence, sexual assaults and extortion.²³⁴ Such mistreatment is understandably rarely reported to authorities and, consequently, police officers are able to act with impunity whilst victims are denied any access to justice or redress.

Across the Americas – a region in which the majority of states do not have codified laws targeting trans and gender diverse people – trans people nevertheless suffer appalling levels of violence. Research has indicated that the average life expectancy of trans women in Latin America is 35 years.²³⁵ The Trans Murder Monitoring project has documented that between January 2008 and September 2018, approximately 80 per cent of the 2,982 reported murders of trans persons globally were committed in Central and South America.²³⁶ It should be noted that these figures are unlikely to capture the full figure. In most Central American countries, as well as in Venezuela, Peru and Paraguay in South America, the absence of legal gender recognition acts to render crimes committed against trans and gender diverse people invisible in official statistics. Activists report that a great majority of these cases are not investigated or prosecuted.

LGBT activists in Latin American countries identify state actors – “*the very agencies charged with the responsibility of protecting the population and seeking justice*” – as those who carry out the majority of abuses against trans persons.²³⁷ In a study carried out by REDLACTRANS, 95 per cent of the respondents – all transgender women – reported suffering police brutality and cruel, inhuman and degrading treatment in police cars, the street and police stations.²³⁸

In Colombia, it was reported that 78.7 per cent of trans people had been victims of police harassment, violence or brutality.²³⁹ OTRANS in Guatemala reported in 2011 that 29 per cent of trans women identified the police as the main agent of discrimination.²⁴⁰ A 2014 report addressing discrimination and violence against LGBT individuals in Bolivia found

234 TGEU, *For the Record: Documenting Violence Against Trans People, Experiences from Armenia, Georgia, Germany, Moldova, Russia and Ukraine* (Report, December 2016), p.9. Available at: https://tgeu.org/wp-content/uploads/2017/04/FortheRecord_FINAL.pdf.

235 Organisation of American States, ‘On the International Day of Remembrance, IACHR urges States to increase the life expectancy of trans persons in the Americas’ (Press Release, 20 November 2015). Available at: http://www.oas.org/en/iachr/media_center/PReleases/2015/137.asp.

236 Transrespect versus Transphobia, *Trans Murder Monitoring Project Update: Trans Day of Remembrance 2018*. Available at: https://transrespect.org/wp-content/uploads/2018/11/TvT_TMM_TDoR2018_Tables_EN.pdf.

237 Civicus, ‘*State of Civil Society Report: Advocacy to Challenge Impunity and Violence against Transgender Human Rights Defenders*’ (2016), p.429. Available at: <https://www.civicus.org/documents/reports-and-publications/SOCS/2016/summaries/SoCS-full-review.pdf>.

238 See n.165 above.

239 Colombia Diversa, *Todos los deberes, pocos los derechos: Situación de derechos humanos de lesbianas, gay, bisexuales y transgeneristas en Colombia 2008 – 2009* (2011) p.40. Available at: <http://colombiadiversa.org/colombiadiversa/documentos/informes-dh/colombia-diversa-informe-dh-2008-2009.pdf>.

240 Organización Trans Reinas de la Noche (OTRANS), *Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007-2011* (2011), p.31. Available at: <https://issuu.com/onusidaguatemala/docs/informetransfobiaguatemala>; REDLACTRANS, *Human Rights Violations of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama* (2016), p.40. Available at: <http://redlactrans.org.ar/site/wp-content/uploads/2013/05/ReportREDLACTRANS.pdf>.

that 82 per cent of respondents knew at least one person who had been arbitrarily detained by police on account of their sexual orientation or gender identity and 93 per cent had themselves been discriminated against by a police officer, prosecutor or judge.²⁴¹

In the US, research conducted by the National Center for Transgender Equality noted that transgender people, particularly trans people of colour, experience elevated levels of negative interactions with law enforcement officers and the criminal justice system, including “higher rates of police mistreatment, incarceration, and physical and sexual assault in jails and prisons”.²⁴² It was found that 58 per cent of trans respondents who had interacted with law enforcement officers in 2015 reported some form of mistreatment, from verbal harassment to physical or sexual assault.²⁴³ Further, research conducted by Harvard University in 2017 highlighted that LGBT people of colour were twice as likely to experience discrimination when interacting with police than white LGBT respondents.²⁴⁴

Similarly, in Asia, where criminalisation is uneven, law enforcement officials routinely operate outside the law to violate the rights of transgender and gender diverse people, even in states that do not explicitly criminalise trans people. For example, in Siem Reap, Cambodia, it has been reported that police target transgender women and force them to “bathe in the dirty, stagnant river when they are caught engaging in sex work, or wrongly perceived to be doing so”.²⁴⁵ Bribes are often extorted from trans women in order to avoid this humiliating treatment.

In Myanmar, which has provisions criminalising gender expression and same-sex intimacy and public order transgression (see Annex 1), law enforcement officials often target trans and gender diverse people without any reference to these laws. On 6 July 2013, police arrested two transgender women in Mandalay. One of the women reported to OutRight Action International that the police had “forcibly pulled off [their] clothes, kicked and beat [them]. [Their] breasts were squeezed, scratched and beaten with police batons”.

²⁴¹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Bolivia* (US State Department), p.28-29. Available at: <https://www.state.gov/documents/organization/236880.pdf>.

²⁴² Sandy James et al. *The Report of the 2015 US Transgender Survey*, National Center for Transgender Equality, December 2016, p.184. Available at: <https://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

²⁴³ *Ibid.*

²⁴⁴ Harvard T.H. Chan School of Public Health et al., *Discrimination in America: Experiences and Views of LGBTQ Americans*, November 2017, p.10. Available at: <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2017/11/NPR-RWJF-HSPH-Discrimination-LGBTQ-Final-Report.pdf>.

²⁴⁵ Cambodian Center for Human Rights, *Discrimination Against Transgender Women in Cambodia’s Urban Centers*, September 2016, p.22. Available at: https://cchrcambodia.org/admin/media/report/report/english/2016_09_21_SOGI_Report_Eng.pdf; see also UNDP & USAID, *Being LGBTQI in Asia: Cambodia Country Report (2014)*, p.31. Available at: http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-cambodia-country-report.pdf on the use of the Village and Commune Safety Policy to target LGBT people for harassment and arrest.

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These allegations were denied by the Mandalay Police, who alleged that this series of arrests were in respect of “*police disturbances*” and to “*save the public from moral deviance*”, charges with no basis in law.²⁴⁶

A 2013 report by Human Rights Watch recorded shocking levels of violence, prejudice and extortion by police in Tanzania against sexual and gender minorities among others.²⁴⁷ In 2009, a trans man was turned into Dar es Salaam police by his manager. The manager accused him of “*being a lesbian*” and having a “*bad attitude*”. Police officers sexually and physically assault him, making him remove his clothes, touching his breasts and genitals and beating him on his arms and back with a belt.²⁴⁸ Another incident in Dar es Salaam involved the sexual assault by police of a trans woman who had been arrested for sex work more than ten times, and recalled on at least one occasion the police “*joking about me and squeezing my fake breasts*” and touching her genitals.²⁴⁹

Such discriminatory and violent policing perpetuates a lack of faith in state authorities and mistrust in the criminal justice system, creating significant barriers to trans persons accessing support, protection and justice.²⁵⁰ In many states where people have been the target of violence on the grounds of their gender identity or expression, they do not report the attacks to the police owing to the fear that, at best, the police will not take their complaints seriously or adequately investigate them,²⁵¹ and, at worst, they will risk being re-victimised by police brutality.

²⁴⁶ Kaleidoscope Australia, Myanmar LGBT Rights Network & Equality Myanmar, Submission to the UPR regarding the protection of the rights of LGBTI persons in Myanmar, March 2015, p.4. Available at: <https://ilga.org/wp-content/uploads/2016/02/Shadow-report-23.pdf>

²⁴⁷ Human Rights Watch, “Treat us Like Human Beings”: Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania, June 2013. Available at: https://www.hrw.org/sites/default/files/reports/tanzania0613webwcover_0_0.pdf

²⁴⁸ *Ibid.*, p.46.

²⁴⁹ *Ibid.*, p.47.

²⁵⁰ See n.234 above, p.45.; Human Rights Watch, “I Had to Leave to Be Me”: Discriminatory Laws Against LGBT People in the Eastern Caribbean, March 2017. Available at: https://www.hrw.org/sites/default/files/report_pdf/easterncaribbean0318_web_0.pdf; National Center for Transgender Equality, *A Blueprint for Equality: A Transgender Federal Agenda* (Report, 2016), p.25. Available at: <https://www.transequality.org/sites/default/files/docs/resources/NCTE%20Federal%20Blueprint%20Chapter%206%20Police%20and%20Ending%20Violence.pdf>

²⁵¹ Human Rights Watch, *Russia: Impunity for Anti-LGBT Violence*, 15 December 2014. Available at: <https://www.hrw.org/news/2014/12/15/russia-impunity-anti-lgbt-violence>

4. Violation of fundamental human rights

Numerous legal instruments guarantee human rights protections at both the global and regional levels, as well as in domestic constitutional law. While international human rights instruments do not expressly refer to gender identity, they apply to “all people”, “all persons” or “everyone” and thus include trans and gender diverse people. Further, many non-discrimination provisions prohibit discrimination on grounds of sex or gender or are non-exhaustive, and have accordingly been interpreted expansively by human rights mechanisms.²⁵² The various violations experienced by transgender and gender diverse people through the application of the laws explored in this report arguably engage protective provisions in the following regional and international human rights instruments:

- Universal Declaration of Human Rights (“UDHR”)²⁵³
- European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”)²⁵⁴
- International Covenant on Civil and Political Rights (“ICCPR”)²⁵⁵
- International Covenant on Economic, Social and Cultural Rights (“ICESCR”)²⁵⁶
- Convention on the Rights of the Child (“CRC”)²⁵⁷
- Convention on the Elimination of all forms of Discrimination against Women (the “CEDAW Convention”)²⁵⁸
- African Charter on Human and Peoples’ Rights (the “African Charter”)²⁵⁹
- American Convention on Human Rights (the “Inter-American Convention”)²⁶⁰
- ASEAN Human Rights Declaration (the “ASEAN Declaration”)²⁶¹

²⁵² OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, 2012, p.40-45. Available at: <https://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>.

²⁵³ Preamble: “... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family...”. Available at: <http://www.un.org/en/universal-declaration-human-rights/>.

²⁵⁴ Article 1: “everyone within their jurisdiction”. Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

²⁵⁵ Preamble: “... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family...”. Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

²⁵⁶ Preamble: “... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family...”. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

²⁵⁷ Preamble: “... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family...”. Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

²⁵⁸ Preamble: “... all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein...”; Article 2: “... discrimination against women in all its forms”. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

²⁵⁹ Article 2: “Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter...”. Available at: <http://www.achpr.org/instruments/achpr/>.

²⁶⁰ Article 1(1): “The States Parties to this Convention undertake... to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms”. Available at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

²⁶¹ Consisting of Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. Available at: https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf.

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These instruments contain various rights that are directly relevant to the types of abuse experienced by transgender and gender diverse people, including the rights to equality and non-discrimination, life, liberty, privacy, human dignity, freedom from arbitrary arrest, freedom from torture and degrading treatment, freedom of association and freedom of expression. It remains the case, however, that in practice the protection of human rights insofar as they concern transgender and gender diverse individuals is inconsistent and fragmented.

Ensuring that transgender and gender diverse individuals benefit from comprehensive and effective human rights protection is an acute and enduring challenge. Whilst some progress has been made, violations of transgender and gender diverse individuals' human rights remain remarkably prevalent and grave, as the summaries and examples in this report demonstrate.

4.1 Equality and Non-Discrimination

Importantly, the need for equal protection of the law for all is expressly recognised in numerous instruments, including Article 7 of the UDHR, which is illustrative of the language used in most instruments:

*“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.*²⁶²

The UN High Commissioner for Human Rights has observed that *“human rights treaty bodies have confirmed that States have an obligation to protect everyone from discrimination on grounds of sexual orientation or gender identity. The fact that someone is... transgender does not limit their entitlement to enjoy the full range of human rights”*.²⁶³

For example, the UN Committee on Economic, Social and Cultural Rights has declared that *“gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, [have undergone gender affirmation surgery] or [are] intersex often face serious human rights violations”*.²⁶⁴ The CEDAW Committee has also recognised that discrimination *“is compounded by intersecting factors... [which] may include... identity as a... transgender woman or intersex person”*.²⁶⁵

²⁶² Available at: <http://www.un.org/en/universal-declaration-human-rights/>.

²⁶³ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights: Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (A/HRC/19/41)* (17 November 2011), para 16. Available at: <https://undocs.org/A/HRC/19/41>.

²⁶⁴ Committee on Economic, Social and Cultural Rights, *General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (E/C.12/GC/20)* (10 June 2009), para 32. Available at: <https://undocs.org/E/C.12/GC/20>.

²⁶⁵ CEDAW, *General Recommendation No. 33, women's access to justice (CEDAW/C/GC/33)* (5 August 2015), para 8. Available at: <https://undocs.org/CEDAW/C/GC/33>.

In addition, the Court of Justice of the European Union has interpreted discrimination on the ground of sex to encompass discrimination arising from gender affirmation treatment. In *P. v. S. and Cornwall County Council*, for example, the Court expansively interpreted Directive 76/207, which prohibits “sex” discrimination in an employment setting, to include “gender reassignment”.²⁶⁶ The European Court of Human Rights has similarly recognised that gender identity falls within the protective scope of Article 14 of the ECHR (prohibition of discrimination).²⁶⁷ The Inter-American Court of Human Rights issued an Advisory Opinion on 24 November 2017, progressively interpreting the American Convention on Human Rights to recognise gender identity as a protected characteristic.²⁶⁸

Attempts have been made to address the problem of fragmentation, perhaps most notably by the drafting of the Yogyakarta Principles.²⁶⁹ The Principles were launched on 26 March 2007 following an international meeting of human rights experts in Yogyakarta, Indonesia, and were later supplemented on 10 November 2017.²⁷⁰ They aim to provide a consistent understanding as to how international human rights law should apply to LGBT people and affirm, by way of examples, that States shall:

- “[t]ake all necessary legislative, administrative and other measures to fully respect and legally recognise each person’s self-defined gender identity”;²⁷¹
- “[t]ake all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity”;²⁷² and
- “[t]ake all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice”.²⁷³

²⁶⁶ *P. v. S. and Cornwall County Council*, Case C-13/94, judgment of 30 April 1996. Available at: <https://www.bailii.org/eu/cases/EUECJ/1996/C1394.html>; see also Directive 2006/54/EC, Preamble (3). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>.

²⁶⁷ *Identoba and Ors. v. Georgia*, No. 73235/12, judgment of 12 May 2015, para. 96. Available at: <https://www.bailii.org/eu/cases/ECHR/2015/474.html>; *P. V. v. Spain*, No. 35159/09, judgment of 30 November 2010, para. 30. Available (French only) at: <http://hudoc.echr.coe.int/eng/?i=001-101943>.

²⁶⁸ ICtHR, Advisory Opinion OC-24/17 on gender identity, equality and non-discrimination for same-sex couples. Available at: http://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf.

²⁶⁹ See n.2 above.

²⁷⁰ *The Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to complement the Yogyakarta Principles* (10 November 2017). Available at: https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

²⁷¹ *The Yogyakarta Principles*, Principle 3B.

²⁷² *Ibid.*, Principle 5A.

²⁷³ *Ibid.*, Principle 7A.

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Despite their undoubted significance – they have, among other things, been cited by the UN Special Rapporteur on the Right to Education as a “*very important contribution*” to fostering inclusive sexual education²⁷⁴ – they have not achieved universal support within the UN. Reference to them has also been criticised by the African Group and other bodies at the UN General Assembly which are hostile to any recognition of LGBT human rights.²⁷⁵

Globally, few domestic human rights instruments expressly prohibit discrimination on the grounds of gender identity.²⁷⁶ However, a number of key cases have seen courts recognise that non-discrimination provisions afford protection to trans people. The Indian Supreme Court, for example, has adopted an expansive approach to the prohibition on “sex” discrimination under the Constitution of India to encompass gender identity.²⁷⁷ The Caribbean Court of Justice has similarly held that Article 149(1) of the Constitution of Guyana prohibits discrimination against transgender people.²⁷⁸ Laws criminalising consensual same-sex intimacy have also been held to violate equality and non-discrimination protections in numerous cases.²⁷⁹

274 UN General Assembly, *Report of the United Nations Special Rapporteur on the right to education (A/65/162)* (23 July 2010), para 23. Available at: <https://undocs.org/A/65/162>.

275 United Nations General Assembly – Third Committee, *Summary record of the 29th meeting* (25 October 2010), para 9 et seq. Available at: <https://www.un.org/press/en/2010/gashc3987.doc.htm>.

276 At the provincial level, Article 10 of the Quebec Charter of Human Rights and Freedoms recognises the “*right to full and equal recognition and exercise of [...] human rights and freedoms, without distinction, exclusion or preference based on [...] gender identity or expression*”. Available at: <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-12>.

277 *National Legal Services Authority v. Union of India & Ors.*, 15 April 2014, Supreme Court of India, para. 59. Available at: <https://indiankanoon.org/doc/193543132/>.

278 *Quincy McEwan et al. v. Attorney General of Guyana*, Caribbean Court of Justice, 13 November 2018, para. 72. Available at: <http://www.ccj.org/wp-content/uploads/2018/11/2018-CCJ-30-AJ2-mod.pdf>.

279 *National Coalition for Gay and Lesbian Equality v. Minister of Justice*, Constitutional Court of South Africa, 9 October 1998. Available at: <http://www.saflii.org/za/cases/ZACC/1998/15.pdf>; *Caleb Orozco v. Attorney General of Belize*, Supreme Court of Belize, 10 August 2016. Available at: <http://www.u-rap.org/web2/images/Documents/Supreme-Court-Claim-No-668-of-2010-Caleb-Orozco-v-The-Attorney-General-of-Belize-et-al1.pdf>; *Navtej Singh Johar & Ors. v. Union of India*, 6 September 2018, Supreme Court of India. Available at: https://www.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf.

4.2 Right to life

The right to life has been described as “*the fulcrum of all other rights [and] the fountain through which other rights flow*”.²⁸⁰ It is ubiquitous across virtually all general international human rights instruments.

- “Everyone has the right to life, liberty and security of person”. (Art 3, UDHR)
- “Every human being has the inherent right to life. This right shall be protected by the law. No one shall be arbitrarily deprived of his life”. (Art 6(1) ICCPR)
- “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”. (Art 2(1), ECHR)
- “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”. (Art 4, African Charter)
- “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”. (Art 4(1), Inter-American Convention)
- “Every person has an inherent right to life which shall be protected by law. No person shall be deprived of life save in accordance with law”. (Art 11, ASEAN Declaration)

It is also a standard provision in virtually all domestic constitutions.

Despite the protections that exist, transgender and gender diverse people have for decades suffered horrendous violations of their right to life, fostered and enabled by stigmatising criminal laws and a pervasive culture of impunity for those who commit anti-trans violence.

In 2012, for example, a transgender woman in Guatemala was reportedly the victim of a violent attack by the police and subjected to death threats. The victim filed a complaint against the perpetrating policemen. Shortly afterwards, her dead body was found.²⁸¹

Recognition that a person’s gender identity should never form the basis of any violation of their right to life is critical to ensuring future protection for transgender and gender diverse people.

