Sexual orientation and gender diversity

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LGBTQI+ South Africans, activists, and allies march in the Johannesburg Pride parade on 26 October 2024 in Sandton. The event marked 35 years since the city's first Pride parade, an annual event that activists see as an essential opportunity to advocate for equal rights Credit: Khensani Mabase

Key points

- Resistance against LGBTQI+ rights has grown in intensity in many countries, with recent examples of anti-LGBTQI+ backlash in Botswana, Malawi, Eswatini, and DRC.
- Religious and cultural fundamentalism continues to fuel violence and discrimination against LGBTQI+ people across the region.
- Equaldex's equality index shows that LGBTQI+ acceptance differs across the region, from a high of 71% in South Africa to just 6% in Zambia.
- While Botswana joined four Southern African countries (Angola, Mozambique, Seychelles, and South Africa) in 2019 and decriminalised same-sex relationships by declaring sections of its penal code unconstitutional, religious leaders recently challenged the ruling, providing lawmakers an opportunity to stall debate on the topic.
- Conservative groups and decision-makers have joined forces to appeal similar court orders in Eswatini and Namibia.
- In a landmark vote in April 2024, the UN Human Rights Council adopted a resolution calling on member states to enhance efforts to combat discrimination, violence and harmful practices against intersex people.

Introduction



Lesbian, gay, bisexual, transgender, queer and questioning and intersex people have seen both significant advancements and many setbacks in claiming their rights in recent decades. The movement for equal rights for this group typically employs the acronym LGBTQI+ to include all members, with the "+" acknowledging that it is not an exhaustive list of terms because different cultures - historically and today - use an array of language to describe the wide range of sexual orientations and gender expressions. This chapter will also use the term SOGIESC, which stands for sexual orientation, gender identity, gender expression and sex characteristics.

The global evolution of the LGBTQI+ equal rights movement represents a significant shift in societal attitudes, legal frameworks, and cultural representations. Once relegated to the shadows of public discourse, its fight for equality and recognition has emerged as a powerful campaign and coalition, garnering both attention and support from diverse advocates and allies.

Southern Africa has a mix of both progressive and regressive laws and practices in this area. While Tanzania and Zambia maintain harsh restrictions and penalties for same-sex relationships, South Africa recognises sexual orientation in its Constitution and was the first country in the world to do so. In 2006, South Africa was also the first country in Africa - and among the first in the world - to legalise same-sex unions. More countries in the region have begun to loosen restrictions on LGBTQI+ rights. However, a strong backlash has accompanied this, led largely by conservative politicians and religious and cultural leaders and communities.

This chapter explores the historical context of LGBTQI+ rights, tracing the journey from marginalisation to recognition and highlighting the milestones that define the ongoing struggle for dignity, acceptance, and protection against discrimination and violence. It also highlights that the journey is not linear; as rights progress, so too does backlash and resistance to their attainment.

Central to this discussion is the understanding that LGBTQI+ rights are fundamentally human rights. Recognising these rights is not just about legal protections but also about challenging social norms, promoting visibility, and fostering environments in which all individuals can live authentically without fear of discrimination and persecution. This chapter will examine the movement's complexities as well as critical legislative changes, landmark court rulings, the impact of grassroots activism, and the cultural shifts that contribute to a broader understanding of gender and sexual diversity.

Equaldex, a collaborative knowledge base for the LGBTQI+ movement, aims to crowdsource every law related to LGBTQI+ rights to provide a comprehensive and global view of its work. It produces the Equality Index - a wealth of information about new developments in LGBTQI+ rights - which shows that governments across the globe have introduced more than 730 legal changes in this area over the past five years. It also finds that the Southern African Development Community (SADC) lags behind other regions.

Equaldex's Equality Index has three measures:

The **Equality Index**: a rating from 0 to 100 (with 100 being the most equal) to help visualise legal rights and public attitudes towards LGBTQI+ people in each region. The Equality Index is an average of two indexes: the legal index and the public opinion index.

Meanwhile, the **LGBT Legal Index** measures the current legal status of 13 different issues, such as the legal status of homosexuality, same-sex marriage, transgender rights, discrimination protections, and censorship laws.

The **LGBT Public Opinion Index** looks at public attitudes using surveys and polls from reputable organisations. Equaldex scores it by averaging the results of all surveys in each region.

Table 8.1: Equality, legal and public opinion indexes for Southern Africa[1]

Country	Equality	Legal	Public opinion
South Africa	71	84	59
Seychelles	60	53	66
Mauritius	54	55	53
Angola	53	66	40
Mozambique	53	60	46
Namibia	53	64	42
Botswana	49	59	39
Lesotho	39	49	29
Madagascar	31	44	19
Eswatini	27	21	32
DRC	21	33	10
Comoros	16	15	16
Zimbabwe	16	21	10
Tanzania	11	8	14
Malawi	10	15	5
Zambia	6	6	6

Source: Equality Index, 2024

Table 8.1 ranks countries from highest to lowest on the Equality Index, illustrating that LGBTQI+ people struggle for equality and rights across the SADC region. Rankings range from a high of 71% in South Africa to 6% in Zambia. Only six countries scored more than 50%. Notably, legal scores rank higher than - or equal to - public opinion scores in all but three countries (Eswatini, Seychelles and Tanzania) where public opinion is higher than the legal index. The two metrics align closely in Comoros, Mauritius, and Zambia, with Seychelles logging the highest public opinion score at 66%.

Angola, Madagascar and South Africa show the biggest discrepancies between the legal and public opinion indexes, with public opinion well behind legal provisions.

Growing backlash

This chapter illustrates that the formidable opposition to the attainment of LGBTQI+ rights has become better organised and funded. Conservative figures, including policymakers, religious authorities, and cultural leaders, spearhead these opposition groups. These individuals play a significant role in shaping public sentiment and mobilising public support against the LGBTQI+ movement. SADC communities, many of which remain deeply rooted in conventional values and social norms, actively participate in these opposing efforts, reinforcing the influence of conservative ideologies within society. This collective resistance creates a powerful challenge to any initiatives aimed at change, highlighting the complexities of navigating social transformations in such an environment.

These findings, along with others in this chapter, point to the need for vigorous advocacy and lobbying for policy and legislative changes accompanied by public education and awareness of LGBTQI+ rights. Despite the challenges, LGBTQI+ activists continue their work in the most challenging circumstances. They have ensured that some light shines through the cracks across the region.

Formidable opposition to the attainment of LGBTQI+ rights has become better organised and funded

[1] https://www.equaldex.com/, accessed 30 October 2024.



Tanzania: A symbolic lighthouse for LGBTQI+ rights in rural communities



One committed member of a Tanzanian network fighting for LGBTQI+ rights has described her organisation's advocacy in rural areas as a symbolic lighthouse for her community. Photo: Art Expo portfolio

In a country that regularly sees violence and societal discrimination against the LGBTQI+ community, a group of brave young activists started a feminist network - referred to here as the Consortium - committed to advancing freedom, justice, and bodily autonomy for all womxn* in Tanzania.

They are inspiring a growing movement that nurtures leaders to combat conservative forces, with a focus on building and strengthening partnerships and synergies among feminist and LGBTQI+ movements.

The convergence of these groups promotes a shared understanding of justice and bodily autonomy as a fundamental and inalienable necessity, presenting fertile ground for cross-movement building and exchange of knowledge and insights.

Aneth** uses her space as a leader within the Consortium to drive transformative change around LGBTQI+ rights in her hometown. Through her participation and leadership, she has grown in confidence as she brings these messages home to her rural community.

"My journey unfolds within the confines of an organisation that has become a beacon of hope, tirelessly working towards the advancement of human rights, the eradication of gender-based violence (GBV), and the facilitation of greater accessibility to Sexual and Reproductive Health and Rights (SRHR) for queer womxn in our community," she said.

The Consortium's efforts expand activists' and leaders' ability to offer unified and nuanced advocacy messaging that speaks to the intersectionality of SRHR issues and the complexity of feminist and lesbian, bisexual, transgender and queer women's lives in Tanzania.

"Our involvement in the consortium has extended beyond mere participation," said Aneth. "We actively engaged in the meticulous collection of data, contributing to vital research on gender-based violence and the accessibility of SRHR services within my community."

A leadership training initiative provides activists with an invaluable arsenal of skills, enabling them to set robust standards and navigate the complex terrain of leadership with newfound proficiency.

"In October 2023, I found myself stepping into the limelight, running for leadership roles within the consortium, and eventually securing a significant leadership position," said Aneth. "This achievement reverberates not just in the corridors of the consortium but profoundly in the rural expanse of my community. It is here, in a setting distinct from urban landscapes, that the LBTQ womxn movement can tackle issues hitherto

A growing movement nurturing leaders to combat conservative forces, with a focus on building and strengthening partnerships and synergies among feminist and LGBTQI+ movements

unexplored, such as forced marriages, which catalyse a cascade of problems for LBQ womxn, ranging from violence to sexually transmitted infections (STIs)."

Aneth said the project has kindled a new era of innovative thinking, compelling its members to reimagine and revitalise their approach to community engagement and empowerment. Collaborating with fellow Consortium members, she weaves the fabric of a comprehensive strategic plan, drawing inspiration from the group's collective wisdom and the overarching guidance provided by the Consortium as an inclusive and nurturing umbrella organisation.

Fundraising endeavours have become a communal effort, a testament to the collaborative spirit within the consortium. The ripple effects of advocacy training also offer leaders like Aneth a detailed roadmap for instigating positive changes within a community.

"The positive metamorphosis this project brings is particularly noteworthy for a rural organisation like ours situated on the fringes of urban dynamism," she said. "The consortium's unwavering support and collaborative ethos have empowered us to confront and address the unique challenges faced by LBQ womxn in rural areas. As we chart the course through these transformative waves, the project stands as a symbolic lighthouse, guiding us towards a future where our contributions resonate far beyond my community."

** "Womxn" is an alternative spelling of the word "woman" that aims to be more inclusive of non-binary and transgender people.*

***Not her real name. Aneth requested that she and her organisation remain anonymous for security reasons.*

Source: Driver of Change submitted by a grantee from the Voice and Choice Southern Africa Fund, supported by Amplify Change and managed by Gender Links.



Table 8.2: Sexual diversity indicators in 2024[2]

Indicators	Angola	Botswana	Comoros	DRC	Eswatini	Lesotho	Madagascar	Malawi	Mauritius	Mozambique	Namibia	Seychelles	South Africa	Tanzania	Zambia	Zimbabwe
Criminalisation of same sex consensual acts																
Consensual same-sex acts decriminalised	Yes, by act of parliament, 2019	Yes. High Court decision of 2019 being challenged	No	Never criminal	No	Decriminalised by Penal Code Act of 2010	Yes, for those older than 21	No	Yes, by Supreme court decision, 2023	Yes	Yes. High Court decision of 2024 being challenged	Yes, by legislation, 2016	Yes, by a court ruling, 1998	No	No, pending since 2021	No, pending since 2006
Gender/s			All genders		Male only		All genders	All genders						All genders	All genders	Male only
Years in prison/other			Up to 5 years/fine		Undetermined			Up to 14 years						Life in prison	14 years to life	Up to ten years or fine
Protection																
Protection against discrimination																
Specific constitutional provisions	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Broad protections	Yes	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Employment	Yes	Only LGB, not trans	No	No	No	No	No	No	Sexual orientation only	Sexual orientation only	Sexual orientation only	Sexual orientation only	Yes	No	No	No
Criminalisation of violence/discrimination against LGBTI communities																
Hate crimes/aggravated circumstances	Yes	No	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No	No
Incitement to hatred/ violence	Yes	No	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No	No
Ban on conversion therapy																
CT banned	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Recognition of LGBTI+ rights																
Same-sex marriages	No	No	No	No	No	No	No	No	Pending	No	Foreign only	Pending	Yes	No	No	No
Civil unions	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Joint adoption of children	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Second parent adoption of children	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Changing identity																
Abilit sex/gender markers	Yes	No legal restrictions	No	No	No	Ambiguous	No	Nominally possible	No	Yes	Requires surgery	No	Requires surgery	No	Ambiguous	Requires surgery
Name change	Possible	Possible	Not possible	Possible	Possible	Possible	Possible	Nominally possible	Possible	Nominally possible	Possible	Possible	Possible	Not possible	Possible	Possible
LGBTI+ organisations																
Able to register	Yes	Yes	No	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Able to operate freely			No	No	No	Yes	No	No	Yes	No	Yes	Yes	Yes	No	No	No

Source: https://www.equaldex.com, accessed November 2024

[2] https://www.equaldex.com , Accessed November 2024.

