Sexual Diversity 8



Participants in Eswatini's first pride parade in June 2018 in Mbabane. Photo: Thandokuhle Dlamini

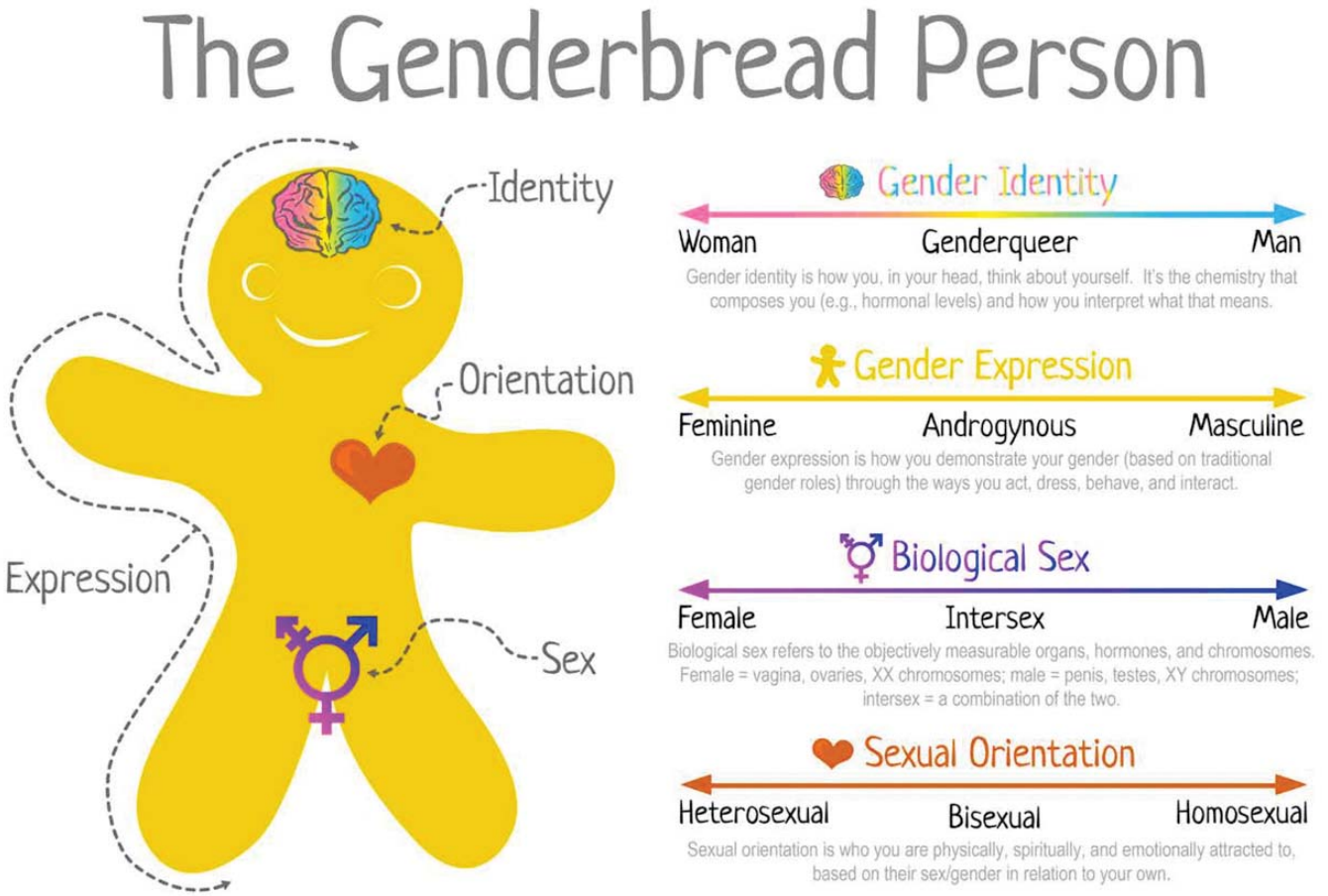
KEY POINTS

- Homosexuality is now legal in seven (about one third) of Southern African countries - South Africa, Seychelles, Angola, Mozambique, Lesotho, Madagascar and DRC.
- Botswana's High Court recently rejected sections of the country's penal code that criminalised same-sex relations. The Attorney General has signalled that he intends to appeal the High Court ruling.
- Only South Africa allows for same sex marriages and civil unions.
- Three countries (Mauritius, Namibia and South Africa) allow LGBTI persons to change their gender markers.
- Mauritius and South Africa ban conversion therapy, which is known to cause extensive physical and psychological damage.
- Only one SADC country, Angola, has hate crimes legislation that explicitly protects LGBTI persons from violence and discrimination.
- Only South Africa has laws in place for protection of intersex people.
- Gender Links and Southern African Gender Protocol Alliance are working with LGBTI organisations from five countries - Botswana, Malawi, Mauritius, Namibia and Eswatini - to lobby for the decriminalisation of LGBTI people and social protection for their communities.
- There is a lack of targeted SRHR services for LGBTI people and a dearth of data to guide informed strategies.

Introduction

In this inaugural edition of the SRHR **#VoiceandChoice** Barometer, this final chapter marks the first time the Barometer has included an extensive look at the regional situation for those in the Lesbian, Gay, Bisexual, Transsexual and Intersex (LGBTI) communities as part of its annual review.

Figure 8.1: The "Genderbread Person"



As reflected in Figure 8.1, **Gender identity** refers to a person's internal sense of being male, female or somewhere in the middle - i.e. gender non-conforming - and how they interpret what that means for them. Sometimes gender identity corresponds to biological sex. **Intersex** people are born with sex characteristics that do not fit typical binary notions of male or female bodies. Doctors or parents often decide for an infant which sex they think it should be. This choice could be wrong. Therefore, some intersex people advocate against doctors or parents making this choice for infants. A person who identifies as **transgender** has a gender identity that does not correspond to their biological sex.

Intersex people are born with sex characteristics that do not fit typical binary notions of male or female bodies

Gender expression relates to how a person chooses to communicate their gender identity to others through the ways they act, dress, behave and interact. This communication may be conscious or unconscious. While most people's understanding of gender expression relates to masculinity and femininity, countless combinations exist that may combine masculine and feminine expressions, or neither, through **androgynous** expressions.

Sexual orientation describes whom we are attracted to. A person's gender identity does not predetermine their sexual orientation. It is important to understand that these orientation and identity fall on a continuum and can be fluid.

In order to counter the gender norms that society assigns to "males" and "females," there is a movement to raise children in a "gender neutral" manner. This means not making distinctions between boys' and girls' clothes, toys and activities (for example, blue clothes for boys, pink for girls; cars for boys, dolls for girls; football for boys, playing house for girls).

It is also important for legislators in members states to recognise that their populations include people of diverse sexual orientations and gender identities and expressions. LGBTI refers to all people across the SOGIESC spectrum and all have a right to be treated with dignity, be safe, live freely and be equal.

In recent years, political discussions about LGBTI rights have expanded in the region alongside an unprecedented increase in the visibility of LGBTI people and organisations. The legal environment in Southern Africa varies from country to country and member states continue to criminalise LGBTI people in varying degrees.

In some cases, countries may appear to have progressive approaches or laws, but the reality is that LGBTI people may be able to take advantage of loopholes that exist due to the nature of legislation enacted before the advent of discussions about their rights. In other cases, new laws protect LGBTI people in countries where they remain criminalised in other ways. One example is Mauritius, where consensual same-sex acts remain criminalised, yet the country's Equal Opportunities Act protects LGBTI peoples' rights to equal access to employment. Because these protections are either not explicit or comprehensive, the LGBTI community views them as tenuous or as work in progress.

Southern African LGBTI communities face many types of prejudice and discrimination, including "corrective" rape and murder. These represent the more extreme forms of violence and discrimination perpetrated because of a person's Sexual Orientation, Gender Identity, Expression and Sex Characteristics (SOGIESC).

Many LGBTI people in SADC live in fear and in hiding

Figure 8.2: Advancements needed to fully realise LGBTI rights and freedoms



As illustrated in Figure 8.2, the advancements needed to fully realise LGBTI rights include:

- Repealing all discriminatory laws and policies against the LGBTI community;
- Ensuring laws and policies exist to protect LGBTI communities from all forms of violence and discrimination; and
- Implementing policies, laws and practices that promote and recognise the rights of LGBTI communities.

Table 8.1 shows that:

- Five out of the 16 SADC countries (or about one third of SADC countries) have decriminalised same sex consensual acts. These are South Africa, Seychelles, Angola, Mozambique and DRC. Botswana is pending an appeal on the High Court ruling.
- In four countries (Mauritius, Namibia, Tanzania and Zimbabwe) homosexuality is illegal for men only.
- Only South Africa has constitutional provisions for LGBTI persons.
- Five countries (Angola, Botswana, Mauritius, Mozambique, South Africa) have employment protection for LGBTI persons.
- Only Angola criminalises hate crimes and incitement to violence of LGBTI communities.
- Conversion therapy (the pseudoscientific practice of trying to change an individual's sexual orientation from homosexual or bisexual to heterosexual using psychological or spiritual intervention)[1] is only banned in South Africa.
- Only South Africa recognises same sex unions; civil unions; joint adoption of children and second parent adoption of children.

[1] https://en.wikipedia.org/wiki/Conversion_therapy, accessed 15 July 2019.

- Changing sex/gender markers[3] and name change is possible in four countries (Mauritius, Namibia, South Africa and Zamia); nominally and potentially in four countries (Angola, Botswana, Malawi and Mozambique) and not possible in the other seven.
- LGBTI organisations are able to register in ten countries (Angola, Botswana, Eswatini, Mauritius, Mozambique, Namibia Seychelles, South Africa, Tanzania and Zimbabwe) but only able to operate freely in the five countries in which homosexuality has been decriminalised, as well as Botswana and Mauritius.

A hostile environment in most SADC countries means LGBTI people face threats of violence, while living in fear and, in many cases, in hiding. A recent story (overleaf) about a Madagascar gospel star illustrates the prejudices that LGBTI communities face even though the country has decriminalised same sex consensual relations.

Table 8.1: Sexual diversity baseline indicators in 2019[3]

INDICATORS	Angola	Botswana	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	Pending	Yes	No	Yes	Yes	No	No	Yes	No	Yes	Yes	No	No	No
Gender/s		All genders		All genders			All genders	Male only		Male only			All genders	All genders	Male only
Years in prison/other		7		Undetermined			14	5		Undetermined			Life	Life	1
Protection															
Protection against discrimination															
Specific constitutional provisions	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Broad protections	Yes	No	No	No	No	No	No	Yes	No	No	No	Yes	No	No	No
Employment	Yes	Yes	No	No	No	No	No	Yes	Yes	No	No	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	No	No	No	No
Incitement to hatred/ violence	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Ban on conversion therapy															
CTs banned	No	No	No	No	No	No	No	Yes	No	No	No	Yes	No	No	No
Recognition of LGBTI+ rights															
Same sex marriages	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Civil unions	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	Yes	No	No	No	Yes	No	No	No
Second parent adoption of children	No	No	No	No	No	No	No	Yes	No	No	No	Yes	No	No	No
Changing identity															
Changing sex/gender markers	Nominally possible	Potentially possible	Not possible	Not possible	Not possible	Not possible	Nominally possible	Possible	Nominally possible	Possible	Not possible	Possible	Not possible	Possible	Not possible
Name change	Nominally possible	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	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	No	No
Able to operate freely	Yes	Yes	No	No	Yes	No	No	Yes	No	Yes	Yes	Yes	No	No	No

[2] When state and government agencies change the gender identifier, sex marker, sex identifier on official documents such as a birth certificate or driver's license.
[3] https://ilga.org/state-sponsored-homophobia-report

Malagasy singer faces backlash after Facebook post with fiancé goes viral[4]



Malagasy gospel star faced vitriolic backlash when he got engaged to his male partner. Photo: D-Lain

D-Lain, a 31-year-old gospel singer, became known for his work in a popular Madagascar group called Tanà Gospel Choir before he left the country for Corsica after he won a Castel Live Opera competition in Abidjan in 2012. Since then, he has become even more popular at home - a figure of national pride and something of an icon.