²⁸⁰ African Commission on Human and Peoples’ Rights, *Forum of Conscience v. Sierra Leone*, Communication No. 223/98 (2000), para 20. Available at: http://www.achpr.org/files/sessions/28th/communications/223.98/achpr28_223_98_eng.pdf.

²⁸¹ See n.165 above, p.14.

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4.3 Prohibition against torture and other cruel, inhuman or degrading treatment or punishment

As with the right to life, the prohibition against torture and other cruel, inhuman or degrading treatment or punishment is afforded universal recognition within international and regional human rights treaties, and is a standard guarantee in domestic constitutions.

- “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. (Art 5, UDHR)
- “All forms of exploitation and degradation of man particularly [...] inhuman or degrading punishment and treatment shall be prohibited”. (Art 5, African Charter)
- “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. (Art 3, ECHR)
- “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person”. (Art 5(2), Inter-American Convention)
- “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. (Art 7, ICCPR)
- “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. (Art 16(1), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

In giving this prohibition full effect, states have both positive obligations, i.e. they are obliged to take active steps in order to protect transgender and gender diverse individuals from cruel, inhuman or degrading treatment and to investigate and prosecute, as well as negative obligations, i.e. they must not carry out acts which subject individuals to such treatment. As the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has observed: “States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorizes, explicitly or implicitly, prohibited acts to be performed with impunity. States are complicit in violence against [...] transgender persons whenever they create and implement discriminatory laws that trap them in abusive circumstances”.²⁸²

²⁸² UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/31/57)* (5 January 2016), para 10. Available at: <https://undocs.org/A/HRC/31/57>.

The mere existence of laws that criminalise people on the basis of their gender identity or expression is arguably itself a violation of the absolute prohibition on degrading treatment. These laws signal to society that trans and gender diverse people are perverse criminals which in turn contributes to humiliation and ill-treatment. By maintaining these laws, states degrade the very existence of the trans community.

Further, numerous examples illustrate the ways in which state officials humiliate and degrade trans and gender diverse people. For example, as discussed in Case Study 12 above, in January 2018 a number of transgender women in Indonesia were arrested as a result of reports of them “teasing” boys. The women had their hair forcibly cut and were made to wear stereotypically ‘male’ clothing. Commenting on this, the local police chief stated that the women would be held for three days to “give them counselling and coaching”, adding that such coaching was “going well and now they are all acting like real men”.²⁸³ In November 2018, police arrested three transgender women during a raid. While in custody, they were hosed down in what was purported to be a form of “*mandi wajib*” (an Islamic bathing ritual to cleanse impurity).²⁸⁴ In Uganda, as discussed in Case Study 6, a transgender woman was reported to have been arrested in January 2014 for impersonating a woman on the basis of the section 381(1) of the Penal Code, which prohibits anyone from defrauding another by “*falsely represent[ing] himself or herself to be some other person, living or dead*”. She was later searched intimately, with the police touching her on the chest and genitals while asking, “*Is this a man or a woman?*”²⁸⁵

In Pakistan, which criminalises consensual “carnal intercourse against the order of nature” under Section 377 of the Penal Code,²⁸⁶ two transgender women were arrested in 2015 after being involved in a dispute and subjected to repeated harassment, humiliation, and assault in police custody. They were forced to strip by the officers because they “*wanted to see if[they] were really transsexuals*”, endless taunts and derisive comments from the officers, and one officer tried to grab one of the women through the bars of her cell and tear off her shirt.²⁸⁷

²⁸³ See Case Study 12.

²⁸⁴ Equal Eyes, ‘Indonesia: Trans Women Reportedly Hosed Down by Fire Truck to ‘Cleanse’ Their ‘Impurity’, 8 November 2018. Available at: <https://equal-eyes.org/database/2018/11/12/indonesian-trans-women-hosed-down>; Human Rights Watch, ‘Indonesian Police Harass Transgender Women’, 8 November 2018. Available at: <https://www.hrw.org/news/2018/11/08/indonesian-police-harass-transgender-women>.

²⁸⁵ See Case Study 6.

²⁸⁶ See Annex 1 for full provision.

²⁸⁷ Rabia Ali, ‘Gender bias: Transgender people face harassment in police lockup’, The Express Tribune, 12 June 2015. Available at: <https://tribune.com.pk/story/902070/gender-bias-transgender-people-face-harassment-in-police-lockup/>.

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4.4 Dignity and Autonomy

Human dignity is a central underlying principle that informs all other rights, and is also explicitly protected in numerous international human rights instruments, including the UDHR, ICCPR and ICESCR, and is afforded further recognition in various regional instruments.

- “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. (UDHR)
- “... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Recognizing that these rights derive from the inherent dignity of the human person”. (ICCPR)
- “... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Recognizing that these rights derive from the inherent dignity of the human person”. (ICESCR)
- “Given the Arab nation’s belief in human dignity since God honoured it by making the Arab World the cradle of religions and the birthplace of civilizations which confirmed its right to a life of dignity based on freedom, justice and peace...” (Preamble, Arab Charter)
- “All persons are born free and equal in dignity and rights”. (General Principles, ASEAN Declaration)
- “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status”. (Art 5, African Charter)
- “Everyone has the right to have his honor respected and his dignity recognized”. (Art 11(1), Inter-American Convention)
- “Human dignity is inviolable. It must be respected and protected”. (Art 1, Charter of Fundamental Rights of the European Union)

The right to human dignity is also expressly protected in many national constitutions.

It has been repeatedly recognised that gender identity forms a critical part of an individual’s dignity and autonomy. Notably, the Yogyakarta Principles state that: “Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom”.²⁸⁸

288 The Yogyakarta Principles, Principle 3.

There are promising indications of such an approach being echoed within national legal systems. In October 2015, for example, the Delhi High Court determined that “[g]ender identity and sexual orientation are fundamental to the right of self-determination, dignity and freedom. These freedoms lie at the heart of personal autonomy and freedom of individuals. A transgender [person’s] sense or experience of gender is integral to their core personality and sense of being. Insofar as, I understand the law, everyone has a fundamental right to be recognized in their chosen gender”.²⁸⁹

Laws that criminalise trans and gender diverse people are inherently an affront to their dignity. They also invite wider social disapprobation and rebukes, in both subtle and extreme forms, presenting trans individuals with a constant challenge in living with basic dignity.

Various courts have found that laws criminalising consensual same-sex intimacy violate the right to dignity. For example, it was determined by the Constitutional Court of South Africa in *National Coalition for Gay and Lesbian Equality v. Minister of Justice* that “[t]here can be no doubt that the existence of a law which punishes a form of sexual expression for gay men degrades and devalues gay men in our broader society. As such it is a palpable invasion of their dignity and a breach of section 10 of the Constitution”.²⁹⁰ Similarly, in *Nadan and McCoskar v. State* the High Court of Fiji held that “[t]he criminalization of carnal acts against the order of nature between consenting adult males or females in private is a severe restriction on a citizen’s right to build relationships with dignity and free of State intervention and cannot be justified as necessary”.²⁹¹ In *Orozco v. Attorney General of Belize*, the Supreme Court held that the criminalisation of consensual same-sex intimacy under section 53 of the Criminal Code was “in breach of the dignity of the Claimant and in violation of section 3(c) [of the Constitution of Belize]”.²⁹² While these cases focus on the situation of gay men, the same principle clearly applies to trans and gender diverse people captured by these laws.

²⁸⁹ *Shivani Bhat v. State of NCT of Delhi & Ors.*, High Court of Delhi, 5 October 2015, para. 10. Available at: <http://lobis.nic.in/ddir/dhc/SID/judgement/05-10-2015/SID05102015CRLW21332015.pdf>.

²⁹⁰ *National Coalition for Gay and Lesbian Equality v. Minister of Justice*, Constitutional Court of South Africa, 9 October 1998, para. 28 per Ackermann J. Available at: <http://www.saflii.org/za/cases/ZACC/1998/15.pdf>.

²⁹¹ *Nadan and McCoskar v. The State*, High Court of Fiji, 26 August 2005, p.12. Available at: <https://www.icj.org/wp-content/uploads/2012/07/McCoskar-and-Nadan-v.-State-High-Court-of-Fiji-at-Suva.pdf>.

²⁹² *Caleb Orozco v. Attorney General of Belize*, Supreme Court of Belize, 10 August 2016, para. 67. Available at: <http://www.u-rap.org/web2/images/Documents/Supreme-Court-Claim-No-668-of-2010-Caleb-Orozco-v-The-Attorney-General-of-Belize-et-al1.pdf>.

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4.5 Freedom of expression

At its core, freedom of expression encompasses the right to seek, receive and express information, ideas and opinions. It is a right that is widely guaranteed at the national, regional and international level.

- “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. (Art 19, UDHR)
- “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers... through any... media of his choice”. (Art 19(2), ICCPR)
- “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers... through any... medium of one’s choice”. (Art 13(1), Inter-American Convention)
- “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. (Art 10, ECHR)
- “Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law”. (Art 9, African Charter)
- “Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information... through any... medium of that person’s choice”. (Art 24, ASEAN Declaration)

As the Yogyakarta Principles state, “the right to freedom of opinion and expression... includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means”.²⁹³ Laws that criminalise the expression of gender identity are clearly in violation of this right.

Courts in the US have been at the forefront of recognising the right to expression of gender identity as a part of freedom of expression. For example, the Massachusetts Superior Court held that a junior high school had violated a transgender teenager’s First Amendment rights by repeatedly expelling her from class for her choice of clothing.²⁹⁴ In doing so, the Court notably observed that “the plaintiff’s expression is not merely a personal preference but a necessary symbol of her very identity”.²⁹⁵ Similarly, a District Court in

²⁹³ The Yogyakarta Principles, Principle 19.

²⁹⁴ The First Amendment to the United States Constitution guarantees freedoms concerning religion, expression, assembly and the right to petition. Available at: <https://www.congress.gov/content/conan/pdf/GPO-CONAN-2017-10-2.pdf>.

²⁹⁵ *Doe v. Yunits et al.*, Superior Court of Massachusetts, United States (11 October 2000), page 3. Available at: <https://www.icj.org/wp-content/uploads/2012/07/Doe-v.-Yunits-et-al-Superior-Court-of-Massachusetts-United-States.pdf> – this decision was affirmed upon appeal in *Doe v. Brockton School Committee* [2000] WL 33342399, Mass. App. Ct., Nov. 30 2000.

Mississippi found the wearing of clothing which was not traditionally deemed “female attire” to be a form of expressive conduct protected by the First Amendment of the US Constitution.²⁹⁶ A legal action had been brought by a gay high school senior against her local school district after it prohibited her from bringing her girlfriend to the school prom and wearing a tuxedo to the event.²⁹⁷

In concluding that Guyana’s “cross-dressing” laws were unconstitutional (see Case Study 1), the Caribbean Court of Justice determined that “*how individuals choose to dress and present themselves is integral to their right to freedom of expression. This choice, in our view, is an expressive statement protected under the right to freedom of expression*”.²⁹⁸ The Indian Supreme Court similarly recognised in *NALSA v. Union of India* that “*freedom of expression guaranteed under Article 19(1)(a) [of the Constitution of India] includes the freedom to express ones chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing etc*”.²⁹⁹

Laws that criminalise consensual same-sex intimacy have, in two recent cases, been recognised as violating the right to freedom of expression. In *Navtej Singh Johar & Ors. v. Union of India*, the Supreme Court of India found Section 377 of the Indian Penal Code, inter alia, to be “*violative of the fundamental right of freedom of expression*”.³⁰⁰ The Supreme Court of Belize similarly determined, in *Orozco v. Attorney General of Belize*, that the criminalisation of consensual same-sex intimacy under Section 53 of the Criminal Code violated freedom of expression under Section 12 of the Constitution of Belize. Despite ubiquitous guarantees of the right to freedom of expression, violations of the right of trans and gender diverse people to express themselves freely are remarkably prevalent. As discussed in Section 2.1 above, a number of states criminalise the gender expression of transgender and gender diverse people either explicitly through so-called ‘cross-dressing’ provisions or through the misuse of impersonation or disguise laws.³⁰¹

²⁹⁶ *McMillen v. Itawamba County School District*, District Court of N.D. Mississippi, United States (23 March 2010). Available at: <https://www.icj.org/wp-content/uploads/2012/07/McMillen-v.-Itawamba-County-School-District-District-Court-of-N.D.-Mississippi-United-States.pdf>.

²⁹⁷ *Ibid.*

²⁹⁸ See n.278 above, para. 76.

²⁹⁹ See n.277 above, para. 65.

³⁰⁰ *Navtej Singh Johar & Ors. v. Union of India*, 6 September 2018, Supreme Court of India, para. 247 per Misra, C.JI. Available at: https://www.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf.

³⁰¹ See n.292 above, para. 97.

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4.6 Privacy

The right to privacy is recognised in numerous human rights instruments since the UDHR:

- “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”. (Art 12, UDHR)
- “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”. (Art 17, ICCPR)
- “Everyone has the right to respect for his private and family life, his home and his correspondence”. (Art 8(1), ECHR)
- “No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. Everyone has the right to the protection of the law against such interference or attacks”. (Art 11(2) & (3), Inter-American Convention)
- “Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence... Every person has the right to the protection of the law against such interference or attacks”. (Art 21, ASEAN Declaration)

Several states also maintain privacy rights in their domestic constitutions.

In addition to creating negative obligations on the part of States not to interfere with a person’s privacy, this right has been held to encompass positive obligations to protect persons from violations by third parties and to provide prompt, effective and adequate remedies for any such violations.³⁰²

The European Court of Human Rights has consistently adopted an expansive approach to the notion of “private life” under Article 8 of the ECHR, notably recognising that “gender identification, names, sexual orientation and sexual life fall within the personal sphere protected by Article 8”³⁰³ and that “the right to respect for private life... applies fully to gender identity as a component of personal identity”.³⁰⁴ The Court has also affirmed that Article 8 guarantees “the right of transgender persons to personal development and to physical and moral security”.³⁰⁵

302 Report of the Inter-American Commission No. 11/96, Case 11.230 (Chile) (3 May 1996), paras 66 and 67. Available at: <http://www.cidh.org/annualrep/96eng/Chile11230.htm>; see also Human Rights Committee, General Comment No. 16 (8 April 1988), para. 1. Available at: <http://hrlibrary.umn.edu/gencomm/hrcom16.htm> & *Lozovyye v. Russia*, No. 4587/09, judgment of 24 April 2018, para. 36. Available at: <https://www.bailii.org/eu/cases/ECHR/2018/361.html>.

303 *Y.Y. v. Turkey*, No. 14793/08, judgment of 10 March 2015, para. 56. Available at: <http://hudoc.echr.coe.int/eng/?i=001-153134>.

304 *A.P., Garçon and Nicot v. France*, Nos. 79885/12, 52471/13 and 52596/13, judgment of 6 April 2017, para 95. Available at: <http://hudoc.echr.coe.int/eng/?i=001-172913>.

305 *Ibid.*, para. 93.

The Yogyakarta Principles assert, among other things, that states are in violation of the right to privacy when they require individuals to provide information on their sex or gender that are not “*relevant, reasonable and necessary as required by the law for a legitimate purpose*”.³⁰⁶

Despite this protective legal framework, numerous examples serve to demonstrate that transgender and gender diverse individuals’ rights to privacy are violated in various ways as a result of discriminatory criminal laws and police abuse.

As discussed in Case Study 6, in 2014 in Uganda a transgender woman was arrested for “*impersonating a woman*” and then strip-searched to identify her genitals and subjected to ongoing physical assaults.³⁰⁷ Such discriminatory and abusive practices, enabled and encouraged by the legal provisions explored in this report, constitute a violation of trans and gender diverse persons’ right to privacy. Flagrant breaches of the right to privacy have also been reported in numerous jurisdictions whereby transgender individuals are placed in detention, subjected to invasive and unnecessary body searches and otherwise mistreated by the police.

It has also been recognised that the mere fact of criminalising LGBT people, for instance, through prohibitions on same-sex intimacy, is a violation of the right to privacy. In *Toonen v. Australia*, the UN Human Rights Committee determined that “[i]nasmuch as Article 17 [of the ICCPR] is concerned, it is undisputed that adult consensual sexual activity in private is covered by the concept of privacy”³⁰⁸ and that the applicant was “*actually and currently affected by the continued existence of the Tasmanian laws [criminalising consensual same-sex intimacy]... even if these provisions have not been enforced for a decade*”.³⁰⁹ The European Court of Human Rights similarly held, in *Dudgeon v. United Kingdom*, that “[t]he very existence of this legislation continuously and directly affects [the applicant’s] private life”.³¹⁰ This position has been echoed in more recent jurisprudence, including the Indian Supreme Court judgment in *Navtej Singh Johar & Ors. v. Union of India*³¹¹ and by the Supreme Court of Belize in *Orozco v. Attorney General of Belize*.³¹² While these cases focus on the criminalisation of gay men, the same principle necessarily applies to the consensual adult conduct of transgender and gender diverse people.

³⁰⁶ See n.270 above, Principle 6G.

³⁰⁷ See Case Study 6.

³⁰⁸ *Toonen v. Australia*, UN Human Rights Committee, Communication No. 488/1992, CCPR/C/50/D/488/1992, 31 March 1994, para. 8.2. Available at: <http://hrlibrary.umn.edu/undocs/html/vws488.htm>.

³⁰⁹ *Ibid.*

³¹⁰ *Dudgeon v. United Kingdom*, 4 EHRR 149 (1981), para. 41. Available at: <http://www.worldlii.org/eu/cases/ECHR/1981/5.html>.

³¹¹ See n.300 above, para. 58 per Dr Chandrachud, J.

³¹² See n.292 above, para. 86.

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4.7 Protection from arbitrary arrest or detention

The right not to be arbitrarily arrested or detained broadly encompasses any kind of deprivation of liberty, including police custody, pre-trial detention and house arrest, and is afforded recognition within several major international and regional human rights instruments. For example:

- “No one shall be subjected to arbitrary arrest, detention or exile”. (Art 9, UDHR)
- “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law...”. (Art 9(1), ICCPR)
- “Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained”. (Art 6, African Charter)
- “No one shall be subject to arbitrary arrest or imprisonment”. (Art 7(3), Inter-American Convention)

It is also a standard protection in virtually all domestic legal frameworks.

The Yogyakarta Principles importantly recognise that “*arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary*”.³¹³

Despite this emphatic and widespread prohibition, the unlawful and persecutory arrest, detention and/or prosecution of trans and gender diverse people remains rampant. As discussed in Section 2 above, the routine use of a variety of criminal laws to harass, arrest, detain and prosecute transgender and gender diverse people is in clear violation of this right, as of course are arrests, harassment and abuse by state officials without any purported justification in law.

³¹³ The Yogyakarta Principles, Principle 7.

4.8 Right to health

The right to an adequate standard of health has been a key feature of human rights instruments since the UDHR,³¹⁴ and is of critical importance to many transgender and gender diverse individuals, who should enjoy uninhibited access to public health information and services without discrimination or fear of harassment, arrest or prosecution. Examples of the framing of this right are as follows:

- “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. (Art 12 of the ICESCR)
- “Every person has the right to the enjoyment of the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to medical facilities”. (Art 29(1), ASEAN Declaration)
- “Every individual shall have the right to enjoy the best attainable state of physical and mental health. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick”. (Art 16, African Charter)

While this right is more directly engaged in respect of the positive rights of trans and gender diverse people to healthcare services, it can also be engaged in the context of criminalisation.