Table 8.2 shows that:

- Five out of 16 SADC countries have decriminalised same-sex consensual acts: Angola, Botswana (though legislators have stalled discussion of the bill that would decriminalise it), Mozambique, Seychelles, and South Africa. DRC never criminalised homosexuality, so laws there require further clarity. Madagascar decriminalises homosexuality for those older than 21 but criminalises it for anyone younger than 21.
- Two countries (Eswatini and Zimbabwe) criminalise homosexuality for men only.
- Only South Africa has constitutional provisions to protect LGBTQI+ people.
- Angola, South Africa and Seychelles have specific legislation that criminalises violence and discrimination against LGBTQI+ people.
- Seven countries (Angola, Botswana, Mauritius, Mozambique, Namibia, Seychelles, and South Africa) have employment protections for some LGBTQI+ people.
- No country in SADC bans conversion therapy.
- Only South Africa recognises same-sex unions, civil unions, joint adoption of children and second-parent adoption of children.
- Six countries (Angola, Botswana, Mozambique, Namibia, South Africa, and Zimbabwe) allow people to change sex and gender markers in their names, although Namibia, South Africa and Zimbabwe require that person to undergo surgery before they can do so.
- LGBTQI+ organisations can legally register in nine countries (Angola, Botswana, Lesotho, Mauritius, Mozambique, Namibia, Seychelles, South Africa, and Zimbabwe) and operate freely in seven countries (Angola, Botswana, Lesotho, Mauritius, Namibia, Seychelles and South Africa).

Legal and policy frameworks

Several global, continental, and regional instruments promote the rights of LGBTQI+ communities. Of the 69 countries that criminalise same-sex relations, 33 are in Africa. Usually, these laws represent the remnants of colonial rule and archaic legislation associated with it. The vague wording of these prohibitions, such as "carnal knowledge against the order of nature" and references to sodomy and "gross indecency," resonate with the beliefs and values of that era. Africa has seen slight progress over the last year in protecting LGBTQI+ rights. However, intense backlash from conservative actors to maintain the status quo or even roll back existing rights, remains a significant challenge.

Global instruments



LGBTQI+ community members take part in an Eswatini Pride event in Mbabane. The country saw its first Pride event in 2018. Photo: Thando Dlamini

The United Nations is the sum of its member states, with many lawmakers within these countries intolerant of LGBTQI+ people and their rights. As such, the Sustainable Development Goals (SDGs) do not include any specific references to LGBTQI+ people or issues. Nevertheless, to ensure that the global development agenda does not leave these communities behind, the United Nations Development Programme (UNDP) developed the lesbian, gay, bisexual, transgender, and intersex (LGBTI) Inclusion Index to inform evidence-based development strategies

to advance their inclusion. Following extensive multi-sectoral and civil society consultations, the five priority dimensions for measurement in the Inclusion Index comprise political and civic participation, economic well-being, personal security, violence, health, and education.[4]

LGBTQI+ rights have been on the global agenda for many years, with activists logging gradual but significant progression within the UN system towards recognising and advocating for LGBTQI+ rights, although many challenges and obstacles remain. In the early 2000s, the International Commission of Jurists and the International Service for Human Rights, representing a coalition of human rights organisations, created a framework of international legal principles addressing human rights violations linked to sexual orientation and gender identity.[5] Known as the Yogyakarta Principles, many member states initially adopted them in 2007 and updated them in 2017. They remain non-binding. Nevertheless, they offer extensive guidance to states covering the right to universally enjoy human rights, non-discrimination, and legal recognition; the right to personal and human security; economic, social, and cultural rights; the rights to freedom of expression, opinion, and association; the freedom to move and seek asylum; participation rights in cultural and family life; rights for human rights defenders; and rights pertaining to redress and accountability.[6]

The UN has developed several instruments enshrining social, economic and political rights. SADC countries have signed many of them.

Table 8.3: Overview of key UN instruments and SADC commitments[7]

Instrument/ Country	International Covenant on Civil and Political Rights	International Covenant on Economic, Social, and Cultural rights	Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Convention on the Elimination of all Forms of Discrimination Against Women	Convention on the Rights of the Child	UN Centre for Regional Development (SDGs)	International Convention on the Elimination of all forms of Racial Discrimination
	(ICCPR)	(ICESRC)	(CAT)	(CEDAW)	(CRC)	(CRD)	(ICERD)
Angola	SP	SP	S	SP	SP	SP	S
Botswana	N	N	N	SP	SP	S	S
Comoros	S	S	SP	SP	SP	SP	SP
DRC	SP	SP	SP	SP	SP	SP	SP
Eswatini	SP	SP	SP	SP	SP	SP	SP
Lesotho	SP	SP	SP	SP	SP	SP	SP
Madagascar	SP	SP	SP	SP	SP	SP	SP
Malawi	SP	SP	SP	SP	SP	SP	SP
Mauritius	SP	SP	SP	SP	SP	SP	SP
Mozambique	SP	N	SP	SP	SP	SP	SP
Namibia	SP	SP	SP	SP	SP	SP	SP
Seychelles	SP	SP	SP	SP	SP	SP	SP
South Africa	SP	SP	SP	SP	SP	SP	SP
Tanzania	SP	SP	N	SP	SP	SP	SP
Zambia	SP	SP	SP	SP	SP	SP	SP
Zimbabwe	SP	SP	N	SP	SP	SP	SP

Table 8.3 provides an overview of the relevant UN instruments and the status of SADC member state commitments. All instruments promote equality, non-discrimination for all citizens, and protection from hate crimes. It classifies the status of commitments in three ways:

1. None means a state has not committed to the instrument, indicated with an "N."

[4] Human Rights Watch, Progress and Setbacks on LGBT Rights in Africa - An Overview of the Last Year, 22 June 2022, accessed 1 November 2024
[5] UNDP, PGA (2022). Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians.
[6] Ibid
[7] ILGA, Kirichenko K, United Nations Treaty Bodies: References to sexual orientation, gender identity,gender expression and sex characteristics 2016 (Geneva: ILGA, November 2017)

2. Signatory means a state has signed an agreement but has not ratified it nationally, indicated with an "S."
3. State party means a state has ratified the instrument at the national level, which means it must domesticate it, indicated with an "SP."

Ten SADC countries have committed to implementing all seven instruments: DRC, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Namibia, Seychelles, South Africa, and Zambia. Botswana, Tanzania, and Zimbabwe have not signed the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Angola has not ratified the CAT and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Meanwhile, Botswana lags in several areas as it has yet to commit to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESRC), or the CAT. It has only signed up to, but not domesticated, the Convention on the Rights of the Child (CRD) and ICERD.

Activists welcome the ongoing attention to LGBTQI+ human rights issues by the UN structures and encourage mandate holders to strengthen their analysis of specific populations within LGBTQI+ communities. This includes LBQ women, trans or intersex persons, and LGBTQI+ persons with disabilities.

African instruments

At the continental level, the African Union (AU) has developed and ratified several relevant treaties and policy instruments between 1981 and 2018. These include enforceable treaties (binding legal agreements for which African states have a collective obligation to implement and be held accountable) and policy instruments (influential regional governing tools aimed to achieve social, political, economic, health, and other targets or objectives).

The goal of fostering inclusion and enhancing the lives, livelihoods, and equality of all citizens, irrespective of gender or sexuality, is a shared characteristic of these regional treaties and policy instruments. Although these instruments do not explicitly refer to LGBTQI+ individuals, they nonetheless highlight the daily issues faced by people in the LGBTQI+ community and present strong, ambitious visions for inclusivity and practical actions to address their concerns about marginalisation.

The goal of fostering inclusion and enhancing the lives, livelihoods, and equality of all citizens, irrespective of gender or sexuality, is a shared characteristic of regional treaties and policy instruments

Table 8.4: Key AU legal and policy instruments with potential for addressing LGBTQI+ exclusion[8]

Instrument	History	Focus	Key values	Limitations
The African Charter on Human and Peoples' Rights	Enforceable treaty approved in June 1981; came into effect October 1986; ratified by every AU member-state.	Human rights and basic freedoms; civil and political rights; economic, social and cultural rights; peoples' rights and group rights; duties of citizens.	Right to self-determination, development, education, health, equality of all persons before the law, freedom from discrimination, life and personal integrity, freedom from cruel, inhuman or degrading treatment or punishment, rights to due process concerning arrest and detention, freedom of association, freedom to assembly, etc.	No specific mention of vulnerable groups, including LGBTQI+, weak or non-existent monitoring mechanism.
African Charter on Democracy, Elections and Governance	Enforceable treaty Adopted in January 2007.	Democracy and people's participation as individual fundamental rights.	Human rights, rule of law democratic principles, good governance, elimination of forms of discrimination, promoting freedom of expression, citizens' full participation to development processes, protecting social groups with special needs, improving access to basic social services, ensuring education and literacy.	No specific mention of vulnerable groups, including LGBTQI+; weak monitoring of national implementation relative to the Charter and not ratified by all member states.
African Youth Charter	Enforceable treaty endorsed and adopted in July 2006, entered into force August 2009.	Strategic youth participation, empowerment and development activities across Africa.	Freedom of movement, expression, private life and property, right to employment, right to education, right to equitable and ready access to medical assistance and healthcare, information, communication and awareness, elimination all forms of discrimination against girls and young women.	No specific mention of vulnerable groups, including LGBTQI+; weak monitoring of national implementation relative to the Charter and not ratified by all member states.
The Maputo Protocol (also known as The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa)	Enforceable treaty adopted in July 2003; came into effect in November 2005.	Women's civil and political rights, including economic, health, sexual, reproductive, social, cultural and environmental.	Equality, freedom, dignity, elimination of gender-based abuse and discrimination.	Does not deal directly with discrimination on the basis of sexual orientation or gender identity, no clear definition of sexual rights.
The Maputo Plan of Action 2016-2030 for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights	Enforceable treaty launched in 2015 following the expiration of the Maputo Plan of Action for The Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2007-2010. Later extended to 2015.	Women's SRHR, empowerment, individual dignity, and welfare and the right to health.	SRHR of men, women, boys and girls and vulnerable and marginalised groups/ populations.	No clear definition of sexual rights, emphasis on age-appropriate and culturally sensitive comprehensive education on SRH for young people that involves parents and communities. No focus on comprehensive sexuality education, no clear meaning of marginalised groups.
Common African Position on the Post-2015 Development Agenda	AU declarative/ obligatory policy instrument and an African Union-sponsored document published in March 2014.	Structural economic transformation inclusive growth, science and technology, people-centred development, environmental sustainability, natural resource management and disaster risk management, peace and security, and finance and partnerships.	Inclusivity, reduction in inequality, eradication of poverty, gender equality and women's empowerment, universal and equitable access to quality healthcare.	Does not deal directly with discrimination based on SOGIESC, with no clear definition of sexual rights.
Agenda 2063: The Africa We Want	AU declarative/ obligatory policy instrument with an AU policy roadmap. Signed in May 2013 by African heads of state and government.	Gender equality, elimination of GBV discrimination, barriers to quality health and education and ending systemic inequalities, young people and elimination of youth unemployment.	Gender parity in public and private institutions, universal access to social, health and economic rights.	No specific mention of LGBTQI+ persons. Does not deal with or mention discrimination based on SOGIESC.

Source: National Library of Medicine

[8] National Library of Medicine - https://pmc.ncbi.nlm.nih.gov/articles/PMC7887941/, accessed 9 November 2024

Regional instruments

Since lawmakers adopted the SADC Gender Protocol in 2008, the SADC Secretariat Gender Unit has developed several strategies, frameworks and tools to guide member states in developing gender policies and programmes to meet the targets set out in it. These include:

Frameworks and strategies

- SADC Framework for Achieving Gender Parity in Political and Decision-Making Positions by 2015.
- Revised SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (2016-2023).
- SADC Strategy and Framework of Action for Addressing Gender-Based Violence (2018-2030).
- SADC Regional Strategy on Women, Peace and Security (2018-2022).

Tools

- SRHR Scorecard to accelerate the attainment of SRHR for the people of SADC.
- Handbook to Promote Effective Gender-Based Violence Prevention Initiatives in the SADC Region (2022).
- SADC Gender and Development Monitor: Women in Politics and Decision-making Positions (2022).
- A draft model law on Gender-based violence (not final).
- Draft GBV Indicators and the GBV Scorecard (not final).

No SADC instruments currently exist specifically to address LGBTQI+ rights. This indicates the resistance amongst legislators in most SADC states to address the needs of these communities.

South Africa remains the exception, with some of the most progressive laws, policies, and practices in the world. Given the policy-rich global and continental environment, activists should continue to lobby and advocate for a regional protocol on the rights of LGBTQI+ people - one that includes global and continental provisions within a SADC context.

On 18-19 April 2023 in Johannesburg, LGBTQI+ organisation Outright International and its partners, in collaboration with the UNDP and the SADC Parliamentary Forum, convened an event with 22 parliamentarians from 12 SADC countries and civil society representatives to discuss conversion practices. The term "conversion therapy" typically describes attempts to change, suppress or divert one's sexual orientation, gender identity or gender expression. The event aimed to enhance the capacity of SADC lawmakers to understand and address harmful conversion practices, including the nature, extent and impact of such practices, and to recognise them as violations of human rights.



Maropene Ramokgopa, South African Minister in the Presidency for Planning, Monitoring and Evaluation, has criticised the SADC region's lack of legal protections for LGBTQI+ people.

Maropene Ramokgopa, South African Minister in the Presidency for Planning, Monitoring and Evaluation, gave the keynote address, during which she noted the persistent lack of legal protections for LGBTQI+ people, despite the development and adoption of key resolutions and protocols by SADC countries.

