

# A Snapshot of the Legal Environment

on Same-Sex Sexual Acts and the Rights  
of Transgender and Intersex Persons  
in Asia and the Pacific



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## Introduction

A Snapshot of the Legal Environment on Same-Sex Sexual Acts and the Rights of Transgender and Intersex Persons in Asia and the Pacific is produced on the occasion of the 28th ILGA World Conference in Bangkok, Thailand. The Snapshot provides an overview of the legal environments in the Asia-Pacific region to inform the issues, challenges and opportunities regarding the rights of men who have sex with men and women who have sex with women, as well as transgender and intersex persons.

The lawfulness of same-sex sexual activity, legislative recognition of transgender identity change and/or expression and recognition of intersex persons' rights in law are the key subjects being assessed in this Snapshot. With some of the sources being updated as per October 2016, the Snapshot is designed primarily for use among the community advocates working on the rights and well-being of lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Asia and the Pacific. This Snapshot, however, only covers parts of the region where APCOM works: South Asia, South-East Asia, East Asia and the Pacific.

The data provided in this Snapshot may serve as an indication of the realities of the lives and experiences of LGBT people in the region. However, it is important to understand that inconsistency of legal interpretation within national penal codes and/or policies is often found, and law enforcement does not always adhere to the written legislation.

Male and/or female same-sex sexual activity is criminalised in 12 States, or part of States, in Asia (Afghanistan, Bangladesh, Bhutan, Brunei Darussalam, India, South Sumatra and Aceh Provinces of Indonesia, Malaysia, Maldives, Myanmar, Pakistan, Singapore and Sri Lanka) and in seven States in the Pacific (Cook Islands, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga and Tuvalu).

Legislation relating to transgender people and/or changing a person's legally recognised sex is rather complex, and is often predicated on sex reassignment surgery. Laws relating to intersex people is often unclear within the national legislative frameworks, and thus, requires detailed research and advocacy initiatives to make the legal issues for intersex people more visible and better understood by relevant stakeholders and the community itself.

### Legend:

A combination of the following icons and color plates would be used to simplify the information provided in the next part of the Snapshot.

Male to Male Sex	
Female to Female Sex	
Transgender Recognition	
Intersex rights explicitly protected in law	
legal / Yes	
Illegal / No	
Unclear	

### Acknowledgements:

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This document has been funded through grant 2015141 to the Consortium of MSM and Transgender Networks by the Robert Carr Civil Society Networks Fund (RCNF).



Design and layout: Vaness Silpakhon Kongsakul

Cover Photo: TORONTO, CANADA - JULY 3, 2016: South Asians march during Toronto Pride Parade.