In 2011, the United Nations High Commissioner for Human Rights – by reference to the Committee on Economic, Social and Cultural Rights³¹⁵ – recognised the full application of the right to health to transgender individuals, stating that “*discrimination in access to health care and the underlying determinants of health, as well as means and entitlements for their procurement, on the grounds of gender identity*” is prohibited.³¹⁶ The Yogyakarta Principles similarly recognise the right of transgender individuals to “*the highest attainable standard of physical and mental health*”³¹⁷ and particularly emphasise states’ obligations to “[p]rovide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their [...] gender identity”.³¹⁸

³¹⁴ Article 25(1), UDHR: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”. Available at: <http://www.un.org/en/universal-declaration-human-rights/>.

³¹⁵ CESCR, *General Comment No. 14* (11 August 2000), para.18. Available at: <https://www.refworld.org/pdfid/4538838d0.pdf>.

³¹⁶ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights: Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (A/HRC/19/41)* (17 November 2011), para 54. Available at: <https://undocs.org/A/HRC/19/41>.

³¹⁷ *The Yogyakarta Principles*, Principle 17.

³¹⁸ *The Yogyakarta Principles*, Principle 9B.

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There are numerous examples of transgender individuals experiencing discrimination and a lack of access to healthcare. Many such experiences are fueled by the existence of criminalising laws. In Uganda, for example, a trans woman was denied access to medication while in police custody.³¹⁹

Trans and gender diverse people also experience discrimination in accessing healthcare services in non-criminalising countries. In a recent study in the US on transgender prisoners, detainees reported a lack of access to adequate mental healthcare, an increase in symptoms of mental illness during their imprisonment and disrupted access to hormone medication where they were unable to provide a prescription.³²⁰

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has emphasised the importance of adopting special measures to address the particular health needs of persons deprived of liberty belonging to vulnerable and high-risk groups, including transgender individuals.³²¹

Criminalisation also fuels the HIV epidemic in the trans community. It is reported, for example, that the criminalisation of transgender people in Malaysia obstructs efforts to address HIV by driving the community underground.³²² Following the 2016 International AIDS Conference in Durban, South Africa, a group of gay, bisexual, queer and other trans masculine people issued a call to action to claim a place in the global HIV response. The statement emphasised that “*structural, cultural and social devaluation and the criminalisation of trans lives are the primary drivers of HIV vulnerability in trans communities, and the primary obstacles to a robust response*”.³²³

319 See Case Study 6.

320 McCauley, Erin et al., *Exploring Healthcare Experiences for Incarcerated Individuals Who Identify as Transgender in a Southern Jail*, *Transgender Health*, Vol. 3.1 (1 February 2018), p.37-38. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5831751/pdf/trgh.2017.0046.pdf>.

321 UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/68/295)* (9 August 2013), paras 47 and 55. Available at: <https://undocs.org/A/68/295>.

322 See n.59 above, p.3.

323 *Transgender and MSM: Trans masculine people who have sex with men claiming our space in the global HIV response* (2016). Available at: <https://dahliadev.iranti.org.za/wp-content/uploads/2018/11/Transgender-AND-MSM.pdf>.

4.9 Other Socio-Economic Rights

Finally, the criminalisation of transgender and gender diverse people often leads to the deprivation of various other socio-economic rights including, for example, the right to employment (and just and favourable working conditions), housing and education. For example, in Guyana, transgender people have been denied promotions, employed at lower wages, and forced to perform tasks outside their job descriptions.³²⁴ In Malaysia, it has been reported that a woman who was arrested on the basis of laws prohibiting cross-dressing was fired when her manager saw a newspaper article documenting her arrest.³²⁵

Indeed, the societal stigma that is fuelled by the criminalisation of gender expression can have the effect of forcing transgender and gender diverse people out of their homes and communities and into street economies, further undermining the ability of those individuals to fully enjoy their socio-economic and other rights. In many countries around the world, the criminalisation and heightened stigmatisation of trans and gender diverse people means they have no genuine access to other basic social needs, such as education and housing. This forces a disproportionate number of trans people into sex work. The cycle is vicious: forced out of their homes and denied access to education and employment for being trans, they have little choice but to engage in underground economies and street life to survive, where they are further criminalised and endangered, and pushed further into the margins of society.

For example, it has been widely reported that transgender teenagers in Jamaica, forced from their homes following persecution, have been compelled to take up residence in storm drains and resort to sex work in order to survive.³²⁶ Trans people who have been forced to endure such circumstances have described it as “*like being in hell*”.³²⁷ In Singapore, which criminalises consensual same-sex intimacy between men under Section 377A of the Penal Code, being trans can often result in the breakdown of family ties, thereby disrupting education and leaving trans women with little alternative but to engage in sex work to earn a living.³²⁸

³²⁴ Columbia Law School Sexuality and Gender Law Clinic, *Documentation of Country Conditions Regarding the Treatment of Gay Men, Lesbians, Bisexuals, and Transgender Individuals In Guyana* (May 2017), para 9e. Available at: https://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/sgl_report_-_guyana_country_conditions_-_may_2017.pdf.

³²⁵ See n.59 above, p.31.

³²⁶ Rebekah Kebede, 'Jamaican LGBTQ youths escape persecution in city storm drains', Reuters, 1 March 2017. Available at: <https://www.reuters.com/article/us-jamaica-lgbt-homeless/jamaican-lgbtq-youths-escape-persecution-in-city-storm-drains-idUSKBN1685AY>.

³²⁷ Julia Felsenthal, 'Meet the Gully Queens, the Transgender Women Defying Jamaica's Culture of Homophobia', Vogue, 10 November 2016. Available at: <https://www.vogue.com/article/ray-blk-chill-out-video-premiere-gully-queens>.

³²⁸ Morganna Magee, 'Inside Singapore's Only Shelter For Homeless Transgender Women' Broadly, 13 December 2016. Available at: https://broadly.vice.com/en_us/article/f5e8ap/inside-singapores-only-shelter-for-homeless-transgender-women.

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4.10 Limitations on human rights

Notably, many human rights instruments include qualifying provisions that those hostile to trans people use to justify infringements of or limitations on their human rights, for example by reference to “morality”, “common interest”, “cultural values” and the “general welfare of the peoples in a democratic society”.

- “The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State ... The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest”. (Art 17(3) and Art 27(2), African Charter)
- “No restrictions shall be placed on the rights and freedoms recognized in the present Charter except where such is provided by law and deemed necessary to protect the national security and economy, public order, health or morals or the rights and freedoms of others”. (Article 4(a), Arab Charter)
- “The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society”. (General Principles, ASEAN Declaration)
- “Everyone has the right to freedom of thought and expression... The exercise of the right provided for... shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure... the protection of national security, public order, or public health or morals”. (Art 13, Inter-American Convention)
- “Everyone has the right to freedom of expression... The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for the protection of health or morals...” (Art 8, ECHR)
- “Everyone shall have the right to freedom of expression... The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary... for the protection of national security or of public order, or of public health or morals”. (Art 19, ICCPR)

As has been identified in Section 2.2 of this report, penal code provisions also make use of such language. The problematic nature of these provisions has been recognised by international and regional human rights mechanisms and by national courts. In a 2015 report, the Inter-American Commission on Human Rights noted that such provisions are “highly subjective” and open to “prejudiced interpretation of the vague concept of ‘public morals’”, recommending that member states “repeal legal provisions that penalize public conduct on the grounds of protecting vaguely defined concepts of ‘public morals’ and similar terms” as such provisions “have a disproportionate impact on LGBT persons”.³²⁹ The Caribbean Court of Justice articulated these concerns in its consideration of the criminalisation of so called ‘cross-dressing’ under Section 153(1)(xlvii) of Guyana’s Summary Jurisdiction (Offences) Act (see Case Study 1), asserting that penal code provisions “should not be stated in ways that allow law enforcement officials to use subjective moral or value judgments as the basis for its enforcement. A law should not encourage arbitrary and discriminatory enforcement”.³³⁰

Such concerns are echoed at the national level by courts tasked with considering the constitutionality of these provisions. The Supreme Court of Belize has emphasised that, where “public morality” laws exist, it is erroneous as a matter of legal principle to treat the term as synonymous with “public opinion”, stating that: “the Court cannot act upon prevailing majority views or what is popularly accepted as moral. [...] There must be demonstrated that some harm will be caused should the proscribed conduct be rendered unregulated”.³³¹ Similarly, the Supreme Court of the Philippines has found that “moral disapproval of an unpopular minority... is not a legitimate state interest sufficient to provide any rational basis for review”.³³² The Constitutional Court of South Africa has emphasised that religious or moral objections in relation to LGBT people “however honestly and sincerely held, cannot influence what the Constitution dictates in regard to discrimination on the grounds of sexual orientation”.³³³ The Indian Supreme Court’s judgment in *Navtej Singh Johar & Ors. v. Union of India* also emphasised that “[t]he veil of social morality cannot be used to violate fundamental rights of even a single individual”.³³⁴

³²⁹ Inter-American Commission on Human Rights, *Violence against LGBTI Persons (OAS/Ser.L/V/II.rev.1 Doc. 36)* (12 November 2015), paras 6, 7 and 95. Available at: <http://www.oas.org/en/iachr/reports/pdfs/violenceagainstlgbtipersons.pdf>.

³³⁰ See n.278 above, para. 80.

³³¹ See n.292 above, para. 81.

³³² *Ang Ladlad v. Commission on Elections*, Supreme Court of the Philippines (8 April 2010), paras 13-14. Available at: <https://www.icj.org/wp-content/uploads/2010/04/Ang-Ladlad-v.-Commission-on-Elections-Supreme-Court-of-the-Philippines.pdf>.

³³³ See n.290 above, para. 38 per Ackermann J.

³³⁴ See n.300 above, para. 253(v) per Misra C.J.

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5. Research and data collection

Much of the global discourse on LGBT criminalisation focuses on the criminalisation of cisgender LGB individuals, and predominantly on gay men. This report demonstrates how critical it is that consideration be given to the criminalisation and persecution of transgender and gender diverse people – both as a separate and distinct issue, and as part of any wider advocacy to decriminalise LGBT people.

There are a number of reasons why trans and gender diverse peoples' experiences in particular are not integrated into legal interventions on criminalisation. These include a lack of research and analysis on the criminalisation of trans people specifically, and the relative absence of trans activists in organisations and spaces focusing on decriminalisation.

Further, where there is research or disaggregated data on the criminalisation and persecution of the transgender and gender diverse community, this commonly focuses on the experiences of trans women. In his May 2018 report, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IESOGI) highlighted that, “*information currently available suggests that trans men and other trans-masculine persons tend to be less visible in reports and data than lesbians, gays or trans women*”. He further observed that whilst trans men are less visible in everyday life and therefore less subject to public violence, they are nevertheless “*victims of severe violence in the family, in the health sector and school bullying*”.³³⁵ Accordingly, significant effort is needed to develop and implement research methodologies to uncover, analyse and report on the specific forms of abuse, discrimination and violence faced by trans men globally, including those experienced in the private sphere.

5.1 Research limitations

Certain limitations were experienced while conducting research for this report. The majority of the information in this report was obtained through desk-based research and consultations with international and national trans activists and experts. Desk research enabled the identification of criminal codes and other legislation which disproportionately impacts upon the lives of trans people. Where possible, the research also took into account dual legal systems where both secular and religious or customary laws are in place. Religious and customary laws are inherently harder to identify due to language differences and the fact that they are often not published and accessible. Clear evidence of enforcement of such religious and customary laws is sparse and reliant on public reporting, which may be extremely limited. As such, trans activists in the relevant country are best placed to identify where these laws and practices are being enforced against trans people.

³³⁵ UN Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/38/43)* (11 May 2018), para 42. Available at: <https://undocs.org/A/HRC/38/43>.

Similarly, evidence relating to the enforcement of statutory laws that target transgender or gender diverse people is not always readily accessible. It is important to note, however, that a lack of evidence of enforcement should not be mistaken as evidence of non-enforcement.

As noted above, research into the experiences of trans and gender diverse people is often not disaggregated from broader research focusing on the experiences of LGBT people as a whole. Gay and bisexual cisgender men, and to a lesser degree lesbian and bisexual cisgender women, are often more visible to researchers and information gathered can therefore become skewed towards the experiences of cisgender members of the LGBT community.³³⁶ Until recently, general and topical population surveys have not made provision for a trans-inclusive measure of sex and gender, only making available the options ‘male’ and ‘female’ based on the person’s assigned sex at birth.³³⁷ As such, the particular lived experiences of trans and gender diverse people, and the unique legal challenges they face, remain relatively unacknowledged and unexplored.

The criminalisation of trans and gender diverse people globally contributes to the lack of data on their experiences in education, employment, housing and health. In regard to health, the African Commission on Human and Peoples’ Rights notably found that whilst transgender women are amongst the most vulnerable groups in relation to HIV, *“in Africa, there is limited information on the impact of HIV on transgender women and men; for the most part, they are an invisible population in responses to the HIV epidemic”*.³³⁸

It is also important to note that data collection itself can place transgender and gender diverse people at great personal risk. For transgender activists, who are already targets because of their identity, seeking to record data about human rights abuses and trans experiences can be deadly. In 2015, Argentinian transgender activist Diana Sacayán was murdered in her home in Buenos Aires.³³⁹ In 2016, LGBT community leader Hande Kader was brutally murdered in Turkey, having been raped and tortured by a gang. She had been at the forefront of the resistance against the draconian measures of the Turkish police force at Istanbul Pride in 2015. Her death resulted in numerous gatherings and protests in Turkey to improve laws to protect LGBT people.³⁴⁰ Such hostile and dangerous conditions for transgender human rights defenders limits the ability of civil

336 Brian Kritz, ‘The Global Transgender Population and the International Criminal Court’, *Yale Human Rights and Development Law Journal* (2014), Vol 17, 1, 2. Available at: <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1120&context=yhrdlj>.

337 Greta Bauer, Jessica Braimoh, Ayden Scheim and Chistoffer Dharma, ‘Transgender-inclusive measures of sex/gender for population surveys: Mixed methods evaluation and recommendations’, *PLOS ONE* (2015) Vol 12(5). Available at: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0178043>.

338 ACHPR, *HIV, The Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses* (Report, 2016), p.89. Available at: http://www.unaids.org/sites/default/files/media_asset/HIV_Law_AfricanHumanRightsSystem_en.pdf.

339 BBC, ‘Argentina transgender killings spark outcry’, 15 October 2015. Available at: <https://www.bbc.co.uk/news/world-latin-america-34538052>.

340 Elif Shafak, ‘The shocking murder of trans activist Hande Kader says much about Turkey today’, *The Guardian*, 23 August 2016. Available at: <https://www.theguardian.com/commentisfree/2016/aug/23/murder-transgender-lgbt-hande-kader-turkey>.

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society to monitor rights violations effectively. Consequently, it is important to note that where this report has not identified the existence of laws used to criminalise trans people, it does not mean that these laws do not exist. Equally, where no evidence of enforcement has been found, this may be a result of a lack of civil society resources and capacity to provide such evidence.

5.2 Underreporting

In addition to the lack of data focusing on the particular experiences of transgender and gender diverse people under criminal law, underreporting of instances of harassment, violence, arrest and prosecution may occur for a multitude of reasons, not least because of fear of reprisals, victimisation or being “outed”.³⁴¹

In countries that criminalise transgender and gender diverse people, it is very unlikely that victims will report abuse to the authorities. Such reluctance is in part attributable to the fact that those perpetrating such abuse are often law enforcement officials. Criminalisation also creates a climate in which trans people are unlikely to avail themselves of the protection of the law and seek redress, for fear that they will be arrested and detained themselves.

5.3 Barriers to access and lack of recognition

In much of the world, transgender and gender diverse people face structural barriers to participation in advocacy, law reform and social and religious institutions at both the domestic and international level, which are predominantly controlled by cisgender people. The factors contributing to this under-representation are complex and multi-layered but are both a product of, and a contributing factor to, trans people’s social and economic vulnerability.

Additionally, the lack of recognition of transgender and gender diverse people as a specific group and lack of access to accurate personal identification documents that reflect their gender identity create difficulties in precisely determining the scale of human rights violations they face. Misgendering in reporting and in the media means that the gender identity of the person involved in arrests or prosecutions can be inaccurate. Further, if a trans or gender diverse person’s gender is not legally recognised in official documentation, legal proceedings and health records, and instead they are listed as their sex assigned at birth, their experiences as a trans person will be rendered entirely invisible in any relevant data.

³⁴¹ UN Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/38/43)* (11 May 2018), para 64. Available at: <https://undocs.org/A/HRC/38/43>.

6. Conclusion

Globally, transgender and gender diverse people are adversely impacted by a complex variety of laws which, by their existence and/or application, criminalise their gender identity and expression. Such laws are often used in conjunction with one another not only to arrest and detain trans people, but to stigmatise, harass and degrade them and to deny them any recourse to justice when they are subjected to violence and abuse. Statutory, customary and religious laws are used in multifaceted ways to control and punish people who are perceived to challenge or undermine majoritarian concepts of gender, gender identity, gender expression and sexual orientation. This is a phenomenon that exists across all regions. From the criminalisation of gender expression through so-called “cross-dressing”, “impersonation” and “disguise” offences, to restricting the ability of trans people to live their daily lives through the use of public order offences, these harmful laws violate the most basic notions of human dignity and are in clear violation of international human rights standards.

Most concerning is the widespread evidence that law enforcement officers operate entirely outside of the law, harassing, assaulting and arbitrarily detaining trans and gender diverse people with impunity. Such abuse is not an anomaly within a particular region, but is widespread and systematic, even in states with established legal protections for trans and gender diverse people. States must take robust steps to end this ubiquitous, unwarranted abuse by law enforcement officials in addition to removing the various criminalising laws which foster and enable it.

This report has sought to contribute to filling a gap within existing legal and judicial analyses and narratives about the impact of criminalisation on LGBT people, by addressing the unique forms of criminalisation and persecution of trans and gender diverse people worldwide. Whilst it identifies some of the statutory, customary and religious laws that are specifically utilised to limit the rights and freedoms of trans people, it does not purport to be comprehensive. It does, however, provide a sense of the pernicious and far-reaching impact of these laws.

Human rights violations against LGBT people globally occur in differing ways, and legal responses to address such violations should be inclusive, recognising the unique forms of persecution experienced by trans and gender diverse people.

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Criminal laws targeting trans and gender diverse people are a tool of oppression and serve to perpetuate societal prejudice against this group. Such prejudice in turn fuels harassment, discrimination and violence. It is critical that such laws are repealed or amended explicitly to remove trans identity and expression from their criminalising scope. It is crucial to also recognise that there are numerous factors, beyond criminalisation – not least rigid societal norms and stereotypes relating to gender and sexuality – which must be addressed before equal rights and legal protections for trans and gender diverse people can be realised. Accordingly, any decriminalisation efforts must be combined with the introduction of legal recognition and robust protections against discrimination and violence, as well as efforts to transform political and public attitudes and prejudices.

