Sexual diversity 8



Eswatini's first pride march in 2019 advocating for LGBTI rights. Photo courtesy of Mathias Wasik

KEY POINTS

- Five (one-third) of Southern African countries (Angola, DRC, Mozambique, Seychelles, and South Africa) have decriminalised homosexual relationships.
- Botswana's High Court decriminalised same-sex relationships in June 2019, but promulgation of the law is pending following an appeal.
- COVID-19 has exacerbated vulnerabilities in LGBTI communities, especially those relating to health care and violence.
- Three countries (Mauritius, Namibia, and South Africa) allow LGBTI people to change their gender markers.
- Mauritius and South Africa ban conversion therapy, which causes extensive physical and psychological damage.
- Only one SADC country, Angola, has hate crimes legislation that explicitly protects LGBTI persons from violence and discrimination.
- The UN Human Rights Office calls on countries to outlaw sporting regulations that pressure female athletes to undergo "unnecessary" medical interventions.
- COVID-19 health strengthening strategies must include long term strategies towards the attainment of universal health care.

Introduction



Photo courtesy of Global Citizen

Homophobia, transphobia, and other forms of stigma, violence, and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people contribute significantly to their exclusion from society, limit their access to health and social services, as well as hinder social and economic development.

LGBTI people face elevated levels of violence, discrimination, and stigma

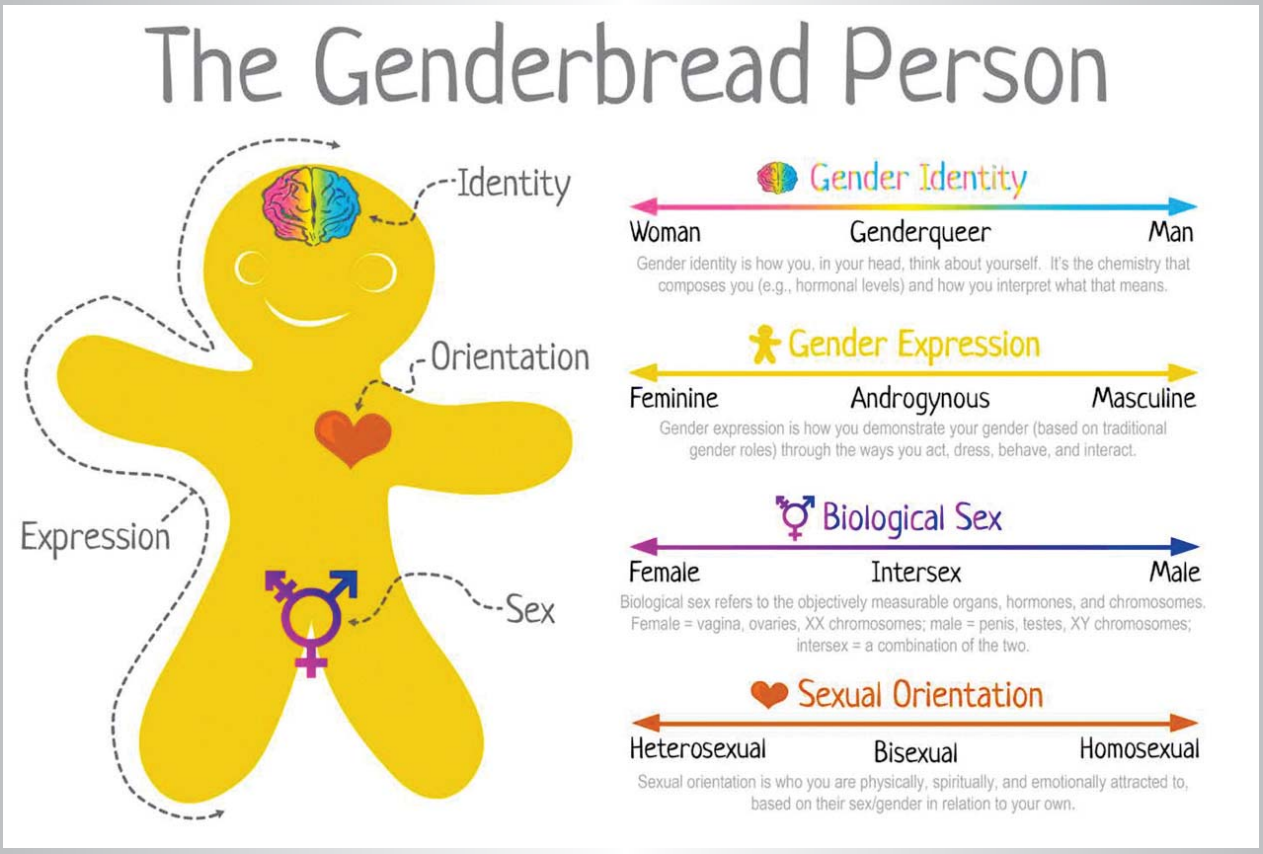
Although LGBTI people have made many important gains, in large part thanks to their own activism and support from civil society organisations and their allies, no country in the world has successfully eliminated all forms of discrimination against, and exclusion of, LGBTI people. Around the world and across Southern Africa, homophobic and transphobic attitudes, often combined with punitive laws and/or lack of effective legal protections against discrimination, continue to expose many LGBTI people to serious violations of their human rights.[1]