She noted the significance of enacting protective laws that address discrimination and violence directed towards the LGBTQI+ community and highlighted the need to address patriarchal norms and social values that fuel discrimination and violence. Ramokgopa also emphasised the need for regional solidarity to address violence, especially through the inclusion of community members in the development of policies and advocacy campaigns in rural areas.

"As SADC legislators, it is our role to pass laws to enable our citizens to exercise global, continental and regional protocols and resolutions as enshrined in legislation," Ramokgopa said. "We cannot truly unite as a region, if we are divided by the violation of fundamental human rights, including those of the LGBTQI+ community."[9]

[9] https://www.undp.org/south-africa/news/sadc-parliamentarians-discuss-harms-conversion-practices-africa-1 , accessed 4 November 2024

Constitutional and legal provisions

It is important to include protections for LGBTQI+ people in national constitutions to guarantee sustainable change, along with safeguarding and security for this community. Fourteen SADC countries include equality and non-discrimination clauses in their constitutions, but these do not include sexual orientation. A constitution provides fundamental foundational principles that apply to all citizens. Governments should not use a constitution to exclude any individuals or groups.

South Africa's Constitution is the only one in the region that recognises sexual orientation, and the country is the only SADC member that recognises same-sex marriage or civil unions.

In several countries in which courts have deemed colonial-area legislation unconstitutional, there is a noticeable trend toward these decisions then paving the way for new legislation that ensures protections for LGBTQI+ people where legislators and religious leaders have strongly opposed them. Examples include Botswana, Eswatini, Malawi and Namibia.

Seychelles and South Africa recently joined Angola to represent the only countries in SADC that have specific hate crime legislation which protects LGBTQI+ people from violence and discrimination.



On 19 September 2024, the **Seychelles** National Assembly passed a Penal Code (Amendment) Bill. The landmark law introduces hate speech as an offence within the Penal Code, imposing penalties on those who incite hatred towards a person or group based on protected characteristics.

It states that "the inclusion of hate as an aggravating factor aims to enhance the severity of penalties when crimes are committed due to bias or prejudice, based on protected characteristics such as race, religious belief, disability, sexual orientation, gender identity, sex characteristics, political affiliation, and HIV/AIDS status."

Eighteen members of the National Assembly voted for, and eight voted against, the amendment. This is a significant development for the Indian Ocean island nation, which only scrapped its colonial-era ban on homosexuality in 2016.

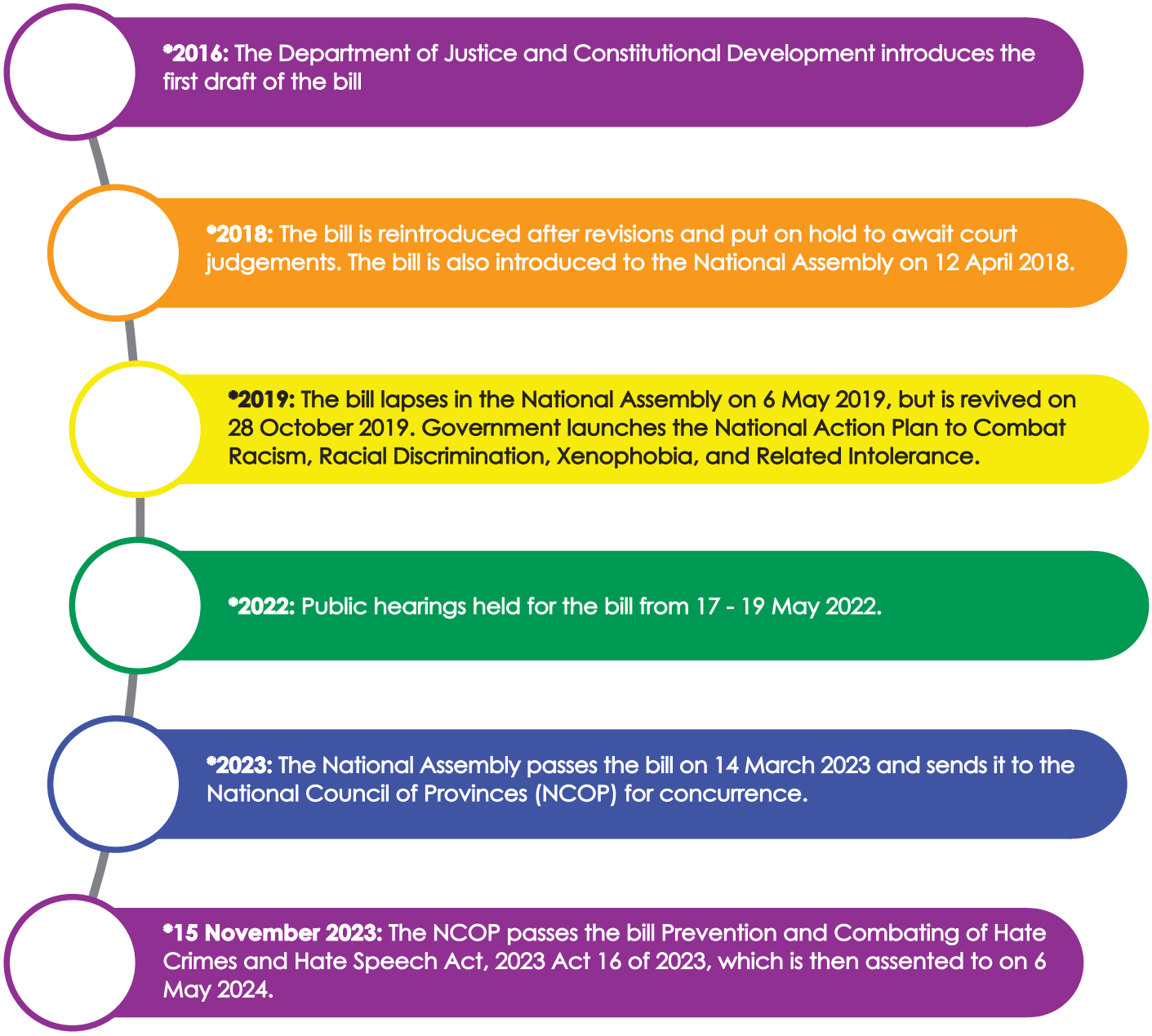
Civil society activists celebrated the decision as a strong stance against hate-motivated violence and a welcome step for the LGBTQI+ community in combatting the harms caused by homophobia, transphobia, and other forms of hate. They also hope it encourages victims to report incidents.[10]



In May 2024, **South Africa** saw its own hate crimes and hate speech bill signed into law. Bigots frequently assault and murder LGBTQI+ South Africans, particularly lesbians and transgender people, because of their sexual orientation and gender identity. By assenting to the Prevention and Combating of Hate Crimes and Hate Speech Bill, lawmakers in the National Assembly and the National Council of Provinces took an important step to prevent such crimes. The Bill creates a specific category of criminal offences for hate crimes and hate speech. In August, the cabinet approved a revised National Intervention Strategy to combat violence against LGBTQI+ people. Meanwhile, government leaders elevated the National Task Team that coordinates government and civil society responses to the portfolio of the deputy minister. The journey to this important moment has been long and slow for activists, civil society and government; the bill is the culmination of more than 15 years of work on their part.

[10] Mamba online, Seychelles Passes LGBTIQ-Inclusive Hate Crimes Bill, 28 September 2024, accessed 9 November 2024

Figure 8.1: South Africa's hate crimes and hate speech legislation journey



South Africa played host in recognition of its history and struggle against the oppressive apartheid system and in acknowledgment of its journey towards democracy, rooted in the principles enshrined in its Constitution

Figure 8.1 shows some of the key moments in developing and rolling out the hate crimes and hate speech bill.

South Africa's journey to this point dates even further back, to the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) in 2001. South Africa played host in recognition of its history and struggle against the oppressive apartheid system and in acknowledgment of its

journey towards democracy, rooted in the principles enshrined in its Constitution.

The government developed the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP 2003-2019) in consultation with various stakeholders, including the Chapter Nine institutions and civil society organisations (CSOs). Development commenced in 2003, and its authors presented a draft version of the NAP in 2013. Notably, lawmakers only launched it 16 years after its inception, in 2019.

The NAP, at least on paper and in principle, complements existing laws, policies and programmes addressing equality and discrimination, and provides the basis for developing comprehensive public policy against racism, racial discrimination, xenophobia and intolerance. It also aims to monitor and report on such incidents, with a rapid response team reporting to the government and society.

Civil society activists established the Hate Crimes Working Group (HCWG) in late 2009 as a multi-disciplinary coalition of organisations and individuals that work together to develop strategies to address prejudice-related crime. They launched the HCWG in response to the lack of data on the prevalence, nature, and psychological impact of hate crimes. The HCWG contributed to national policy and legislative interventions to combat hate crimes by supporting the speedy enactment of comprehensive hate crimes laws, improving the policing of, and judicial responses to, hate crimes, and assisting in the development of effective mechanisms to monitor hate crimes incidents.[11]

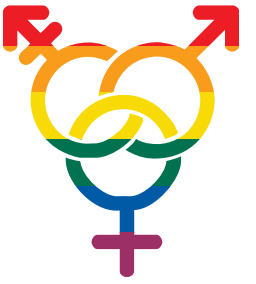
The creation of this legislation in South Africa represented a groundbreaking moment in Africa, as no other country on the continent had implemented similar measures. Seychelles soon followed suit. By recognising and attempting to respond to hate victimisation, South Africa reaffirmed its commitment to democratic values and demonstrated its unequivocal intolerance for any form of discrimination or prejudice.[12]

Recognition of LGBTIQ rights

It is critical for policymakers to recognise the human rights of the LGBTQI+ community and formalise them in legislation and policies. This comprehensive approach guarantees that individuals in the LGBTQI+ community have the same rights and liberties as every other citizen. These rights encompass, among other things, the entitlement for them to marry, adopt children, and express themselves freely.

Status of same-sex consensual sexual relations in SADC

Most SADC countries criminalise same-sex consensual sexual acts or "sodomy" for men through archaic laws and regulations. However, many variations exist in terms of the way countries enforce the legislation.



[11] Hate Crimes Working Group (HCWG) https://hcwg.org.za/about/, accessed 11 November 2024.
[12] Juan A. Nel and Zindi Venter, (South) African perspectives on the prevention, monitoring and combating of hate victimisation, VOL. 23 NO. 3 2024, pp. 192-206.

Table 8.5: Status of same-sex consensual sexual acts

Country	Status
South Africa	***Decriminalised***
	Following a case decided by the Constitutional Court of South Africa, the state abrogated laws carried through from the Penal Code of 1955 in which Article 600(1) and 601 criminalised consensual same-sex sexual conduct between adults, including the common-law crime of sodomy. Lawmakers retroactively applied the ruling to all cases of "sodomy" dating back to 1994.[13]
Seychelles	***Decriminalised***
	In July 2016, an amendment to the country's Penal Code (1955) repealed Sections 151(a and c), removing them from the updated version of the provision, which criminalised "carnal knowledge of any person against the order of nature."
Angola[14]	***Decriminalised (2019) by an act of parliament***
	Sexual orientation is an aggravating factor for several crimes as discrimination (art. 212) or incitement to discrimination (art. 380), injury (art. 213) and defamation (art.214), and corpse desecration (art. 223, in conjunction with articles 221 and 222). Angola also includes sexual orientation as a characteristic of persecution, which constitutes a crime against humanity (art. 382), protecting sexual minorities in times of extreme violence and internal turmoil.
Mozambique	***Decriminalised***
	In July 2014, the parliament approved Law 35/2014 repealing earlier criminalising provisions, namely articles 70 and 71 of the 1886 Penal Code, as modified by Law No. 177 (1912) and Executive Order-Law No. 39688 of 1954. These colonial provisions imposed penalties on those who "habitually practiced vices against nature." The revised Penal Code came into force in June 2015.
DRC	***Never explicitly outlawed***
	On 22 October 2010, the Congolese parliament sent the Sexual Practices Against Nature Bill to the Socio-Cultural Committee. The Bill gained widespread support both publicly and within the government, and the National Assembly considered it constitutional. Legislation has yet to be drafted.
Lesotho	***Not criminalised***
	Under Article 52 of the Penal Code Act (effective 2012), "sodomy" is not mentioned among the unlawful sexual acts. Furthermore, the Code does not have any provisions criminalising same-sex consensual relations, therefore revoking the previous common law crime of "sodomy." In this sense, Section 2(2) of the Code states, "no person shall be tried, convicted or punished for an offence other than an offence specified in this Code or in any other written law or statute in force in Lesotho."[15]
Botswana	***Declared unconstitutional***
	In 2019, the High Court unanimously ruled the relevant sections of Botswana's Penal Code (164(a), 164(c), 165, and 167) unconstitutional. The attorney then requested and received leave to appeal the decision, which the Court of Appeal upheld in 2021.
Mauritius	***Penal code declared unconstitutional***
	In October 2023, the Supreme Court of Mauritius ruled that section 250(1) of the Penal Code, which seeks to criminalise sodomy, is discriminatory and unconstitutional.
Madagascar	***Criminal for those younger than 21***
	Prior to and following its independence from France in 1960, the Criminal Code (2005) has not prohibited consensual same-sex sexual acts between adults in Madagascar. However, article 331 sets the age of consent at 14 for heterosexual sexual acts and 21 for same-sex sexual acts.
Comoros[16]	***Criminalised***
	Penal Code of the Federal Islamic Republic of Comoros 138, Article 318 states "(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."