Then, at the beginning of November 2018, some photos and a video of D-Lain kissing his fiancé, a man, at the announcement of their engagement appeared on someone else's Facebook page and the post went viral.

Social media users in Madagascar weighed in with a mixture of support and condemnation. The condemnation got so bad that the on arts group in Madagascar denounced the "hate speech" against the singer in a press release to raise awareness about LGBTI people.

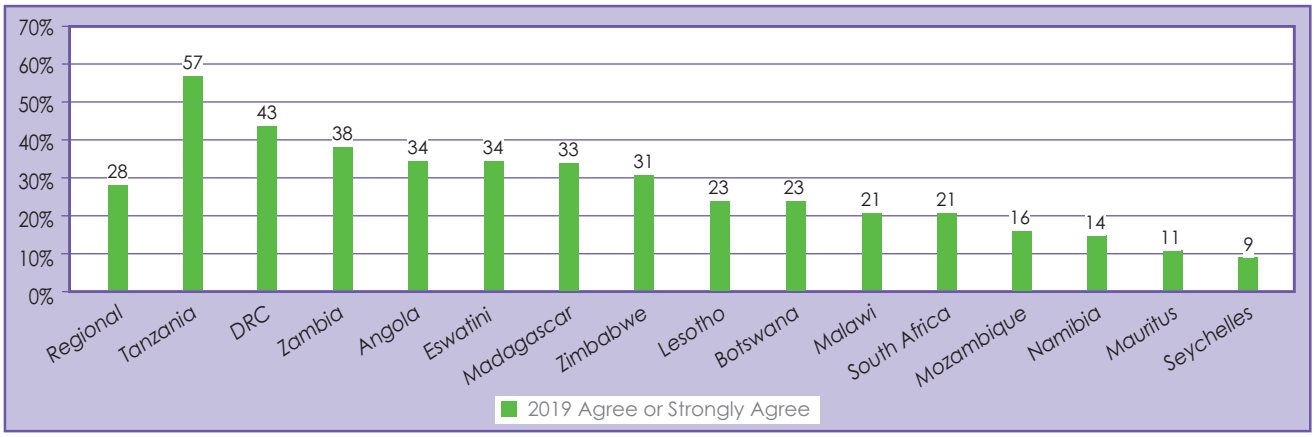
Comments included: "It's his life"... "If it's his way to find happiness, why not?"... "When you love someone, it doesn't matter," came the supportive voices of a few fans. Others wrote "Shame on you"... "It's unnatural"... "It's an abomination."

For LGBTI Malagasy, this latter kind of backlash is still far more common than responses showing respect or tolerance. Many sexual and gender minorities continue to face rejection, discrimination and even physical violence.

Source: Ratsara, D., City Press, 2018

Every year GL administers the Agenda 2030 SADC Gender and Sustainable Development Attitudes Survey to citizens across 15 SADC countries. The survey measures attitudes and the prevailing levels of gender awareness in countries based on a series of 25 questions. For the 2019 SRHR Barometer, GL collected 11 068 responses from 5985 women and 5083 men.

Figure 8.3: Homosexuality is a psychological disease 2019



Source: Agenda 2030 SADC Gender and Sustainable Development Attitudes Survey.

[4] https://www.news24.com/Africa/News/madagascars-secret-society-20180204-2

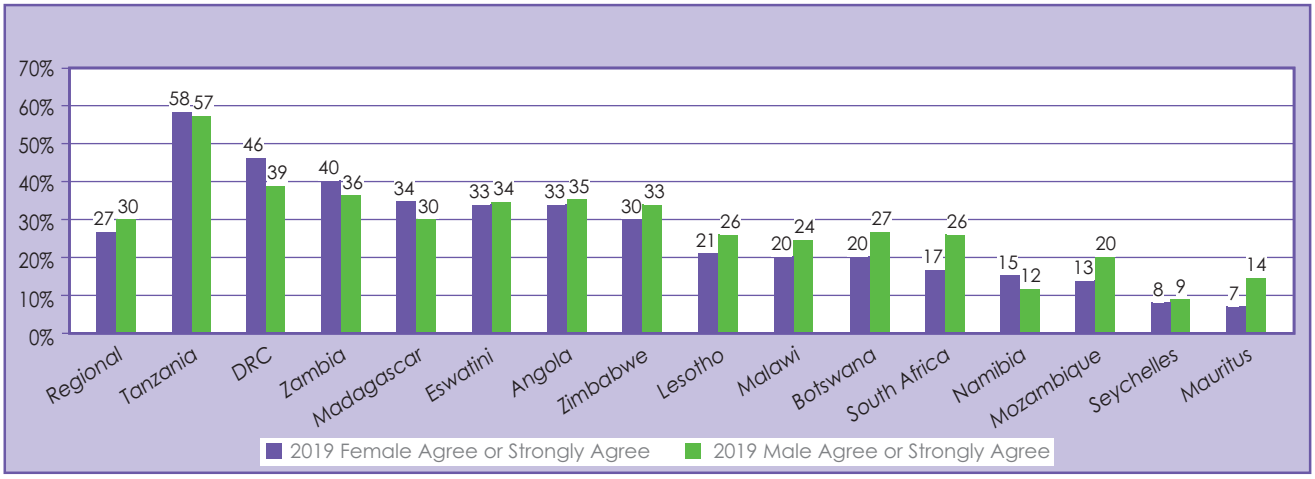
Figure 8.3 shows that 28% of respondents across the region agreed or strongly agreed in response to the statement "Homosexuality is a psychological disease." It may not be surprising, given the growing anti-LGBTI sentiment in Tanzania, stoked by lawmakers there, that the highest proportion of respondents in that country agreed or strongly agreed with the statement (57%).

It is concerning that between 33% and 43% of the respondents agreed or strongly agreed with the statement in three countries where governments have decriminalised same-sex consensual relations: Angola, DRC and Madagascar. This underscores the need to prioritise ongoing advocacy and awareness-raising campaigns.

Same sex consensual relations remain a crime in Namibia and Mauritius, but both display more progressive public perceptions and attitudes. Between 76% and 89% of respondents do not agree that homosexuality is a psychological disease. Given this finding, which points to high levels of acceptance, it is an opportune time to push for decriminalisation of same-sex consensual relations in these countries. Both have national elections at the end of 2019; the pre-election context is fertile ground for calls for legislative reform.

More than 50% women and men respondents from Tanzania agreed and strongly agreed that homosexuality is a psychological disease

Figure 8.4: Statement: "Homosexuality is a psychological disease," by sex, 2019



Source: Agenda 2030 SADC Gender and Sustainable Development Attitudes Survey.

Figure 8.4 illustrates that the most significant differences between women's and men's responses to the question appeared in Botswana, Mauritius, Mozambique and South Africa, with men agreeing with the statement more than women, between seven and nine percentage points more. Overall, women's attitudes appear less conservative.

Strategic litigation is an important way to challenge discriminatory laws and policies in countries that criminalise homosexuality.

However, stakeholders should accompany these initiatives with social protection strategies for LGBTI communities.

The mixed messages in Botswana and increasing government aggression in Tanzania show the fragility of gains made so far. There is a need for more monitoring and activism to hold states accountable for discriminatory laws and practices so they ensure that LGBTI citizens receive the same protections as all other citizens.

Media perpetuates negative views

The media remains one of the key drives of homophobia and transphobia in the region - both in its exclusion of stories about LGBTI people and in its sensationalism of issues related to the community when it does produce stories about it. Research conducted by the Gay and Lesbian Memory in Action (GALA) and Community Media for Development (CMFD) found that media around the world presents an unfair reflection of LGBTI people.[5] It noted that media highlights sexuality in stories where it is not relevant, creating a sense of "otherness." This also perpetuates stereotypes that construct the LGBTI community as hyper-sexed. In extreme situations, media reports have crossed serious ethical lines, calling for the arrest and murder of LGBT people.

In an environment of abundant state-led media, controlled by governments that have institutionalised homophobia, discrimination towards LGBTI people in SADC extends itself into the media, creating newsrooms that strategically misrepresent or underrepresent this community.

A well-known example is the 2010 *Rolling Stone* article in Uganda, which called for lawmakers to hang the country's "top" homosexuals. The story, like many articles published in Uganda, claimed activists had launched a gay campaign to recruit schoolchildren. It included the names of suspected "homosexuals" and gay rights activists. Shortly after the story appeared, police found Ugandan gay rights activist David Kato bludgeoned to death in his home.



A 2010 article in Uganda called for lawmakers to hang the country's "top" homosexuals. Photo: Daily Maverick

Another challenge is the sin of omission. The ground-breaking 2015 *Gender and Media Progress Study* (GMPS), the first comprehensive study on media coverage and portrayal of LGBTI issues, provided baseline data on this topic. It found that just 0.1% of all stories in SADC discuss LGBTI issues. Additionally, the GMPS research noted that most stories on the topic concern discrimination (55%), affirming the reality on the ground.

The research noted that stories often lack the voices of LGBTI people; fail to address stereotypes about LGBTI people; lack analysis, context, history or research; and use moralising or stereotypical language. This symbolic annihilation points to the ways in which poor media treatment can contribute to social disempowerment and in which symbolic absence in the media can erase groups and individuals from public consciousness.[6]

According to Klein and Shiffman (2009), this exclusion contributes to keeping sexual minorities invisible and without power. They further argue that when society does not value certain groups, the media tend not to include them in their storylines, in the process, casting them aside, and disenfranchising them further by not showing them. The absence of a particular group in the media instructs people, albeit tacitly, about how one should or should not act, and about what one should or should not look like.

Source: The Guardian, 2010; Gender and Media Progress Study (GMPS), Gender Links, 2015

5 http://www.mdda.org.za/OutInTheMediaFinalReport%20(2).pdf
6 http://www.blackwellreference.com/public/tocnode?id=g9781405131995_chunk_g978140513199524_ss12-1
7 Klein H and Shiffman , S.H (2009) Underrepresentation and Symbolic Annihilation of Socially DisenfranchisedGroups ("Out Groups") in Animated Cartoons . The Howard Journal of Communications
http://www.academia.edu/3046269/Underrepresentation_and_symbolic_annihilation_of_socially_disenfranchised_groups_out_groups_in_animated_cartoons (Accessed 29/05/2016)

Legal and policy and framework

This section covers the global, continental and regional instruments that promote the rights of LGBTI communities. It begins with an overview of seminal international declarations. These overarching frameworks provide entry points for lobbying and advocacy at national level.