LGBTI people face elevated 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 people, including conversion therapy.

[1] https://www.pgaction.org/inclusion/pdf/handbook/en.pdf

Key concepts

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. A cisgender person is someone whose sense of personal identity and gender corresponds with their birth sex.

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 orientations and identities fall on a continuum and can be fluid.

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 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 member states to recognise that their populations include people of diverse sexual orientations, gender identities and expressions. LGBTI refers to all people across the sexual orientation, gender identity and expression and sex characteristics (SOGIESC) spectrum and all have a right to be treated with dignity, be safe, live freely, and be equal.

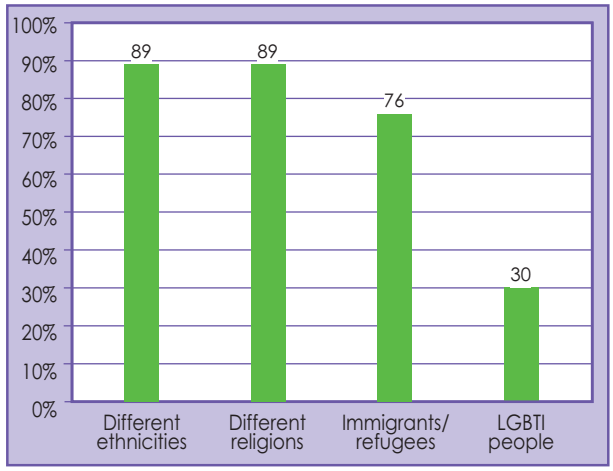
The inaugural Barometer Sexual Diversity chapter in 2019 advocated that governments' and other decision-makers in all countries should prioritise the creation of a safe, enabling environment for LGBTI communities to fully enjoy their rights and freedoms, as represented in below.



Such an environment requires:

- 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.

Figure 8.2: Would like having people from this group as neighbours?



Source: Afro Barometer 2018, accessed 1 July 2020.

Figure 8.2 shows responses to Afrobarometer, a pan-African series of national public attitude surveys on democracy, governance, and society, to a question about possible neighbours. The study analysed 45 823 responses from 34 countries, including 12 in SADC (Botswana, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Tanzania, Zambia and Zimbabwe). It shows that participants mostly accept different ethnicities and religions, and to a lesser extent immigrants and refugees. However, they appear least tolerant to LGBTI people. Only 30% would want to have LGBTI neighbours. These findings underscore the need for strengthened interventions to create a safer and more enabling environment for LGBTI people in the region. It underscores the need for concerted campaigns to challenge discrimination and stigma.