[13] Pat Reber, "South Africa Court Upholds Gay Rights" Associated Press, 9 October 1998 (as reproduced in Sodomy Laws, 11 July 2004).
[14] AfricLaw, Decriminalisation of consensual same-sex acts in Angola and the progress of LGBTI human rights in Lusophone Africa, 5 March 2021, accessed 11 November 2024.
[15] Southern Africa Litigation Centre, Laws and Policies Affecting Transgender Persons in Southern Africa: Lesotho (Johannesburg: SALC, 2017), 92
[16] Human Rights Watch Country Profiles: Sexual Orientation and Gender Identity
https://www.hrw.org/video-photos/interactive/2020/06/22/human-rights-watch-country-profiles-sexual-orientation-and

Country	Status
Eswatini	***Criminalised***
	Eswatini criminalises same-sex sexual activity despite no law explicitly outlining this, as Section 252(1) of the Constitution (2005) states that Roman-Dutch Common Law, as interpreted in 1907, applies to any regulations or laws in place prior to independence in 1968 and not subsequently overturned. As such, "sodomy" remains a crime. In 2005, media reported that the government had plans to include prohibitions of all male homosexual acts and lesbian acts in its revision of the Sexual Offences laws with proposed penalties of imprisonment for a minimum period of two years.[17]
Namibia	***Criminalised***
	No codified legislation in Namibia directly criminalises same-sex sexual activity; as such, lawmakers derive criminalisation from interpretations of Roman-Dutch Common Law. However, the Criminal Procedure Act 25 (2004) outlines in Article 299 the need for verifiable evidence that an accused person committed the "offence of sodomy or attempted sodomy," providing clear evidence of de jure criminalisation. Lawyers tested the constitutionality of the 2004 act in court and on 21 June 2024, three judges of the High Court of Namibia determined that these laws constituted unfair discrimination and were therefore unconstitutional and invalid. In July 2024, the Namibian government lodged an appeal against the ruling of the High Court amid strong resistance from religious groups and communities.[18]
Malawi	***Criminalised***
	Section 153 of the Penal Code states that anyone who has had "carnal knowledge of any person against the order of nature" is guilty of a felony and is liable to face imprisonment for up to 14 years. Additionally, Section 156 criminalises "indecent practices between males," whether in public or private, imposing a penalty of imprisonment for five years and/or corporal punishment. In December 2010, the parliament passed a bill amending the Penal Code (effective in January 2011), which introduced Section 137A to criminalise "indecent practices between females," imposing a penalty of imprisonment of five years. The constitutionality of these provisions was tested in court in 2023, but Malawi's Constitutional Court rejected a legal challenge and upheld sections 153 and 154 of the penal code.
Zimbabwe	***Criminalised***
	Article 73 (1) of the Criminal Law (Codification and Reform) Act (Act No. 23) (2004) criminalises anal intercourse between males as well as "any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act." For these two types of conduct, the Code imposes a penalty of imprisonment for up to a year and/or a fine.
Zambia	***Criminalised***
	Per Amendment Number 26 of 1933, Article 155 of the Penal Code states that any person who "has carnal knowledge of any person against the order of nature" has committed a felony and is liable to receive a sentence of up to 14 years in prison. Additionally, Article 178(g) of the Penal Code (1930) criminalises any act of "soliciting for immoral purposes in a public place."
Tanzania	***Criminalised***
	Section 154 of Tanzania's Penal Code (1998) prohibits "carnal knowledge of any person against the order of nature," with a prescribed penalty of 30 years to life imprisonment. Sections 138a and 157 also prescribe a five-year imprisonment for "gross indecency."

Source: Equaldex country information

An analysis of Table 8.5 shows:

- Seven countries - Angola, Botswana, DRC, Lesotho, Mozambique, Seychelles and South Africa - have decriminalised consensual same-sex sexual acts or never criminalised them in the first place. In Madagascar, same-sex consensual sexual acts are legal for citizens older than age 21 but against the law for everyone else.
- Consensual same-sex sexual acts remain a crime in Comoros, Eswatini, Malawi, Mauritius, Namibia, Tanzania, Zambia and Zimbabwe.

[17] ILGA World: Eddie Bruce-Jones Lucas Paoli Itaborahy, State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults (2012).
[18] Human Dignity Trust, Namibia: Case before the High Court, accessed 11 November 2024.



In October 2023, the **Mauritian** Supreme Court ruled that section 250 of the country's Criminal Code, which criminalises anal sex between two consenting adult men, violates the constitution. The litigant, Abdool Ridwan (Ryan) Firaas Ah Seek, based his case on the right to be free from discrimination, and the court found that the word "sex" in the constitution includes "sexual orientation."

The court also considered international human rights commitments and rejected the state's argument that same-sex relations remain a sensitive issue in Mauritian society. The court held that the threat of prosecution for homosexual men justified the need for protection from discrimination based on sexual orientation.[19]

The decision represents a victory for human rights and a major step towards full inclusion of the LGBTQI+ community in Mauritius. It rejects the criminalisation of same-sex relations, which British rule imposed on the country. The judges underlined the constitutionally protected right to non-discrimination and said that the state must have serious reasons to interfere with how homosexual men choose to have consensual sexual intercourse.

In 2014, the Ministry of Health amended a blood donation policy to allow men who have sex with men to donate blood. However, healthcare staff still sometimes prevent LGBTQI+ people from donating blood.[20]

The region has seen several legal challenges regarding the constitutionality of provisions in archaic penal codes. In some cases, the courts declare the provisions unconstitutional. Conservative parliamentarians, religious leaders and communities have put up strong resistance in all these cases.



Five years ago, the LGBTQI+ community in **Botswana** celebrated a significant legal victory. The country's High Court, in the Letsweletse Motshidiemang v. Attorney General (2019) case ruled in favour of activists seeking the abolishment of gaol sentences for consensual sexual acts between same-sex adults, citing such penalties unconstitutional. The Court ruled that the word "sex" in section 3 of the Constitution of Botswana should be "generously and purposively interpreted to include 'sexual orientation.'" The Government of Botswana then unsuccessfully appealed the High Court ruling. In 2021, Botswana's Court of Appeal emphasised that sections 164(a) and (c) of the Penal Code "have been rendered unconstitutional by the march of time and the change of circumstances" and noted that the code "incentivise[d] law enforcement agents and others to become key-hole peepers and intruders in private spaces." The Court accentuated that this "[is] neither in the public interest nor in the nature of Batswana." However, government leaders need to take further action on the remaining section 167 of the Penal Code, which effectively undercuts the decriminalisation ruling through its banning of acts of "gross indecency" in public and private, commonly interpreted to refer to same-sex activity.

In January 2022, media reported that the President of Botswana had assured the LGBTQI+ community that "the Government of Botswana is led by principles of democratic governance and the rule of law." He noted that the government will uphold the Court of Appeal decision. In July 2023, the LGBTQI+ community anticipated parliament would remove Sections 164(a) and (c) from the penal code, aligning it with the 2019 decision. However, that same month in Molepolole, large groups of anti-LGBTQI+ community members and religious leaders protested the anticipated legislative changes. Media reports showed photos of young children holding placards with strong messaging, such as "We say no to homosexuality," and "Protect our children against homosexuality."

Pastor Pulafela Mabiletswane Siele, representing the Evangelical Fellowships of Botswana, delivered a petition to the parliament. Siele alleged that in passing the bill, legislators "would open floodgates of immorality." Opposition lawmaker Wynter Mmolotsi received the petition on behalf of the parliament and assured protes-

[19] African Liberty, Like Mauritius, other African Countries should Decriminalize Homosexuality, October 13, 2023, accessed 1 November 2024.
[20] UN OCHR - Supreme Court ruling tells LGBTQ people in Mauritius that their dignity is valued: UN expert, accessed 10 November 2024.

ters that policymakers would consider their views in the legislative discussions. He reported the public concerns to parliament, which then abandoned the bill, removing it from the pending debate, with the possibility that legislators would revisit it later. It did not re-emerge in that sitting of parliament, which ended in August 2023, and lawmakers have yet to debate it.



Malawi's penal code also violates its Constitution. Parts of the country erupted in protest in 2024 as activists attempted to leverage this disconnect to bring about progressive change. Its penal code contains several provisions that criminalise adult consensual same-sex conduct, with punishment of up to 14 years in prison.

The government enacted a new anti-homosexuality law in January 2011, amending the penal code to extend the crime of "gross indecency" to women, with up to five years in prison. In 2012 and again in 2015, Malawi's Ministry of Justice announced a moratorium on enforcing these laws. But in 2016, the Mzuzu High Court issued an order suspending the moratorium pending judicial review, which has led to legal ambiguity.

In July 2023, Jan Willem Akstar, a Dutch citizen, and Jana Gonani, a transgender Malawian woman, brought a case challenging the constitutionality of the provisions in the penal code that criminalise consensual same-sex relations. They alleged that it infringes on several rights, including the rights to personal liberty; dignity; equal and effective protection by the law; privacy; and the right to be informed with sufficient particularities of the charge. Malawi's High Court, sitting as a constitutional court, heard a case involving Akstar, who was arrested in 2020 and charged with nine offenses of sexual abuse and sodomy. Meanwhile, a Malawi court sentenced Gonani to eight years in prison for same-sex relations. Dealing a blow to activists hoping for change, Malawi's Constitutional Court rejected the legal challenge to the country's penal code on 28 June 2024, with the three-judge panel upholding its validity.[21]

The following month, several religious groups led street demonstrations to protest the push to legalise same-sex marriage in Malawi. Thousands[22] of protesters, representing the country's major religions - Christianity and Islam - participated.[23] The opposition simultaneously organised protests in several towns. In Blantyre, protesters presented a petition to the office of the district commissioner, appealing to policy-makers not to pass any laws legalising same-sex relations. Meanwhile, Eric Sambisa, the executive director of Nyasa Rainbow Coalition, which advocates for LGBTQI+ rights in Malawi, went into hiding due to death threats he received after criminals burned down his office in Blantyre.

Moving backwards



In the **DRC**, where same-sex consensual conduct has never been criminalised, lawmakers started a push to change the law. In April 2024, National Deputy Constant Mutamba proposed legislation to criminalise, among other things, consensual same-sex sexual acts. The bill's rationale, outlined in a comprehensive "statement of reasons," revolves around cultural preservation, sovereignty protection, and resistance against perceived "neocolonial influences" promoting divergent cultural norms. It contends that homosexuality is incompatible with Congolese heritage, emphasising adherence to the "natural order" and the preservation of "traditional values".



Constant Mutamba, a politician in the DRC, wants to criminalise consensual same-sex sexual acts in the country, which has previously never criminalised gay sex.

[21] Amnesty International, We are facing extinction: escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Amnesty International 2024.
[22] France 24, Thousands rally in anti-LGBTQ protest in Malawi, accessed 10 November 2024.
[23] Macmillan Mhone, Dutch national at centre of homosexuality case in Malawi says he is not gay, Malawi 24, 17 July 2023, accessed 9 November 2024.

The proposed amendments seek to address perceived moral decay by explicitly criminalising "sexual deviations" within the penal code, including consensual same-sex conduct. Furthermore, legislators contended they need to revise rape and assault statutes to extend the criminalisation of homosexuality "in all its splendour," thereby reinforcing a conception of homosexuality that encompasses both consensual and non-consensual acts.[24]



In March 2023, MPs called for more stringent criminalising provisions and the effective enforcement of existing provisions that criminalise same-sex relationships in **Zambia**. One MP specifically highlighted that the country relied on "a piece of legislation that talks about the order of nature" and called for the enactment of a law that will "specifically target those who are involved in homosexuality." In so doing, he also stated that "even those men who are dressing like women must be punished under that law."[25]

The same month also saw Hakainde Hichilema, Zambia's president, deny claims that his government planned to decriminalise homosexuality. Rumours of this have plagued his administration even before voters elected him to office, demonstrating the politicisation of this topic in the country. Hichilema stated that his government would not change any law without extensive consultations with the public and he encouraged Zambia's religious leaders to continue preaching against LGBTQI+ people.[26]



In **Eswatini**, section 185(5) of the Criminal Procedure and Evidence Act - which exists as a remnant of colonial-era Sodomy Act of 1907 - criminalises consensual same-sex relations between men. However, the law is silent on provisions criminalising consensual same-sex relations between women.

The LGBTQI+ community in the country experiences significant discrimination, a reality underscored by research from the Out and Proud: LGBTI Equality and Rights in Southern Africa project. In Eswatini, its findings reveal a troubling perception among the population: only one out of every ten survey participants believe that individuals identifying as LGBTQI+ receive the same level of dignity and respect as others in society. This stark statistic highlights the ongoing challenges faced by the community in achieving equality and acceptance.