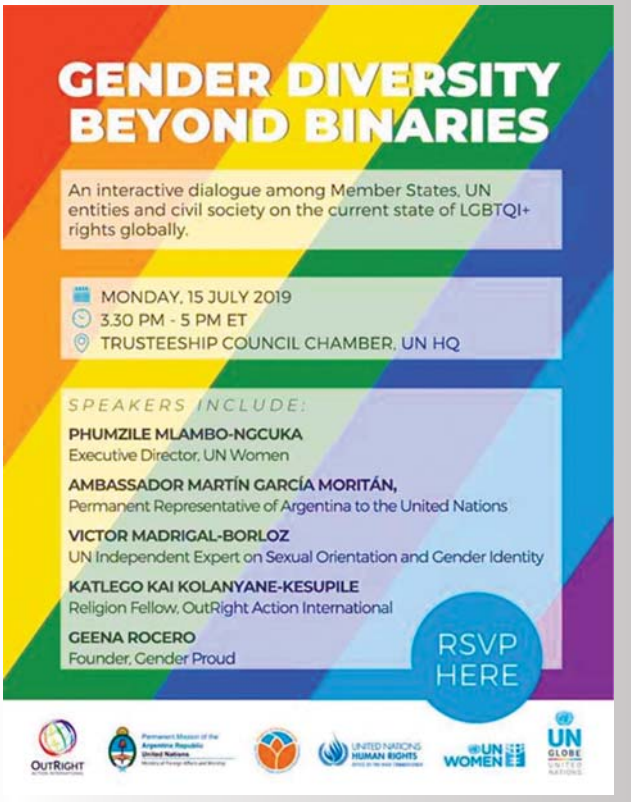
The Sustainable Development Goals do not include any specific references to LGBTI

Global instruments

The UN is the sum of its member states, many of whom do not tolerate LGBTI rights. As such the Sustainable Development Goals (SDGs) do not include any specific references to LGBTI. But to ensure that the global development agenda does not leave LGBTI communities behind, the UNDP developed the 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 LGBTI Inclusion Index are: political and civic participation, economic well-being, personal security and violence, health and education.[8]

UN Women highlights importance of LGBTI rights[8]

In July 2019, Phumzile Mlambo-Ngcuka executive director of UN Women former Deputy President of South Africa convened an unprecedented discussion called "Gender Diversity Beyond Binaries," at the UN headquarters. Panellists included ambassador Martin Garcia Moritán, permanent representative of Argentina to the UN; Victor Madrigal-Borloz, the UN's independent expert on sexual orientation and gender identity; Katlego Kai Kolanyane-Kesupile, a Botswana LGBTI activist and fellow at OutRight Action International; and Geena Rocero, the founder of Gender Proud. This unprecedented gathering marked the start of a more bold approach by the UN in engaging member states on their attitudes towards LGBTI. *Source: UN Women*



[8] https://www.pgaction.org/inclusion/pdf/handbook/en.pdf
[9] https://www.unwomen.org/en/news/stories/2019/7/news-event-gender-diversity-and-non-binary-identities

To bring greater clarity and coherence to states' human rights obligations, the International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organisations, developed a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity.[10] Although stakeholders first adopted the Yogyakarta Declaration, as it is called, in 2007 and updated it in 2017, it remains non-binding. However, it provides comprehensive guidance to states on guiding principles, these include:

- *Rights to universal enjoyment of human rights, non-discrimination and recognition before the law:* Principles 1 through 3 establish the universality of human rights and their application to all without discrimination. All people have a right to recognition as a person before the law, regardless of their sexual orientation or gender identity. Forced medical procedures, like sterilisation or sex reassignment surgery, cannot be required for legal recognition.
- *Rights to human and personal security:* Principles 4 through 11 address fundamental rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention and human trafficking.
- *Economic, social and cultural rights:* Principles 12 through 18 elaborate on non-discrimination in the enjoyment of economic, social and cultural rights. This covers the rights to employment, housing accommodations, social security and education, as well as sexual and reproductive health rights that include the right to informed consent and sex reassignment therapy.
- *Rights to expression, opinion and association:* Principles 19 through 21 set forth the freedom to express oneself, one's identity and one's sexuality based on sexual orientation or gender identity, without state interference. Along with this right to free expression, everyone also has the right to freely participate in peaceful assemblies and associate.
- *Freedom of movement and asylum:* Principles 22 and 23 highlight the rights of persons to seek asylum from persecution based on sexual orientation or gender identity.
- *Rights of participation in cultural and family life:* Principles 24 to 26 address the rights of people to have family life and to participate in public affairs and the cultural life of their communities without discrimination based on sexual orientation or gender identity.
- *Rights of human rights defenders:* Principle 27 establishes the right to defend and promote human rights without discrimination based on sexual orientation and gender identity, as well as the obligation of states to ensure the protection of human rights defenders working in these areas.
- *Rights of redress and accountability:* Principles 28 and 29 elaborate on holding rights violators accountable and ensuring appropriate redress for those who face rights violations.
- *Additional recommendations:* The principles establish 16 additional recommendations to national human rights institutions, professional bodies, funders, NGOs, the High Commissioner for Human Rights, United Nations agencies, treaty bodies, special procedures and others.[11]

Although stakeholders first adopted the Yogyakarta Declaration, as it is called, in 2007 and updated it in 2017, it remains non-binding

The UN has rolled out several instruments that enshrine these rights, and SADC countries have signed on to many of them.

[10] http://yogyakartaprinciples.org/introduction/
[11] https://www.pgaction.org/inclusion/pdf/handbook/en.pdf

Table 8.2: Overview of key UN instruments and SADC commitments[12]

Country	International Convention on Civil and Political Rights (ICCPR)	International Covenant on Economic, Social, and Cultural rights (ICESRC)	Convention on Torture (CAT)	Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)	Convention on the Rights of the Child (CRC)	UN Centre for Regional Development (SDGs) (CRD)	International Convention on the Elimination of all forms of Racial Discrimination (ICERD)
Angola	SP	SP	S	SP	SP	SP	S
Botswana	N	N	N	SP	SP	S	S
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

Source: ILGA, 2019.

Table 8.2 provides an overview of the relevant UN instruments and the status of SADC members 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:

- None means a state has not committed to the instrument, indicated with an "N."
- Signatory means a state has signed in agreement but has not ratified at national level indicated with a "S."
- State party means a state has ratified the instrument at national level, which means it must be domesticated, indicated with an "SP."

Ten SADC countries have committed to implementing all seven instruments in country: DRC, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Namibia, Seychelles, South Africa and Zambia. It is a concern that Tanzania and Zimbabwe have not signed the Convention on Torture, particularly in Tanzania, where the regional governor of Dar es Salaam threatened in late 2018 to set up a task force to round up and arrest people suspected of being gay.

Angola has not ratified the CAT and ICERD, while Botswana lags in several areas as it has not committed to the ICCPR, ICESRC and CAT and it has only signed up to, but not domesticated, the CRD and ICERD.

[12] https://ilga.org/downloads/Treaty_Bodies_SOGIESC_references_2016_ILGA.pdf

Mauritius commits to LGBTI rights agenda following UN review[13]

As part of its Universal Periodic Review (UPR), which involves a review of its human rights record, Mauritius received 14 recommendations from 13 countries, four advanced questions and three comments in favour of LGBTI rights as human rights.

This included concerns that the government has not yet taken any policy decision to repeal section 250 of its Criminal Code regarding consensual homosexual activity; concerns about hate speech and violence, including death threats, against LGBT people; and a note that "non-heterosexuals experienced harassment by neighbours, forced marriages following kidnapping and sequestrations by the family, physical violence and blackmail."[14]



Lawmakers in Mauritius committed to continue to advance the rigths of LGBTI people at the 40th Regular Session of the Human Rights Council.
Photo: Gender Links

Following the UPR, the government committed to do better to advance the rights of its LGBTI community. "Please rest assured that Mauritius will take initiatives for the recognition of the rights of the LGBT community," said Maneesh Gobin, attorney general and minister of justice, human rights and institutional reforms, at the 40th Regular Session of the Human Rights Council.

The UPR is a unique state-driven process under the auspices of the Human Rights Council, which provides the opportunity for each state to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.

As one of the main features of the Council, UN stakeholders designed the UPR to ensure equal treatment for every country in assessments of human rights. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. Currently, no other universal mechanism of this kind exists.

The UPR holds states accountable to conventions and treaties that its lawmakers have ratified and have a moral obligation to implement. Advocacy on the UPR enabled peer-to-peer dialogue and brought pressure from development partners and other states to encourage Mauritius to guarantee the equal rights of LGBTI persons.

Source: Gender Links case study, 2019

[13] https://genderlinks.org.za/casestudies/mauritius-lgbt-youth-led-advocacy-paving-the-way-for-lgbt-rights/
[14] https://ilga.org/downloads/31ST_UPR_WORKING_GROUP_SESSIONS_SOGIESC_RECOMMENDATIONS.pdf

Continental instruments

Two binding treaties that apply at the regional level strengthen the fight to curb violence against persons based on their real or imputed sexual orientation or gender identity. The principal treaty is the African Charter on Human and Peoples' Rights (also known as the Banjul Charter), which guarantees the principles of non-discrimination and equality before the law; the rights to life, dignity and physical integrity; the guarantee against cruel, degrading or inhuman treatment or punishment; and the right to a fair hearing before competent national courts. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), in addition, requires state parties to take specific measures to combat violence against woman regardless of their sexual orientation or gender identity.[15]

In 2014, the African Commission on Human and Peoples' Rights adopted Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity. It provides clarity on the import of the clauses in the African Charter for LGBTI communities. Resolution 275 calls on members states to:

- Ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities; and
- End all acts of violence and abuse, whether committed by state or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence, including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.[16]

The first clause in resolution 275 commits member states to allowing LGBTI organisations to operate freely. This is currently only possible in Botswana, Lesotho, Mauritius, Namibia, Seychelles and South Africa. Nine SADC countries actively restrict the functioning of these organisations.

Clause two commits members states to creating a legal environment that criminalises violence against LGBTI persons in all its forms and ensures prosecution of perpetrators of such violence.

At the moment, Angola, is the only country in SADC that has hate crimes legislation that protects LGBTI persons from violence and discrimination. Ensuring other countries bring in similar legislation is an urgent priority across the region.

Regional instruments

No SADC instruments currently exist specifically to address LGBTI rights. This is indicative of the resistance amongst legislators in most SADC states to address the needs of these communities. South Africa is the exception, with some of the most progressive laws, policies and practices in the world. Given the policy-rich global and continental environment, there is a need to lobby and advocate for a regional Protocol on the Rights of LGTBI Persons - one that includes these global and continental provisions within a SADC context.

No SADC instruments currently exist specifically to address LGBTI rights

[15] http://cfnhri.org/uploads/files/resolution_275_eng.pdf
[16] http://www.achpr.org/sessions/55th/resolutions/275/

One important area of concern involves the provision of high quality sexual and reproductive health services to LGBTI communities. The right to health is fundamental to every citizen's wellbeing.

The Lancet and Guttmacher new SRHR definition include people's right to freely define their own sexuality, including sexual orientation and gender identity and expression. This ground-breaking new definition will help LGBTI people access sexual and reproductive health information and services. The Lancet and Guttmacher report stresses the importance of people being able to have access to the information, resources, services and support necessary to achieve this without discrimination, coercion, exploitation or violence.

It also acknowledges that people with diverse sexual orientations, gender identities and expressions, and sex characteristics, including LGBTI people, have been neglected in efforts to advance sexual and reproductive health and this has held back progress among wider populations. Exclusion has been due, in part, to pervasive stigma and discrimination of LGBTI people, including among health workers.[17]

Three SADC instruments speak to improving SRHR in member states:

- Strategy for Sexual and Reproductive Health and Rights in the SADC region, 2019-2030;
- SADC Regional Strategy for HIV Prevention, Treatment, Care and Sexual and Reproductive Health and Rights among key populations; and
- Minimum Standards for the Integration of HIV and Sexual and Reproductive Health in the SADC Region.

The SADC SRHR strategy includes LGBTI people in its list of beneficiaries. It is intended to meet the SRHR needs of all people in the SADC region, including: adolescent girls and young women; women of a reproductive age; men and boys; and key populations including sex workers, people who inject and use drugs, prisoners, MSM and LGBTI, migrants, refugees, mobile populations, people living with disabilities and victims of sexual exploitation.[18] There is no other specific reference to the needs of LGBTI people in the SRHR strategy.



Malawian authorities arrested Steven Monjeza (left) and Tiwonge Chimbalanga in 2009 when they attempted to get married. Photo: Google Images

Additionally, the SADC Regional Strategy for HIV Prevention, Treatment, Care and Sexual and Reproductive Health and Rights among key populations does not include LGBTI persons at all. However, it does identify men having sex with men (MSM) and transgender persons as key populations. All key populations named in this strategy face elevated levels of stigma and discrimination, which impedes their access to health services, including HIV and SRH services. They also face stigma and discrimination in health care settings, the workplace, families, and within communities.[19]

The Minimum Standards for the Integration of HIV and Sexual and Reproductive Health in the SADC Region takes a similar approach by referencing LGBTI persons as a key population. It calls on states to:

- Review and revise or develop new policies that support access to integrated SRH and HIV services for key populations, especially adolescents, youth, migrant populations, LGBTI persons and people with disabilities.