Cover Photo by: Shawn Goldberg

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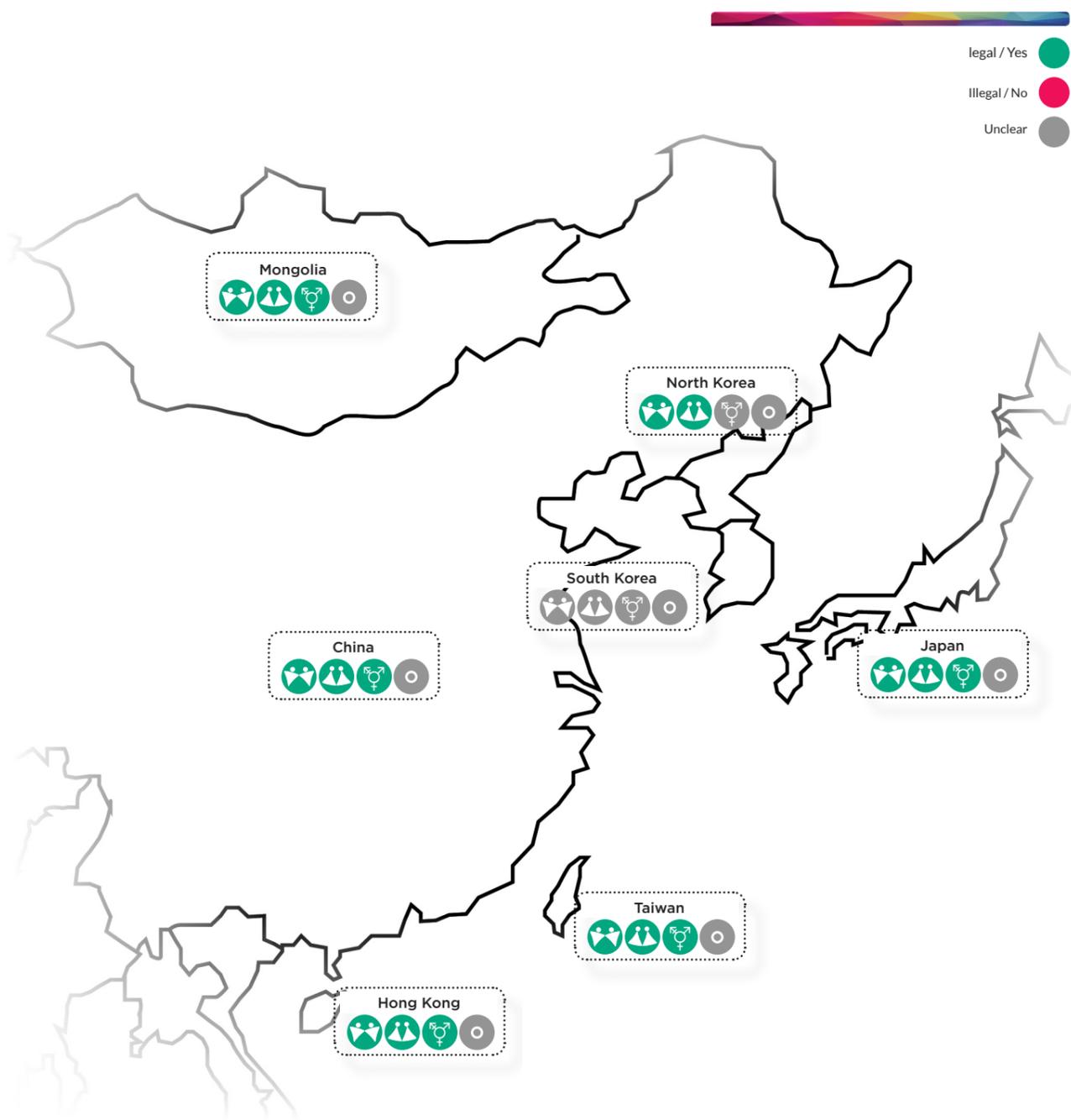
Map Disclaimer: The designations employed and the presentation of the material on this map do not imply the expression of any opinion whatsoever on the part of APCOM concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. Every effort is made to ensure this map is free of errors but there is no warrant the map or its features are either spatially or temporally accurate or fit for a particular use. This map is provided without any warranty of any kind whatsoever, either express or implied.



# EAST ASIA

	 <b>Male to Male Sex</b>	 <b>Female to Female Sex</b>	 <b>Transgender Recognition</b>	 <b>Intersex rights explicitly protected in law</b>
People's Republic of China	Legal	Legal	Legal, but surgery required	Unclear
Hong Kong SAR	Legal	Legal	Legal, but surgery required	Unclear
Japan	Legal	Legal	Legal, but surgery required	Unclear
North Korea	Legal	Legal	Unclear	Unclear
Mongolia	Legal	Legal	Legal, but surgery required	Unclear
South Korea	<b>Unclear</b> Homosexuality in South Korea is not specifically mentioned in either the South Korean Constitution or in the Civil Penal Code. However, Article 92 of the Military Penal Code, which is currently under a legal challenge, singles out sexual relations between members of the same sex as "sexual harassment", punishable by a maximum of one year in prison.		<b>Unclear</b> The Supreme Court of South Korea has ruled that in order for a person to be eligible for a sex-change operation they must be over 20 years of age, single and without children. However, On March 2013, Seoul Western District Court ruled that five female-to-male transgender individuals can be registered as male without sex reassignm.	Unclear
Taiwan	Legal	Legal	Legal, but surgery required	Unclear