Same-sex marriages and civil unions

Only South Africa's legal frameworks provide for same-sex marriage and civil unions. All other SADC countries define marriage as a union between a woman and a man. Namibia had an opportunity to recognise same-sex marriages in January 2022, but the country's High Court ruled against it. In 2023, the Supreme Court overturned the High Court's decision.



In June 2023, the Supreme Court of **Namibia** advanced the rights of LGBTQI+ people by reversing an earlier decision that had rejected a request to acknowledge same-sex unions registered in other countries. Friedel Dausab, a gay Namibian citizen, successfully argued that the common law offence of sodomy and related charges conflicted with his rights against unfair discrimination under the Namibian Constitution. On 21 June 2024, a three-judge panel of the High Court of Namibia determined that these laws constitute unfair discrimination and are, therefore, unconstitutional and invalid. The court stated that "the enforcement of the private moral views of a segment of the community (even if they are the majority of that community), which are largely based on nothing

[24] ILGA World: Lucas Ramon Mendos and Dhia Rezki Rohaizad, Laws On Us: A Global Overview of Legal Progress and Backtracking on Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics, 1st Edition (Geneva: ILGA, May 2024).
[25] Ibid.
[26] Ibid

more than prejudice" cannot be justified. It stated that criminalising gay men "poses a greater threat to the fabric of society as a whole than tolerance." In July 2024, the Namibian government lodged an appeal against the ruling.[27]

Following this, some members of the Namibian parliament put forward what has come to be known as Ekandjo's Bill. It proposes revising the Marriage Act to explicitly define the term "spouse" to represent only a union between a man and a woman. Lawmakers then enacted additional legislation to modify the definition of "spouse" to exclude transgender individuals from legal unions, stating that "spouse" means "one half of a legal union between a genetically born man and a genetically born woman of the opposite sex." The Ekandjo Bill explicitly references Articles 81 and 45 of the Namibian Constitution, allowing for the courts to overturn a Supreme Court decision if it "is contradicted by an Act of Parliament lawfully enacted." The National Union of Namibian Workers backed the Bill.

Ekandjo's Bill extends beyond simple definitions; it also criminalises celebrating, witnessing, promoting, and advocating for same-sex marriage. Individuals convicted of these offences face significant penalties, including imprisonment for up to six years and fines reaching 100 000 Namibian dollars (US$5500).[28]

Joint adoption of children and second-parent adoption of children

Preventing LGBTQI+ people from adopting children violates their rights, yet South Africa remains the only SADC country that allows same-sex couples to adopt children. In South Africa, a partner in a same-sex relationship can also adopt the other partner's biological or adopted child regardless of the legal status of their relationship.

Transgender rights in SADC



Sisonke Pride March. Credit: Sisonke

Transgender serves as an umbrella term to describe individuals whose gender identity, expression, or behaviour differs from the conventional expectations based on the sex they were assigned at birth. Gender identity refers to a person's inner understanding of their proximity to what society consider male, female, both, neither, or something in between, while gender expression is how a person conveys their gender identity to others through behaviours, attire, hairstyles, voice, and physical traits. "Nonbinary" is another term people use to describe genders that do not fall into either the male or female category.

Members of the LGBTQI+ community often use "trans" as a shorthand version of "transgender." However, not everyone who exhibits gender-nonconforming traits will identify as transgender.

[27] Human Dignity Trust, Namibia: Case before the High Court, accessed 11 November 2024
[28] Amnesty International, We are facing extinction: escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Amnesty International 2024

The discourse surrounding transgender individuals in popular culture, academia, and scientific fields is continually evolving, especially as the awareness, understanding, and acceptance of transgender experiences expand and grow.[29]

Transgender people face discrimination and a range of challenges in various aspects of life, including:

Employment discrimination: Transgender people can face discrimination during employment processes, advancement opportunities, or in their treatment at work. Numerous individuals experience harassment on the job or may even lose their positions because of their gender identity and expression.

Healthcare discrimination: Access to appropriate healthcare can be a significant issue for transgender people, who often face discrimination from healthcare providers, denial of care, or lack of knowledgeable practitioners regarding their health needs, including hormone therapy or surgeries.

Housing discrimination: Transgender people may have trouble in securing housing or face harassment in their living situations. Landlords may refuse to rent to them based on their gender identity.

Legal challenges: Many transgender people face barriers when trying to update legal documents (such as IDs and birth certificates) to reflect their gender identity, leading to complications in navigating various systems.

Violence and harassment: Transgender people, particularly those in marginalised ethnic or racial groups, often face higher rates of violence and hate crimes. This includes physical assault, verbal harassment, and other forms of violence, including from police and other state actors.

Education discrimination: In educational settings, transgender students may face bullying, harassment, or denial of access to facilities that align with their gender identity, which can adversely affect their academic performance and mental health.

Stigma and isolation: Transgender individuals often deal with societal stigma that can lead to isolation, mental health challenges, and reduced support from friends and family.

Barriers to public facilities: Many transgender people encounter difficulties accessing public restrooms and facilities that align with their gender identity, leading to discomfort or potential confrontation in public spaces.

All these challenges and types of discrimination can have severe emotional, psychological, and physical consequences for transgender individuals, emphasising the need to expedite comprehensive legal protections and advocate for societal acceptance.

Changing sex designation, name, or gender marker

The ability to change one's gender marker or name is a fundamental right for transgender and gender-diverse individuals, serving as a crucial aspect of their identity and recognition in society. Experts often refer to this process as "legal gender recognition," which plays a significant role in affirming one's gender identity and fostering a sense of belonging.

In many countries where trans people lack the option to modify their gender markers to reflect their true selves, changing their name becomes a necessary but temporary solution. This stopgap measure, while helpful, does not fully address the complexities of legal identity for transgender and gender-diverse people.

[29] American Psychological Association, https://www.apa.org/topics/lgbtq/transgender-people-gender-identity-gender-expression accessed 6 November 2024.

According to research conducted by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), even in regions where individuals have the legal right to change their names and gender markers, the actual process can be fraught with challenges. These range from bureaucratic hurdles and stringent requirements to social stigma and discrimination, creating an inordinately difficult experience for those seeking to have their identities formally recognised. Ultimately, a seamless process for legal gender recognition is essential for the dignity, equality, and human rights of transgender and gender-diverse individuals.[30] In 2022, ILGA launched a toolkit to support global advocacy efforts to support legal gender recognition for transgender people.[31]



In 2019, the High Court of Bulawayo, in **Zimbabwe**, issued a ruling in the case of unlawful arrest, detention and malicious prosecution of a transgender woman. The Court stated that "Transgender citizens are part of the Zimbabwean society. Their rights ought to be recognised like those of other citizens. Our constitution does not provide for their discrimination. It is nothing but delusional thinking to wish away the rights of transgender people. To avoid the recurrence of what happened to the Plaintiff in this case, it might be prudent to construct unisex toilets as an addition to the resting rooms in public places."[32]

This ruling represents significant progress in promoting the rights of transgender individuals in Zimbabwe and across the region. However, trans individuals still encounter difficulties in Zimbabwe that hinder their access to, and enjoyment of, their human rights and freedoms. Zimbabwe has no legal provisions for obtaining gender-affirming healthcare or processes in place for altering gender markers on official documents. This means that transgender people find it challenging to match their legal identities with their gender identities, resulting in daily violations to their human rights.[33]



LGBTQI+ members of the Capricorn District Municipality, in South Africa's Limpopo province, take part in a 16 Days of Activism march in 2023. Credit: Selaleleo Matlakala

[30] https://database.ilga.org/legal-gender-recognition, accessed 4 November 2024
[31] https://ilga.org/news/tlmr-toolkit-towards-trans-liberation-advocacy-lgr/, accessed 17 November 2024.
[32] Southern Africa Litigation Centre, Zimbabwe: Action for damages of unlawful arrest of a transgender person, 15 November 2019, accessed 10 November 2024
[33] Amnesty International, We are facing extinction: escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Amnesty International 2024

Table 8.6: Conditions under which citizens can change gender markers[34]

Country	Relevant law	Conditions	Issue
Angola	Código do Registo Civil 2015, Section 87	Although s.78 of the Code does not allow alterations of details entered in the registration of records of the Civil Registrar, s.87 permits changes, including change of name where there is a change of facts that alter the legal identity or status of the person.	Unclear, no specific reference to trans and diverse gender identities
Botswana	National Registration Act 26 of 1986, s.16	Section 16. Material change: (1) Where the registrar is of the opinion that any change in the particulars relating to a registered person materially affects his registration, he shall record the change and notify the registrar of national registration of the circumstances and recommend that the person concerned should be issued with a new identity card. […] (3) The particulars relating to the new identity card and its holder shall be recorded in the national register and the register of the area in which that person is registered.	At the discretion of the registrar; not an unconditional right
Malawi	National Registration Act 13 of 2010 (not trans specific)	Section 20(1) provides that, where a change in particulars of a registered person materially affect his registration, the district registrar shall record the change and notify the director of the circumstances and recommend that the person be issued with a new identity card. Section 21(1) provides that every registered person may, when he is satisfied that his appearance has changed so as to make it likely that his identity may be questioned, apply to the district registrar for the issue of a new card with a more recent photograph.	Unclear, no specific reference to trans and diverse gender identities
Mozambique	Código do Registo Civil 2004	Section 85(1) gives the civil registrar general authority to make changes when there is a change of facts that alter the legal identity or status of the person registered.	Unclear, no specific reference to trans and diverse gender identities
Namibia	Births, Marriages and Deaths Registration Act 81 of 1963; Identification Act 2 of 1996	The Secretary may, on the recommendation of the secretary of health, alter in the birth register of any person who has undergone a change of sex, the description of the sex of such person and may for this purpose call for such medical reports and institute such investigations as they may deem necessary. The Act does not define "change of sex." Applications in terms of s.7B occur on a case-by-case basis - as long as a person can provide medical reports of their "change of sex." Once the application is granted, a trans person can apply for a new identity document and passport. Namibia does not provide gender-affirming healthcare in the public health system, making the Act largely inaccessible. A transgender person who has not had a "change of sex" could use s.12 (1) (a) of the Identification Act 2 of 1996. It states that "if an identity document does not reflect correctly the particulars of the person to whom it was issued, or contains a photograph which is no longer a recognisable image of that person," the person shall hand over the identity document to the Minister. Section 12(3) states that the Minister shall cancel it and replace it with an improved identity document. Most trans people who have made applications to update their photographs have not been successful.	Comprehensive legislation, barrier in the public health system
South Africa	Alteration of Sex Status and Sex Descriptor Act, No.49 of 2003	Any person whose sexual characteristics have been altered by surgical or medical treatment or by evolvement through natural development resulting in gender reassignment, or any person who is intersexed may apply to the director-general of the National Department of Home Affairs (DHA) for the alteration of the sex description on his or her birth register. There are no directives from the DHA on how to interpret the Act, and in practice this causes arbitrary obstacles, such as requiring proof of gender reassignment surgery, long waiting periods for application processing (averaging between one and seven years), what forms to use, and what documents an applicant must bring.	Comprehensive legislation, barrier in Home Affairs
Zambia	National Registration Act 19 of 1964	Section 9(2): In any case where a national registration card issued to a registered person ceases in any material particular to accurately represent his identity, such person shall, without undue delay, produce his national registration card and give such particulars as shall be necessary for the issue of a new national registration card to a registrar who... shall issue to such person a new national registration card.	Unclear, no specific reference to trans and diverse gender identities
Not possible currently, or a law or policy needed, in Comoros, DRC, Eswatini, Lesotho, Madagascar, Mauritius, Seychelles, Tanzania and Zimbabwe.			

Source: ILGA

[34] https://ilga.org/downloads/ILGA_Trans_Legal_Mapping_Report_2017_ENG.pdf

Table 8.6 lists the relevant laws and conditions applicable to changing gender markers in those SADC countries which allow it in some way. It illustrates that a variety of acts and laws provide for the change, but issues arise when transgender or gender-diverse people attempt to attain their rights under these laws.

At a practical level, the inability to change gender markers affects trans people in several ways:[35]

- Certain institutions, both private and public, may require a legal gender identity on official documents, this includes health care services;
- If a person presents themselves in a gender opposite to their gender marker it makes it difficult to engage in everyday activities, such as opening a bank account, applying for a job or driver's licence, and boarding a plane;
- Most countries still use a binary gender system of male and female, which applies to visa applications, which people often need to complete in person; and
- Correctional services, also known as imprisonment/prison/incarceration or gaol. Gender markers will determine where prison officials house an individual during imprisonment.



As early as 2017, the High Court in **Botswana**, in the case of ND v. Attorney General, clearly stated that preventing transgender individuals from changing a gender marker without undue legal obstacles infringes upon essential rights such as identity, dignity, privacy, protection from discrimination, and freedom of expression. The court mandated that the State undertake necessary legislative and administrative measures to ensure that official documents accurately reflect an individual's self-identified gender.

In the same ruling, the High Court affirmed that people have the right to alter their gender marker in accordance with the National Registration Act of 1986. Section 16 stipulates that the law justifies alterations to registered individuals' information in cases of a "material change" to their details. The court emphasised that having a gender identity that differs from the one assigned at birth, as noted in the birth register, qualifies as such a "material change." Once a person makes this adjustment, the registrar must provide a new identity document.