Annex 1: Table of relevant criminal legislation by country

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Afghanistan		<p>Penal Code 1976³⁴²</p> <p>Book 1: General Provisions Section 4: Punishment Chapter 6: General Aggravating Conditions Article 153 <i>“Crimes which are mentioned together in one paragraph of the following paragraphs are considered similar:</i> 1- Embezzlement, larceny, trickery and fraud, threat, dishonesty in trust, usurpation of goods and documents and hiding article obtained through these crimes or taking possessions of the said article illegitimately; 2- Defamation, insult, abuse and divulgence of secret; 3- Crimes against public manners and good morals; 4- Murder and intentional molestation; 5- Other intentional crimes which have been described under the same section in this Law”.</p> <p>Book 2: Felonies, Misdemeanours, Petty Offences and their Punishments Section 3: Petty Offences Chapter 5: Petty Offence Pertaining to Public Manners Article 512 <i>“A person watching-by in a way repugnant to public manners, shall be imprisoned for a period not exceeding 10 days, or shall be fined an amount not exceeding 100 Afghanis”.</i></p>	<p>Penal Code 1976</p> <p>Book 2: Felonies, Misdemeanours, Petty Offences, and their Punishments Section 2: Felonies and Misdemeanours against Individuals Chapter 8: Adultery, Pederasty, and Violations of Honour</p> <p>Article 427 <i>“(1) A person who commits adultery or pederasty shall be sentenced to long imprisonment.</i> <i>(2) In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions:</i> a) In the case where the person against whom the crime has been committed is not yet eighteen years old”.</p> <p>Pederasty may be interpreted as including sodomy.</p>
Algeria		<p>Penal Code 1966³⁴³</p> <p>Article 333 <i>“any outrage of public decency will be punished with two months to two years imprisonment and a fine of 500-2,000 dinars”.</i></p>	<p>Penal Code 1966</p> <p>Article 338 <i>“Any person who commits an act of homosexuality against a person of the same sex shall be punished with imprisonment from two months to two years and a fine of 500 to 2,000 dinars”.</i></p> <p>Article 333 (modified) [in 1982] <i>“When the indecent exposure consisted of an act against nature with an individual of the same sex, the penalty is imprisonment for six months to three years and a fine of 1,000 to 10,000 dinars”.</i>³⁴⁴</p>

³⁴² Afghanistan Penal Code 1976. Available at: https://www.unodc.org/res/cld/document/penal-code-amended_html/PENAL_CODE_with_Amendments.pdf.

³⁴³ Penal Code (Ordinance 66-156 of 8 June 1966). Available at: <http://www.refugeelawaidinformation.org/algeria-lgbi-resources>.

³⁴⁴ ILGA, *State-Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition* (12th edition, May 2017), p.81. Available at: https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Antigua and Barbuda			<p>Sexual Offences Act 1995³⁴⁵</p> <p>Article 12, Buggery “(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment— (a) for life, if committed by an adult on a minor; (b) for fifteen years, if committed by an adult on another adult; (c) for five years, if committed by a minor.</p> <p>(2) In this section “buggery” means sexual intercourse per anum by a male person with a male person or by a male person with a female person”.</p> <p>Article 15, Serious indecency “(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— (a) for ten years, if committed on or towards a minor under sixteen years of age; (b) for five years, if committed on or towards a person of sixteen years of age or more,</p> <p>(2) Subsection (1) does not apply to an act of serious indecency committed in private between— (a) a husband and his wife; or (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 genital organ for the purpose of arousing or gratifying sexual desire”.</p>
Azerbaijan		<p>Criminal Code 2006³⁴⁶</p> <p>Article 221, Hooliganism “221.1 Hooliganism, that is the deliberate actions roughly breaking a social order, expressing obvious disrespect for a society, accompanying with application of violence on citizens or threat of its application, as well as destruction or damage of another’s property is punished by public works for the term from hundred sixty up to two hundred, or corrective works for the term up to one year, or imprisonment for the term up to one year”.</p>	

³⁴⁵ The Sexual Offences Act 1995. Available at: <http://www.easterncaribbeanlaw.com/wp-content/uploads/2014/08/Sexual-Offences-Act-a1995-9.pdf>.

³⁴⁶ Criminal Code of the Republic of Azerbaijan 2006. Available at: <http://www.worldlii.org/cgi-bin/sinodisp/az/legis/laws/ccotroa2006317/ccotroa2006317.html?query=Criminal%20Code%20of%20the%20Republic%20of%20Azerbaijan>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Azerbaijan (cont.)		<p>221.2 <i>The same act:</i></p> <p>221.2.1. <i>committed by group of persons or repeatedly;</i></p> <p>221.2.2. <i>committed with resistance to representative of the authority, acting as on protection of a social order or stopping infringement of a social order or with resistance to other person,</i></p> <p><i>is punished by corrective works for the term up to two years or imprisonment for the term up to five years.</i></p> <p>221.3. <i>The hooliganism committed with application of a weapon or subjects, used as the weapon is punished by imprisonment for the term from three up to seven years”.</i></p>	
Bahrain		<p>Penal Code 1976³⁴⁷</p> <p>Article 329 <i>“Every person who solicits another in a public place to do acts of immorality or prostitution shall be liable for imprisonment for a period not exceeding two years”.</i></p>	
Bangladesh		<p>Code of Criminal Procedure 1898³⁴⁸</p> <p>Article 54 <i>“Any police-officer may, without an order from Magistrate and without a warrant, arrest- firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned”.</i></p>	<p>Penal Code 1860³⁴⁹</p> <p>Section 377, Unnatural Offences <i>“Whoever voluntary has carnal intercourse against the order of nature with man, woman, or animal, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine”.</i></p>
Barbados			<p>Sexual Offence Act 1992³⁵⁰</p> <p>Section 9, Buggery <i>“Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life”.</i></p>

³⁴⁷ Bahrain Penal Code 1976. Available at: https://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf.

³⁴⁸ Code of Criminal Procedure 1898. Available at: http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75§ions_id=14518.

³⁴⁹ Penal Code (Act No. XLV of 1860). Available at: <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46812525.pdf>.

³⁵⁰ Barbados Sexual Offences Act 1992. Available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/lgbti2.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Barbados (cont.)			<p>Section 12, Serious indecency “(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. (2) A person who commits an act of serious indecency with or towards a child under the age of 16 or incites the child under that age to such an act with him or another is guilty of an offence and is liable on conviction to imprisonment for a term of 15 years. (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>
Bhutan			<p>Penal Code 2004³⁵¹ Chapter 14: Sexual Offences</p> <p>Section 213, Unnatural sex “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”.</p> <p>Section 214, Grading of Unnatural sex “The offence of unnatural sex shall be a petty misdemeanour”.</p> <p>Chapter 2: Classification of crimes</p> <p>Section 3, Classes of crime “For the purpose of this Penal Code, the classes of crimes shall be as follows: [...] (c) A crime shall be a petty misdemeanour, if it is so designated in this Penal Code or other laws and provides for a maximum term of imprisonment of less than one year and a minimum term of one month for the convicted defendant”.</p>

³⁵¹ Penal Code of Bhutan 2004. Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/bt/bt019en.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Botswana		<p>Penal Code (as amended up to 2005)³⁵²</p> <p>Sections 176, Common nuisance <i>“Any person who does an act not authorised by law or omits to discharge a legal duty thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercised of common rights, commits the offence termed a common nuisance and is liable to imprisonment for a term not exceeding one year”.</i></p> <p>Section 179, Idle and disorderly persons <i>“Any person who [...] (b) wanders or places himself in any public place for the purpose of begging or gathering alms, or causes or procures or engages any child to do so; [...] (d) publicly conducts himself in a manner likely to cause a breach of the peace; (e) without lawful excuse does any indecent act; (f) in any public place solicits immoral purposes is guilty of an offence and liable to a fine not exceeding P10 or to imprisonment for a term not exceeding one month”.</i></p> <p>Section 182, Rogues and vagabonds <i>“A person who [...] (c) is found in or about any premises or in any road or highway or any place adjacent thereto or in any public place, for any unlawful purpose shall be guilty of an offence and shall be liable on a first conviction thereof to imprisonment for a term not exceeding three months”.</i></p>	<p>Penal Code (as amended up to 2005)</p> <p>Section 164, Unnatural offences <i>“Any person who; (a) has carnal knowledge of any person against the order of nature; (b) has carnal knowledge of any animal; or (c) permits any other person to have carnal knowledge of him or her against the order of nature, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years”.</i></p> <p>Section 165, Attempts to commit unnatural offence <i>“Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment for a term not exceeding five years”.</i></p>

³⁵² Botswana Penal Code (Law No. 2 of 1964, as amended up to Act No. 14 of 2005). Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/bw/bw012en.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Brunei	<p>Syariah Penal Code Order 2013³⁵³</p> <p>Section 198 “(1) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable excuse is guilty of an offence and shall be liable on conviction to a fine not exceeding B\$1,000, imprisonment for a term not exceeding 3 months or both. (2) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place for immoral purposes is guilty of an offence and shall be liable on conviction to a fine not exceeding B\$4,000, imprisonment for a term not exceeding one year or both”.</p>	<p>Syariah Penal Code Order 2013</p> <p>Section 197(1) “Any person who commits an act of indecent behaviour in a public place is guilty of an offence and shall be liable on conviction to a fine not exceeding B\$2,000, imprisonment or a term exceeding 6 months or both”.</p>	<p>Penal Code (Revised edition 2016)³⁵⁴</p> <p>Section 377, Unnatural offences “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for a term not exceeding 10 years and fine”.</p> <p>Syariah Penal Code Order 2013</p> <p>Section 82 “(1) Any person who commits liwat is guilty of an offence and shall be liable on conviction to the same punishment as provided for the offence of zina [see section 69]. (2) For the purposes of this Order, “liwat” means sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature that is through the anus”. [see also ‘Attempt to commit liwat’ under s.84]</p> <p>Section 92 “(1) Any Muslim woman who commits musahaqah is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or combination of any two of the punishment. (2) Any non-Muslim woman who commits musahaqah with a Muslim woman is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000 [approx. £22,650], imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or a combination of any two of the punishment. (3) In this section, “musahaqah” means any physical activities between a woman and another woman which would amount to sexual acts if it is done between a man and a woman, other than penetration.”</p>

³⁵³ Syariah Penal Code Order 2013. Available at: http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/s069.pdf.

³⁵⁴ Brunei Penal Code (No. 16, Cap. 22 of 1951, as amended) (Revised edition 2016). Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/78238/83493/F1602044948/BRN78238%202016%20Edition.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Burkina Faso		<p>Penal Code 1996³⁵⁵</p> <p>Article 410 <i>“Anyone who commits a public outrage to modesty can be punished by imprisonment from two months to two years and a fine of 50,000 to 600,000 francs.</i></p> <p><i>1. Any intentional act contrary to morality committed publicly or in a private place accessible to the public, which is likely to offend the modesty and the moral sense of the people who are the involuntary witnesses is a public outrage to modesty.</i></p> <p><i>2. However, such an act committed privately in the presence of a minor constitutes a crime of excitement of minor to debauchery”.</i></p>	
Burundi			<p>Law No. 1/05 of 22 April 2009 on the Revision of the Criminal Code³⁵⁶</p> <p>Article 567 <i>“Whoever has sexual relations with someone of the same sex shall be punished with imprisonment for three months to two years and a fine of fifty thousand to one hundred thousand francs or one of those penalties”.</i></p>
Cambodia		<p>The Village and Commune Safety Policy is used “to simply suppress and control the population”, “authorizes the police to scrutinize their fellow Cambodians and round up people pre-emptively. This includes LGBTQI people sitting inconspicuously in parks, and those presumed by the police to be gang members and sex workers”.³⁵⁷</p>	
Cameroon			<p>Criminal Code³⁵⁸</p> <p>Article 347-1 bis <i>“Whoever has sexual relations with a person of the same sex shall be punished with imprisonment for six months to five years and a fine of 20,000 to 200,000 Francs CFA”.</i></p>

³⁵⁵ Burkina Faso Penal Code 1996 – translated from the original text. Available (in French) at: <https://www.refworld.org/docid/3ae6b5cc0.html>.

³⁵⁶ Law No. 1/05 of 22 April 2009 on the Revision of the Criminal Code – translated from the original text. Available (in French) at: <https://wipo.lex.wipo.int/en/text/491098>.

³⁵⁷ UNDP & USAID, *Being LGBTQI in Asia: Cambodia Country Report* (2014), p.31. Available at: http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-cambodia-country-report.pdf.

³⁵⁸ Republic of Cameroon Law No. 2016/007 of 12 July 2016 relating to the Penal Code – translated from the original text. Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/cm/cm014en.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Chad			<p>Penal Code 2017, Chapter 2: Offence against modesty³⁵⁹</p> <p>Section 354</p> <p><i>“Anyone who has sexual relations with persons of the same sex is liable to imprisonment for three months to two years and a fine of between 50,000 and 500,000 francs.”</i></p>
Comoros			<p>Penal Code 1981³⁶⁰</p> <p>Article 318</p> <p><i>“(3) 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 50 000 to 1 000 000 francs. If the act was committed with a minor, the maximum penalty will always be applied”.</i></p>
Cook Islands		<p>Crimes Act 1969³⁶¹</p> <p>Article 136, Indecent act in public place</p> <p><i>“(1) Everyone is liable to imprisonment for a term not exceeding two years who wilfully does any indecent act in any place to which the public have or are permitted to have access, or within view of any such place”.</i></p>	<p>Crimes Act 1969</p> <p>Section 154, Indecency between males</p> <p><i>“(1) Everyone is liable to imprisonment for a term not exceeding five years who, being a male-</i></p> <p><i>(a) Indecently assaults any other male; or</i></p> <p><i>(b) Does any indecent act with or upon any other male; or</i></p> <p><i>(c) Induces or permits any other male to do any indecent act with or upon him.</i></p> <p><i>(2) No boy under the age of fifteen years shall be charged with committing or being a party to an offence against paragraph (b) or paragraph (c) of subsection (1) of this section, unless the other male was under the age of twenty-one years.</i></p> <p><i>(3) It is not defence to a charge under this section that the other party consented”.</i></p>

³⁵⁹ Chad Code Pénal 2017 (Loi n°2017-01 du 8 mai 2017). Translated from the original French. Available at: <https://www.droit-afrique.com/uploads/Tchad-Code-penal-2017.pdf>.

³⁶⁰ Islamic Federal Republic of the Comoros, Federal Assembly Act No. -082 P/A F- Act 95/012 on the Penal Code. Available at: <http://www.icla.up.ac.za/images/un/use-of-force/afrika/Comoros/ Penal%20Code%20Comoros%201981.pdf>.

³⁶¹ Crimes Act 1969. Available at: https://www.unodc.org/res/cld/document/cok/1970/crimes_act_1969_html/Cook_Islands_Crimes_Act_1969.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Cook Islands (cont.)			<p>Section 155, Sodomy “(1) Everyone who commits sodomy is liable- (a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding fourteen years; (b) Where the act of sodomy is committed on a male, and at the time of the act that male is under the age of fifteen years and the offender is of over the age of twenty-one years, to imprisonment for a term not exceeding fourteen years; (c) In any other case, to imprisonment for a term not exceeding seven years. (2) This offence is complete upon penetration. (3) Where sodomy is committed on any person under the age of fifteen years he shall not be charged with being a party to that offence, but he may be charged with being a party to an offence against section 154 of this Act in say case to which that section is applicable. (4) It is no defence to a charge under this section that the other party consented”.</p>
Costa Rica		<p>Penal Code³⁶²</p> <p>Title II Crimes Against Good Customs</p> <p>Article 392, Words or Obscene Acts “A fine of five to thirty days will be imposed: [...] 3) A person who, in a public place or in a private place exposed to the eyes of others, utters obscene words or executes acts, gestures, attitudes or improper or dishonest exhibitions”.</p>	

³⁶² Penal Code – translated from the original text. Available at: http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=5027.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Cuba		<p>Penal Code³⁶³</p> <p>Article 303 <i>“A punishment of deprivation of freedom for a period of from three months to one year or a fine of one hundred to three hundred quotas shall be imposed on whosoever:</i></p> <p><i>a) harasses another individual with sexual requirements;</i></p> <p><i>b) offends modesty or good manners with exhibitions or obscene acts;</i></p> <p><i>c) produces or circulates publications, prints, cinematographic recordings or tape recordings, photographs or other objects that are obscene, tending to pervert or degrade customs”.</i></p>	
Côte d’Ivoire		<p>Penal Code³⁶⁴</p> <p>Article 360 <i>“Any person who commits an act of outrage to public decency shall be punished by a term of imprisonment of three months to two years and a fine of 50,000 to 500,000 francs.</i></p> <p><i>If the act of outrage to public decency involves an improper or unnatural act with a person of the same sex or unnatural act with a person of the same sex, the term of imprisonment is from six months to two years, and the fine shall be 50,000 to 300,000 francs”.</i></p>	
Democratic Republic of Congo		<p>Penal Code 1940³⁶⁵</p> <p>Article 176 <i>“A person who engages in activities against public decency will be liable to a term of imprisonment of eight days to three years and/or fined twenty-five to one thousand zaires [former currency]”.</i></p>	

³⁶³ Penal Code (Law No. 62 of December 29, 1987, as amended by Law No. 97 of February 16, 1999) – translated from the original text. Available at: <https://wipo.lex.wipo.int/en/text/492002>.

³⁶⁴ Penal Code 1981 (as amended by Act No. 1995-522 of 6 July 1995) – translated from the original text. Available at: <http://www.refworld.org/docid/568e2ee74.html>; see also Human Rights Committee, Concluding observations on the initial report of Côte d’Ivoire (CCPR/C/CIV/CO/1) (28 April 2015), para. 8. Available at: <http://undocs.org/en/CCPR/C/CIV/CO/1>.

³⁶⁵ Penal Code (Decree of 30 January 1940) – translated from the original text. Available at: <http://www.refworld.org/docid/53733c254.html>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Dominica			<p>Sexual Offences Act 1998³⁶⁶, as amended by the Sexual Offences (Amendment) Act 2016³⁶⁷</p> <p>Section 14, Gross Indecency “(1) Any person who commits an act of gross indecency with another person is guilty of an offence and liable on conviction to imprisonment— (a) if the complainant is a person sixteen years of age or more, for twelve years; [...] (2) Subsection (1) does not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent. [...] (4) In this section “gross indecency” means – (a) an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs, breasts or anus for the purpose of arousing or gratifying sexual desire [...]</p> <p>Section 16, Buggery “(1) A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for— [...] (b) ten years, if committed by an adult on another adult; [...] (2) Any person who attempts to commit the offence of buggery [...] is guilty of an offence and liable to imprisonment for four years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to the psychiatric hospital for treatment. (3) In this section “buggery” means sexual intercourse per anum by a male person with a male person or by a male person with a female person”.</p>

³⁶⁶ Sexual Offences Act 1998. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=49696&p_country=DMA&p_count=208&p_classification=01.04&p_classcount=25.

³⁶⁷ Sexual Offences (Amendment) Act 2016. Available at: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/104938/128169/F-151352353/DMA104938.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
El Salvador		<p>Penal Code³⁶⁸ Second Book Title IV Offenses Against Sexual Freedom. Chapter III Other Attacks on Sexual Freedom.</p> <p>Article 171, Obscene Exhibitions <i>“A person who exhibits or has exhibited other acts of lewdness or of obscene or indecorous exhibition, in a public place or a place that is exposed to the public or before minors under the age of eighteen years old or before persons with mental disabilities, will be punished with imprisonment of two to four years”.</i></p> <p>Penalties Third Book Title II Chapter IV Faults Related to The Family, Good Customs and Public Decorum.</p> <p>Article 392 <i>“A penalty of ten to thirty days will be imposed on: [...] 2) a person who in a public place or who is exposed to the sight of others offends public decency by means of obscene words, gestures, attitudes, signs or songs;”</i></p>	
Egypt		<p>Penal Code 1937³⁶⁹</p> <p>Article 269 bis, Incitement to Indecency <i>“Whoever is found on a public road or a traveled and frequented place inciting the passersby with signals or words to commit indecency shall be punished with imprisonment for a period not exceeding one month. If the felon recurs to committing this crime within one year of the first crime, the penalty shall become imprisonment for a period not exceeding six months and a fine not exceeding fifty pounds. A ruling of conviction shall necessitate placing the convict under police supervision for a period equal to that of the penalty”.</i></p> <p>Article 278, Scandalous act <i>“Whoever commits in public a scandalous act against shame shall be punished with detention for a period not exceeding one year or a fine not exceeding three hundred pounds”.</i></p>	<p>Prevention of Prostitution Act (No. 10 of 1961)³⁷⁰</p> <p>Article 9(c) <i>“Anyone who habitually engages in debauchery or prostitution is liable to a penalty of three months to three years’ imprisonment and/or a fine of LE 25300”.</i></p>

³⁶⁸ Penal Code of El Salvador (Decree No. 1030) – translated from the original text. Available (in Spanish) at: https://www.oas.org/dil/esp/Codigo_Penal_El_Salvador.pdf.