[17] https://www.outrightinternational.org/content/sexual-and-reproductive-health-and-rights-all
[18] https://genderlinks.org.za/wp-content/uploads/2018/11/1-Final-signed-SADC-SRHR-Strategy-2019-2030.pdf
[19] https://www.sadc.int/files/2715/3060/7629/SADC-regional-strategy-hiv-srhr-key-pops_FINAL.pdf

- Put systems in place, including the necessary facility and community service provision modifications and infrastructure, to facilitate access to SRH and HIV services by key populations, especially adolescents, youth, LGBTI persons and people with disabilities.[20]

While the various strategies do not include comprehensive provisions to address the SRHR needs and rights of LGBTI persons, they do provide entry points for engagements with governments and other key stakeholders. The global, continental and regional instruments commit SADC members states to ensure that they fully recognise LGBTI persons as equal citizens. It is important to hold governments accountable for the commitments they make and ensure that they implement them.

Status of same-sex consensual relations in SADC

People engaged in same-sex consensual relations face stigma and discrimination across SADC. Even in countries where legislators have decriminalised same-sex consensual relations, most governments stop at decriminalisation without putting further requisite rights in place. Political will remains a major challenge but examples of positive reforms do exist. For example, Mozambique decriminalised same-sex consensual relations in 2015 after a review of its 1886 Penal Code.

In 2018, GL compiled a case study on Mozambique's Penal Code review process. It comprised interviews with different stakeholders, including government. Isaque Chande, Mozambique ombudsman and former minister of justice, said that he believed Mozambican society is not ready to accept LGBTI communities. "Mozambique society will not accept marriage between same sex couples," he said, noting that the country needs to take its time and ensure everyone is ready before putting laws and policies in place to fully integrate LGBTI communities.

Chande's intervention raises several fundamental questions. Why are LGBTI communities viewed as separate from "society?" Who defines society? Why are LGBTI persons lesser citizens? Who decides when society is ready? Does society have to be ready for equality, fairness and dignity?

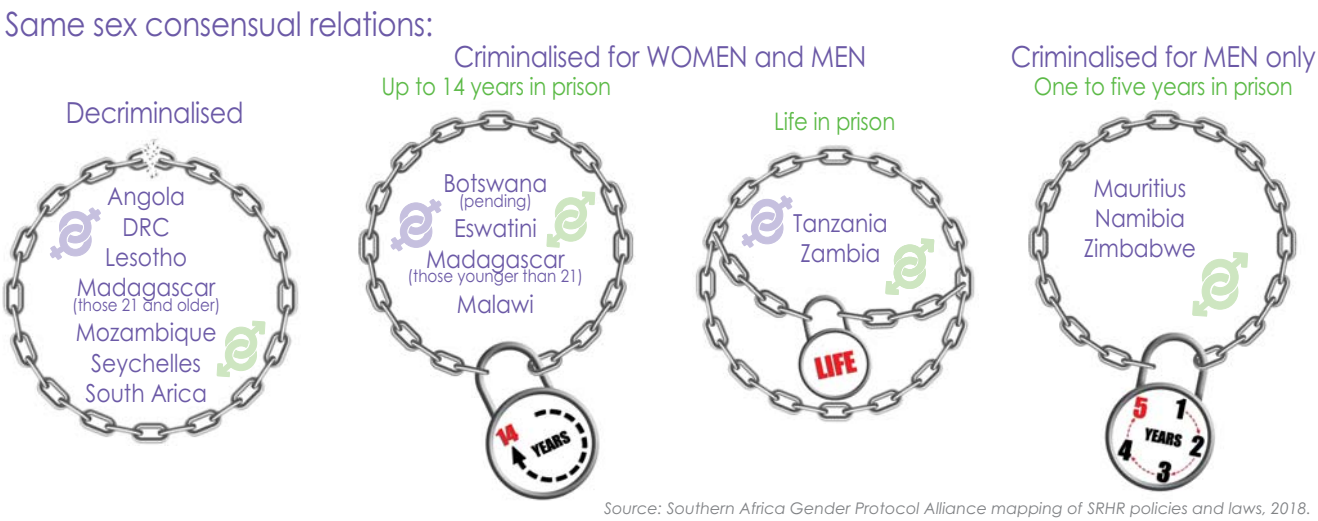
While Chande's strategy is one approach, the approach in other parts of the world has been one where government guarantees and facilitates the realisation of citizens' rights instead of dispensing them out as privileges when leaders believe a majority in the rest of "society" approves of it.



Pride march in Eswatini, 2018. Photo: Gender Links

[20] http://www.integrainitiative.org/wp/wp-content/uploads/2015/12/tmp-11285-SADC-Min-Stds-Eng-final-1158402048.pdf

Figure 8.5: Legal status of same-sex relationships in SADC



Source: Southern Africa Gender Protocol Alliance mapping of SRHR policies and laws, 2018.

Figure 8.5 shows that seven countries (Angola, DRC, Lesotho, Madagascar, Mozambique, Seychelles and South Africa) have decriminalised homosexuality. Meanwhile, nine countries have laws in place criminalising same-sex consensual relations. In Madagascar, homosexuality remains a crime for people younger than 21. In January 2019, Angola's High Court decriminalised homosexual relationships following the parliament's adoption of a new penal code. The country's courts went further, making it a criminal act to discriminate against another person because of their sexual orientation, with the possibility of imprisonment of up to two years.[21]

Nine countries have gender distinctions around the criminalisation of consensual same-sex relations. Six of the nine - Botswana, Eswatini, Madagascar, Malawi, Tanzania and Zambia - criminalise same-sex consensual relations for both women and men. But Mauritius, Namibia and Zimbabwe only criminalise same sex consensual relations between men.

These conditions create legal uncertainty and ambiguity. The latter three countries cannot charge lesbians for same-sex relations, and the reason for this anomaly is not clear. It could be gender blindness; an implicit acknowledgement that legislators believe gay relationships to somehow be more serious and/or threatening. The different ways that laws treat gay and lesbian relations point to a serious violation of the principles of equality and fairness. Decriminalising all same-sex consensual relations will remove any legal questions linked to this.

Mauritius, Namibia and Zimbabwe only prosecute men for same-sex consensual relations

In Tanzania and Zambia, the sentence for same-sex consensual relations is life imprisonment for both women and men.



Chanda says he tried three times to kill himself before he learned to accept himself. Photo: Prudence Phiri and Global Press Journal Zambia

[21] https://www.iol.co.za/news/africa/angola-lifts-ban-on-homosexuality-18965269

Landmark ruling in Botswana throws out law that criminalised same-sex relations[22]

LGBTI activists in Botswana celebrated on 11 June 2019 following a unanimous ruling by the Botswana High Court that cast aside sections of the country's penal code that criminalised same-sex relations.

University student Letsweletse Modshidiemang brought the case before the court, challenging the constitutionality of sections 164(a), 164(c) and 167 of the Botswana Penal Code.

These provisions criminalise same-sex sexual conduct between consenting adults in Botswana and impose a maximum sentence of seven years' imprisonment. Modshidiemang and the group Lesbians, Gays and Bisexuals of Botswana (LEGBIBO) argued that the penal code provisions were unconstitutional, and that the government should do away with them to reflect a changed society in which same-sex relations have become more widely accepted.

However, following the ruling, Botswana Attorney General Abraham M. Keetshabe said the government would appeal the decision, noting that he felt the judges made a mistake.

Keetshabe's statement confused LGBTI activists and pointed to government confusion on the matter because it contradicted an earlier statement from Botswana President Mokgweetsi Masisi, made in December 2018 during the 16 Days campaign. At that time, Masisi said: "There are also many people of same-sex relationships in this country, who have been violated and have also suffered in silence for fear of being discriminated [against]... Just like other citizens, they deserve to have their rights protected."



Activists in Botswana struggle for legal recognition of same-sex relations outside the High Court in 2019. Photo: Gender Links

In a June press release, the Southern African Gender Protocol Alliance noted that it welcomes the bold move by Botswana's high court to decriminalise homosexuality. Emma Kaliya, the group's Chair, said "Botswana has shown that they are progressive on human rights. We hope that other SADC member states will do the same."

It is important that civil society organisations and LGBTI advocates within government monitor the situation and continue to keep up the pressure and make strategic interventions to ensure that the government's appeal does not succeed. *Source: BBC News, 2019*

Chanda, a gay man in Zambia, spoke about the impact of the extremely harsh law in an interview with Public Radio International. "It's a jungle we live in. We are always hunted," he said. "If I had a choice, why would I choose such a hostile life?" The 34-year-old, who asked to remain anonymous for fear of being arrested, said he had attempted suicide three times because he could not cope with the rejection and harassment he endured from his family and community.

Many in Zambia's LGBTI community, who face potential imprisonment, say it's a struggle to cope with the emotional trauma that comes with living in a place where one's most personal practices or identity is regularly attacked. Suicide is common in the community, so is alcohol and drug abuse.[23]

Meanwhile, the Tanzania Penal Code 1945, Section 154 on Unnatural Offences, criminalises "carnal knowledge... against the order of

[22] https://www.bbc.com/news/world-africa-48594162
[23] https://www.pri.org/stories/2018-08-18/gay-men-zambia-where-homosexuality-banned-suicide-common-end

nature," which is punishable with a maximum penalty of life imprisonment.[24] The Tanzania government has implemented especially harsh measures against the LGBTI community. Alongside draconian laws, legislators have authorised special police units to arrest and imprison LGBTI persons for lengthy periods.

In November 2018, police arrested ten men for allegedly conducting a same-sex marriage ceremony on the Tanzanian island of Zanzibar. The men endured a forced anal examination under the pretext of "gathering evidence."

The UN Committee against Torture has said such examinations "have no medical justification" and violate international law.

The number of arrests increased following a call from lawmaker Paul Makonda, regional commissioner for Dar es Salaam, for citizens to begin reporting homosexuals for round-ups. Makonda said he had put together a team of officials and police that would target gay people, who could face lengthy prison sentences.[25]

Protections for LGBTI communities



Activists protest GBV and homophobia in South Africa's Orange Farm community in 2015. Photo: Thandokuhle Dlamini

LGBTI+ persons face high levels of violence, discrimination and stigma because of their sexual orientation, gender identity and expression, and sex characteristics. In addition to removing discriminatory laws and policies governments must provide protections in existing and new laws and policies. This section covers protection against discrimination, criminalisation of violence and discrimination against LGBTI+ persons and banning conversion therapy.

Constitutional provisions

Only South Africa has specific provisions in its constitution recognising the rights of LGBTI people. Chapter two, the Bill of Rights of the South African constitution, states under sub section nine: "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth... No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection... National legislation must be enacted to prevent or prohibit unfair discrimination... Discrimination on one or more of the grounds listed in subsection 3 is unfair unless it is established that the discrimination is fair."

It is important to include protections for gender and sexual orientation in country constitutions. This guarantees long term protection of LGBTI people. Fourteen SADC countries include equality and non-discrimination clauses in their constitutions, but do not include sexual orientation.

GL works with groups of experts in countries across the region to conduct an audit on government responsiveness to gender. The Gender Responsive Assessment (GRA) includes a question on whether the constitution provides for non-discrimination based on different criteria. Experts scored their countries out of a total of two points.

Experts in seven out of 14 countries scored their countries a maximum of two points. These

[24] Tanzania Penal Code 1945, Section 154 Unnatural Offences
[25] https://www.theguardian.com/world/2018/nov/08/tanzania-men-arrested-for-gay-marriage-face-anal-examinations

included countries such as Malawi, Tanzania and Zimbabwe that have highly repressive LGBTI laws and policies. In contrast, Mauritius has several progressive laws and policies on equality, but experts there scored it at zero. In June 2018, Mauritius held a pride event. However, organisers cancelled its scheduled pride parade following threats from protestors who called the march "immoral and anti-Islamic."[26] The prevailing negative context with this and issues such as growing levels of child marriages could account for Mauritius's low score. Overall, the differences in rankings highlights a disparity in views and perceptions across the region, once again underscoring the need for more and better information on this topic as well as advocacy aimed at citizens and activists, not only political leaders.



Candidates give short shrift to sexual diversity during Malawi elections[27]

It is an exception rather than a rule when Malawi's political leaders mention LGBTI rights, even during elections when citizens pay closer attention, hoping to get a clear sense of which leaders may bring in progressive changes. But it was politics as usual in 2019 as the country went to the polls on 21 May following a campaign once again marked by almost no mention of the rights of LGBTI Malawians, who continue to be criminalised.