Although in this case the petitioner succeeded in updating their identity documents to reflect their gender identity, it is concerning that, in 2023, the Southern Africa Litigation Centre (SALC) reported that many transgender individuals in Botswana still face significant obstacles in their pursuit of legal gender recognition.[36]



Fighting for recognition: Members of Lesbians, Gays & Bisexuals of Botswana (LEGABIBO) gather outside the Hight Court in Gaborone. It ruled in their favour in 2019, paving the way for law reform and the decriminalisation of LGBTQI+ people. Photo: Gender Links

[35] BeTrue2Me, Gender Marker and Forename Change, accessed 12 November 2024.
[36] Amnesty International, We are facing extinction: escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Amnesty International 2024.

Intersex

Intersex is a term for people born with, or who develop, sex characteristics which are different from what doctors typically consider male or female. These characteristics can include chromosomes, genitals, reproductive organs, and secondary sex traits. Experts estimate that approximately 1.7% of the global population have intersex traits.[37]

Intersex people can have a variety of gender identities and sexual orientations, including male, female, non-binary, transgender, or queer. They come from all races, ethnicities, socioeconomic backgrounds, faiths, and political ideologies. Intersex is not a disease and thus doctors cannot "cure" or "repair" it. However, intersex people may need to address some health conditions related to their anatomy. For example, if someone has a uterus but no uterine opening, they may experience painful menstrual cycles. Surgery to create an opening may be an option in this case.

Most intersex surgeries are non-lifesaving procedures to alter these natural variations in genital appearance or reproductive anatomy, representing what doctors refer to as medical pathologisation. These surgeries can have risks and complications.[38]

Though we speak of intersex as an inborn condition, intersex anatomy does not always show up at birth. Sometimes, a person does not discover their intersex anatomy until they reach puberty or find out they are infertile. Some people live and die with intersex anatomy without ever knowing.[39]

Many people misunderstand intersexuality because they believe that gender is strictly binary (male or female), which contributes to the discrimination intersex people face. Intersexuality has often been confused with sexual orientation or gender identity, but it strictly refers to biological variations in sex characteristics. Intersex individuals can identify with any gender and have diverse sexual orientations.

Many people simply lack education about intersexuality, leading to misconceptions and stigmatisation. The lack of representation and dialogue around intersex issues perpetuates ignorance as well as a misunderstanding regarding consent and the rights of intersex individuals, especially regarding surgeries performed on infants or children before they can provide informed consent.

Addressing these misunderstandings will promote awareness and acceptance of intersex individuals and their rights. To this end, various initiatives by the Office of The High Commissioner for Human Rights (OHCHR), UN agencies and regional human rights mechanisms have attempted to address this topic.

In 2019, the Office issued a Background Note on human rights violations against intersex people. In 2020, it shared a report and recommendations on addressing the intersection of race and gender discrimination in sport, including its impacts on women with variations in sex characteristics. Last year, it issued a Technical Note for States and other stakeholders on UN recommendations on the rights of intersex people and good practices in their implementation.

In 2024, the Human Rights Council adopted a resolution on Combatting Discrimination, Violence and Harmful Practices against Intersex People. The resolution requests the High Commissioner to present a report and organise a panel discussion at the 60th session of the Council examining discriminatory laws and policies, acts of violence and harmful practices against persons with innate variations in sex characteristics, in all regions of the world. This includes looking at root causes and examining best practices, especially when addressing the realisation of their right to the enjoyment of the highest attainable standard of physical and mental health.[40]

[37] https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people, accessed 4 November 2024.
[38] https://lgbtq.unc.edu/resources/exploring-identities/intersex/ accessed 4 November 2024
[39] https://isna.org/faq/what_is_intersex/, accessed 4 November.
[40] UN OHCHR - https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people, accessed 2 November.

Forced and coercive medical interventions

Doctors often perform unnecessary surgeries and other interventions on intersex children with the aim of making their bodies fit into traditional binary sex norms. These procedures, which are often irreversible, can lead to issues such as permanent infertility, pain, incontinence, loss of sexual sensation, and long-lasting psychological distress, including depression. Frequently conducted without obtaining the complete, voluntary, and informed consent of the individuals involved - who are often too young to participate in the decision-making process - these interventions may infringe upon their rights to physical integrity, protection against torture and ill-treatment, and freedom from harmful practices.

Many intersex adults who underwent surgical procedures during childhood highlight the profound sense of shame and stigma associated with efforts to eliminate their intersex characteristics. These experiences often lead to significant physical and psychological suffering, stemming from both the invasive nature of the surgeries and the painful, lasting scars they bear as a result. In addition to the physical repercussions, many intersex individuals experience coercion to conform to specific sex and gender categories that do not align with their authentic identities. This forced conformity can lead to a disconnect from their true selves and ongoing struggles with their sense of identity and belonging.[41]

According to the OHCHR, to ensure the physical integrity of intersex persons, States should:

1. Prohibit medically unnecessary surgery and procedures on the sex characteristics of intersex children;
2. Ensure that experts investigate human rights violations against intersex people and prosecute alleged perpetrators;
3. Ensure that intersex people and their families receive adequate counselling and support, including from peers;
4. Ensure that academics and researchers consult intersex people and organisations so they can participate in the development of research, legislation and policies that impact on their rights; and
5. Provide health care personnel with training on the health needs and human rights of intersex people and the appropriate advice and care to give to parents and intersex children, being respectful of the intersex person's autonomy, physical integrity and sex characteristics.[42]

Prohibit medically unnecessary surgery and procedures on the sex characteristics of intersex children



Zimbabwe took a positive step recently by showing greater acceptance for intersex rights and actively engaging proposals made by Iceland during the 2022 Universal Periodic Review (UPR), a peer review process that allows all UN Member States to review each other's human rights records. The proposal focused on safeguarding minors with intersex variations from non-consensual surgeries and violations of their bodily autonomy. The Zimbabwean government indicated that it is reviewing this recommendation. The acknowledgement of intersexuality as a naturally occurring variation that is part of human diversity marks a promising initial step toward promoting inclusivity and respecting the rights of individuals with intersex variations in Zimbabwe.

However, some members of civil society have raised concerns about the incongruence in the understanding of concepts relating to SOGIESC within Zimbabwe. They caution that, while the country has seen a growing acknowledgement of intersexuality as a biological characteristic, there remains a problematic pathologisation of some identities and the perception that gender identity and sexual orientation are matters of choice or behaviour.

[41] UN OHCHR - https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people, accessed 2 November 2024.
[42] Ibid

Intersex, transgender and sport

The topic of intersex and transgender identities in the sporting world - particularly who can compete and in which category - remains fraught with complexities and challenges. Proposed regulations to address these often spark considerable debate and backlash, including in South Africa, which is home to intersex Olympic gold medallist Caster Semenya.

Involving the scientific and medical communities is generally not a prerequisite for establishing regulations in sport, but the intricate analysis of gender dynamics increasingly necessitates their input. However, it is important to recognise that sporting experts should not confine their analysis and decision-making solely to these perspectives.

The principle of equity in women's sports lies at the heart of this discussion. Many experts express concern that this debate may undermine women's hard-won progress and liberties in the athletic arena over the past century. This debate raises critical questions about the future of women's sport and the ongoing struggle for inclusive representation and fairness for all women regardless of their sexual orientation, gender identity, or sex characteristics.[43]

Broadly speaking, transgender athletes do not identify with the gender they were assigned at birth. The question as to whether professional athletics should allow transgender athletes to compete following surgery or because of their use of hormonal treatment is not new. These procedures are, in practice, the ones that primarily require regulation within sports federations.

It is also important to distinguish between transgender and intersex athletes. As noted earlier, intersex athletes have sexual characteristics that do not correspond to traditional gender definitions. This could include naturally high testosterone levels in female athletes. Sporting association regulations limiting their access to competition frequently target these athletes, but the legitimacy of these regulations remains in question. What is the difference between a naturally high testosterone level in a sportswoman and an "abnormally" tall volleyball or basketball player from the point of view of sports equity?

Regulations on intersex, transgender and female athletes with abnormally high hormones in international sports have evolved over more than 60 years and remain subject to ongoing debate and revision. After extensive consultation with athletes and international sports federations, the International Olympic Committee (IOC) published a document entitled *IOC Framework on Equity, Inclusion and Non-Discrimination on the Basis of Gender Identity and Intersex* in November 2021. It notes that transgender athletes can compete without undergoing surgery.

The guiding principles of the framework are:

- Transgender male athletes have no particular sporting advantage and should be able to compete in male competitions;
- The same applies to transgender athletes before puberty, who should be able to compete in male or female competitions depending on their identified gender; and
- Experts should assess the situation of athletes who have changed sex after puberty on a case-by-case basis, as testosterone-generating male puberty can, at least in theory, lead to physiological advantages.[44]

The rules focus on hormone levels, particularly testosterone. Trans women (assigned male at birth but identifying as female) can compete in women's events if their testosterone levels sit below a certain threshold for at least 12 months prior to competition. World Athletics, the governing body for track and field, has its own set of regulations. As of 2023, it restricts eligibility for trans women in female categories based on testosterone levels, but it has faced criticism for this stringent criterion.

[43] Pierre Bydzovsky, The status of transgender and intersex athletes in international sports federations, The International Sports Law Journal (2023) 23:357-367.
[44] Ibid

Athletes with intersex variations face different regulations depending on the sport. Some governing bodies have regulations that require their testosterone levels to fall within female limits or that require them to undergo medical interventions to compete in women's categories. This has led to legal challenges and discussions on human rights. Each sport's national governing body may have its own set of rules regarding transgender and intersex athletes, and these can vary widely from state to state and sport to sport.

Female hyperandrogenism

This is a medical condition that causes the body to produce high levels of androgens, or male sex hormones. This occurs in intersex female athletes - also known as Differences in Sex Development (DSD) - and has been the subject of much debate, leading to new and revised rules and regulations about how and when sports bodies permit athletes to participate.

On 23 April 2018, World Athletics published *Rules Governing Qualification in the Women's Category (for Athletes with Differences in Sex Development)* - also known as the DSD Rules. The DSD Rules stipulate that athletes must have a testosterone level of less than five nanomoles per litre to compete in international women's competitions, otherwise athletes must either medically lower their testosterone level or attempt to qualify for men's competitions. World Athletics agreed it can also subject athletes to an "investigation" carried out by members of the National Olympic Committee, including physicians, chief medical officers and Chairs of the IOC Medical Commission.

Caster Semenya challenged these regulations and has led the battle against them since her debut in 2009. In 2019, Semenya filed a request for arbitration with the Court of Arbitration (CAS), challenging the validity of the DSD rules. CAS rejected the request, confirming the validity of the rule. Despite its discriminatory character, officials considered it necessary, reasonable and proportionate for the preservation of sporting equity in women's competitions.[45]

Female hyperandrogenism is a medical condition that causes the body to produce high levels of androgens, or male sex hormones

The Swiss Federal Tribunal upheld a decision regarding the Semenya case on 25 August 2020, emphasising the importance of fairness in sports and ruling that high testosterone levels provide female athletes with an unfair advantage. This decision sparked controversy, with debates over gender discrimination and the conditions for admitting hyperandrogenic and transgender athletes.

On 11 July 2023, the European Court of Human Rights (EUCHR) disagreed with the Swiss ruling, stating that discrimination based on sex is unjustified and highlighting shortcomings in the regulation of testosterone levels. The EUCHR noted the serious side effects of hormone treatment and the lack of evidence supporting the claim that higher testosterone levels confer a significant competitive advantage. Ultimately, the case underscores that regulations solely relying on testosterone tests could lead to discrimination.[46]

[45] Ibid
[46] Ibid



South Africa's Caster Semenya: more than 15 years advocating for an end to discrimination in women's sport

Olympic medallist Caster Semenya is arguably the most well-known intersex sports figure in the world. Her struggle for the right to participate in long distance events as a woman without having to take drugs to reduce her testosterone levels has spanned more than 15 years, inspiring other intersex and hyperandrogenic athletes around the world.

Semenya first started facing questions about her sex and gender in 2009, when she won the 800-metre world-championship in Berlin at age 18. At that time, she underwent two gender-verification tests before her breakout performance. Since then, she has been in and out of court to challenge her rights to participate in female sports without the indignities of gender testing or taking medication to reduce high testosterone levels.

In a 2023 interview with *TIME*[47] following the release of her memoir Race to be myself, Semenya explained the humiliation of the gender verification process. "I wanted to show these people, 'Look, what you're doing is wrong.' You're not going to find anything. Only 'you have a high testosterone level. You are a woman who has no uterus, a woman with no fallopian tube, you are a woman with internal testicles.' Publicising this, they've done me a favour. You're educating people about differences in a human being. That was not humiliating. What was humiliating was how they treated me."

She won the 800-metre gold at the 2016 Rio Olympics and two fellow Africans joined her on the podium: silver medallist Francine Niyonsaba of Burundi and bronze medallist Margaret Nyairera Wambui of Kenya, who both also have DSD and produce high levels of testosterone. They also experienced discrimination and disrespect from their fellow competitors, challenging their right to compete in the event.