³⁶⁹ Penal Code (Law No. 58 of 1937). Available at: <http://hrlibrary.umn.edu/research/Egypt/criminal-code.pdf>.

³⁷⁰ Combating of Prostitution Act (No. 10 of 1961) – unofficial English translation. Available at: <http://www.refworld.org/docid/5492d8784.html>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Eritrea		<p>Penal Code 2015³⁷¹</p> <p>Article 312, Public Indecency “(1) A person who, in a public place or in sight of the public, performs [a] sexual act or any other indecent act or gesture grossly offensive to decency or morals, is guilty of public indecency, a Class 2 petty offence, punishable with a definite term of imprisonment of not less than 1 month and not more than 6 months, or a fine of 5,001 – 20,000 Nakfas, to be set in intervals of 1,000 Nakfas.”</p>	<p>Penal Code 2015</p> <p>Article 310, Homosexual Conduct “(1) A person who performs with a person of the same sex an act corresponding to the sexual act, or any other indecent sexual act, is guilty of homosexual conduct, a Class 7 serious offence, punishable with a definite term of imprisonment of not less than 5 year and not more than 7 years”.</p>
Ethiopia		<p>Criminal Code 2004³⁷²</p> <p>Title IV: Crimes against Morals and the Family Chapter I: Crimes against Morals Section IV: Crimes tending to Corrupt Morals</p> <p>Article 639, Public Indecency and Outrages against Morals “Whoever, in a public place or in sight of the public, deliberately performs [a] sexual act or any other obscene act or gesture grossly offensive to decency or morals, is punishable with simple imprisonment from three months to one year, or fine not exceeding one thousand Birr”.</p>	<p>Criminal Code 2004</p> <p>Title IV: Crimes against Morals and the Family Chapter I: Crimes against Morals Section II: Sexual Deviations</p> <p>Article 629, Homosexual and other Indecent Acts “Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment”.</p>
Fiji		<p>Penal Code 1945 amended 1978³⁷³</p> <p>Article 188 “(1) Any person who: [...] (e) publicly exhibits any indecent show or performance tending to corrupt morals, is guilty of a misdemeanour, and is liable to imprisonment for two years or to a fine of two hundred dollars”.</p>	

³⁷¹ Penal Code 2015. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101051/121587/F567697075/ERI101051%20Eng.pdf>.

³⁷² Criminal Code (Proclamation No, 414/2004). Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf>.

³⁷³ Penal Code 1945 (as amended). Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/77674/82549/F743212285/FJI.77674.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Gabon		<p>Penal Code 1963³⁷⁴</p> <p>Article 260 “Anyone who: (1) has the demeanour/attitude in a public area that is likely to provoke debauchery; (2) by gestures, words, writings or by any other means publicly proceeds to solicit persons of either sex, with a view to provoking debauchery; shall be punished with 3 months to one year imprisonment and a fine of 25,000 to 240,000 francs”.³⁷⁵</p>	
The Gambia	<p>Criminal Code of The Gambia 1965³⁷⁶ (as amended in 2014³⁷⁷)</p> <p>Section 167, Rogues and vagabond provides that any male person who “dresses or is attired in the fashion of a woman” in a public place shall be deemed a “rogue and vagabond”, guilty of a misdemeanour and subject to up to five year’s imprisonment, a fine of D20,000, or both”</p>	<p>Criminal Code of The Gambia 1965 (as amended)</p> <p>Section 166, Idle and disorderly persons provides inter alia that “every person who in any public place conducts himself in a manner likely to cause a breach of the peace” and “every person who publicly without lawful excuse does any indecent act [...] shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one month or to a fine not exceeding two pounds or to both”.</p>	<p>Criminal Code of The Gambia 1965 (as amended in 2005)</p> <p>Article 144, Unnatural Offences “(1) Any person who— (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits any person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for a term of 14 years. (2) In this section- “carnal knowledge of any person against the order of nature” includes- (a) carnal knowledge of the person through the anus or the mouth of the person; (b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and (c) committing any other homosexual act with the person”.</p>

³⁷⁴ Gabonese Republic Penal Code (Law No. 21/63 of 31 May 1963 as amended) – translated from the original text. Available (in French) at: <http://www.droit-afrique.com/upload/doc/gabon/Gabon-Code-1963-penal.pdf>.

³⁷⁵ Code Pénal (complété par la loi n° 18/84 du 29 décembre 1984) – translated from the original text. Available at: http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_13_en.pdf.

³⁷⁶ Criminal Code of The Gambia. Available at: https://www.ilo.org/dyn/natlex/docs/SERIAL/75289/107490/F973061365/GMB75289%20pp%201284_1316.pdf.

³⁷⁷ Finnish Immigration Service, *Status of LGBTI People in Cameroon, Gambia, Ghana and Uganda* (2015), p.38. Available at: https://migi.fi/documents/5202425/5914056/64429_Status_of_LGBTI_people_in_Cameroon_Gambia_Ghana_and_Uganda_3.12.2015.pdf/678747c6-1b6f-477a-be13-984a62908e47; The Point, *Criminal Code Act amended 'to reflect political realities'*, 17 April 2013. Available at: <http://thepoint.gm/africa/gambia/article/criminal-code-act-amended-to-reflect-political-realities>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
The Gambia (cont.)			<p>Article 147 (1) <i>‘Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.</i></p> <p>Article 147(2) <i>“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. Section 147(3) further specifies that act of indecency includes any homosexual act”.</i></p> <p>Criminal Code (Amendment) Act, 2014³⁷⁸</p> <p>144A, Aggravated homosexuality <i>“(1) A person commits the offence of aggravated homosexuality where the –</i> <i>(a) person against whom the offence is committed is below the age of eighteen years;</i> <i>(b) offender is a person living with HIV;</i> <i>(c) offender is a parent or guardian of the person against whom the offence is committed;</i> <i>(d) offender is a person in authority over the person against whom the offence is committed;</i> <i>(e) victim of the offence is a person with disability;</i> <i>(f) offender is a serial offender; or</i> <i>(g) offender applies, administers or causes to use by any man or woman any drug, matter this with intent to stupefy or overpower him or her, so as to enable any person to have unlawful carnal connection with any person of same sex.</i></p> <p><i>(2) A person who commits the offence of aggravated homosexuality is liable on conviction to imprisonment for life”.</i></p>

³⁷⁸ Criminal Code (Amendment) Act 2014 (No. 11 of 2014). Available at: https://www.hrw.org/sites/default/files/related_material/Gambia%20Criminal%20Code%20Act%20202014.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Georgia		<p>Administrative Offences Code of Georgia 1984³⁷⁹</p> <p>Chapter 13: Administrative Offences involving Violations of Public Order</p> <p>Article 166 <i>“Disorderly conduct – swearing in public places, harassment of citizens or similar actions that disrupt public order and peace of citizens - shall carry a fine of GEL 100 or, if the application of the measure seems insufficient after taking into account the circumstances of the case and the person of the offender, an administrative detention of up to 15 days may be imposed”.</i></p> <p>Chapter 14: Administrative Offences Violating the Established Rule of Governance</p> <p>Article 173 <i>“Non-compliance with a lawful order or demand of a law-enforcement officer, military servant, officer of a Special State Protection Service or enforcement police officer or verbal abuse of and/or any other abusive act against such person while such person is in the line of duty [...] shall carry a fine from GEL 250 to 2000 or an administrative penalty of up to 15 days”.</i></p>	
Ghana		<p>Ghana Criminal Code 1960 (Act 29 as amended up to 2003)³⁸⁰</p> <p>Section 278, Gross Indecency <i>“Whoever publicly and wilfully commits any grossly indecent act commits a misdemeanour”.</i></p>	<p>Ghana Criminal Code 1960 (Act 29 as amended up to 2003)</p> <p>Section 104, Unnatural Carnal Knowledge <i>“(1) Whoever has unnatural carnal knowledge— (b) of any person of sixteen years or over with his consent is guilty of a misdemeanour; or (2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal”.</i></p>

³⁷⁹ *Administrative Offences Code of Georgia 1984* – translated from the original text. Available at: <http://www.parliament.am/library/varchakaniravaxaturner/Georgia.pdf>.

³⁸⁰ *Ghana Criminal Code 1960 (Act 29 as amended up to 2003)*. Available at: <https://wipolex.wipo.int/en/text/339612>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Grenada			<p>Criminal Code 1987³⁸¹ Part IX: Offences against Public Order, Health and Morality Title XXIX: Public Nuisances</p> <p>Article 431 <i>“If any two persons are guilty of unnatural connexion, or if any person is guilty of an unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years”.</i></p>
Guatemala		<p>Penal Code 1973³⁸² Chapter IV: Offences against Good Customs</p> <p>Article 489 <i>“A punishment by arrest of ten to fifty days will be imposed on: [...]</i> 6. <i>Whoever publicly offends modesty with songs, allegories or other pornographic or obscene material.</i> 7. <i>Anyone who, in any way, offends women with requirements or propositions of improper, incorrect, disrespectful or obscene manners or anyone who follows women or bothers women with any improper purpose”.</i></p>	
Guinea		<p>Penal Code 1988³⁸³</p> <p>Article 326 <i>“Any intentional act performed publicly which could potentially offend the sense of decency and the morals of people who are involuntarily witness to it shall constitute a public outrage against decency”.</i></p> <p>Article 327 <i>“Any person who has committed a public outrage against decency will be punished to between 3 months – 2 years imprisonment and a fine of 50,000 – 450,000 Guinean francs or only one of the two”.</i></p>	<p>Penal Code 1988³⁸⁴</p> <p>Article 325 <i>“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”.</i></p>

³⁸¹ *Criminal Code of Grenada 1987*. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/gd/gd011.en.pdf>.

³⁸² *Penal Code of Guatemala 1973 (Decree No. 17-73)* – translated from the original text. Available (in Spanish) at: http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM_codigo_penal.pdf.

³⁸³ Rights in Exile Programme, *Guinea LGBTI Resources* Available at: <http://www.refugeelegalaidinformation.org/guinea-lgbti-resources>.

³⁸⁴ See n.343 above, p.90.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Guyana		<p>Criminal Law (Offences) Act 1893³⁸⁵</p> <p>Section 355 “Everyone who – (a) does any indecent act in any place to which the public have or are permitted to have access; or (b) does any indecent act in any place, intending thereby to insult or offend any person, shall be guilty of a misdemeanour and liable to imprisonment for two years”.</p> <p>Summary Jurisdiction (Offences) Act 1893³⁸⁶</p> <p>Section 166 “Every person who (c) loiters about, or importunes any person in any street or other public place for the purpose of prostitution, shall be liable, on summary conviction – in the case of a first conviction, to a fine not less than fifteen thousand dollars nor more than thirty thousand dollars or to imprisonment for eighteen months, and in the case of a second or subsequent conviction, to imprisonment for three years, and if the offender is male, he shall in addition, be liable to a whipping or a flogging”.</p>	<p>Criminal Law (Offences) Act 1893</p> <p>Section 352 “Any male person, who in public or private, commits, or is a party to the commission, or procures or attempts to procure the commission, by any male person, of an act of gross indecency with any other male person shall be guilty of misdemeanour and liable to imprisonment for two years”.</p> <p>Section 353 “Everyone who— (a) attempts to commit buggery; or (b) assaults any person with the intention to commit buggery; or (c) being a male, indecently assaults any other male person, shall be guilty of felony and liable to imprisonment for ten years”.</p> <p>Section 354, Buggery “Everyone who commits buggery, either with a human being or with any other living creature, shall be guilty of felony and liable to imprisonment for life”.</p>
Honduras		<p>Penal Code 1983³⁸⁷</p> <p>Title IV: Offences against Good Customs</p> <p>Article 410 “Imprisonment from sixty (60) to ninety (90) days and a fine from seven hundred (L.700.00) to one thousand Lempiras (L.1,000.00) will be imposed on: 1) Whoever publicly offends modesty [...]”</p> <p>Police and Social Coexistence Law 2001³⁸⁸</p> <p>Article 99 “People who do not have a known honest way of living will be considered and sanctioned as lazy are consequently, street people, scoundrels, street prostitutes, drug addicts, drunkards and gamblers are considered to be vagabonds”.</p>	

³⁸⁵ Laws of Guyana, Chapter 8:01, Criminal Law (Offences) Act 1893. Available at: https://www.oas.org/juridico/spanish/mesicic2_guy_criminal_law_act.pdf.

³⁸⁶ Laws of Guyana, Chapter 8:02, Summary Jurisdiction (Offences) Act 1893. Available at: http://www.oas.org/juridico/pdfs/mesicic4_guy_summ.pdf.

³⁸⁷ Penal Code of Honduras 1983 (Decree No. 144-83) – translated from the original text. Available (in Spanish) at: https://oig.cepal.org/sites/default/files/1999_hnd_d144-83.pdf.

³⁸⁸ Police and Social Coexistence Law 2001 (Decree No. 2262001) – translated from the original text. Available (in Spanish) at: [https://www.tsc.gob.hn/web/leyes/Ley%20de%20Policia%20y%20de%20Convivencia%20Social%20\(actualizada-07\).pdf](https://www.tsc.gob.hn/web/leyes/Ley%20de%20Policia%20y%20de%20Convivencia%20Social%20(actualizada-07).pdf).

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Indonesia	<p>Qanun 11/2002 - among five laws enacted between 2002 and 2004 that criminalise violations of Sharia law and contain Islamic dress requirements.³⁸⁹</p>	<p>Penal Code 1999³⁹⁰</p> <p>Chapter XIV: Crimes against Decency</p> <p>Article 281 <i>“By a maximum imprisonment of two years and eight months or a maximum fine of three thousand rupiahs shall be punished:</i> <i>1st, any person who with deliberate intent publicly offends against decency;</i> <i>2nd-ly, the people who with deliberate intent offend against decency whereby another person is present in spite of himself”.</i></p>	<p>Provincial Ordinance on the Eradication of Immoral Behaviour (No. 13/2002) in South Sumatra classifies and penalises same sex relations as “<i>immoral behaviour</i>”.³⁹¹</p> <p>City Ordinance on the Prevention, Eradication and Prosecution of Social Ills (No.9/2010) in Padang Panjang, West Sumatra.³⁹²</p> <p>This regulation provides that “<i>homosexual and lesbian</i>” relationships are prohibited and persons “<i>offering themselves for homosexual and lesbian relationships either with or without payment</i>” are committing an offence.</p> <p>Aceh Regulation No. 6/2014³⁹³</p> <p>The local regulation punishes any homosexual act, adultery or public displays of affection by unmarried couples with 100 strokes of a cane or up to eight years in prison for the crimes of <i>Liwat</i> and <i>Musahaqah</i>.</p> <p>Article 63: <i>Liwat</i> (male penetration)</p> <p>Article 64: <i>Musahaqah</i> (female same-sex activity)</p>

³⁸⁹ See Case Study 12.

³⁹⁰ *Penal Code of Indonesia 1999*. Available at: https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/l1_Criminal_Code.pdf.

³⁹¹ UNDP, *Being LGBT in Asia: Indonesia Country Report* (Bangkok, 2014), p.22. Available at: http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-indonesia-country-report-english.pdf.

³⁹² *Ibid.*, p.23.

³⁹³ See n.343 above, pp.125-126.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Iran			<p>Islamic Penal Code 2013³⁹⁴</p> <p>Article 232 <i>“Where a man or woman confesses to zina less than four times, s/he shall be sentenced to thirty-one to seventy-four lashes of tazir punishment of the sixth grade. The same punishment mentioned in this article shall be applicable in the cases of livat, tafkhiz and musaheqeh”.</i></p> <p>Article 233 <i>“Livat is defined as penetration of a man’s sex organ (penis), up to the point of circumcision, into another male person’s anus”.</i></p> <p>Article 234 <i>“The hadd punishment for livat shall be the death penalty for the insertive/active party if he has committed livat by using force, coercion, or in cases where he meets the conditions for ihsan; otherwise, he shall be sentenced to one hundred lashes. The had punishment for the receptive/passive party, in any case (whether or not he meets the conditions for ihsan) shall be the death penalty”.</i></p> <p>Article 235 <i>“Tafkhiz is defined as putting a man’s sex organ (penis) between the thighs or buttocks of another male person”.</i></p> <p>Article 236 <i>“In the case of tafkhiz, the hadd punishment for the active and passive party shall be one hundred lashes and it shall make no difference whether or not the offender meets the conditions of ihsan or whether or not [the offender] has resorted to coercion”.</i></p> <p>Article 237 <i>“Homosexual acts of a male person in cases other than livat and tafkhiz, such as kissing or touching as a result of lust, shall be punishable by thirty-one to seventy-four lashes of ta’zir punishment of the sixth grade”.</i></p> <p>Article 238 <i>“Musaheqeh is defined as where a female person puts her sex organ on the sex organ of another person of the same sex”.</i></p> <p>Article 239 <i>“The hadd punishment for musaheqeh shall be one hundred lashes”.</i></p> <p>Article 240 <i>“Regarding the hadd punishment for musaheqeh, there is no difference between the active or passive parties or between Muslims and non-Muslims, or between a person that meets the conditions for ihsan and a person who does not, and also whether or not [the offender] has resorted to coercion”.</i></p>

³⁹⁴ Islamic Penal Code of Iran 2013 – unofficial English translation. Available at: <http://www.refworld.org/docid/518a19404.html>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Iraq		<p>Penal Code No.111 of 1969 (as amended to 2010)³⁹⁵</p> <p>Article 401 <i>“Any person who commits an immodest act in public is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 50 dinars or by one of those penalties”.</i></p>	<p>Iraq’s Penal Code does not prohibit same-sex intimacy. However, it does criminalise extra-marital sexual relations. As the law does not allow same-sex marriage, it in effect criminalises all same-sex relations. Prominent Shia opposition cleric, Moqtada al-Sadr, reportedly indicated in July 2016 that although same-sex intimacy is not acceptable, those who do not conform to gender norms suffer from “<i>psychological problems</i>” and should not be attacked.³⁹⁶ However, there are reports indicating that non-state actors, including Sharia judges, have ordered executions for same-sex activity.³⁹⁷ Further, in Daesh held areas of Northern Iraq men and women have been targeted on the basis of their gender expression/identity and their sexual orientation.³⁹⁸</p>
Jamaica			<p>Offences Against the Person Act 1864³⁹⁹</p> <p>Article 76, Unnatural Crime <i>“Whosoever shall be convicted of the abominable crime of buggery committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years”.</i></p> <p>Article 77, Attempt <i>“Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour”.</i></p> <p>Article 79, Outrages on Decency <i>“Any male 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 male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour”.</i></p>

³⁹⁵ Iraq Penal Code No. 111 of 1969 (as amended to 2010) – unofficial English translation. Available at: <https://www.refworld.org/docid/452524304.html>.