Table 8.1: Sexual diversity baseline indicators in 2019[2]

INDICATORS	Angola	Botswana	Comoros[2]	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	No	Yes	No	(Never criminalised)	(For those over 21)	No	No	Yes	No	Yes	Yes	No	No	No
Gender/s		All genders	Male only		All genders		All genders	All genders	Male only		Male only			All genders	All genders	Male only
Years in prison/other		Seven	Up to five or a fine		Undeter-mined			14	Five		Undeter-mined			Life	Life	One
Protection																
Protection against discrimination																
Specific constitutional provisions	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Broad protections	Yes	No	No	No	No	No	No	No	No	Yes	No	No	Yes	No	No	No
Employment	Yes	Yes	No	No	No	No	No	No	Yes	Yes	No	No	Yes	No	No	No
Criminalisation of violence/discrimination against LGBTI communities																
Hate crimes/ aggra-vated circumstances	Yes	No	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	No
Ban on conversion therapy																
CT banned	No	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	No	Yes	No	No	No
Civil unions	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Joint adoption of children	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Second parent adoption of children	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Changing identity																
Changing sex/ gender markers	Nominally possible	Potentially possible	Not 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	Not possible	Possible	Possible	Possible	Possible	Nominally possible	Possible	Nominally possible	Possible	Possible	Possible	Not possible	Possible	Possible
LGBTI+ organisations																
Able to register	Yes	Yes	No	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Able to operate freely	Yes	Yes	No	No	No	Yes	No	No	Yes	No	Yes	Yes	Yes	No	No	No

2 https://ilga.org/state-sponsored-homophobia-report
3 https://en.wikipedia.org/wiki/LGBT_rights_in_the_Comoros

Table 8.1 shows that:

- Five out of the 16 SADC countries (or about one third) have decriminalised same sex consensual acts: Angola, DRC, Mozambique, Seychelles, and South Africa. Lesotho has not ever criminalised homosexuality, so its laws require further clarity, and Madagascar decriminalises homosexuality for those older than 21 but criminalises it for anyone younger than 21.
- Four countries (Mauritius, Namibia, Tanzania, and Zimbabwe) criminalise homosexuality for men only.
- Only South Africa has constitutional provisions to protect LGBTI people.
- Five countries (Angola, Botswana, Mauritius, Mozambique, and South Africa) have employment protection for LGBTI people.
- Only Angola criminalises hate crimes and incitement to violence against LGBTI communities.
- Only Mauritius and South Africa ban 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).[4]
- Some countries, like Mauritius, have contradictory legislation, criminalising homosexual sex acts yet protecting LGBTI people from discrimination in the workplace and banning conversion therapy.
- Only South Africa recognises same sex unions; civil unions; joint adoption of children; and second parent adoption of children.
- Four countries explicitly allow people to change sex and/or gender markers[5] and their name (Mauritius, Namibia, South Africa, and Zambia); while four others nominally allow these changes (Angola, Botswana, Malawi and Mozambique).
- LGBTI organisations can legally register in nine countries (Angola, Botswana, Lesotho, Mauritius, Mozambique, Namibia, Seychelles, South Africa, and Zimbabwe) and operate freely in the five countries in which homosexuality has been decriminalised, as well as Botswana, Mauritius, and Namibia.

Only 5 of 16 countries in SADC have decriminalised homosexuality, which activists see as an important first step towards full recognition of LGBTI rights

This chapter includes new case studies and information on LGBTI concerns in the Southern African Development Community (SADC). Sections on global, continental, and national legislative frameworks align with last year, as these remain unchanged. This is a concern because only five of 16 countries in SADC have decriminalised homosexuality, which activists see as an important first step towards full recognition of LGBTI rights. Governments must accelerate this moving forward.

Researchers prepared this sexual diversity chapter against the backdrop of the COVID-19 pandemic. Like other communities, COVID-19 has affected LGBTI people in fundamental ways mentioned throughout the chapter. The current crisis highlights the need for governments and civil society to engage with COVID-19, development priorities, and the unique impact of both on key populations, including the LGBTI community.

[4] https://en.wikipedia.org/wiki/Conversion_therapy, accessed 15 July 2019.
[5] 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.