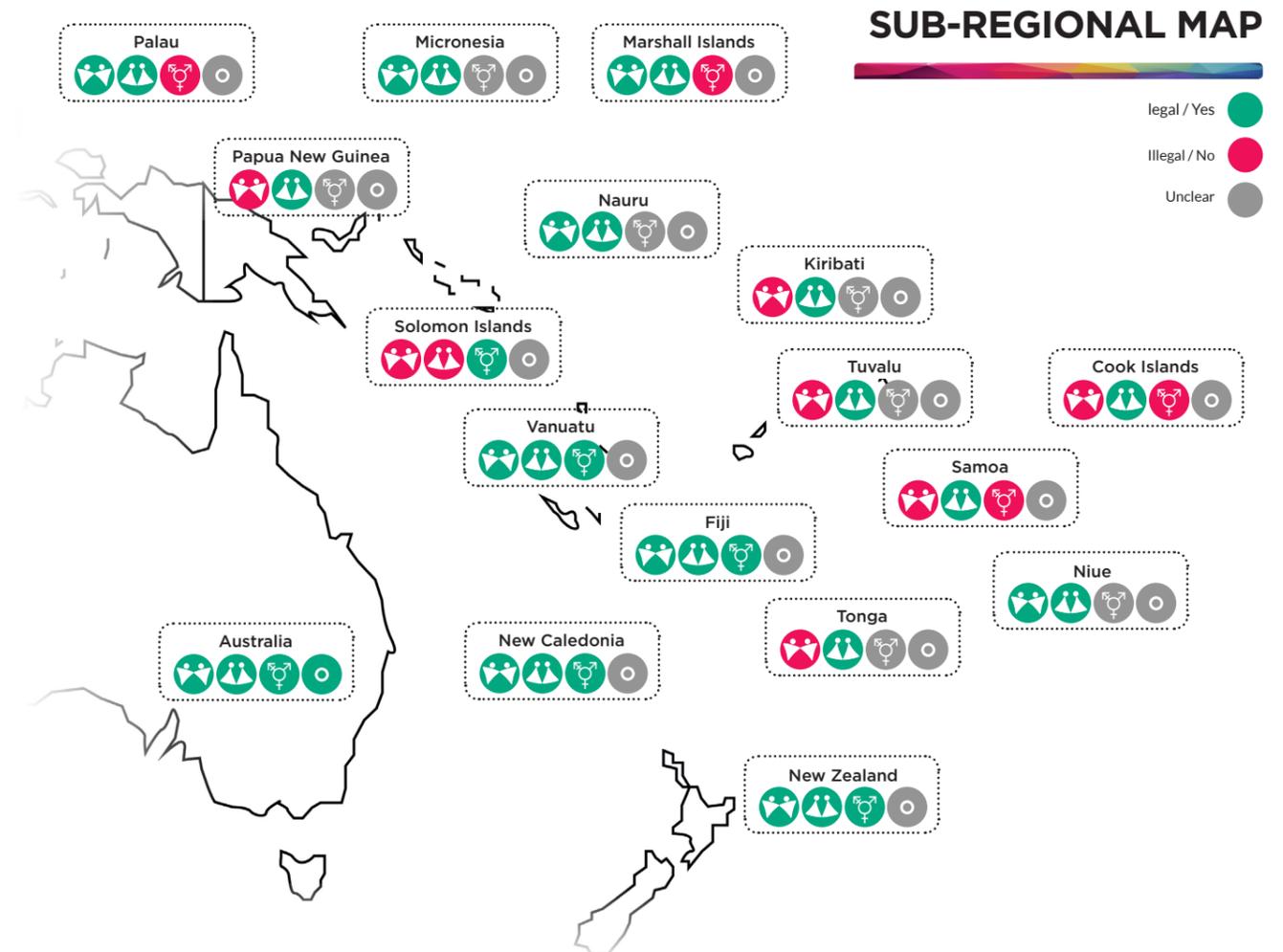
## SUB-REGIONAL MAP



# THE PACIFIC

	 <b>Male to Male Sex</b>	 <b>Female to Female Sex</b>	 <b>Transgender Recognition</b>	 <b>Intersex rights explicitly protected in law</b>
<b>Australia</b>	<b>Legal.</b> There are no laws or articles which prohibit same sex relations	<b>Legal.</b> There are no laws or articles which prohibit same sex relations	<b>Legal</b> Legally recognised to choose gender identity and include on formal documentation without surgery or hormone treatment, although some exceptions exists at State level. Federal Government recognises an X (indeterminate) gender marker on some documents	<b>Yes</b>
<b>Cook Islands</b>	<b>Illegal</b> Punishable by up to 7 years imprisonment	<b>Legal</b>	<b>Illegal</b>	<b>Unclear</b>
<b>Fiji</b>	<b>Legal</b>	<b>Legal</b>	<b>Legal, but surgery required</b>	<b>Unclear</b>
<b>Kiribati</b>	<b>Illegal</b> Punishable by up to 14 years imprisonment	<b>Legal</b>	<b>Unclear</b>	<b>Unclear</b>
<b>Marshall Islands</b>	<b>Legal</b>	<b>Legal</b>	<b>Illegal</b>	<b>Unclear</b>
<b>Federated States of Micronesia</b>	<b>Legal</b>	<b>Legal</b>	<b>Unclear</b>	<b>Unclear</b>
<b>Nauru</b>	<b>Legal</b>	<b>Legal</b>	<b>Unclear</b>	<b>Unclear</b>
<b>New Caledonia</b>	<b>Legal</b>	<b>Legal</b>	<b>Legal, but surgery required</b>	<b>Unclear</b>
<b>New Zealand</b>	<b>Legal</b>	<b>Legal</b>	<b>Legal</b> The right exists to have official documents issued in the preferred sex / gender identity of M (male), F (female) or X (no indication/other)	<b>Unclear</b>
<b>Niue</b>	<b>Legal</b>	<b>Legal</b>	<b>Unclear</b>	<b>Unclear</b>
<b>Palau</b>	<b>Legal</b>	<b>Legal</b>	<b>Illegal</b>	<b>Unclear</b>
<b>Papua New Guinea</b>	<b>Illegal</b> Punishable by up to 14 years imprisonment for anal sex and 3 years for gross indecency	<b>Legal</b>	<b>Unclear</b>	<b>Unclear</b>
<b>Samoa</b>	<b>Illegal</b> Sodomy continues to attract a criminal punishment of up to five years imprisonment and seven years for keeping a place of resort for homosexuals to engage in sex	<b>Legal</b>	<b>Illegal</b> There is no formal legal recognition of changes to identity	<b>Unclear,</b> no recognition within current legal framework