Recalling the event Semenya says: "It became a racial situation. Followed by discrimination, then disrespect. Where is the sportsmanship? It shows that the leadership in world athletics have done well to separate women from women. To make sure that we, as women, hate one another. They're not building women's sports. They're teaching people how to discriminate, how to be racist. But the principle of sports is to say no to racism, so say no to discrimination. And it confuses me, when you are a leader, you come in, you want to build a sport, but you're destroying it."

Semenya has been in and out of CAS since she challenged the DSD regulations in 2018. After several hearings over five years, the EUCHR finally ruled in her favour. The ruling did not immediately change World Athletics, but it leaves open the possibility of a different outcome in the future.

Even if she does not compete again, she says "For me, the hope is that such rulings are never made [again]. Human rights need to be considered. People need to be treated with dignity and respect. I'm fulfilled if those young girls can go run, enjoy their youth, enjoy their teenage life, enjoy sport. As much you say sport is for all, at the moment it is not."[48]

The topic remains highly contentious, with advocacy groups calling for more inclusive policies that respect the rights and identities of all athletes while balancing fair competition. Reforms and new policies are under continuous discussion within various sports organisations.

Lawyers have brought several cases and challenges in courts regarding these regulations in recent years, as affected athletes fight for their rights to compete in accordance with their gender identity.[49]

[47] TIME, Caster Semenya Isn't Just Fighting for Herself, 2 November 2023, accessed 14 November 2024
[47] Ibid
[49] Pierre Bydzovsky, The status of transgender and intersex athletes in international sports federations, The International Sports Law Journal (2023) 23:357-367.

Employment

Only six SADC countries protect LGBTQI+ peoples' rights to equal access to employment: Angola, Botswana, Mauritius, Mozambique, Seychelles, and South Africa. Such protection in employment represents a critical first step to ensuring inclusive workplaces for members of this community. It is crucial for employers to remain vigilant in preventing discrimination against people due to their sexual orientation, gender identity or expression.

A 2014 study by The Williams Institute, a US-based think tank, found a theoretical connection between LGBTQI+ inclusion and economic development in emerging economies. It suggested that including people from this community allows them to achieve their economic potential, which in turn can lead to stronger economic growth and development.[50]

In research released this year, the Other Foundation, an African trust that advances equality and freedom in Southern Africa with a particular focus on sexual orientation and gender identity, found that LGBTQI+ people in South Africa contribute R250 billion (US $13.7 billion) annually to the national economy as consumers, employees, and entrepreneurs, which is about 13% of the government's budget this year.[51] This report definitively quantifies the size of the LGBTQI+ market in South Africa for the first time. It also assesses the scale and qualities of the economic influence that the South African LGBTQI+ population has more broadly.

Up until now, policymakers have largely overlooked the considerable economic influence of LGBTQI+ individuals due to the lack of data regarding their distinct economic contributions. International research has primarily concentrated on the economic damage caused by discrimination against LGBTQI+ people, but very little research has examined their economic potential when recognised as a market segment.

The Other Foundation's research included 400 respondents who completed a 51-question survey on topics such as demographics, economic position, consumption, employment, and entrepreneurship. Some of the key findings include:

- 75% of respondents have part-time or full-time employment.
- 61% are more motivated to buy from inclusive businesses.
- 44% hold managerial positions, showing that, compared to other groups, LGBTQI+ professionals advance significantly more into positions of influence within the workplace.
- 90% of LGBTQI+ people are engaged in some form of income-generating activity.
- 90% intend to start a business.
- 50% live on modest earnings.
- 70% support other people financially.
- 35% have children or are guardians to children.
- 25% believe that they do not benefit from equal opportunities in career advancement in comparison to their non-LGBTQI+ co-workers.[52]

Economic inclusion of LGBTQI+ people is important because it drives overall economic growth through increased productivity, higher consumer spending, and greater entrepreneurial activity. The report underscores the long-term benefits of inclusion and calls for concerted action toward greater LGBTQI+ economic participation.

A socially integrated, legally protected, and economically active LGBTQI+ community can significantly contribute to economic growth, equity, and stability. Removing barriers to inclusion involves eliminating discriminatory practices and actively promoting equal treatment and greater diversity in all spheres of social and economic life. Detailed information about the economic activity of the LGBTQI+ community is also instrumental for evidence-based decision-making and advocacy, enabling key stakeholders to devise targeted and effective initiatives that promote inclusion and fuller economic participation.[53]

[50] The Williams Insttute titled "The Relationship between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies, 2014.
[51] The Other Foundation, Size matters - how big is the LGBTI market in South Africa and what economic influence does the LGBTI population have?, 2024.
[52] Ibid
[53] The Williams Institute titled "The Relationship between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies, 2014.



While **Angola** has made progress in terms of LGBTQI+ rights, sexual orientation remains one of the main reasons for workplace dismissals. In 2019, an act of parliament decriminalised same-sex relationships, which has resulted in greater acceptance of LGBTQI+ people. Meanwhile, implementation of the new penal code has created safer spaces for LGBTQI+-focused events and public gatherings. However, this community still experiences prejudice and discrimination in employment and several remaining non-inclusive policies represent a persistent challenge for LGBTIQ+ people in the country.[54]

For example, Angola still has no law that permits transgender people to change their gender marker on their identification documents. This makes it particularly difficult for them to participate in the mainstream economy. As a result, many trans people resort to sex work and other roles in the informal economy. Arquivo de Identidade Angolano (AIA), an Angolan women-focused LGBTQI+ organisation, works to address this by providing skills to LGBTQI+ youth. AIA's initiated its "I am LGBTIQ+ and I Undertake" project during the economically challenging COVID-19 outbreak to assist LGBTQI+ entrepreneurs in vulnerable situations to establish new businesses or improve their employment opportunities.[55]

Violence and discrimination

LGBTQI+ individuals deserve dignified treatment and to have their fundamental human rights respected, protected, and fulfilled. Unfortunately, governments, justice systems, bigots, and others regularly undermine their rights in alarming ways. This includes acts of violence such as killings and torture, instances of sexual violence, criminalisation based on sexual orientation or gender identity, and arbitrary detention, which occurs across the region with disturbing regularity. Additionally, harmful and outdated practices, such as conversion therapy, forced sterilisation, and non-consensual medical procedures targeting transgender and intersex individuals, remain alarmingly prevalent in the region.[56]

Moreover, pervasive stigma and discrimination permeate various aspects of life. Individuals face harassment and bullying not only in their workplaces but also within their homes, educational institutions, and healthcare settings. Access to housing, sports, and public services remains challenging, with gatekeepers to these spaces taking decisions against the LGBTQI+ community rooted in bias and intolerance. A persistent climate of fear and exclusion highlights the urgent need for comprehensive change to ensure that leaders in the region uphold the rights and dignity of all individuals. Tackling these issues means more than changes in laws and policies - it requires greater acceptance, support and celebration of LGBTQI+ people by everyone in society, including at the family and community levels.



A study on GBV in **Mauritius** analysed questionnaires from 227 LGBTQI+ people and 119 women and found evidence supporting the notion that GBV negatively impacts people's access to education and their ability to participate in school and economic and employment activities. The research indicated that high levels of GBV negatively impacts the economy, encompassing both direct and indirect costs. Victims face hardships as they must use their limited financial resources for medical care, legal assistance, and personal needs, such as paying rent for alternative housing and replacing lost or damaged belongings. These costs become even more significant due to various opportunity costs, including lost time that could have supported education goals, loss of goods and services that victims miss out on because they cannot work, and their inability to carry out daily household tasks. Consequently, GBV has extensive repercussions on the Mauritian economy, where the labour force serves as the primary engine for economic development.[57]

[54] Mambaonline, Angola: A journey to LGBTIQ+ economic inclusion and participation, 15 February 2023, accessed 10 November 2024.
[55] Ibid.
[56] Amnesty International, We are facing extinction: escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Amnesty International 2024.
[57] Kolektif Drwa Imin, Gender-based violence and its impact on the economic cost in Mauritius: A victims' perspective, 2023.

When solidarity backfires

In countries where harsh laws still apply, such as Zambia, activists continue to advocate for legalisation. However, sometimes well-intentioned solidarity action can result in unintended negative consequences. In May 2022, anti-LGBTQI+ sentiment escalated when the Swedish and Finnish embassies in Lusaka displayed the rainbow flag alongside their national flags to express support for LGBTQI+ rights. Rather than encouraging inclusivity as intended, this action prompted a strong backlash that emboldened anti-LGBTQI+ activists and heightened the difficulties faced by LGBTQI+ Zambians.

"Throughout the past year, there has been a crackdown on LGBTI rights following the display of the pride flag by bilateral partners," said an activist who goes by the pseudonym "Alex." He noted that this "was perceived as 'Western 'gayism.'" This incident raises important questions about the effectiveness of bold public activism and advocacy in support of LGBTQI+ rights, such as embassies displaying pride flags, and whether it can inadvertently increase the myriad risks faced by the very communities it seeks to assist.[58] It is an issue for advocates to consider.

LGBTQI+ organisations

Civil society organisations focused on LGBTQI+ issues need to register and operate within a country's legal framework to be most effective. Regionally, LGBTQI+ groups can only legally register in nine SADC countries, with seven others (Comoros, DRC, Eswatini, Madagascar, Malawi, Tanzania and Zambia) outlawing it.

This formal recognition legitimises their efforts and empowers them to better serve their communities and advocate for the rights and needs of their communities. When these organisations operate openly, they can mobilise resources, create awareness, and influence public policy. Additionally, registration provides them with a platform to engage with government entities, NGOs, and other key stakeholders, further amplifying their voice and impact in promoting acceptance and equality.[59]

While some organisations must register by using non-explicit names or descriptions (e.g. referring to their work as on "human rights" or "sexual health" rather than LGBTQI+), laws and systems may still prevent them from effectively conducting their activities and advocacy.



Incidents of homophobia have increased in recent years in **Tanzania**, possibly connected to discussions about the controversial anti-homosexuality bill passed in neighbouring Uganda in March 2023. According to one Tanzanian human rights organisation, anti-LGBTQI+ sentiment escalated in Tanzania around 6 March 2023, when Muslim leaders in Mwanza led a demonstration against homosexuality. A few weeks later, similar demonstrations in Arusha followed. On 27 March, a former member of parliament and minister held a press conference and revealed false information about LGBTQI+ organisations and their work. This stoked the flames of bigotry, increasing incidents of hate speech from religious leaders and other Tanzanian homophobes. Since then, some MPs have raised the issue in parliament, with Abubakar Asenga, MP for Kilombero constituency, encouraging lawmakers to replicate Uganda's hateful bill in the country.

"Safety and security have been a very vital aspect of our organisation work," said one leader of a Tanzanian human rights organisation.

[58] Amnesty International, We are facing extinction: escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Amnesty International 2024
[59] https://database.ilga.org/legal-barriers-freedom-of-association

"Because of the hostile environment that we are operating in, there is a high rate of hate from the society, and politicians have used LGBTQ people as a political weapon to draw people's attention away from issues that will put them in challenging situations."

The leader, who asked to remain anonymous, noted that their organisation had to take extra security measures to implement its projects to prevent putting its members in danger. This includes closing their office space and transitioning to work from home. The result is that their clients no longer have a safe space to visit for wellness and mental health support. "Our shelters have been overpopulated with LBTQ people, and yet it also puts the shelters in a risky situation," they said. "Our organisation has been trying to fundraise to minimise the effects of the current situation. Still, we have yet to receive support as many donors are directing their efforts to support Uganda, where the problem is worse. Our staff also do not feel safe in their homes."

Other measures the group has taken to enhance security include no longer holding meetings and workshops at hotels; destroying all physical and hard copies of materials related to their work; moving meetings online; and reducing the number of participants at all workshops and meetings. "We have been documenting the situation since its beginning; it increases our fear, as every day, there is something said by religious leaders, politicians, or threats from the general population."



In September 2019, the **Eswatini** Registrar of Companies rejected an application by Eswatini Sexual and Gender Minorities (ESGM), a community-based advocacy organisation working to advance the protection of the rights of LGBTQI+ persons, for registration as a non-profit organisation. The Registrar cited several reasons behind the rejection, including that the country criminalises same-sex sexual acts and, therefore, the government cannot register an organisation that promotes the interests and aspirations of LGBTQI+ persons.

[60] Amnesty International, We are facing extinction: escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Amnesty International 2024.



Members of Eswatini's LGBTQI+ community take part in the country's first Pride march in July 2018. Credit: Mathias Wasik

The ESGM filed a case before the high court challenging the refusal. In 2020, the High Court upheld the Registrar's decision to deny ESGM's registration. In May 2022, ESGM filed a notice of appeal against the High Court decision. In July 2023, the Supreme Court ruled in their favour, publicly declaring that "the approach undertaken by the Registrar in this regard does not meet the legal requirements contained in Section 33 of the Constitution." The court ordered the acting minister of Commerce and Trade to reconsider ESGM's application.