One of many litmus tests for any elected government is how they handle sensitive and divisive issues such as LGBTI rights, said activists in Malawi. "The winners of the 2019 elections are obligated to respect and protect the rights of LGBTI+ persons. The government must repeal 'bad laws' that impinge on LGBTI+ persons' rights and freedoms," said LGBTI activist, Eston Mwala.



UK-based activists call on Malawi lawmakers to release Tiwonge Chimbalanga and Steven Monjeza in a 2010 protest in London. Photo: MC Modern Ghana

"This is both a constitutional and a human rights obligation. The government must repeal the sodomy laws and put in place deliberate policies to protect the rights of LGBTI+ persons because, as we have seen, such laws fuel homophobic violence."

In 2009, Malawi's authorities arrested Tiwonge Chimbalanga and Steven Monjeza, and charged them with unnatural practices between males and gross public indecency after they were married in front of friends and family. The case attracted international attention and generated interest in Malawi, where homosexuality carries a maximum 14-year jail sentence.

Section 153 of Malawi's penal code criminalizes "carnal knowledge of any person against the order of nature." Same sex partners face discrimination as far as access to health services is concerned.

Following this year's election, a 33-year-old transgender woman who refused to be named for security reasons said, "The reality is that we are here and we deserve to enjoy the human rights like everyone else, and we must not be hunted down like animals but we should be given the rights to enjoy living in Malawi just like everyone else."

Source: Penelope Paliani-Kamanga, Gender Links News Service, 2019

[26] https://www.mambaonline.com/2018/06/08/mauritians-celebrate-pride-despite-backlash-and-threats-in-pictures/
[27] https://genderlinks.org.za/news/malawi-elections-and-sexual-diversity/

Broad protections

Only Angola, Mauritius and South Africa provide broad protections for the LGBTI community. As mentioned earlier, Angola passed legislation in January 2019 making it a criminal act to discriminate against another person based on sexual orientation, with punishment of up to two years' imprisonment.[28] This law accompanies the decriminalisation of same-sex consensual relations.

Mozambique decriminalised same-sex consensual relations in 2015. At that time, lawmakers in the country had an opportunity to broaden the provisions on discrimination. Article 243 of the 2015 Mozambique Penal Code covers discrimination against different people and sites.

Only Angola, Mauritius and South Africa provide broad protections for the LGBTI community

Table 8.3: Discrimination clauses in the 2015 Mozambique Penal code

Key provisions	Sentences
• Anyone who discriminates on the basis of race or colour, religion, sex, age, disease, social status, ethnicity or nationality and offends the victim's honour and consideration.	Up to one year.
• If the discrimination is based on the restriction or refusal of access to a commercial establishment, of teaching, of lodging or places of entertainment or leisure, beaches, sports venues, venues or public goods, elevators, public transport, in a bar or restaurant, to meet or receive customers, to buy or sell.	Penalty is imprisonment.
• If the discrimination is aimed at preventing or hindering access to someone duly qualified, to any position or employment public or private, or hinder their professional development.	Two to eight years.
• Anyone who manufactured, marketed, distributed, any propagandistic material containing elements based on racial prejudice or colour, sex, age, partisan affiliation, marital status, religion, ethnicity and family situation.	Two to eight years.
• If any of the offences referred to in this Article are committed in a humiliating, public or publicised manner.	Penalty is accompanied by a fine of between ten to 20 times the national minimum wage.

Source: 2015 Mozambique Penal Code.

Table 8.3 shows that Mozambique has extensive clauses on discrimination, most punishable with prison sentences. While the Mozambique Penal Code decriminalised homosexuality, the provisions on discrimination do not specifically reference LGBTI+ communities, which is a lost opportunity.

Employment

Five SADC countries protect LGBTI peoples' rights to equal access to employment: Angola, Botswana, Mauritius, Mozambique and South Africa.

[28] https://www.iol.co.za/news/africa/angola-lifts-ban-on-homosexuality-18965269



The Mauritius Equal Opportunities Act[29]

Mauritius passed an Equal Opportunities Act in 2008. The following clauses in Part III - Employment Activities - protect all potential and existing employees.



Thanks to the Mauritius Equal Opportunities Act, its military cannot exclude LGBTI persons from employment. Photo: Wikimedia

10. Employment of persons

No employer or prospective employer shall discriminate against another person -

(a) in the advertisement of a job;
(b) in the arrangements he/she makes for the purpose of determining who should be offered employment;
(c) in determining who should be offered employment;
(d) in the terms or conditions on which employment is offered; or
(e) by refusing or deliberately omitting to offer employment to that person.

11. Persons in employment

No employer shall discriminate against an employee -

(a) in the terms or conditions of employment that the employer affords that employee;
(b) in conditions of work or occupational safety and health measures;
(c) in the provision of facilities related to or connected with employment;
(d) by denying the employee access, or limiting access, to opportunities for advancement, promotion, transfer or training, or to any other benefit, facility or service associated with employment;
(e) by terminating the employment of the employee; or
(f) by placing the employee at a disadvantage in any other manner.

The legislation provides for an equal opportunities commission to monitor its implementation.

Source: Equal Opportunities Commission, Mauritius, 2019

Mozambique protects the rights of LGBTI people to employment. However, according to Danilo da Silva, executive director of Mozambican Association for the Defence of Sexual Minorities (LAMBDA), only one in ten LGBTI people in Mozambique have secondary level education. While the organisation has welcomed decriminalisation of same-sex relations, da Silva says the country still has a long way to go. He notes that, in many cases, members of the LGBTI community leave school because of stigma and discrimination. Sometimes families kick them out when they find out about their status.



LAMBDA welcomed the decriminalisation of same sex consensual relations, but it says government needs to do more to protect sexual minorities. Photo: Afrika News

[29] http://eoc.govmu.org/English/Pages/default.aspx

This lack of education severely affects a person's ability to find decent work. LAMBDA has called for stakeholders to focus on protecting young LGBTI people and enforce their right to equal opportunities to education and training.

Other SADC countries also need to develop policies and legislation to guarantee LGBTI access to employment and fair and equitable treatment while in employment.



Zimbabwe: LGBTI people not protected in the workplace[30]

Asked by CNN's Richard Quest about whether his new government would remove the country's ban on same-sex marriage and campaign for the rights of LGBTI people President Emmerson Mnangagwa responded: "Those who want it are the people who should canvass for it, but it is not my duty to campaign for this. In our constitution, it is banned and it is my duty to obey my constitution."

With this kind of attitude at leadership level, many organisations and companies refuse to take a progressive stand on LGBTI rights. Activists in the country say this is true even of those business leaders who know they employ people from the LGBTI community.

It is a divisive issue. In September 2018, a teacher from St Johns College came out to his students. In a perhaps surprising move, the school supported him, saying it provides "a safe environment for all persons regardless of gender, sexual orientation, abilities or disabilities or any other real or perceived differences." However, after parents threatened to pull their children out of the school, the teacher resigned.

spared," says Harare-based freelancer Chiedza*, who said the president's response to CNN worried her and raised many questions and fears. "His response to Richard Quest summed up my fears, new wine in old bottles." Chiedza, who pretends to be heterosexual to avoid retribution in the office, including worries that editors would not publish her stories, said "it's hard enough being a woman in a highly patriarchal working environment, being a lesbian makes it even more difficult."

** Chiedza is not her real name.*

Source: Shamiso Chigonde, Gender Links News Service, 2018



Protesting for rights in Zimbabwe. Photo: SADCNews.org.za

[30] https://genderlinks.org.za/news/zim-newsrooms-a-safe-haven-for-the-lgbti/

Criminalisation of violence and discrimination against LGBTI persons

As this chapter has set out, LGBTI people face high levels of discrimination and violence across the region. In some instances, such as in Tanzania, it is state-driven. In other countries, the lack of progressive legislation creates unsafe environments for these communities. Where enabling environments do exist, such as in South Africa, ongoing advocacy remains necessary to ensure that public values and attitudes align with the legal and constitutional environment.

> Only five SADC countries protect LGBTI peoples' rights to equal access to employment

At its worst, violence and discrimination manifest in hate crimes and mob violence. Bullying and public humiliation are other common forms.

Hate crimes and aggravating circumstances/ Incitement to hatred and violence

Hate crime is defined as crime, typically involving violence, that is motivated by prejudice on the basis of race, religion, sexual orientation, or other grounds.[31] In criminal law, incitement is the encouragement of another person to commit a crime.[32] Currently only Angola has laws on hate crimes and protections against incitement to hatred and violence included in the January 2019 Penal Code.

It provides extensive protection of LGBTI people. Articles 71, 172, 215, 216, 225, 382 and 384 outlaw incitement to hatred, hate speech, defamation and hate crimes motivated by sexual orientation with varying degrees of punishment. For instance, article 172 bans threats against someone or a group of people on account of their sexual orientation, among others, with one-year imprisonment and a fine of up to 120 days. In the case of a death threat, punishment doubles. Article 384 lists persecution based on sexual orientation as a crime against humanity, on par with slavery, wilful manslaughter, genocide, rape, forced mutilation and others.[33]

South Africa has a draft Hates Crimes Bill that has been in play at the political level since 2009. The highly contested Prevention and Combating of Hate Crimes and Hate Speech Bill, which is currently before the Department of Justice and Constitutional Development, has generated plenty of debate.



Mauritius gay pride event in June 2018. Photo: Herb Klein

[31] Dictionary.com
[32] IBID
[33] Angola Penal Code January 2019.

Originally intended to solely address the offence of hate crimes, legislators decided to include hate speech in 2015, spurred on partly by the public outrage following the infamous Penny Sparrow incident (in which the former KwaZulu-Natal estate agent wrote a Facebook post likening black people to monkeys).

A range of interested parties have submitted input on the Bill, from conservative religious groups not wanting to be denied the right to speak out against homosexuality, to human rights groups defending the constitutionally-entrenched right of freedom to expression, to politicians and journalists concerned that the Bill may be used as a tool to silence critics of government.[34]

In its election manifesto ahead of the May 2019 South African election, the ruling African National Congress (ANC) party committed to passing the Hate Crimes Bill as a matter of priority.



"Corrective" rape on the rise in DRC[35]

The hate crime known as "corrective" rape is on the rise in the SADC country already saddled with the moniker of the world capital of rape.

Between July 2016 and July 2017, a local organisation documented ten cases of "corrective" rape in Goma and East DRC.[36]

"Corrective" rape has been described as a "hate crime in which an individual is raped because of their perceived sexual or gender orientation, with the intended consequence of the rape being to 'correct' the individual's orientation or make them 'act' more like their gender."[37]

Navi Pillay, former UN High Commissioner for Human Rights has stated that "corrective" rape commonly combines "a fundamental lack of respect for women, often amounting to misogyny, with deeply-entrenched homophobia."[38]

Lydia,* a lesbian sex worker from Bukavu, in DRC, affirms that trans men have become targets of sexual violence because of their gender expression. She notes that people perceive them to be lesbians and sometimes rape them, which the offenders perceive to be a "corrective" measure."



Congolese women walk past a sign advocating against sexual violence in December 2008. The DRC has long been described as "the rape capital of the world." Photo: BBC

Celeste,* a female journalist, declared that "almost every day in the city, people look at you, insult you and stigmatise you. One day, in 2007, I was surrounded by a group of men, they threatened they were going to rape me, to give me the taste of men, that whatever I did I was still a woman. They beat me and raped me, but I was able to defend myself and run."[39]

A transgender man, Antoine,* was raped by four young men from his neighbourhood the night of 24 June 2017. In his own words: "it started with

[34] https://genderjustice.org.za/article/hate-crimes-hate-speech-bill-good-bad-unspeakable
[35] https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/COD/INT_CCPR_CSS_COD_29078_E.pdf
[36] 3 L'OBS, RDC: la vie des homosexuels entre ombre et lumière, 5/16/2014. http://tempsreel.nouvelobs.com/societe/20140516.AFP7367/rdc-lavie-des-homosexuels-entre-ombre-et-lumiere.html.
[37] Keren Lehavot and Tracy L. Simpson, Incorporating Lesbian and Bisexual Women into Women Veterans' Health Priorities, June 27, 2013
[38] Pillay, Navi "The shocking reality of homophobic rape" in The Asian Age, June 20, 2011
[39] L'OBS, RDC: la vie des homosexuels entre ombre et lumière, 5/16/2014. http://tempsreel.nouvelobs.com/societe/20140516.AFP7367/rdc-lavie-des-homosexuels-entre-ombre-et-lumiere.html.

insults every time I walked by. They had already attacked twice in the past, trying to rape me. They told me all the time: we are going to rape you and you are going to become a normal man." That night, Antoine said he saw four people behind him, "they threw themselves on me, while hitting me. They had knives, they said they would kill me if I cried. They ripped my pants and the four of them raped me. When they finished, they told me we just turned you into a normal man."[40]

"Corrective" rape is an extreme crime that can cause irreparable physical and psychological harm. DRC does not adequately protect victims against these extreme violations and does not hold perpetrators accountable.