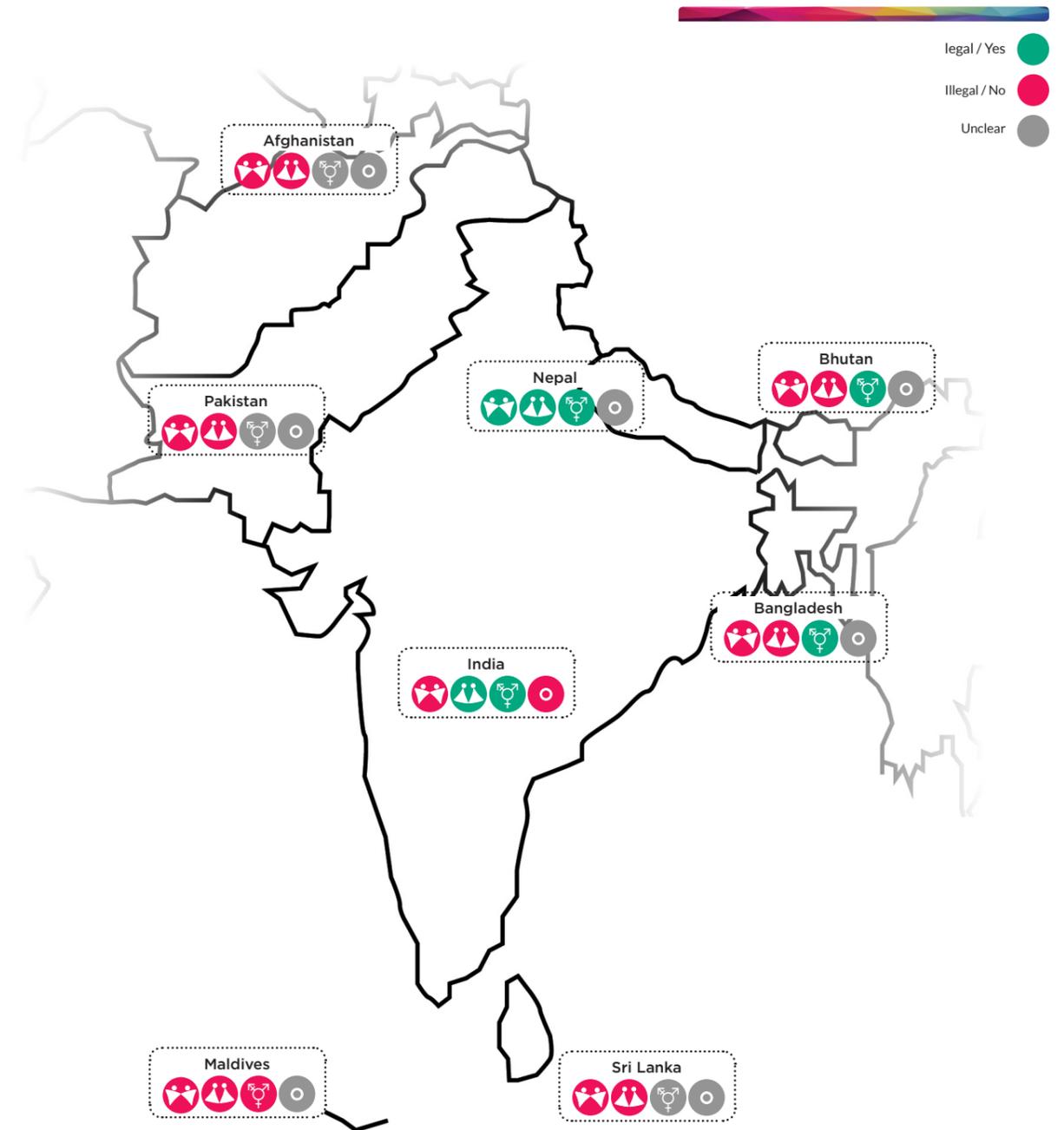
<b>Solomon Islands</b>	<b>Illegal</b> Punishable up to 14 years imprisonment	<b>Illegal</b> Punishable with imprisonment	<b>Legal, but surgery required</b>	<b>Unclear</b>
<b>Tonga</b>	<b>Illegal</b> Punishable by up to 10 years imprisonment	<b>Legal</b>	<b>Unclear</b>	<b>Unclear</b>
<b>Tuvalu</b>	<b>Illegal</b> Punishable by up to 10 years imprisonment	<b>Legal</b>	<b>Unclear</b>	<b>Unclear</b>
<b>Vanuatu</b>	<b>Legal</b>	<b>Legal</b>	<b>Legal, but surgery required</b>	<b>Unclear</b>