³⁹⁶ Human Rights Watch, *World Report 2017: Iraq* (2017), p.345. Available at: <https://www.hrw.org/world-report/2017/country-chapters/iraq>.

³⁹⁷ See n.343 above, p.128.

³⁹⁸ Ibid.

³⁹⁹ *The Offences Against the Person Act 1864*. Available at: http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Jordan	<p>Penal Code 1960⁴⁰⁰</p> <p>Article 307 <i>“Any male who is disguised in a female’s dress and enters a place reserved for women only or which cannot be entered by other than women at the time of committing the act; he shall be punished by imprisonment for a period not to exceed six months”.</i></p>	<p>Penal Code 1960</p> <p>Article 466 <i>“Whoever bathes in public, in a manner opposed to decency; or appears in a public place, or a place open to public in such a state; shall be punished by imprisonment of not more than a week and by a fine not to exceed five dinars (JD5)”.</i></p>	
Kenya			<p>Penal Code 1948 (as amended by Act No.5 of 2003)⁴⁰¹</p> <p>Chapter XV: Offences against Morality</p> <p>Section 162, Unnatural offences <i>“Any person who:</i> <i>(a) has carnal knowledge of any person against the order of nature; or</i> <i>(b) has carnal knowledge of an animal; or</i> <i>(c) permits a male person to have carnal knowledge of him or her against the order of nature,</i> <i>is guilty of a felony is liable to imprisonment for fourteen years:</i></p> <p><i>Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—</i> <i>(i) the offence was committed without the consent of the person who was carnally known; or</i> <i>(ii) the offence was committed with that person’s consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act”.</i></p> <p>Section 163, Attempt to commit unnatural offences <i>“Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years”.</i></p>

⁴⁰⁰ Jordan Penal Code (No. 16 of 1960) – English translation. Available at: http://www.ahtnc.org.jo/sites/default/files/penal_code.pdf.

⁴⁰¹ Penal Code (Act No. 81 of 1948) (as amended by Act No. 5 of 2003). Available at: <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Kenya (cont.)			<p>Section 165, Indecent practices between males <i>“Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years”.</i></p> <p>Sodomy is prohibited as a common-law offence. It is defined as <i>“unlawful and intentional sexual relationship through the anus between two human males”</i>.⁴⁰²</p>
Kiribati		<p>Penal Code (Revised edition 1977)⁴⁰³</p> <p>Part XVIII: Nuisances and Other Miscellaneous Offences</p> <p>Article 166, Traffic in obscene publications <i>“(1) Any person who- [...] (e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals is guilty of a misdemeanour, and shall be liable to imprisonment for 2 years or to a fine of AU\$200”.</i></p> <p>Article 167, Idle and disorderly persons <i>“The following persons- [... (e) any person who without lawful excuse publicly does any indecent act; [... are deemed idle and disorderly persons, and shall be liable to imprisonment for 2 months or to a fine of AU\$20”.</i></p>	<p>Penal Code (Revised edition 1977)</p> <p>Part XVI: Offences against Morality</p> <p>Section 153, Unnatural Offences <i>“Any person who- (a) commits buggery with another person or with an animal; or (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for 14 years”.</i></p> <p>Section 154, Attempts to commit unnatural offences and indecent assaults <i>“Any person who attempts to commit any of the offences it specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years”.</i></p> <p>Section 155, Indecent practices between males <i>“Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years”.</i></p>

⁴⁰² See n.343 above, p.91.

⁴⁰³ *Laws of the Gilbert Islands, Chapter 67, Penal Code (Revised edition 1977)*. Available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=195858.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Kuwait	<p>Penal Code 1960 (as amended)⁴⁰⁴</p> <p>Article 198 <i>“Any person [...] imitating the appearance of a member of the opposite sex, shall be subject to imprisonment for a period not exceeding one year or a fine not exceeding one thousand dinars [approx. US\$3,500]”.</i></p>		<p>Penal Code 1960 (as amended)</p> <p>Article 193 <i>“Consensual intercourse between men of full age (from the age of 21) shall be punishable with a term of imprisonment of up to seven years”.</i></p>
Lebanon	<p>Penal Code 1943⁴⁰⁵</p> <p>Article 521 <i>“Any man who disguises himself as a woman and enters a place specifically for women only or a place in which anyone aside from women are prohibited from entering may be jailed for no more than 6 months”.</i></p>	<p>Penal Code 1943</p> <p>Articles 209, 531 and 532 Provides that it is a crime to perpetrate indecent acts or behaviours in public places.</p>	<p>Penal Code 1943</p> <p>Article 534 <i>“Any sexual intercourse against nature is punished with up to one year of imprisonment”.</i></p>
Lesotho		<p>Penal Code 2010⁴⁰⁶</p> <p>Section 56, Public indecency <i>“A person who creates or takes part in any indecent spectacle or performance, or who does in public or in private any indecent act which is calculated to offend any reasonable member of the public, commits an offence”.</i></p>	
Liberia			<p>Penal Code 1976 (revised 1998)⁴⁰⁷</p> <p>Section 14.74, Voluntary sodomy <i>“A person who engages in deviate sexual intercourse under circumstance not stated in Section 14.72 or 14.73 has committed a first degree misdemeanor”.</i></p> <p>Section 14.79, Definitions relating to sections on sexual crimes against the person <i>“In this subchapter:</i> (a) ‘sexual intercourse’ occurs upon penetration, however slight; ejaculation is not required; (b) ‘deviate sexual intercourse’ means sexual contact between human beings who are not husband and wife or living together as man and wife though not legally married, consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and vulva; (c) ‘sexual contact’ means any touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying sexual desire”.</p>

⁴⁰⁴ Kuwait Criminal Code – translated from the original text. Available at: http://gulfmigration.org/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20obligations/2.1%20Penal%20Law_AR.pdf.

⁴⁰⁵ Lebanon Penal Code (Legislative Decree No. 340 of 1943) – translated from the original text. Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/89873/103350/F300391946/LBN89873%20Arab.pdf>.

⁴⁰⁶ Lesotho Penal Code 2010 (Act No. 6 of 2012). Available at: <https://lesotholii.org/lis/legislation/num-act/6>.

⁴⁰⁷ Liberian Code of Laws, Title 26, Penal Code 1976. Available at: <http://www.icla.up.ac.za/images/un/use-of-force/africa/Liberia/Penal%20Code%20Liberia%201978.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Libya		<p>Penal Code 1953⁴⁰⁸</p> <p>Article 421 “Anyone who commits an indecent act in an open public place or a place accessible to the public shall be punished by detention for a period not exceeding one year or a fine not exceeding LYD 50”.</p>	<p>Penal Code 1953</p> <p>Article 407(4) “If anyone has [illicit] sexual intercourse with a person with that person’s consent, both he, and his partner shall be punished by imprisonment for a period not exceeding five years”.</p> <p>Article 408(4) “<i>If anyone who commits an indecent act upon a person with that person’s consent, both he and his partner shall be punished by detention</i>”.</p>
Malawi	<p>Penal Code (as amended to Act No. 8 of 1999)⁴⁰⁹</p> <p>Section 180, Idle and disorderly person “The following persons- [...] (g) every male person who wears the hair of his head in such a fashion as, when he is standing upright, the main line of the bottom of the mass of hair (other than hair growing on his face or on the nape of his neck) lies below an imaginary line drawn horizontally around his head at the level of the mouth, shall be deemed idle and disorderly persons and shall be liable for the first offence to a fine of K20 and to imprisonment for three months and for a subsequent offence to a fine of K50 and to imprisonment for six months”.</p>	<p>Penal Code (as amended to Act No. 8 of 1999)</p> <p>Section 180, Idle and disorderly persons “The following persons- [...] (d) every person who without lawful excuse publicly does any indecent act [...] shall be deemed idle and disorderly persons and shall be liable for the first offence to a fine of K20 and to imprisonment for three months and for a subsequent offence to a fine of K50 and to imprisonment for six months”.</p> <p>Section 184, Rogues and vagabonds “(1) The following persons- [...] (c) every person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose [...] shall be deemed to be a rogue and vagabond, and shall be guilty of a misdemeanour and shall be liable for the first offence to imprisonment for six months, and for every subsequent offence to imprisonment for eighteen months”.</p>	<p>Penal Code (as amended to Act No. 8 of 1999)</p> <p>Section 153, Unnatural offences “Anyone who – (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of any animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment”.</p> <p>Section 154, Attempt to commit unnatural offences “Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment”.</p> <p>Section 156, Indecent practices between males “Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment”.</p> <p>Section 137A, Indecent practices between females (2011 amendment) “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 or five years”.⁴¹⁰</p>

⁴⁰⁸ Libya: Penal Code 1953. Available at: <https://security-legislation.ly/node/33464>.

⁴⁰⁹ Penal Code, Chapter 7:01. Available at: https://malawilii.org/mw/consolidated_legislation/701.

⁴¹⁰ Available at: <https://www.refworld.org/pdfid/58aefab44.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Malaysia	<p>Sharia laws</p> <p>Numerous Malaysian states criminalise <i>tasyabbuh</i>, i.e. “male posing as woman” or vice versa.</p> <p>Five states prohibit: “Any male person who, in any public place, wears a woman’s attire and poses as a woman”.⁴¹¹</p> <p>Nine states prohibit: “Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes”.⁴¹²</p> <p>At least three states prohibit: “Any female person who, in any public place, wears a man’s attire and poses as a man”.⁴¹³</p> <p>Sentences range from fines of 1,000 to 5000 ringgits and prison terms of up to three years.</p>	<p>Minor Offences Act 1955 (as amended up to 2006)⁴¹⁴</p> <p>Section 21 “Any person who is found drunk and incapable of taking care of himself, or is guilty of any riotous, disorderly or indecent behaviour, or of persistently soliciting or importuning for immoral purposes in any public road or in any public place [...] shall be liable to a fine not exceeding twenty-five ringgit or to imprisonment for a term not exceeding fourteen days and on a second or subsequent conviction to a fine not exceeding one hundred ringgit or to imprisonment for a term not exceeding three months or to both.”</p>	<p>Penal Code 1936 (as amended up to 2009)⁴¹⁵</p> <p>Unnatural Offences</p> <p>Section 377A, Carnal intercourse against the order of nature “Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature”.</p> <p>Section 377B, Punishment for committing carnal intercourse against the order of nature “Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping”.</p> <p>Section 377D, Outrages on decency “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”.</p>
Maldives			<p>Penal Code 2014⁴¹⁶</p> <p>Section 411, Unlawful Sexual Intercourse “(a) A person commits an offense if [...] (2) he engages in sexual intercourse with a person of the same sex. [...] (f) Definitions. [...] (2) “Same- sex intercourse means”; (A) Insertion by a man his sexual organ or any object into the anus of another man for sexual gratification. Or the insertion into another man’s mouth the penis of a man or (B) Insertion of a woman’s organ or any object into the vagina or anus of another woman for sexual gratification”.</p> <p>The offenses in this Section range from Class 1 misdemeanours to Class 3 felonies that carry a jail term of between 6 months and 8 years (when same-sex involving incest or adultery).</p>

⁴¹¹ Kedah, Kelantan, Negeri Sembilan, Perlis, Sabah. See Asia Pacific Transgender Network, *Legal Gender Recognition in Malaysia: A Legal & Policy Review in the Context of Human Rights*, 2017, p.58. Available at: http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/Malaysia-APTN_Publication_OnlineViewing.pdf.

⁴¹² Ibid. Johor, Malacca, Pahang, Perak, Pulau Pinang, Sarawak, Selangor, Terengganu, Wilayah Persekutuan Kuala Lumpur.

⁴¹³ See n.411 above. Pahang, Perlis, Sabah.

⁴¹⁴ *Minor Offences Act 1955 (Act 336) (as amended up to 2006)*. Available at: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20336.pdf>.

⁴¹⁵ *Penal Code 1936 (Act 574) (as amended up to 2009)*. Available at: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%202009.pdf>.

⁴¹⁶ *Penal Code (Law No. 6/2014)*. Available at: <https://www.law.upenn.edu/live/files/4203-maldives-penal-code-2014>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Mali		<p>Penal Code 1961⁴¹⁷</p> <p>Article 179 <i>“Any act committed in public that offends the decency and the moral feelings of the persons who are involuntarily witness to it, and that is capable of disturbing public order and of causing a manifest social prejudice, is a public outrage against decency. The outrage against decency, committed publicly and intentionally, will be punished by three months to two years imprisonment and a fine of 20,000 to 200,000 francs or to only one of these two punishments”.</i></p>	
Mauritania		<p>Penal Code 1983⁴¹⁸</p> <p>Article 306 <i>“Any person who has committed an outrage against public decency and Islamic morals or has desecrated sacred places or has helped to desecrate them [...] will be punished by a correctional punishment of three months to two years and a fine of 5,000 to 60,000 UM”.</i></p>	<p>Penal Code 1983</p> <p>Article 308 <i>“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”.</i></p>
Mauritius			<p>Criminal Code 1838 (as amended)⁴¹⁹</p> <p>Section 250, Sodomy and bestiality <i>“(1) Any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding 5 years”.</i></p>
Morocco		<p>Penal Code 1962⁴²⁰</p> <p>Article 87 <i>“The exercise of a profession, activity or art shall be prohibited and pronounced against convicted persons for crimes or offenses where the court finds that the offense committed has a direct relationship with the practice of the profession, activity or art, and that there are serious fears that by continuing to exercise them, the condemned person is a danger to public safety, health, or morality. The sentence may be for a period which may not exceed ten years, counting from the day the sentence was suffered, except where the law provides otherwise”.</i></p> <p>Article 483 mandates a prison sentence of one month to two years for any act of “obscenity in a public place”.</p>	<p>Penal Code 1962</p> <p>Article 489 <i>“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”.</i></p>

⁴¹⁷ Malian Penal Code 1961 (Law No. 61-99 AN-RM of 3 August 1961). Available at: <http://www.wipo.int/edocs/lexdocs/laws/fr/ml/ml006fr.pdf> (French); <http://www.refugeelaidinformation.org/mali-lgbti-resources> (English).

⁴¹⁸ Penal Code (Ordinance 83-162 of 9 July 1983) – translated from the original text. Available (in French) at: <http://www.refworld.org/pdfid/491c1ffc2.pdf>.

⁴¹⁹ Criminal Code 1838 (as amended). Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/mu/mu008en.pdf>.

⁴²⁰ Penal Code (Law No. 1-59-413 of 26 November 1962) – translated from the original text. Available (in Arabic) at: <http://www.wipo.int/wipolex/en/details.jsp?id=7323>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Myanmar (Burma)	<p>Police Act 1945⁴²¹</p> <p>Section 35(c) <i>“Any person found between sunset and sunrise having his face covered or otherwise disguised, who is unable to give a satisfactory account himself [...] may be taken into custody by any police-officer without a warrant, and shall be punishable on conviction with imprisonment for a term which may extend to three months”.</i></p> <p>Rangoon Police Act 1899⁴²²</p> <p>Section 30(c) <i>“Any person found between sunset and sunrise having his face covered or otherwise disguised and who is unable to give a satisfactory account of himself [...] may be taken into custody by any police-officer without a warrant, and shall be liable to imprisonment which may extend to three months”.</i></p>	<p>Police Act 1945</p> <p>Section 35(d) <i>“Any person found within the precincts of any dwelling-house or other building whatsoever, or in any back-drainage space, or on board any vessel, without being able satisfactorily to account for his presence therein [...] may be taken into custody by any police-officer without a warrant, and shall be punishable on conviction with imprisonment for a term which may extend to three months”</i></p>	<p>Penal Code 1860⁴²³</p> <p>Section 377, Unnatural offences <i>“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.</i></p>
Namibia		<p>Combating of Immoral Practices 1980⁴²⁴</p> <p>Section 7(b), Enticing to Commission of Immoral Acts <i>“Any person who – [...] (b) wilfully and openly exhibits himself in an indecent dress or manner at any door or window or within view of any public street or place or in any place to which the public have access, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment”.</i></p> <p>Section 8, Committing of Immoral Acts <i>“Any person who in public commits any immoral act with another person shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment”.</i></p>	<p>Sodomy is a common law offence and is listed as a Schedule 1 offence in the Criminal Procedure Act 25 of 2004. Sections 42 and 44 of the Criminal Procedure Act permit the arrest of a person for sodomy, without a warrant. Section 44 notably allows a private person to make such an arrest without a warrant.⁴²⁵</p>

⁴²¹ The Police Act 1945 (No. 6 of 1945). Available at: http://www.burmalibrary.org/docs15/1945-Police_Act-en.pdf.

⁴²² The Rangoon Police Act 1899. Available at: http://www.burmalibrary.org/docs24/1899-06-15-Rangoon_Police_Act-en.pdf.

⁴²³ Myanmar Penal Code (Act XLV of 1860). Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/mm/mm004en.pdf>.

⁴²⁴ Combating of Immoral Practices Act 21 of 1980. Available at: https://laws.parliament.na/cms_documents/combating-of-immoral-practices-dd1d3dda31.pdf.

⁴²⁵ Criminal Procedure Act 2004. Available at: https://laws.parliament.na/cms_documents/criminal-procedure--72901768c7.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Nauru		<p>Criminal Code 1921 (as amended in 2011)⁴²⁶</p> <p>Article 227, Indecent Acts “Any person who: (1) Wilfully and without lawful excuse does any indecent act in any place to which the public are permitted to have access, whether on payment of a charge for admission or not; or (2) Wilfully does any indecent act in any place with intent to insult or offend any person; is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years”.</p>	
New Zealand		<p>Crimes Act 1961⁴²⁷</p> <p>Article 125, Indecent act in public place “(1) Everyone is liable to imprisonment for a term not exceeding 2 years who wilfully does any indecent act in any place to which the public have or are permitted to have access, or within view of any such place”.</p>	
Nigeria	<p>Under the Sharia Penal Codes of various states:⁴²⁸</p> <p>In the state of Kano, a person who “being a male gender who acts, behaves or dresses in a manner which imitates the behavioural attitude of women shall be guilty of an offence”.</p> <p>In the states of Bauchi, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe, and Zamfara, “any female person who dresses or is attired in the fashion of a man in a public place” is a vagabond.</p>	<p>In the state of Kaduna, a person commits an act of gross indecency “in public, exposure of nakedness in public and other related acts of similar nature capable of corrupting public morals”.</p>	<p>Criminal Code Act 1990⁴²⁹</p> <p>Section 214 “Any person who- (1) has carnal knowledge of any person against the order of nature; or (2) has carnal knowledge of an animal; or (3) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for fourteen years”.</p> <p>Section 217 “Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years. The offender cannot be arrested without warrant”.</p>

⁴²⁶ Criminal Code 1921 (as amended to 2011). Available at: <http://ronlaw.gov.nr/nauru.lpms/files/acts/7a6152bda0c095cb3b94813330d84b80.pdf>.

⁴²⁷ Crimes Act (No. 43) 1961. Available at: <http://www.legislation.govt.nz/act/public/1961/0043/137.0/DLM327382.html>.

⁴²⁸ The Centre for Islamic Legal Studies, Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook – Volume IV, Chapter III: Draft Harmonised Sharia Penal Code Annotated. Available at: http://www.sharia-in-africa.net/media/publications/sharia-implementation-in-northern-nigeria/vol_4_4_chapter_4_part_III.pdf.