The Ministry of Commerce and Trade then chose to decline the application, declaring that Eswatini's Constitution does not clearly prohibit discrimination based on sexual orientation and gender identity, so the principles and rules of Roman-Dutch Law remain enforceable as the common law of the country. In a statement to Amnesty International in October 2023, ESGM noted, "The court case proceedings have adversely affected LGBTI human rights advocacy [and] have sparked considerable interest from society, as well as local and international human rights organisations and activists. [While] the organisation has received significant support from its members and from political groups... it remains disappointing that the human rights of LGBTI individuals in the country are still not acknowledged."

While the Supreme Court's decision set the stage for LGBTQI+ organisations to register, the response by the government illustrates another example of resistance to LGBTQI+ rights and how laws criminalising the LGBTQI+ community place them in precarious situations and violate their rights, including their rights to freedom of association, expression, equality before the law, and of non-discrimination.[60]

The current climate for LGBTQI+ people in **Zimbabwe** is marked by diminishing space for political engagement. This narrowing of civic space makes it increasingly difficult for the LGBTQI+ community to organise and advocate for their rights. The introduction of the Criminal Law (Codification and Reform) Amendment Bill (Patriotic Bill), a piece of legislation signed into law in May 2023, has worsened the situation. This law, ostensibly designed to protect sovereignty and national interests, has raised significant concerns about diminishing fundamental rights, including freedom of expression, peaceful assembly, and association. It compounds existing challenges in a country with a long history of discrimination against LGBTQI+ people who continue to face police harassment and sexual and physical assaults.

The vague language used within the legislation raises concerns about its potential misuse. Activists also connect a surge in homophobic sentiment in Zimbabwe to the growing influence of Pentecostal churches, which have experienced a significant proliferation in recent years and often propagate anti-LGBTQI+ rhetoric. They believe that this religious shift has intensified the perpetuation of discriminatory attitudes, presenting additional challenges for Zimbabwe's LGBTQI+ community.[61]

Civil society organisations nonetheless continue with their activism and mobilisation and even sometimes partner with traditionally conservative actors, including some churches.

South Africa: Strange bedfellows advocate for LGBTQI+ rights in Limpopo

An unlikely alliance is helping rural South African communities overcome stigma and move toward acceptance for LGBTQI+ community members.

Capricorn ignited LGBTI (CIL), a lesbian-led organisation established in 2017, has joined forces with Limpopo Chaplaincy to advance community development, health care and spiritual services for the LGBTQI+ community in the province.

CIL employs a feminist lens to advocate for women's rights in Limpopo province while the Limpopo Chaplaincy provides health and community care. Its many faith-based chaplains reside in various communities within the province, helping communities with development, health care services, and spiritual assistance.

Partnership between the two groups has played an essential role in mobilising community members and other civil society organisations to collaborate on similar activities that address social challenges, including GBV and femicide.



Community fundraising lunch hosted by Capricorn ignited LGBTI. Credit: CIL

"Our organisation works with everyone and does not discriminate. We are guided by the constitution of South Africa and the laws," said Chaplain Albert Masingi at a meeting to welcome stakeholders. The collaboration has enhanced the visibility of the LGBTIQ+ community while also supporting the faith-based and men's sectors. This cross-sector strategy helps break down stigma and improves working relations between the various groups.

[61] Ibid



Visibility of the LGBTIQ+ community enhances collaboration. Credit: CIL

The pairing has assisted in many community development projects, including building houses for GBV survivors and providing food parcels to needy families. However, the religious group's involvement with the LGBTIQ+ sector meant that some of its members left the organisation because they felt they could not work with LGBTIQ+ people because of their faith-based beliefs.

"I told my members that the door is open if they feel like they cannot work with LGBTIQ+ people because our organisation aims to unite people and not divide them; we work with everyone," said Masingi.

For its part, CIL says it has evolved thanks to its partnership with Limpopo Chaplaincy and the two groups plan further work together, specifically to respond to the needs in harder-to-reach communities in the province.

Source: Mashangu Albert Masingi, driver of change, GL Summit

Funders are also seeing the value of building strong LGBTQI+ movements. One example is the Morang Fund, which launches in 2025.



New fund presents a "ray of sunshine" for a persecuted community

Gender Links, in partnership with the Botswana Network on Ethics, Law and HIV/AIDS (BONELA) and funded by the European Union, will roll out the #VoiceandChoice: Diversity and Inclusion in Southern Africa Programme in 2025. Under the title, the Morang Fund, which means "a ray of sunshine that brings hope" in Setswana, it aims to strengthen LGBTQI+ organisations and movements in Botswana, Lesotho, Madagascar, Mauritius, and Namibia.

BONELA is a national NGO championing the right to health. It has supported strategic litigation for LGBTQI+ organisations' right to register and decriminalise same-sex activity in Botswana. Its ongoing legal battle with partners in Botswana for full decriminalisation illustrates the challenges in achieving legal rights, let alone social inclusion, for LGBTQI+ persons.[62]

BONELA has launched a parallel campaign to include gender equality, sexual orientation, and gender identity in the Botswana Constitution, which is due for a review. As a co-applicant and technical advisor in this proposal, BONELA has created a step-by-step guide for litigation on LGBTQI+ rights in Southern Africa.

BONELA, a national NGO in Botswana, will work with Gender Links in 2025 to support LGBTQI+ organisations in five SADC countries.

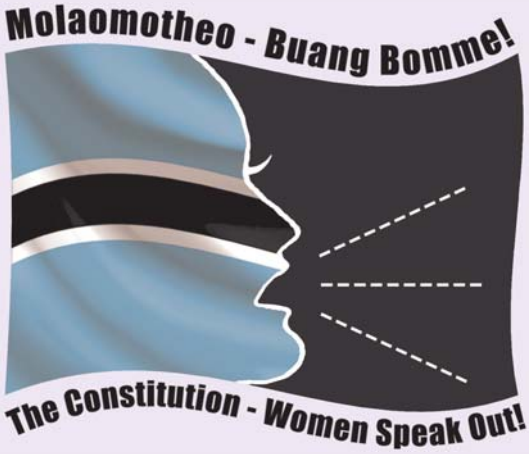
The organisation has a long track record of facilitating collaborative advocacy for policy and law reform in service delivery for key and vulnerable populations (KVPs), including adolescent girls and young women, adolescents and young people, sex workers, men who have sex with men (MSM), LGBTQI+ people, people with disabilities, children, women, people living with

[62] Fair Planet, The African Nation Going Against The Tide On Sodomy Laws, July 20, 2023, accessed 10 November 2024

HIV, prisoners, non-citizens particularly refugees, and asylum seekers.

BONELA also supported the emergence of Botswana's first LGBTQI+ and sex work organisations. These include the Lesbians, Gays, and Bisexuals of Botswana (LEGABIBO), Rainbow Identity Association (RIA), and Sisonke Botswana.

GL Botswana worked with BONELA to lead an initiative, called *Molaomotheo-Buang Bomme!* (The Constitution: Women Speak Out) around the country's constitutional review. The submission argued that ensuring compliance with global, African, and regional commitments to attain gender equality represents a compelling reason for reviewing Botswana's 55-year-old Constitution. The submission, supported by women politicians across the political spectrum, also made the case for recognising LGBTQI+ rights in the Constitution.



Source: Gender Links

LGBTQI+ people and the media

When media outlets rely on, and perpetuate, negative stereotypes about LGBTQI+ individuals, it can lead to further misunderstanding and prejudice

When media outlets rely on, and perpetuate, negative stereotypes about LGBTQI+ individuals, it can lead to further misunderstanding and prejudice. Depicting LGBTQI+ people solely through a negative or stereotypical lens reinforces harmful perceptions. Some media coverage of LGBTQI+ issues sensationalise them, focusing on extreme cases or controversies rather than everyday realities and human experiences. This sensationalism can provoke fear and backlash among those who might not have direct experience with LGBTQI+ individuals, setting back attempts to protect them and their rights.

Media coverage that emphasises conflicts surrounding LGBTQI+ rights, such as efforts to improve legislation affecting the community, also frequently enforces polarised perspectives. With the growth of social media across the region, anti-gender and LGBTQI+ rights actors have become increasingly effective and organised in their social media messaging.

As pro-rights activists promote positive messages and share stories that target stigma and misconceptions, anti-rights movements increasingly depend on social media to spread misinformation about LGBTQI+ individuals or issues, influencing public opinion in negative ways. By perpetuating negative narratives and focusing on conflict, the media can contribute to societal backlash against LGBTQI+ people, making it

crucial for media outlets to approach LGBTQI+ topics with sensitivity, accuracy, and dedication to representation.



In **Malawi**, the LGBTQI+ community faced a backlash following a legal challenge regarding the constitutionality of the country's outdated penal code, which criminalises same-sex relations. According to LGBTQI+ activists, messages from anti-LGBTQI+ protesters, which the media has frequently shared, have intentionally mixed up the distinct issues of LGBTQI+ organisation registration, decriminalisation of same-sex relations, and same-sex marriage. While the court contemplates the decriminalisation of consensual same-sex sexual acts (by repealing section 153 of the Penal Code), some religious groups have deliberately merged these issues in the media to misrepresent the case as one concerning same-sex marriage, aiming to provoke public outrage and further complicate the discourse.[63]

Conversion therapy

Conversion practices are attempts to suppress or alter an individual's sexual orientation, gender identity, or gender expression. These remain prevalent in SADC even though medical experts have long noted they have harmful effects on the lives of LGBTQI+ individuals. The methods used as part of what is also known as "conversion therapy" abuse LGBTQI+ peoples' fundamental human rights.

"Conversion" practices damage people who undergo them and can include beatings, rape and forced isolation, administration of drugs and hormones and religious "ritual cleansings."[64] Major mental health organisations, including the World Health Organisation, have condemned conversion therapy, citing the potential for significant psychological harm and asserting that sexual orientation and gender identity are inherent and not subject to change.

In many places, policymakers have criminalised or restricted conversion therapy, reflecting a growing recognition of the rights of LGBTQI+ individuals and the importance of supporting their mental health and well-being.

While activists have extensively documented conversion practices over the past 50 years in North America and Australia, comprehensive research has yet to be conducted in any African country to characterise the nature and extent of these damaging and degrading practices. In 2022, Outright International produced the first report on so-called conversion therapy in Africa, titled Converting Mindsets, Not Our Identities. It found that these damaging practices occur in many countries and vary in their degrees of physical and psychological harm.

Key cross-cutting findings from the research on conversion practices in Kenya, Nigeria, and South Africa include:

- More than half of the LGBTQI+ respondents from the three countries surveyed indicated that they had undergone some form of conversion practices.
- Conversion practices take various forms. The cross-cutting forms identified in the research include talk therapy, exorcism, drinking herbs, prayer, laying of hands for healing, beatings, and rape or another form of sexual assault.
- Frequently, those who administer it combine several forms of conversion practices to change a person's identity or sexual orientation, either simultaneously or over different periods. As a result, most of the respondents in this survey indicated that they endured more than one form of conversion practice.
- Practices increase in intensity from the moment of discovery, starting with family talks and conversations and escalating to counselling

[63] Ibid.
[64] UNDP, SADC parliamentarians discuss the harms of 'conversion' practices in Africa, 8 May 2023, accessed 10 November 2024.

or prayer, and then to violence, economic coercion, and shunning when other methods do not work.
- Conversion practices perpetuate over a long period and they usually do not end until a victim affirms that they have changed to being heterosexual and/or cisgender.
- Religious leaders, mental health practitioners, and family members represent the main perpetrators of conversion practices, while family members mostly initiate them. However, some LGBTQI+ individuals seek out these practices, likely because of the immense stigma, fear and discrimination they face in homophobic and transphobic communities.
- Conversion practices can harm the physical and mental health of survivors. The research found that many survivors of conversion practices suffer from depression, social anxiety, substance abuse, and thoughts of or attempts of suicide.



Next steps

There is a worrying and growing trend of resistance and backlash to LGBTQI+ rights in the region. Even in countries in which same-sex relationships are legal, public attitudes towards LGBTQI+ people remain mostly negative when compared to the laws and freedoms increasingly afforded to them.

- Activists and allies need new **strategies and tactics** to counter the resistance and backlash. They should start by researching and understanding the opposition actors, their strategies, and their sources of funding.
- **Opposition tracking:** Understand and follow the opposition's tactics and actions to comprehend and respond to the specific challenges and threats to LGBTQI+ rights. This insight can help formulate effective strategies for advocacy and mobilisation.
- Develop counter strategies and communication to **combat misinformation** and negative narratives.
- **Build alliances** with other progressive organisations and movements facing similar challenges. This enhances advocacy and ensures that well-intentioned actions or messaging do not cause unintended negative consequences.
- **Documenting** opposition helps raise awareness within the broader community, including allies outside the region, about the ongoing struggles faced by LGBTQI+ individuals in SADC. This also encourages public support and solidarity.
- Gender and LGBTQI+ activists and organisations must work together in **coordinated campaigns** across the region that challenge discriminatory laws and policies. These initiatives should adopt an intersectional approach, highlighting the diverse experiences within communities. Key objectives should include a clear timeline for the elimination of conversion therapy and the enactment of hate crimes legislation to protect individuals from violence and discrimination.
- **Collaboration with stakeholders** - such as policymakers, educators, and healthcare providers - is a critical tactic for fostering support and driving meaningful change in the legal landscape.

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