# SOUTH ASIA

	 <b>Male to Male Sex</b>	 <b>Female to Female Sex</b>	 <b>Transgender Recognition</b>	 <b>Intersex rights explicitly protected in law</b>
<b>Afghanistan</b>	<b>Illegal under Sharia law</b> Punishable with a long imprisonment or death penalty	<b>Illegal under Sharia law</b>	<b>Unclear</b>	<b>Unclear</b>
<b>Bangladesh</b>	<b>Illegal</b> Punishable by up to life imprisonment	<b>Illegal</b>	<b>Recognised as third gender by decree</b>	<b>Unclear</b>
<b>Bhutan</b>	<b>Illegal</b> Punishable by up to 1 year imprisonment	<b>Illegal</b> Punishable by up to 1 year imprisonment	<b>Legal, but surgery required</b>	<b>Unclear</b>
<b>India</b>	<b>Illegal</b> Punishable with life imprisonment or by up to ten years including fine liability	<b>Legal</b>	<b>Legal</b> Third gender recognised	<b>No</b>
<b>Maldives</b>	<b>Illegal under Sharia law</b> Punishable by up to nine months to one year or 10 to 30 lashes	<b>Illegal under Sharia law</b> Punishable by up to nine months to one year of house arrest	<b>Illegal</b>	<b>Unclear</b>
<b>Nepal</b>	<b>Legal</b>	<b>Legal</b>	<b>Recognised as third gender by decree</b>	<b>Unclear</b>
<b>Pakistan</b>	<b>Illegal under Sharia law</b> Punishable by life imprisonment, 100 lashes, or stoning to death (depending the province)	<b>Illegal</b>	<b>Unclear</b>	<b>Unclear</b>
<b>Sri Lanka</b>	<b>Illegal</b>	<b>Illegal</b>	<b>Unclear</b>	<b>Unclear</b>