** Not their real names*

Source: Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC), Submitted for consideration at the 121st Session of the Human Rights Committee, 2017[41]

Conversion therapy

So-called "conversion therapy," sometimes known as "reparative therapy," is a range of dangerous and discredited practices that falsely claim to change a person's sexual orientation or gender identity or expression. Every mainstream medical and mental health organisation has rejected such practices for decades, but due to continuing discrimination and societal bias against LGBTI people, some practitioners continue to conduct conversion therapy. Minors are especially vulnerable, and conversion therapy can lead to depression, anxiety, drug use, homelessness and suicide.[42]

Mauritius and South Africa both ban conversion therapy. In other countries, such as Zambia, religious leaders like evangelical reverend Pukuta Mwanza, executive director of the Evangelical Fellowship of Zambia, endorse prayers and counselling as way to "cure" homosexuality. Mwanza asks LGBTI people to seek "spiritual help and prayers" from the church. In his view, the church is the hospital for African gays - if they accept to be "cured."[43]

This view of LGBTI people as having an ill that needs curing is dangerous. It spreads the false ideology that LGBTI people yearn to "fix" themselves. Homophobic churches in Southern Africa have tended to see human rights as secular and anti-Christian. To overcome this, it is important for citizens in SADC to understand that no conflict of substance exists between the foundational Christian belief that all human beings are created in the image of God and the equally foundational human rights principle of the inherent dignity and equality of all human beings.[44]

Recognition of LGBTI rights

Recognition of LGBTI human rights is an integral part of the process to ensure that this community enjoys the same rights and freedoms as all other citizens. These include, amongst others, the right to marriage, adopt children and have free expression.

Same sex marriages and civil unions

Only South Africa provides for same sex marriages and civil unions in its legal frameworks. The other SADC countries define marriage as a union between a woman and a man. This fundamentally affects a same sex couple's human rights, which is evident in the case of Johann Potgieter, a Namibian, and his South African husband, Daniel Digashu, versus the Namibian government.

[40] IBID
[41] https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/COD/INT_CCPR_CSS_COD_29078_E.pdf
[42] https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy
[43] https://www.politicalresearch.org/2014/10/06/conversion-therapy-a-bigger-threat-to-africa-than-scott-lively/
[44] http://theotherfoundation.org/wp-content/uploads/2017/01/Silent-No-Longer.pdf



Gay couple sue Namibian government for same-sex marriage and family rights[45]

Namibian Johann Potgieter married his South African husband Daniel Digashu in South Africa in August 2015 and the couple are now adopting a young boy. However, Namibia recognises neither their relationship nor family, a reality that has affected Digashu's and the boy's right to live in the country.



Johann Potgieter and Daniel Digashu.
Photo: Google Images

The men recently filed an urgent application in the Windhoek High Court against the government, the minister of home affairs and immigration, the attorney general, the Immigration Selection Board, the Immigration Tribunal, and the country's ombudsperson.

They are asking the court to order the government to issue a certificate of identity to Digashu as Potgieter's spouse, to recognise their marriage and family, and to recognise an order of the High Court of South Africa that gave them guardianship of their son. The couple have been raising the eight-year-old boy since his mother, Digashu's aunt, died in 2014. A South African court granted them permission to take the boy to Namibia while the adoption process is underway.

Since moving to Windhoek, the family have faced numerous hurdles and instances of discrimination from officials at the ministry of home affairs and immigration. Authorities have forced Digashu to go in and out of the country on various visas. In one case, a senior official reportedly said to the men: "I have never met people like you in my life. I don't know anyone of your kind. Who is the husband and who is the wife in the relationship?"

Digashu noted in court papers that the incident was "extremely demeaning, humiliating and degrading" adding, that "we were ridiculed and at the same time powerless to do anything. It was one of the worst feelings we have ever felt."

Friedel Dausab, director of Out-Right Namibia (ORN), an LGBTI rights organisation, said, "The case forces our hand to deal with issues on marriage equality and same-sex adoptions and parental recognition. We would like to support the couple and work towards a win for the sake of all LGBTI+ folks in Namibia."

Source: Mambaonline, 2017

Joint adoption of children/second parent adoption of children

South Africa is the only country in the region that allows same sex couples to adopt children. It is possible for a partner in a same-sex relationship to adopt the other partner's biological or adopted child regardless of the legal status their relationship in South Africa and Mauritius. The inability to adopt children is a violation of an LGBTI person's rights.

[45] https://www.mambaonline.com/2017/12/15/namibia-gay-couple-sue-govt-sex-marriage-rights/



Seychelles: Same sex couples seek right to adopt children[46]

As a country that has signed on to multiple human rights conventions, Seychelles is missing one important human right law: it does not allow same sex couples to adopt children. The current adoption law, enacted in 1982, does not make any provision for it.



LGBTI activist Fabianna Bonne.
Photo: Twitter

According to Marie-Agnes Ally, a social worker, the country's social service assesses applicants on their capacity as potential parents if they are childless, and as parents (for those who already have children).

She says that social services consider all other factors related to "the best interest of the child" and not the best interest or want of the foster parent. "Bearing in mind that the issue of LGBTI is sensitive and our society is coming to terms with the moral implication of the right of a person to his/her sexual orientation. As much as the government or system will not interfere with their sexual orientation, social services having the mandate to ensure the well-being and protection of children has an obligation to ensure protection of children. Hence, we need to be mindful of arising/interrelated issues such as how a child residing with same-sex couple, will be accepted/related to, for instance in a school environment and wider community."

Ally notes that the ministry is considering certain amendments of the Children's Act, but adoption by same-sex couples is not a priority. "The society needs to be prepared to affront this drastic change. It goes beyond only the Children Act but other legislations concerning family issues such as the Civil Code and even the Constitution," she said.

National Council for Children Chief Executive Officer Jean-Claude Matombe said that it will not be easy for the people of Seychelles to accept the idea of same sex couples adopting children. "We all know that it is coming because Seychelles has signed the human rights convention. Our constitution gives the same chance and opportunity to all, we speak of equality for everyone, meaning that these people need to be treated as equal," he said. "But in practice it's totally different. I just thought of an example, a couple of years ago there was a same-sex wedding in Seychelles, but it was held at the British High Commissioner's residence. There was an uproar, people were against it, the churches and everyone disagreed with that. This shows that there is a lot of work to be done to educate the population to advocate for these people to be able to enjoy the same rights."

Fabianna Bonne, chairperson of a local LGBTI association, says that couples in the community have been told that they cannot adopt children as a couple but can do it as a single parent as long as they are not in a relationship.

Bonne believes it is time for chage, noting that the real victims of the current rules have refrained from speaking out due to fear of discrimination.

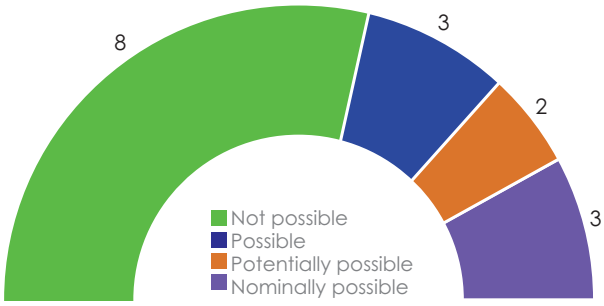
Source: Julliete Dine, Gender Links News Service, 2019

[46] https://www.betrue2me.org/resources/be-true-2-me-guideline-legal-gender-marker-and-forename-change/

Changing sex designation, name or gender marker

The ability to change a gender marker or name is a critical right for trans and diverse people. Experts refer to this as "legal gender recognition." In countries where it is not possible to change gender markers, the ability to change names is stopgap measure. Research conducted by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) suggests that, even where it is possible to change names and gender markers, the process remains inordinately difficult.

Figure 8.6: Ability to change sex and gender markers



Source: ILGA, 2019.

Figure 8.6 shows that only three SADC countries allow for changing gender markers unconditionally. These are Namibia, South Africa and Zambia. Changing a gender marker is potentially possible in Botswana and is nominally possible in Angola, Malawi and Mozambique. It is not possible to change gender markers in the DRC, Eswatini, Lesotho, Madagascar, Mauritius, Seychelles, Tanzania and Zimbabwe. At a practical level, the inability to change gender markers affects trans people in several ways:[47]

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

For these reasons and more, it is critical for all SADC countries to enact and implement laws and policies to facilitate the process of changing gender markers.

Only three SADC countries allow for changing gender markers: Namibia, South Africa and Zambia

[47] https://www.betrue2me.org/resources/be-true-2-me-guideline-legal-gender-marker-and-forename-change/

Table 8.4: Conditions under which gender markers may be changed[48]

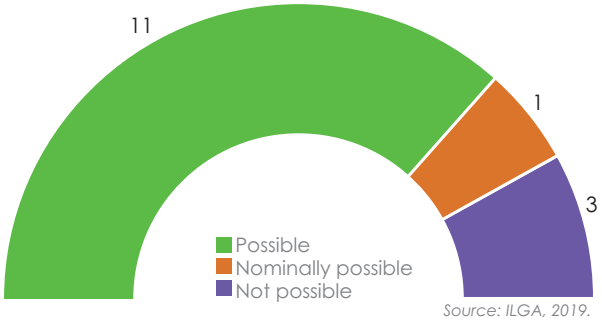
Country	Relevant law	Conditions	Issue
Angola	Código do Registo Civil 2015, Section 87	Although s. 78 of the Code does not allow alterations of details entered in the registration of records of the Civil Registrar, s.87 permits changes, including change of name where there is a change of facts which alter 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 which 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 he may deem necessary. The Act does not define "change of sex". Applications in terms of s.7B are done 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 recognizable 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. The majority of 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	(2) 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 for the alteration of the sex description on his or her birth register. There are no directives from the National Department of Home Affairs (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 applications to be processed (averaging 1-7 years), what forms to use and what documents and applicant must bring.	Comprehensive legislation, barrier in the 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	
Not possible currently, law or policy needed in DRC, Eswatini, Lesotho, Madagascar, Mauritius, Seychelles, Tanzania, Zimbabwe			

Source: ILGA, 2017.

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

Name change

Figure 8.7: Changing names

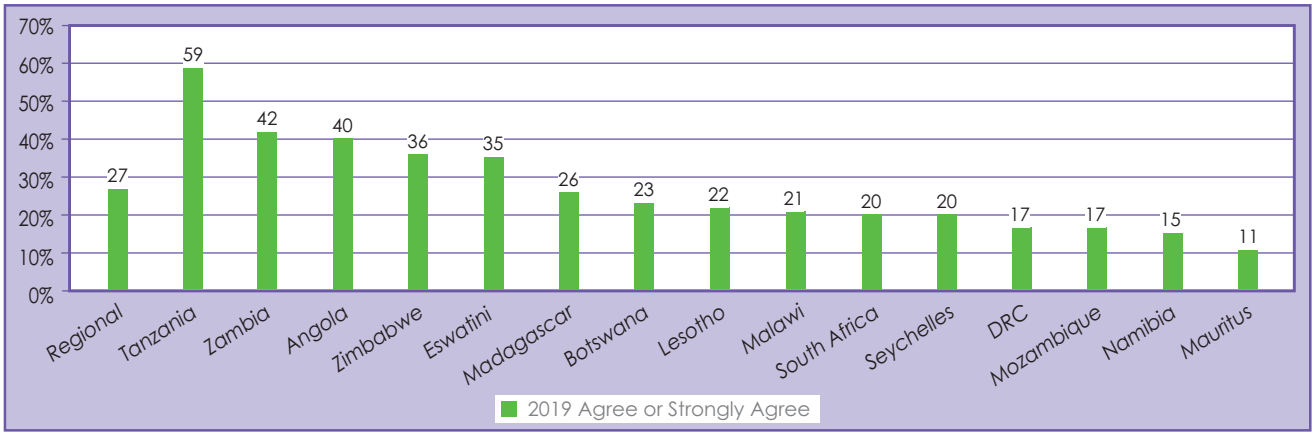


Source: ILGA, 2019.