⁴²⁹ Laws of the Federation of Nigeria, Chapter 77, Criminal Code Act 1990. Available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=218191.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Nigeria (cont.)			<p>Northern Nigeria states have adopted Sharia law criminalising same-sex activity.⁴³⁰</p> <p>Penal Code (Northern States) Federal Provisions Act of 1959, applicable to all 19 States in Northern Nigeria</p> <p>Section 284, Unnatural Offences <i>“Whoever has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine”.</i>⁴³¹</p>
Oman	<p>Penal Code 2018⁴³²</p> <p>Article 266 <i>“Any male who:</i> a. <i>through speech or action, treats a female in a way that offends her modesty.</i> b. <i>Intrudes upon a female in a private area.</i> c. <i>Disguises himself as a female and enters a female-only area.</i> d. <i>publicly appears in a female outfit, either in his way of clothing or body appearance.</i> <i>Will be subject to a prison sentence of one month to one year and a fine of 100 to 300 Omani Riyal or by any of these penalties.”</i></p>	<p>Penal Code 2018</p> <p>Article 265 <i>“Whoever commits publicly, in word or deed, an act of indecency will be punished for a prison sentence of 10 days to three months and a fine of 100 to 300 Riyal Omani or by any of these penalties.”</i></p> <p>Article 267 <i>“Whoever creates, distributes or displays, even in private/not in public, a text, a publication, drawings, photographs, films/videos, symbols or any other objects that are indecent and immoral will be subject to a prison sentence of 10 days to one year and a fine of 100 to 300 Riyal Omani or by any of these penalties.”</i></p> <p>Article 268 <i>“Whoever uses wire and wireless communications, electronic means/ media, sentences, photographs, programs or any other method to transfer sentences, photographs or programs that are against decency or morals, will be subject to a prison sentence of 10 days one month and a fine of 100 to 300 Riyal Omani or by any of these penalties.”</i></p>	<p>Penal Code 2018</p> <p>Article 261 <i>“Any male who has sexual intercourse with another male will be subject to a prison sentence of one year to three years. The same penalty shall apply on the male who accepted the intercourse.”</i></p> <p>Article 262 <i>“Whoever commits a sensual act with another person of the same sex will be subject to a prison sentence of 6 months to 3 years. No legal action shall be brought against anyone who commits these acts, either male or female, only on the basis of an allegation brought by a husband or a guardian. The public prosecutor can prosecute or exile from the country whoever commits these acts and does not have a husband or a guardian in the state.”</i></p> <p><i>“A husband or guardian may withdraw the allegation or complaint under all circumstances and as a result the criminal prosecution and the penalty shall be suspended.”</i></p>

⁴³⁰ See n.343 above, p.96.

⁴³¹ Human Dignity Trust, *Country Profile: Nigeria* (2018). Available at: <https://www.humandignitytrust.org/country-profile/nigeria/>.

⁴³² *Royal Decree No. 7/2018 promulgating the Penal Code* – translated from the original text. Available at: <http://qanoon.om/p/2018/rd2018007>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Pakistan		<p>Penal Code 1860⁴³³</p> <p>Section 268 <i>“A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right”.</i></p> <p>Section 294 <i>“Whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both”.</i></p>	<p>Penal Code 1860</p> <p>Section 377, Unnatural offences <i>“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to a fine”.</i></p>
Palestine (Gaza)			<p>The British Mandate Criminal Code Ordinance, No. 74 of 1936⁴³⁴</p> <p>Section 152(2) <i>“Any person who: (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony, and is liable to imprisonment for ten years”.</i></p>

⁴³³ Pakistan Penal Code (Act XLV of 1860). Available at: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

⁴³⁴ The British Mandate Criminal Code Ordinance (No. 74 of 1936). Available at: https://www.nevo.co.il/law_html/law21/PG-e-0633.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Papua New Guinea		<p>Criminal Code Act 1974⁴³⁵</p> <p>Article 227, Indecent Acts “(1) A person who— (a) wilfully and without lawful excuse does an indecent act in a place to which the public are permitted to have access, whether or not on payment of a charge for admission; or (b) wilfully does an indecent act in a place with intent to insult or offend a person, or by which any person is reasonably insulted or offended, is guilty of a misdemeanour. Penalty: Imprisonment for a term not exceeding two years”.</p>	<p>Criminal Code Act 1974</p> <p>Section 210, Unnatural Offences “(1) A person who— (a) sexually penetrates any person against the order of nature; or (b) sexually penetrates an animal; or (c) permits a male person to sexually penetrate him or her against the order of nature, is guilty of a crime. (2) A person who attempts to commit an offence against Subsection (1) is guilty of a crime”.</p> <p>Section 212, Indecent Practices between Males “(1) (1) A male person who, whether in public or private— (a) commits an act of gross indecency with another male person; or (b) procures another male person to commit an act of gross indecency with him; or (c) attempts to procure the commission of any such act by a male person with himself or with another male person, is guilty of a misdemeanour”.</p>
Philippines		<p>Revised Philippine Penal Code 1930⁴³⁶</p> <p>Article 200 “The penalties of arresto mayor and public censure shall be imposed upon any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code”.</p>	
Qatar		<p>Penal Code 2004⁴³⁷</p> <p>Article 290 “Whoever makes gestures, dares to say or sing immoral things or perform obscene acts in a public place or an open space shall be punished with imprisonment for a term not exceeding six months and/or a fine not exceeding three thousand Qatari Riyals (QR 3.000)”.</p> <p>Article 294 “Whoever instigates debauchery, dissipation or adultery in public through words, gestures or any other means shall be liable to a prison term of no less than six months and not exceeding three years”.</p>	<p>Penal Code 2004</p> <p>Article 296 “One is convicted to no less than a year and no more than three years in prison in case of [inter alia] 3 - Leading, instigating or seducing a male anyhow for sodomy or immorality. 4 - Inducing or seducing a male or a female anyhow to commit illegal or immoral actions”.</p>

⁴³⁵ Criminal Code Act 1974. Available at: http://www.paclii.org/pg/legis/consol_act/cca1974115/.

⁴³⁶ Revised Penal Code of the Philippines (Act No. 3815) 1930. Available at: http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf.

⁴³⁷ Law No. 11 of 2004 issuing the Penal Code. Available at: https://www.unodc.org/res/cld/document/qat/penal-code_11_2004.html/2014_Penal_Code_Law_11_2004_26.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Rwanda		<p>Penal Code⁴³⁸</p> <p>Section 4: Public Outrage of Morality</p> <p>Article 377 <i>“Anyone who has publicly outraged morals by acts which hurt public decency, will be punished to eight days to three years imprisonment and a fine of 1,000-10,000 francs, or just one or the other”.</i></p>	
Saint Kitts and Nevis			<p>Offences Against the Person Act 1873 (Revised Edition)⁴³⁹</p> <p>Article 56, Sodomy and bestiality <i>“Any person who is convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour”.</i></p> <p>Article 57, Attempt to commit an infamous crime <i>“Any person who attempts to commit the said abominable crime, or is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, commits a misdemeanour, and, on conviction, shall be liable to be imprisoned for a term not exceeding four years, with or without hard labour”.</i></p>

⁴³⁸ *Penal Code of Rwanda 1977* – translated from the original text. Available (in French) at: http://www.wipo.int/wipolex/en/text.jsp?file_id=221102; N.B. However: Eugene Kwibuka, 'Parliament passes new penal code', The New Times, 29 June 2018. Available at: <https://www.newtimes.co.rw/news/parliament-passes-new-penal-code>.

⁴³⁹ *Offences Against the Person Act 1873 (Revised Edition)*. Available at: <http://scm.oas.org/pdfs/2011/CIM03051-IV.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Saint Lucia			<p>Criminal Code 2004⁴⁴⁰</p> <p>Section 132, Gross Indecency “(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.</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>(3) For the purposes of subsection (2) — (a) an act shall be deemed not to have been committed in private if it is committed in a public place; and (b) a person shall be deemed not to consent to the commission of such an act if — (i) the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature of the act; (ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person; or (iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder.</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 the genital organs for the purpose of arousing or gratifying sexual desire”.</p> <p>Section 133, Buggery “(1) A person who commits buggery commits an offence and is liable on conviction on indictment to imprisonment for — (a) life, if committed with force and without the consent of the other person; (b) ten years, in any other case. (2) Any person who attempts to commit buggery, or commits an assault with intent to commit buggery, commits an offence and is liable to imprisonment for five years. (3) In this section “buggery” means sexual intercourse per anus by a male person with another male person”.</p>

⁴⁴⁰ Saint Lucia Criminal Code (No.9 of 2004). Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88074/132555/F201091458/LCA88074%20Act.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Saint Vincent and the Grenadines			<p>Criminal Code 1990⁴⁴¹</p> <p>Section 146 “Any person who — (a) commits buggery with any other person; (b) commits buggery with an animal; or (c) permits any person to commit buggery with him or her; is guilty of an offence and liable to imprisonment for ten years”.</p> <p>Section 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”.</p>
Samoa		<p>Crimes Act 2013⁴⁴²</p> <p>Section 76, Indecent act in public place “(1) A person is liable to imprisonment for a term not exceeding two years who wilfully does any indecent act in any public place, or within view of any such place”.</p>	<p>Crimes Act 2013</p> <p>Section 67, Sodomy “(1) A person who commits sodomy is liable: (a) where the act of sodomy is committed on a female, to imprisonment for a term not exceeding 7 years; or (b) where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the offender is of or over the age of 21 years, to imprisonment for a term not exceeding 7 years; or (c) in any other case, to imprisonment for a term not exceeding 5 years. (2) Sodomy is complete upon penetration. (3) It is no defence to a charge under this section that the other party consented”.</p> <p>Section 68, Attempts to commit sodomy “A person is liable to imprisonment for a term not exceeding 5 years who: (a) attempts to commit sodomy; or (b) assaults any person with intent to commit sodomy”.</p>

⁴⁴¹ *Criminal Code (1990 edition)*. Available at: <http://www.refworld.org/docid/5188f6074.html>.

⁴⁴² *Crimes Act (No. 10 of 2013)*. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93579/124323/F-1523655815/WSM93579%202015.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Saudi Arabia	Saudi Arabia has no written law addressing gender identity and expression. Uncodified Islamic legal principles are used to harass transgender and gender diverse people – including dress and behavioural codes that are strictly enforced through its religious police (the Committee for the Promotion of Virtue and Prevention of Vice).	Saudi Arabia enforces dress and behavioural codes through the Committee for the Promotion of Virtue and Prevention of Vice, capturing transgender people.	<p>The criminalisation of same-sex activity is through the application of Islamic Sharia law.</p> <p>Sexual intercourse outside of marriage is illegal. Absent any legal recognition of same-sex marriage, all same-sex intimacy is therefore unlawful.</p> <p>The punishment for same-sex sexual activity is disputed with reports of whipping and execution. The Committee for the Propagation of Virtue and the Prevention of Vice is responsible for arresting and detaining those who violate Wahhabism, including same-sex sexual acts.⁴⁴³</p>
Senegal			<p>Penal Code 1965⁴⁴⁴</p> <p>Article 319(3) <i>“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”.</i></p>
Sierra Leone		<p>Public Order Act 1965⁴⁴⁵</p> <p>Article 12, Riotous Conduct <i>“Every person who- [...] (c) in any theatre, concert hall, lecture room or other place of public entertainment or instrument of whatever kind, is guilty of any riotous, indecent, disorderly, or insulting behaviour shall, on conviction thereof, be liable to a fine, not exceeding two hundred leones or to imprisonment for a period not exceeding eighteen months or both”.</i></p>	<p>Offences Against the Person Act 1861⁴⁴⁶</p> <p>Unnatural Offences</p> <p>Section 61, Sodomy and Bestiality <i>“Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than ten years”.</i></p>

⁴⁴³ See n.343 above, p.135.

⁴⁴⁴ Penal Code of Senegal 1965 (as amended until 1999). Available at: <https://acj.org.za/resource-centre/penal-code-of-senegal-1965/view>.

⁴⁴⁵ Public Order Act 1965. Available at: <http://www.sierra-leone.org/Laws/1965-46s.pdf>.

⁴⁴⁶ Offences Against the Person Act 1861. Available at: http://www.legislation.gov.uk/ukpga/1861/100/pdfs/ukpga_18610100_en.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Singapore		<p>Penal Code 1871 (Revised Edition 2008)⁴⁴⁷</p> <p>Section 294, Obscene Songs <i>“Whoever, to the annoyance of others (a) does any obscene act in any public place; or (b) sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment for a term which may extend to 3 months, or with fine, or with both”.</i></p> <p>Section 354, Assault of use of criminal force to a person with intent to outrage modesty <i>“(1) Whoever assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with caning, or with any combination of such punishments. (2) Whoever commits an offence under subsection (1) against any person under 14 years of age shall be punished with imprisonment for a term which may extend to 5 years, or with fine, or with caning, or with any combination of such punishments”.</i></p> <p>Miscellaneous Offences (Public Order and Nuisance Act) 1906 (Revised Edition 1997)⁴⁴⁸</p> <p>Section 19 <i>“Every person who in any public road or public place persistently loiters or solicits for the purpose of prostitution or for any other immoral purpose shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$1,000 and, in the case of a second or subsequent conviction, to a fine not exceeding S\$2,000 or to imprisonment for a term not exceeding 6 months or to both”.</i></p>	<p>Penal Code 1871 (Revised Edition 2008)</p> <p>Section 377A, Outrages on decency <i>“Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years”.</i></p>

⁴⁴⁷ Penal Code (Ordinance 4 of 1871) (Revised Edition 2008). Available at: <https://sso.agc.gov.sg/Act/PC1871>.

⁴⁴⁸ Miscellaneous Offences (Public Order and Nuisance) Act (Ordinance 13 of 1906) (Revised Edition 1997). Available: <https://sso.agc.gov.sg/Act/MOPONA1906>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Solomon Islands		<p>Penal Code 1963 (as amended to 1990)⁴⁴⁹</p> <p>Article 175, Idle and disorderly persons <i>“The following persons [...] (e) any person who without lawful excuse publicly does any indecent act; [...] are deemed idle and disorderly persons, and shall be liable to imprisonment for 2 months or to a fine of SI\$20”.</i></p>	<p>Penal Code 1963 (as amended to 1990)</p> <p>Section 160, Unnatural offences <i>“Any person who— (a) commits buggery with another person or with an animal; or (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for fourteen years”.</i></p> <p>Section 161, Attempts to commit unnatural offences <i>“Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault indecent assaults upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years”.</i></p> <p>Section 162, Indecent practices between persons of the same sex <i>“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”.</i></p>
Somalia		<p>Penal Code 1962⁴⁵⁰</p> <p>Article 402, Obscene acts <i>“Whoever, in a public place or a place open to the public, commits obscene acts shall be punished with imprisonment from six months to three years”.</i></p> <p>Article 404, Definition of obscene acts and objects <i>“For purposes of penal law, act and object deemed to be obscene where they, in the general opinion, are offensive to modesty”.</i></p>	<p>Penal Code 1962</p> <p>Article 409 Homosexuality <i>“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”.</i></p>

⁴⁴⁹ Laws of Solomon Islands, Chapter 26, Penal Code 1963 (as amended to 1990). Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68888/67465/F308930764/SLB68888.pdf>.

⁴⁵⁰ Penal Code (Legislative Decree No. 5 of 1962). Available at: <https://www.refworld.org/docid/4bc5906e2.html>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
South Sudan	<p>Penal Code Act 2008⁴⁵¹</p> <p>Article 379, Vagabond “(1) The term “vagabond” means— [...] (e) any male person who dresses or is attired in the fashion of a woman in a public place. (2) Whoever is convicted as a vagabond shall be sentenced to imprisonment for a term not exceeding three months or with a fine or with both”.</p>	<p>Penal Code Act 2008</p> <p>Article 251, Public Indecency “(1) Whoever— (a) indecently exposes himself or herself or engages in any other indecent conduct which causes offence to any other person in or near a public place, or in or near a private place within the view of such other person [...] commits the offence of public indecency, and upon conviction shall be sentenced to imprisonment for a term not exceeding six months with a fine or with both”.</p>	<p>Penal Code Act 2008</p> <p>Article 248, Unnatural Offences “(1) Whoever, has carnal intercourse against the order of nature with any person and whoever allows any person to have such intercourse with him or her commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years and may also be liable to a fine [...] Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section”.</p>
Sri Lanka	<p>Penal Code 1883⁴⁵²</p> <p>Section 399, Cheating by personation “A person is said to ‘cheat by personation’ if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is”.</p> <p>Section 402, Punishment for cheating by personation “Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both”.</p>	<p>Vagrants Ordinance of 1841⁴⁵³</p> <p>Section 2, Punishment of persons behaving riotously or disorderly in the public streets “Every person behaving in a riotous or disorderly manner in any public street or highway shall be liable to a fine not exceeding five rupees”.</p> <p>Section 3(2), Persons who are deemed idle and disorderly “A police officer may arrest without a warrant every person deemed to be an idle and disorderly person”.</p> <p>Section 7(1)(b), Soliciting and acts of indecency in public places “Any person found committing any act of gross indecency, or found behaving with gross indecency, in or about any public place [...] shall be guilty of an offence, and shall be liable on summary conviction to imprisonment of either description for a period not exceeding six months, or to a fine not exceeding one hundred rupees, or to both”.</p> <p>Other sections of note are <i>inter alia</i>: Section 10, Detention of youthful bad characters; and Section 5, Who are deemed to be incorrigible rogues.</p>	<p>Penal Code 1883</p> <p>Article 365, Unnatural offences “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years [...]”</p> <p>Article 365A, Acts of gross indecency between persons “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 and where the offence is committed by a person over eighteen (18) years of age in respect of any person under sixteen (16) years of age shall be punished with rigorous imprisonment for a term not less than 10 years and not exceeding 20 years and with a fine and shall also be ordered to pay compensation of amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such a person”.</p>

⁴⁵¹ Penal Code Act (No. 9 of 2008). Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/ss/ss014en.pdf>.

⁴⁵² Penal Code (Ordinance No. 2 of 1883) (as amended). Available at: http://hrii.library.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

⁴⁵³ Vagrants Ordinance (No. 4 of 1841). Available at: http://hrii.library.umn.edu/research/srilanka/statutes/Vagrants_Ordinance.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Sudan		<p>Criminal Act 1991⁴⁵⁴</p> <p>Article 151(2), Gross Indecency <i>“Where the offence of gross indecency is committed in a public place [...] the offender shall be punished, with whipping not exceeding eighty lashes, and he may also be punished, with imprisonment, for a term, not exceeding two years, or with fine”.</i></p> <p>Article 152, Obscene and Indecent Acts <i>“(1) Whoever commits, in a public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent, or immoral dress, which causes annoyance to public feelings, shall be punished, with whipping, not exceeding forty lashes, or with fine, or with both”.</i></p> <p><i>(2) The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the custom of the country where the act occurs”.</i></p>	<p>Criminal Act 1991</p> <p>Article 151, Gross Indecency <i>“(1) There shall be deemed to commit the offence of gross indecency, whoever commits any act contrary to another person’s modesty, or does any sexual act, with another person not amounting to adultery, or sodomy, and he shall be punished, with whipping, not exceeding forty lashes, and he may also be punished, with imprisonment, for a term, not exceeding one year, or with fine”.</i></p> <p>Article 148, Sodomy <i>“(1) Any man who inserts his penis or its equivalent into a woman’s or a man’s anus or permitted another man to insert his penis or its equivalent in his anus is said to have committed Sodomy.</i> <i>(2) (a) Whoever commits Sodomy shall be punished with flogging one hundred lashes and he shall also be liable to five years imprisonment.</i> <i>(b) If the offender is convicted for the second time he shall be punished with flogging one hundred lashes and imprisonment for a term which may not exceed five years.</i> <i>(c) If the offender is convicted for the third time he shall be punished with death or life imprisonment”.</i></p>
Swaziland			Common law offence of Sodomy. ⁴⁵⁵
Syria		<p>Penal Code 1949⁴⁵⁶</p> <p>Article 517 Punishes crimes “against public decency” that are carried out in public with imprisonment of three months to three years.</p>	<p>Penal Code 1949</p> <p>Article 520 <i>“Any unnatural sexual intercourse shall be punished with a term of imprisonment of up to three years”.</i></p>
Tajikistan		<p>Criminal Code 1998⁴⁵⁷</p> <p>Article 237, Hooliganism <i>“(1) Hooliganism, i.e. intentional actions, rudely violating the public order, accompanied by violence to citizens, as well as destroying and damaging property, is punishable by a fine in the amount of 500 to 1000 times of the monthly minimum wage or by confinement for a period of 3 to 6 months, or by up to 2 years’ imprisonment.</i></p>	

⁴⁵⁴ *Criminal Act 1998* – unofficial English translation. Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/80450/118284/F-1325877900/SDN80450%20Eng.pdf>.