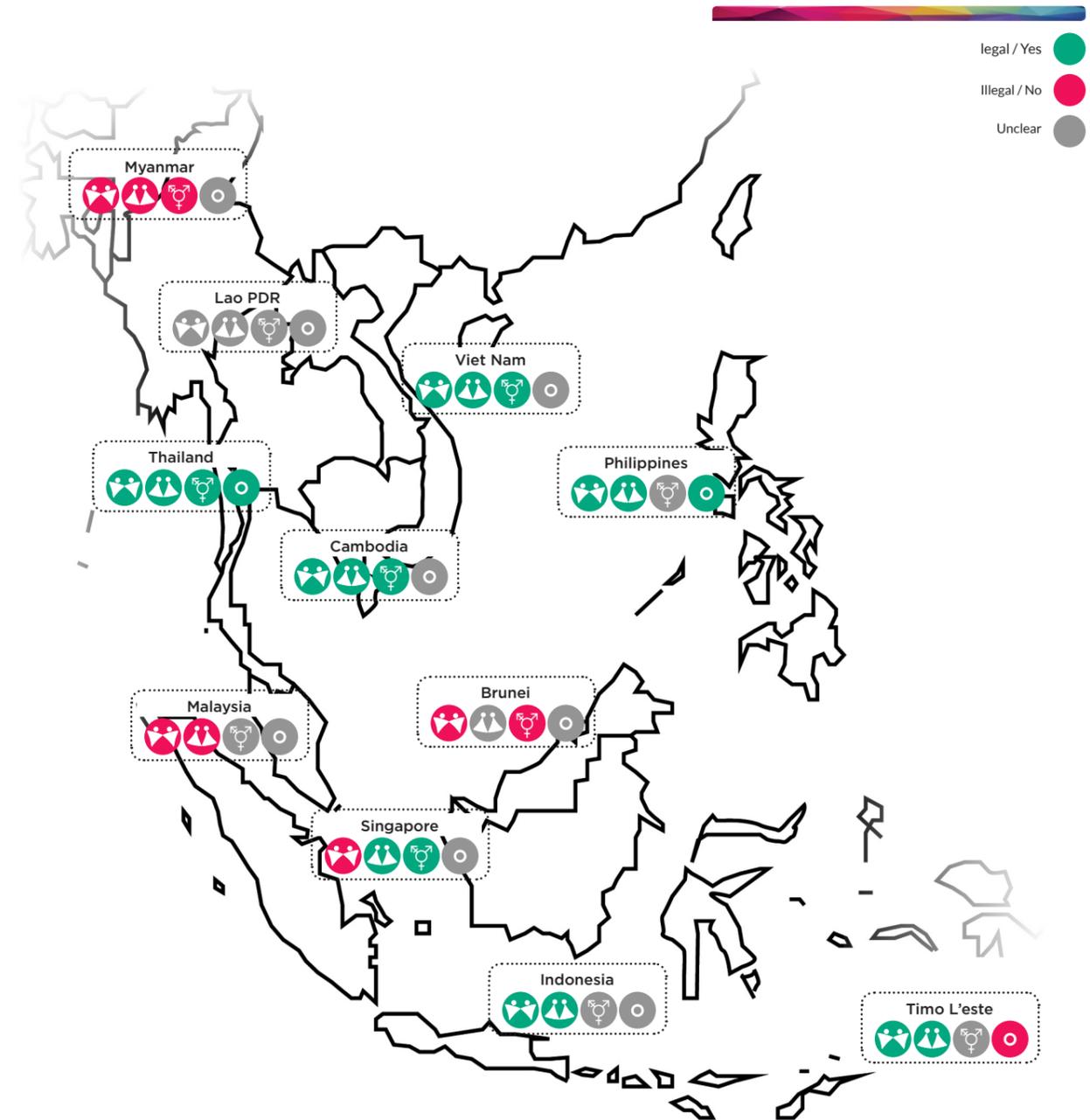
## SUB-REGIONAL MAP



# SOUTHEAST ASIA

	 <b>Male to Male Sex</b>	 <b>Female to Female Sex</b>	 <b>Transgender Recognition</b>	 <b>Intersex rights explicitly protected in law</b>
<b>Brunei Darussalam</b>	<b>Illegal</b> Punishable by stoning to death according to the proposed bill on full implementation of Sharia Penal Code	<b>Unclear</b> Not specifically mentioned as illegal, but may be subject to Sharia Penal Code	<b>Illegal</b>	<b>Unclear</b>
<b>Cambodia</b>	<b>Legal</b>	<b>Legal</b>	<b>Legal, but surgery required</b>	<b>Unclear</b>
<b>Indonesia</b>	<b>Legal</b> except in two provinces (Aceh and South Sumatra) that promulgate Sharia law within their provincial penal code	<b>Legal</b> except in two provinces (Aceh and South Sumatra) that promulgate Sharia law within their provincial penal code	<b>Unclear</b> There is no law explicitly penalising or protecting the expression and appearance of the opposite gender	<b>Unclear</b>
<b>Lao PDR</b>	<b>Unclear</b>	<b>Unclear</b>	<b>Unclear</b>	<b>Unclear</b>
<b>Malaysia</b>	<b>Illegal</b> Punishable by imprisonment or whipping	<b>Illegal</b> Punishable by imprisonment or whipping	<b>Unclear</b>	<b>Unclear</b>
<b>Myanmar</b>	<b>Illegal</b> Punishable by up to 10 years imprisonment	<b>Unclear</b>	<b>Illegal</b>	<b>Unclear</b>
<b>Philippines</b>	<b>Legal</b>	<b>Legal</b>	<b>Unclear</b>	<b>Yes</b>
<b>Singapore</b>	<b>Illegal</b> Punishable by up to 2 years imprisonment	<b>Legal</b>	<b>Legal, but surgery required</b>	<b>Unclear</b>
<b>Thailand</b>	<b>Legal</b>	<b>Legal</b>	<b>Legal</b> Operative transition of gender is legal, but the law does not allow for changes in recognition on formal documents	<b>Yes</b> Intersex people are able to "correct" their honorific titles, once they have chosen a gender, undergone surgery and can demonstrate with medical proof of Intersexuality at birth
<b>Timor L'este</b>	<b>Legal</b>	<b>Legal</b>	<b>Unclear</b> There are variable reports from legally recognised to choose gender identity and include it on formal documentation following surgery to refusal to recognise on identity documentation	<b>No</b>
<b>Viet Nam</b>	<b>Legal</b>	<b>Legal</b>	<b>Legal, but surgery required</b>	<b>Unclear</b>

## SUB-REGIONAL MAP



## References

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*We are united in our courage to advocacy issues that affect the lives of men who have sex with men and transgender people, including HIV, rights, health and well being.*

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