Figure 8.7 illustrates that changing names in SADC countries is less challenging than changing gender markers. It is possible to change names in 11 SADC countries: Botswana, DRC, Eswatini, Lesotho, Madagascar, Mauritius, Namibia, Seychelles, South Africa, Zambia and Zimbabwe.

It is nominally possible to change names in Angola, Mozambique and Malawi. It is not possible to change names in Tanzania. While not ideal, trans and gender diverse people may use this option until countries allow

Figure 8.8: "It bothers me when a girl acts like a boy," 2019



Source: Agenda 2030 SADC Gender and Sustainable Development Attitudes Survey, 2019.

Scores point to relatively high levels of intolerance of trans and gender diverse people

In response to the statement "It bothers me when a girl acts like a boy," between 40% to 59% of respondents to the Agenda 2030 SADC Gender and Sustainable Development Attitudes Survey in Angola, Tanzania and Zambia agreed or strongly agreed. The scores in other SADC countries range from a low of 11% in Mauritius to 36% in Zimbabwe. These scores point to relatively high levels of intolerance of trans and gender diverse people.

Figure 8.9: "It bothers me when a girl acts like a boy," male vs. female, 2019[49]

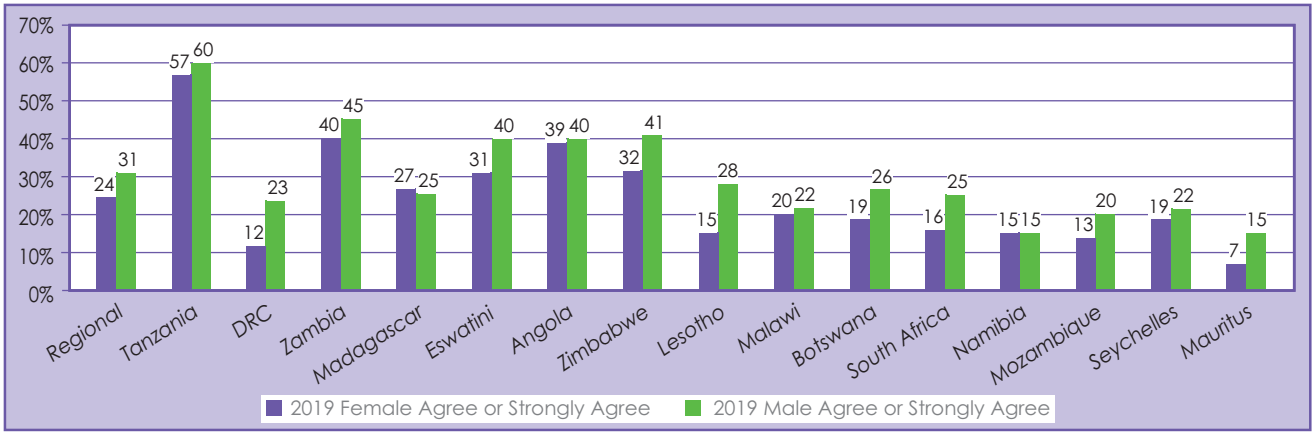
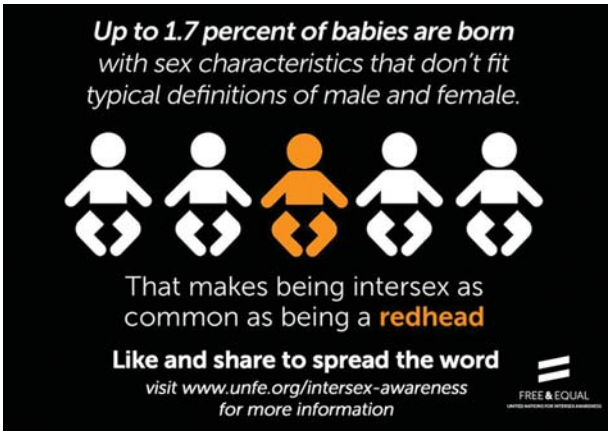


Figure 8.9 shows that women and men in many countries hold similar views about this statement. But in the DRC, Lesotho, Mauritius, Mozambique, South Africa, Swaziland and Zimbabwe, substantially fewer women agreed or strongly agreed with the statement.

Intersex

Intersex is an umbrella term to describe people born with natural sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.



Unlike sexual orientation or gender identity, intersex relates to natural biological sex characteristics

Intersex people have been referred to as "hermaphrodites" or persons with "disorders of sexual development." Describing something as a "disorder," however, infers that it is something that society needs to correct. Variations of intersex traits may be visible at birth, while others only manifest during puberty. The UN's Free & Equal campaign tell us that up to 1.7% of the world's population identify as intersex.[50] Up to two million babies come into the world every year with intersex traits.

Unlike sexual orientation or gender identity, intersex relates to natural biological sex characteristics and is unrelated to sexual orientation or gender identity.[51] Researchers did not include indicators relating to intersex and gender non-conforming persons in the overall set of queries guiding this chapter. There is a dearth of data on intersex individuals across the region, except in South Africa, which was the first country in the world to explicitly include intersex people within the definition of "sex" in its anti-discrimination laws.[52]

[49] Agenda 2030 SADC Gender and Sustainable Development Attitudes Survey, 2019.
[50] https://www.unfe.org/perfect-just-as-they-are/
[51] https://www.chr.up.ac.za/images/researchunits/sogie/documents/Intersex_Fact_Sheet.pdf
[52] http://www.justice.gov.za/vg/lgbti/2018-NationalIntersexMeetingReport.pdf



South Africa: Caught in the intersex no-person's land[53]

The ruling by the International Association of Athletics Federations (IAAF) that track star Caster Semenya must moderate her testosterone levels if she wants to compete in certain races has sparked furious debate about gender and sex.

But while society expects people to conform to being either male or female, being intersex and fitting somewhere between the two is more complex and common than you might think. Dimakatso Sebidi was born 34 years ago at Baragwanath Hospital on April Fools' Day with ambiguous genitalia. Her father, Abraham Sebidi, says it was a day he will never forget.



Dimakatso Sebidi wants to change how society sees intersex people. Photo: Daily Maverick

"When I arrived at the hospital, my wife told me we were going to change our baby's name to Dimakatso," he reminisces. "I asked her why and she said because Dimakatso means something surprising. She is a surprise.

"As we had bought clothes for a baby girl as we were expecting a girl we decided to go ahead and have the operations done to turn our baby into a girl."

It meant six long years in hospital for little Sebidi.

"I used to get pass-outs only for my birthday and family events and I would cry when I had to return to the ward," remembers Sebidi. On those visits home, she recalls that some family members saw her as a curiosity. "My aunts and family friends would go with me to the bathroom and ask me to pull down my pants. They would look and point and laugh and then go out. I never understood what it was all about. What was so different?"

As Sebidi reached puberty, she found herself attracted to girls and wrestled with herself over these "lesbian tendencies," wondering why she felt that way. "In the townships there was a lot of stigma and I remember this one boy used to wait for me when I was coming home from school." She recalls him threatening her, telling her that she is a girl and he is going to change her. Terrified and knowing that many lesbian women in her community have been raped to "fix" them, she tried to evade him and started using different routes home.

It was only when she turned 21 that her parents finally sat her down and broke the news. "The doctors had told us not to say anything, just to accept it," says Abraham, "but we had to tell her."

In the past, with children born with ambiguous genitalia like Sebidi, doctors pressured parents to operate to assign a gender immediately. "Doing a surgery at three means that you are committing a child of three to genital penetrations and dilations on an ongoing basis till they are a teenager," says David Segal, a paediatric endocrinologist, "And I am not sure that's the right thing to be doing to a three-year-old."

Sebidi is still emotional when she speaks about the impact the operation has had on her life. "I am angry at the doctors, I am angry at my parents for agreeing to take my penis," she cries, tears streaming down her face, "Let your child grow until they can make the decision. Until they say they want to keep them both or remove a penis or vagina. They have a right - don't take that right away from them."

[53] https://www.dailymaverick.co.za/article/2019-05-22-caught-in-the-intersex-no-persons-land/

Not all intersex individuals are born obviously intersex at birth. Sharon Rose Khumalo only discovered her condition at age 21.



Sharon Rose Khumalo is an activist for the intersex community.
Photo: Daily Maverick

"I grew up a normal little girl by all appearances. I wore pink, I grew my hair and it was only when I reached my late teens and I did not get my period that we realized there might be something was amiss," she says.

Khumalo says her mother, who was a nurse, attributed this to her being very thin at first but by the time she turned 21 they decided to seek advice from a gynaecologist. "I just thought he would give me some pills, or they would need to do a small operation or something," recounts Khumalo.

But the doctor did a sonar and told her that he could not see a uterus and ovaries. He explained that this fell into a range of intersex conditions. For Khumalo, it was all surreal. "As a biotechnology student, I understood what it meant but I never thought I would be a case study." She says her family were incredibly supportive as she grappled with her new identity.

After one of her friends made a cruel comment in conversation about intersex, she realised it was time to speak up. "I wrote three blog posts and I posted on Instagram." She was amazed at the number of people who reached out to her. It was an awakening.

"For such a long time you think that there is something wrong with you and something broken. Our diversity is what makes us unique and special."

Source: Bernadette Maguire, Daily Maverick, 2019

In 2013, the third International Intersex Forum issued the Malta Declaration,[54] which sets out key demands to end discrimination against intersex people and ensure the right of bodily integrity, physical autonomy and self-determination. The demands include:

- End mutilating and "normalising" practices such as genital surgeries, psychological and other medical treatments through legislative and other means. Intersex people must be empowered to make their own decisions affecting own bodily integrity, physical autonomy and self-determination;
- End pre-implantation genetic diagnosis, prenatal screening and treatment, and selective abortion of intersex foetuses;
- End infanticide and killings of intersex people;
- End non-consensual sterilisation of intersex people;
- Depathologise variations in sex characteristics in medical guidelines, protocols and classifications, such as the World Health Organisation's International Classification of Diseases;
- Register intersex children as females or males, with the awareness that, like all people, they may grow up to identify with a different sex or gender;
- Ensure that sex or gender classifications are amendable through a simple administrative procedure at the request of the individuals concerned. All adults and capable minors should be able to choose between female (F), male (M), non-binary or multiple options. In the future, as with race or religion, sex or gender should not be a category on birth certificates or identification documents for anybody;
- Raise awareness around intersex issues and the rights of intersex people in society at large;

[54] https://oiieurope.org/malta-declaration/

- Create and facilitate supportive, safe and celebratory environments for intersex people, their families and surroundings;
- Ensure that intersex people have the right to full information and access to their own medical records and history;
- Ensure that all professionals and healthcare providers that have a specific role to play in intersex people's wellbeing are adequately trained to provide quality services;
- Provide adequate acknowledgement of the suffering and injustice caused to intersex people in the past, and provide adequate redress, reparation, access to justice and the right to truth;
- Build intersex anti-discrimination legislation in addition to other grounds, and to ensure protection against intersectional discrimination;
- Ensure the provision of all human rights and citizenship rights to intersex people, including the right to marry and form a family;
- Ensure that intersex people are able to participate in competitive sport, at all levels, in accordance with their legal sex. Intersex athletes who have been humiliated or stripped of their titles should receive reparation and reinstatement;
- Recognition that medicalisation and stigmatisation of intersex people result in significant trauma and mental health concerns; and
- In view of ensuring the bodily integrity and well-being of intersex people, autonomous non-pathologising psycho-social and peer support be available to intersex people throughout their life (as self-required), as well as to parents and/or care providers.