⁴⁵⁵ Amnesty International, *Making Love a Crime: Criminalisation of Same-Sex Conduct in Sub-Saharan Africa* (2013), p.91. Available at: <https://www.amnesty.org/download/Documents/8000/afr010012013en.pdf>.

⁴⁵⁶ *Penal Code 1949 (Legislative Decree No. 148/1949)* – translated from the original text. Available (in Arabic) at: <http://www.wipo.int/wipolex/en/details.jsp?id=10918>.

⁴⁵⁷ *Criminal Code of the Republic of Tajikistan 1998* – unofficial English translation. Available at: <https://www.legislationline.org/download/action/download/id/1707/file/207b8150765af2c85ad6f5bb8a44.htm/preview>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Tajikistan (cont.)		<p>(2) <i>The same acts, if they:</i> [...] c) are connected with obstructing an officer or another <i>person doing obligations for protection of the public order</i> d) <i>neglect public moral norms, are punishable by deprivation of freedom for a period of 2 to 5 years</i>".</p> <p>Article 238, Involving in Prostitution <i>"(1) Involving in prostitution by violence, blackmail, fraud, as well as by destroying and damaging property, is punishable by a fine in the amount of 500 to 1000 the monthly minimum wage or by limitation of freedom for up to 3 years , or by up to 2 years' deprivation of freedom.</i> <i>(2) The same action committed repeatedly or by an organized group, is punishable by a fine in the amount of 1000 to 2000 times the monthly minimum wage or by imprisonment for a period of 2 to 5 years</i>".</p>	
Tanzania			<p>Penal Code 1945 (as amended by the Sexual Offences Special Provisions Act 1998)⁴⁵⁸</p> <p>Section 138A, Gross indecency <i>"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; 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, a pupil of a primary school or a student of a secondary school 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 caused to that person"</i>.</p> <p>Section 3, Interpretation Defines "gross indecency" as any sexual act that is more than ordinary but falls short of actual intercourse and may include masturbation and indecent physical contact or indecent behaviour without any physical contact.</p>

⁴⁵⁸ Penal Code 1945. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/59637/104199/F-1839757965/TZA59637.pdf> – as amended by the Sexual Offences Special Provisions Act 1998. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/67094/63635/F532037758/TZA67094.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Tanzania (cont.)			<p>Section 154, Unnatural offences “(1) Any person who– (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence, and is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years. (2) Where the offence under subsection (1) of this section is committed to a child under the age of ten years the offender shall be sentenced to life imprisonment”.</p> <p>Section 155, Attempt to commit unnatural offences “Any person who attempts to commit any of the offences specified under section 154 commits an offence and shall on conviction be sentenced to imprisonment for a term of not less than twenty years”.</p> <p>Section 157, Gross indecency “Any male person who, whether in public or private, commits any act of gross indecency with another male person or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person, with himself or with another male person, whether in public or private, commits an offence and is liable to imprisonment for five years”.</p> <p>Penal Decree (Amendment) Act 2004 of Zanzibar⁴⁵⁹</p> <p>Section 145, Lesbianism “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 a term not exceeding five years or to a fine not exceeding 500,000 shillings”.</p>

⁴⁵⁹ Penal Decree (Amendment) Act 2004 of Zanzibar. Available at: [https://www.judiciaryzanzibar.go.tz/uploads/The%20Penal%20Decree\(Amendment\)%20ACT%20%20N0.6%20%202004%20%20.pdf3204.pdf](https://www.judiciaryzanzibar.go.tz/uploads/The%20Penal%20Decree(Amendment)%20ACT%20%20N0.6%20%202004%20%20.pdf3204.pdf).

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Togo			<p>Penal Code 1980 (as amended in 2000)⁴⁶⁰</p> <p>Article 88 <i>“Imprudent acts or crimes against nature with an individual of the same sex are punished with imprisonment from one to three years and 100,000-500,000 francs in fine”.</i></p>
Tonga			<p>Criminal Offences Act 1988 (Revised Edition)⁴⁶¹</p> <p>Section 136, Sodomy and bestiality <i>“Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the Court to be imprisoned for any period not exceeding ten years and such animal shall be killed by a public officer”.</i></p> <p>Section 139, Attempted sodomy, indecent assault upon a male <i>“Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the Court to imprisonment for any term not exceeding 10 years”.</i></p> <p>Section 140, Evidence <i>“On the trial of any person upon a charge of sodomy or carnal knowledge it shall not be necessary to prove the actual emission of seed but the offence shall be deemed complete on proof of penetration only”.</i></p> <p>Section 142, Whipping for certain offences <i>“Whenever any male person shall be convicted of any offence against sections 106, 107, 115, 118, 121, 122, 125, 132, 136 and 139 of this Act the Court may, in its discretion in lieu of or in addition to any sentence of imprisonment authorised under this Act order the person so convicted to be whipped in accordance with the provisions of section 31 of this Act”.</i></p>

⁴⁶⁰ Penal Code 1980 (as amended in 2000) – translated from the original text. Available at: <http://www.wipo.int/wipolex/en/details.jsp?id=8148>.

⁴⁶¹ Criminal Offences Act 1988 (Revised Edition). Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73337/95725/F665862081/TON73337.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Tunisia		<p>Penal Code 1913⁴⁶²</p> <p>Article 226 <i>“Any person who publicly affronts moral values or public decency through their actions or words, or intentionally offends others in a morally reprehensible manner shall be punishable by six months of imprisonment and a fine of 1,000 dinars”.</i></p>	<p>Penal Code 1913</p> <p>Article 230 <i>“The sodomy, that is not covered by any of the other previous articles, is punished with imprisonment for three years”.</i> (Unofficial translation)</p> <p>The Arabic version of the text verifies that sexual acts between women are included within the restriction.⁴⁶³</p>
Turkmenistan			<p>Criminal Code 1997⁴⁶⁴</p> <p>Chapter 18, Crimes against morality</p> <p>Section 135, Homosexual acts <i>“(1) Homosexual acts, i.e. sexual intercourse between men, shall be punished with a term of imprisonment of up to two years.</i> <i>(2) Homosexual acts involving physical force, the threat of force and the exploitation of the victim’s need for assistance shall be punished with a term of imprisonment of between three and six years.</i> <i>(3) The offence that is specified in subsection (2) of this Section, where:</i> <i>(a) it is committed more than once;</i> <i>(b) it is committed by three or more persons without collusion or by several persons in collusion;</i> <i>(c) it is committed consciously against a minor;</i> <i>(d) it has infected the victim with a sexual disease; shall be punished with a term of imprisonment of between five and ten years.</i> <i>(4) The offence that is specified in subsections (2) and (3) of this Section, where:</i> <i>(a) it has been committed consciously against a person who has not yet reached the age of 14;</i> <i>(b) it has, due to negligence, caused the death of the victim, caused severe damage to their health or infected them with AIDS;</i> <i>shall be punished with a term of imprisonment of between ten and 20 years”.</i></p>

⁴⁶² Penal Code (Decree of 9 July 1913) – translated from the original text. Available (in Arabic) at: <http://www.refworld.org/docid/3ae6b5590.html>.

⁴⁶³ See n.343 above, p.103.

⁴⁶⁴ Criminal Code 1997 – translated from the original text. Available (in Turkmen) at: https://www.unodc.org/res/cld/document/criminal-code-of-turkmenistan_html/Turkmenistan_Criminal_Code.pdf; see n.343 above, p.138.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Turkmenistan (cont.)			<p>Section 137, Coercion to engage in sexual relations <i>“The coercion of a person to engage in sexual relations, homosexual acts or other acts of a sexual nature by means of blackmail, threats to destroy assets or the exploitation of a material or other dependency shall be punished with a term of correctional labour of up to two years or a term of imprisonment of up to two years”.</i></p>
Tuvalu		<p>Penal Code 2008 (Revised Edition)⁴⁶⁵</p> <p>Article 167, Idle and disorderly persons <i>“The following persons- [...] (e) any person who without lawful excuse publicly does any indecent act [...] are deemed idle and disorderly persons, and shall be liable to imprisonment for 2 months or to a fine of AU\$20”.</i></p> <p>Article 168, Rogues and vagabonds <i>“The following persons- [...] (c) any person found wandering or loitering in or upon or near any premises or in any public way or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose...are deemed to be rogues and vagabonds, and are guilty of a misdemeanour, and shall be liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year. ”</i></p>	<p>Penal Code 2008 (Revised Edition)</p> <p>Section 153, Unnatural offences <i>“Any person who— (a) commits buggery with another person or with an animal; or (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for 14 years”.</i></p> <p>Section 154, Attempts to commit unnatural offences and indecent assault <i>“Any person who attempts to commit any of the offences specified in the last preceding section [sic], or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years”.</i></p> <p>Section 155, Indecent practices between males <i>“Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years”.</i></p>

⁴⁶⁵ Penal Code 2008 (Revised Edition). Available at: http://www.paclii.org/tv/legis/consol_act_2008/pc66/.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Uganda	<p>Penal Code 1950 (amended)⁴⁶⁶</p> <p>Section 381, Personation in general “(1) Any person who, with intent to defraud any person, falsely represents himself or herself to be some other person, living or dead, commits a misdemeanour”.</p>	<p>Penal Code Act 1950 (amended)</p> <p>Section 167, Idle and disorderly persons “Any person who [...] (d) publicly conducts himself or herself in a manner likely to cause a breach of the peace (e) without lawful excuse, publicly does any indecent act”.</p>	<p>Penal Code Act 1950 (amended)</p> <p>Section 145, Unnatural offences “Any person who— (a) has carnal knowledge of any person against the order of nature; (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life”.</p> <p>Section 146, Attempt to commit unnatural offences “Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years”.</p> <p>Section 148, Indecent practices “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”.</p>
United Arab Emirates	<p>United Arab Emirates Penal Code (Law No. 3 of 1987)⁴⁶⁷</p> <p>Article 359 “Any male disguised in a female apparel and enters in this disguise a place reserved for women or where entry is forbidden, at that time, for other than women. Should the male perpetrate a crime in this condition, this shall be considered an aggravating circumstance”.</p>	<p>United Arab Emirates Penal Code (Law No. 3 of 1987)</p> <p>Article 358 “Shall be sentenced to detention for a minimum term or six months, whoever has flagrantly committed an indecent act”.</p> <p>Emirate of Abu Dhabi Penal Code</p> <p>Article 58 Criminalises “violation of public morals”.⁴⁶⁸</p>	<p>Sexual intercourse outside of marriage is illegal. Absent any legal recognition of same-sex marriage, such laws therefore criminalise all same-sex intercourse. The criminalisation of same-sex activity is also criminalised through the application of Islamic Sharia law. Different emirates within the UAE have laws prohibiting same-sex intimacy. Article 80 of the Emirate of Abu Dhabi Penal Code criminalises “unnatural sex” with another person while Article 177 of the Penal Code of Dubai criminalises “sodomy”.⁴⁶⁹</p>

⁴⁶⁶ Penal Code Act 1950 (amended). Available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=170005.

⁴⁶⁷ Federal Law No. 3 of 1987, Penal Code. Available at: <https://www.adjd.gov.ae/sites/Authoring/AR/ELibrary%20Books/E-Library/PDFs/Penal%20Code.pdf>.

⁴⁶⁸ Available at: <https://www.adjd.gov.ae/sites/Authoring/AR/ELibrary%20Books/E-Library/LocalPublications/Local.AbuDhabi.Penal.Code/HTML5/index.html>.

⁴⁶⁹ Available at: https://www.stonewall.org.uk/sites/default/files/uae_global_workplace_briefing_2018.pdf.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
United States of America	<p>Benson, State of Minnesota</p> <p>Locality Regulation General Offenses (4)(C)</p> <p><i>“No person shall appear in any street or public place in the city in a state of nudity, a dress not belonging to his or her sex, or any indecent or lewd dress, shall be guilty of any obscene or filthy acts or of any lewd, indecent, immoral, or insulting conduct, language, or behaviour, or shall exhibit, sell, or offer to sell an indecent, obscene, or lewd book or picture of things, or shall exhibit or perform any indecent, immoral, or lewd play or other representation”.</i></p>	<p>State of Wyoming</p> <p>HB 244⁴⁷⁰</p> <p><i>“(a) A person is guilty of public indecency if, while in a public place where he may reasonably be expected to be viewed by others, he: [...] (iv) Knowingly uses a public bathroom or changing facility designated to be used by a specific sex which does not correspond to the person’s sex identified at birth by the person’s anatomy”.</i></p>	
Uzbekistan			<p>Criminal Code 1994⁴⁷¹</p> <p>Article 120</p> <p><i>“Homosexual acts, which are defined as the gratification of a man’s sexual drive with another man without the use of force, shall be punishable with a term of imprisonment of up to three years”.</i></p>
Vanuatu		<p>Penal Code 1981⁴⁷²</p> <p>Article 94, Indecent act in public place</p> <p><i>“(1) No person shall wilfully do any indecent act in any place to which the public have or are permitted to have access, or within view of any such place. Penalty: Imprisonment for 2 years”.</i></p> <p>Article 148, Idle and disorderly</p> <p><i>“No person shall -</i></p> <p>[...]</p> <p><i>(c) commit any indecent act in a public place. Penalty: Imprisonment for three months”.</i></p>	

⁴⁷⁰ House Bill No. HB0244, State of Wyoming - full text available at: <http://legisweb.state.wy.us/2017/Introduced/HB0244.pdf>.

⁴⁷¹ Criminal Code of the Republic of Uzbekistan 1994. Available at: https://www.ctbto.org/fileadmin/user_upload/pdf/Legal_documents/national_provisions/Uzbekistan_CriminalCode_220994.pdf.

⁴⁷² Penal Code 1981 (Consolidated Edition 2006). Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88512/101229/F1616956608/VUT88512.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Yemen		<p>Republican Decree 1994⁴⁷³</p> <p>Article 277 <i>“Immorality and prostitution is committing one of the acts touching the honour and violating the law for the purpose of spoiling the morals of others or gaining thereof”.</i></p> <p>Article 278 <i>“Punishment with imprisonment for a period not exceeding three years or a fine is to whoever practices immorality or prostitution”.</i></p> <p>Article 279 <i>“Punishment with imprisonment for a period not exceeding three years is to whoever instigates others on immorality or prostitution”.</i></p>	<p>Republican Decree 1994</p> <p>Article 264 <i>“Homosexuality is the contact of one man to another through his posterior; both sodomites whether males or females are punished with whipping of one hundred strokes if not married. It is admissible to reprimand it by imprisonment for a period not exceeding one year punishment by stoning to death if married”.</i></p> <p>Article 268 <i>“Lesbianism is intercourse between one female and another. Anyone engaged in this act without another shall be punished with imprisonment for a period not exceeding three years. If the act happens under coercion imprisonment may be expanded to seven years”.</i></p>
Zambia		<p>Penal Code Act 1931 (as amended 2005)⁴⁷⁴</p> <p>Section 178, Idle and disorderly persons <i>“The following persons: [...] (d) every person who, without lawful excuse, publicly does any indecent act; (e) every person who publicly conducts himself in a manner likely to cause a breach of the peace; [...] (g) every person who in any public place solicits for immoral purposes”</i></p> <p>Section 181, Rogues and vagabonds <i>“Every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose”.</i></p>	<p>Penal Code Act 1931 (as amended 2005)</p> <p>Section 155, Unnatural offences <i>“Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature; commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life: Provided that where a person- (i) has carnal knowledge of a child against the order of nature; (ii) causes a child to have carnal knowledge of an animal; or (iii) permits a male person to have carnal knowledge of a male or female child against the order of nature; that person commits an offence and is liable, upon conviction, to imprisonment for not less than twenty-five years and may be liable to imprisonment for life”.</i></p>

⁴⁷³ Republican Decree by Law No. 12 for the Year 1994 Concerning Crimes and Penalties. Available at: <http://www.refworld.org/docid/3fec62f17.html>.

⁴⁷⁴ Penal Code Act 1931 (amended 2005). Available at: <http://www.parliament.gov.zm/sites/default/files/documents/acts/Penal%20Code%20Act.pdf>.

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Zambia (cont.)			<p>Section 156, Attempt to commit unnatural offences <i>“Any person who attempts to commit any of the offences specified in section one hundred and fifty-five commits a felony and is liable, upon conviction of not less than seven years but not exceeding fourteen years”.</i></p> <p>Section 158, Indecent practices between persons of the same sex <i>“(1) Any male who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male 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.</i> <i>(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 herself 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.</i> <i>(3) A child who, whether in public or private, commits any act of gross indecency with another child of the same sex or attempts to procure the commission of any such act by any person with the child’s self or with another child or person of the same sex, whether in public or private, commits an offence and is liable, to such community service or counseling as the court may determine in the best interests of the child”.</i></p>

Country	Legislation criminalising gender expression	Public order, vagrancy or misdemeanour offences	Legislation criminalising consensual same-sex activity
Zimbabwe		<p>Criminal Law (Codification and Reform) Act 2004⁴⁷⁵</p> <p>Section 77, Public indecency “(1) Any person who — (a) indecently exposes himself or herself or engages in any other indecent conduct which causes offence to any other person in or near a public place, or in or near a private place within the view of such other person; or (b) knowing or realising that there is a real risk or possibility that he or she will be heard, utters or makes use of indecent or obscene language in or near a public place, or in or near a private place within the hearing of another person; or (c) sings any indecent or obscene song in or near a public place, or in or near a private place within the hearing of another person, knowing or realising that there is a real risk or possibility that he or she will be heard; or (d) writes or draws any indecent or obscene word, figure or representation in or near a public place, or in or near a private place in the view of another person, knowing or realising that there is a real risk or possibility that such writing or drawing will be seen; shall be guilty of public indecency and liable to a fine not exceeding level nine or imprisonment for a period not exceeding six months or both”.</p>	<p>Criminal Law (Codification and Reform) Act 2004</p> <p>Section 73, Sodomy “(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both”.</p>

⁴⁷⁵ Criminal Law (Codification and Reform) Act (No. 23/2004). Available at: https://www.unodc.org/res/cld/document/zwe/2006/criminal_law_codification_and_reform_act.html/criminal_law_codification_and_reform_act.pdf.