The stories from South Africa highlight the urgent need for SADC states to recognise the needs and rights of intersex persons. The Malta Declaration of 2013 is an important departure point for this engagement.

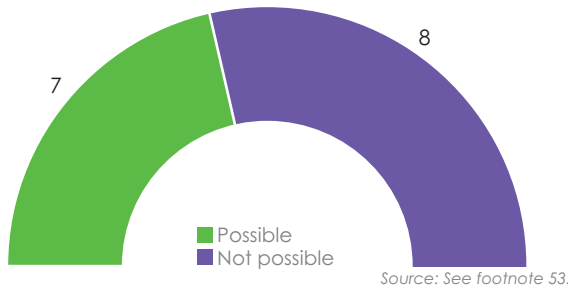
LGBTI organisations able to register and operate freely

The ability to organise and operate freely is a vital right for LGBTI organisations advocating for change. As well as organising events and promoting LGBTI rights, these groups often provide a safe space and shelter for LGBTI youth, who are often kicked out of the family home, to talk about their own sexuality or gender identity.

In countries where registration of an LGBTI organisation is impossible, LGBTI activists often register using generic umbrella names, such as women's groups or human rights groups. Inability to formally register and operate freely also impedes fundraising, which limits a group's ability to collect research for advocacy purposes. In some cases, it also means organisations cannot receive tax exemptions.

A 2018 report by LGBTI rights group OutRight Action International found that only 56% of the 194 countries analysed allow LGBTI groups to legally register and organise safely. It found that gay organisations exist in many countries, but states deny them official authorisation. Other countries ban these groups outright.

Figure 8.10: Registration of LGBTI+ organisations[55]



Source: See footnote 53.

Figure 8.10 illustrates that it is currently possible to register LGBTI organisations in eight countries:

[55] Angola, Botswana, Eswatini, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Zambia, Zimbabwe - Canaries in the Coalmine, The Other Foundation, 2016. DRC - Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC) Submitted for consideration at the 121st Session of the Human Rights Committee 2017, Madagascar - News24 2018, Seychelles - MambaOnline 2017, South Africa - Constitution of South Africa 1996, Tanzania - Human Dignity Trust 2018.

Angola, Botswana, Lesotho, Mauritius, Mozambique, Namibia, Seychelles and South Africa. Organisations operate freely in all these countries except Mozambique, where the government has spent years blocking the formal registration of LAMBDA, Mozambique's only organisation for LGBTI rights.

A 2015 Penal Code change in Mozambique removed a provision that had been used to prosecute the community in the past. After the change, LAMBDA went to the Constitutional Council to challenge the government's refusal to allow its registration. The government had cited a legal clause which declared that organisations can only operate if they benefit "the moral, social and economic order of the country and not offend the rights of third parties or the public good."

LAMBDA and other civil society organisations took the issue to the Constitutional Council and requested that it declare the clause unconstitutional as it illegitimately restricted the right to freedom of association. In November 2017, LAMBDA won its case, yet it remains unregistered because officials at the Ministry of Justice, the body in charge of registering associations, have ignored repeated registration requests.

Human Rights Watch has said that the treatment of LAMBDA is "discriminatory" and that "The failure to register LAMBDA in this arbitrary manner is a clear violation of their right to association, guaranteed under Mozambique's constitution and in international law."[56]

The other eight SADC countries that do not allow LGBTI organisations to register and operate freely must urgently remove policies and laws that prevent people in these groups from exercising their right of free association. These countries include the DRC, Eswatini, Madagascar, Malawi, Tanzania, Zambia and Zimbabwe.

Eight SADC countries do not allow LGBTI organisations to register and operate freely

LGBTI Sexual and Reproductive Health Rights

LGBTI communities face high levels of discrimination and social exclusion, including access to SRHR services. For example, health centres throughout the region will turn trans and intersex people away because they do not resemble their photographs in their identity documents.

The lack of, or disparities in, healthcare available to LGBTI persons represents a denial of their civil and human rights and is an example of societal stigma and discrimination. While much anecdotal evidence for this exclusion exists, there is limited data on LGBTI communities' access to SRH services. Additionally, SADC countries do not have specific health programming for lesbians and women who have sex with women (WSW).

Moreover, existing provisions on transgender people and men who have sex with men (MSM) in the national strategic plans and frameworks of many countries in the region unfortunately remained unimplemented. A lack of clear guidelines on healthcare provision to LGBTI persons means healthcare workers face a major roadblock in their quest to ensure universal access to health services for all citizens.[57]

[56] http://www.mambaonline.com/2017/11/09/mozambique-major-constitutional-victory-lgbtq-community/
[57] http://catalogue.safaids.net/sites/default/files/publications/LGBTI%20Southern%20Africa%202014.pdf



Healthcare workers in Zimbabwe "afraid to touch" LGBTI patients[58]

A 2017 study from Zimbabwe - one of very few studies of healthcare access beyond HIV for key populations in Africa - examined the experiences of LGBTI people, MSM and sex workers regarding access to, and experiences of, healthcare in the country.



Zimbabwe's LGBTI community has long struggled for recognition, protection and health care support. Photo: Twitter

It found that discrimination towards key populations "discourages early diagnosis, limits access to healthcare/treatment and increases risk of transmission of infectious diseases." Additionally, it noted that key populations experience unnecessary suffering from untreated conditions, exclusion from healthcare and extreme psychological distress.

Jennifer Hunt, Katherine Bristowe, Sybille Chidyamatare and Richard Harding conducted the in-depth qualitative study, called *"They will be afraid to touch you": LGBTI people and sex workers' experiences of accessing healthcare in Zimbabwe*, amongst 60 respondents in Zimbabwe.

Three distinct main themes emerged from the data: (1) Populations think that healthcare workers believe their illnesses have been caused by "bad behaviour" and that they deserve blame, discouraging key populations from seeking health support: these workers perceive key populations to have brought illnesses on themselves through sexual behaviour; (2) Equal access to healthcare is conditional on conforming to sexual norms: to receive the same access to health and palliative care services as the general population, key populations believed they must pretend, deny or lie about their sexual identity/behaviour; and (3) Perceptions that healthcare workers are ill-informed about needs of key populations, and personal attitudes impacted on their care delivery: the lack of understanding of, and disrespect for, key populations by health workers resulted in experiences of poor support and provision of care during chronic illness, significantly increasing morbidity and mortality.

The main findings included:

- Participants experienced widespread stigma and discrimination irrespective of their symptoms and illnesses. They described healthcare workers blaming them for their illness because of their identity or profession. The discrimination for sexual minorities extended to accusations of witchcraft to explain their condition, bringing a curse on the family or suggestions of divine retribution against their sexual identity.
- Participants reported humiliating responses and inadequate care from health workers when they disclosed sexual orientation or sex worker status, often resulting in unwillingness to pursue treatment. Participants described assessing the level of discrimination of the health worker from their manner and language, which often discouraged disclosure. Fears regarding potential reactions from healthcare professionals resulted in failure to attend the hospital for diagnosis. Such delays in attending clinics had significant impacts on the health and well-being of these individuals.

[58] https://gh.bmj.com/content/2/2/e000168

- Participants living with a diagnosis of an advanced sexually transmitted infection, HIV diagnosis or any other chronic illness described not receiving anything other than basic history taking and simple treatments. Lack of knowledge and experience of working with key populations seems to be a key driver of stigma. Health workers appeared unwilling to examine key populations for fear of possible contamination or sexual predation.
- Participants described care being driven by the personal attitudes of health workers, often based on religious beliefs. Participants perceived that health workers abused their professional role by promoting personal religious views and that they often framed prejudice against sexual minorities in moral and religious (Christian) terms.[59]

Source: Hunt, J., Bristowe, K., Chidyamatare, S. and Harding, K., 2017

Any strategies to mitigate the healthcare challenges faced by members of the LGBTI community must include health worker training and sensitisation as well as incorporation of health services that respond to the community's specific needs.

Don't get angry - get smart!

In an effort to highlight the importance of LGBTI equality and align the struggle for it with the struggle for gender equality and SRHR, the Southern African Gender Protocol Alliance secretariat and GL convened a regional meeting in April 2019 in Johannesburg.

The meeting brought together five regional LGBTI organisations: Centre for the development of people (CEDEP) from Malawi; Namibia Diverse Women's Association (NDWA); Eswatini's Rock of Hope group; Young Queer Alliance from Mauritius and Lesbians, Gays & Bisexuals of Botswana (LEGABIBO). The group sought to identify institutional areas that require capacity building and advocacy strengthening or training in SRHR-specific thematic expertise.

Other objectives centred on:

- Identifying country specific campaigns for the decriminalisation of homosexuality and for social protections for LGTBI communities in five SADC countries.
- Strengthening the Alliance LGBTI sub-group as a new cluster of the SADC Gender Protocol Alliance.
- Building the institutional capacity of LGBTI organisations in all five countries.
- Creating linkages between LGBTI organisations and the media to increase media coverage of the key LGBTI issues.

The SADC Gender Protocol Alliance has renewed its efforts around LGBTI rights as part of its focus on gender justice issues including menstrual health, safe abortion, maternal health, GBV, HIV and AIDS, and sexual diversity.

A core component of the second phase of work involves strengthening the Alliance SRHR LGBTI network by setting up country chapters of the SRHR and LGBTI networks that work closely together in national campaigns. These autonomous networks will conduct their own fundraising and campaigns.



Participants in an April 2019 workshop in Johannesburg to promote LGBTI work linked to SRHR in the SADC region. Photo: Colleen Lowe Morna

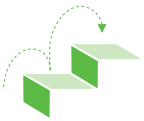
[59] https://gh.bmj.com/content/2/2/e000168

The meeting brought together key decision-making managers and chief executive officers from strategically chosen organisations. These included members of Rock of Hope, which, in 2018, helped organise Eswatini's first ever LGBTI Pride, which the group saw as a success.

The Young Queer Alliance in Mauritius is currently working on SRHR peer education and outreach campaigns that include training of public healthcare providers to reduce stigma and discrimination against LGBTI community members when they seek treatment.

The most recently established network is NWDA, which has been raising awareness in Namibia about gaps in SRHR policy.

As one workshop participant noted, "We need strategies [to work together] so we do not end up in a worse off situation."



Next steps

The lack of recognition of LGBTI rights is a fundamental violation of human rights and requires urgent action in all SADC countries. Strategies must include:

- A concerted region-wide push for LGBTI protections against discrimination and the enshrining of LGBTI rights within member state constitutions to ensure that these cannot be easily changed or repealed. This includes pressuring Eswatini, Malawi, Mauritius, Namibia, Tanzania, Zambia and Zimbabwe to decriminalise same-sex consensual relations and ensure that Botswana upholds the recent decision to decriminalise same-sex consensual relations.
- Lobbying governments to repeal laws criminalising gender variant identity. Countries must commit to human rights conventions and emulate the good practices demonstrated by those countries that protect and include LGBTI people.
- Civil society organisations must develop mechanisms to hold governments accountable for the commitments they sign up to and push for their implementation.
- Lobbying SADC member states to develop laws and policies that recognise the rights of LGBTI people and protect them.
- Engage with faith-based organisations (FBOs) on the rights of LGBTI people as human rights and encourage them to play a role in tackling stigma and discrimination.
- Advocate for stakeholders to enforce LGBTI rights legislation in all sectors and social services, including institutions of education, law enforcement, the justice system, healthcare, government departments and in all workplaces.
- Create partnerships between media and civil society to foster a better understanding of LGBTI issues and improve media coverage of them.
- Develop regional and national strategies to tackle stigma and discrimination, ensuring that states equally implement them to ensure no one is excluded.
- Continue to align the struggle for LGBTI equality with other struggles such as gender, racial and economic equality. This includes continuing to grow relationships between regional LGBTI organisations and the SADC Gender Protocol Alliance and other key gender stakeholders in the region.
- Work with governments and civil society organisations to extend the ambit of existing SRHR strategies to address the needs of LGBTI persons across the region.