COVID-19 and LGBTI



The COVID-19 crisis has resulted in far-reaching socio-economic implications for many marginalised communities. The pandemic - like other disasters such as Cyclone Idai - sharply highlights existing inequalities and exclusion. "Vulnerable communities become more vulnerable during times of crisis and for LGBTI people, this is amplified even more so exponentially," says Daina Ruduša, senior communications manager at OutRight Action International, an LGBTI advocacy organisation, told Global Citizen.[6]

In SADC as elsewhere, the pandemic has added to the multiple and intersecting forms of marginalisation this community already experiences. Emergency measures enacted by states to control the spread of the virus have affected public service delivery and sexual and reproductive health services (SRH).[7]

OutRight Action International undertook a literature review and conducted 59 in-depth interviews with LGBTI people in 38 countries, including South Africa and Zimbabwe. The study, which researchers conducted between March and April 2020, looked at how the COVID-19 pandemic and the public health measures to curb its transmission affected LGBTI people and their movements.

The report, *Vulnerability amplified: The impact of the COVID-19 pandemic on LGBQTI people* identified the following key challenges:[8]

- ***Devastation of livelihoods:*** rising food and shelter insecurity resulting from job loss, and economic fall out because of over-representation of LGBTI people in the informal sector and broad employment discrimination.
- ***Disruptions in accessing health care***, including crucial HIV medication and gender affirming treatments, and reluctance to seek healthcare due to discrimination, stigma and refusal of services experienced by LGBTI people, even outside a pandemic.
- ***Elevated risk of domestic and family violence:*** a crisis heightens the most prevalent form of violence faced by LGBTI people on a day-to-day basis, in circumstances of lockdowns, curfews, and lack of access to support services and community resources.
- ***Social isolation and increased anxiety*** occur when people get cut off from chosen families and the LGBTI community.
- ***Scapegoating, societal discrimination, and stigma*** - there is an unfortunate history of LGBTI people being blamed for social problems in emergency situations, leading to further stigmatisation, marginalisation, violence, and danger.
- ***Abuse of state power***, repression, exclusion, and criminalisation have all increased in countries prone to authoritarianism and regressive gender ideologies, with some states using the emergency situation to clamp down specifically on LGBTI people.
- Concerns about organisational survival, due to fears about closures of LGBTI community organisations and spaces, which provide a lifeline to countless people. Organisations now face an uncertain future with funding cuts, lockdowns, and having to shift activities online. Activists have called for direct support for these groups.

6 https://www.globalcitizen.org/en/content/how-covid-19-is-affecting-lgbtq/
7 http://theotherfoundation.org/covid-19-crisis/
8 https://outrightinternational.org/content/vulnerability-amplified-impact-covid-19-pandemic-lgbtiq-people

COVID-19 has negatively affected refugees since the onset of the pandemic in March 2020, as evidenced by Robert Mudzuri's story (not his real name).

COVID-19 affects the livelihood of gay sex workers[9]

Six years ago, Robert Mudzuri fled Zimbabwe when his family found out he is gay. "We are either going to call the police to arrest you or kill you ourselves," they threatened. Fleeing in the middle of the night to the country's capital, Harare, he then caught a bus to South Africa. "I did not have a passport, but you just give those officials R50 and they leave you to pass. When I got to Johannesburg, I stayed at the bus station, Park Station for almost three weeks. Life was very hectic for me. I almost committed suicide that time."

Mudzuri eventually made his way to Cape Town, where he took up sex work as a way to survive. Although it puts food on the table, the decision led to him becoming HIV-positive. "Clients sometimes force you. They will rape you," Mudzuri told All Africa in April 2020.

With the outbreak of COVID-19 and the implementation of a national lockdown, the 28-year-old no longer earns any income. "Going to bed without eating is really something else. If you are not having any food, you know you cannot take your medication. It is not just me. It is all of us," he adds, speaking of his circle of friends, a group of sex workers from other parts of Africa who, like him, have fled persecution in their countries of birth.

"It is actually a disaster for us. All of us, we are HIV-positive now. So we are going to suffer. We are going to starve. So you just end up thinking. Why is this happening to me? If I go home, it will be better. But home is where they wanted to kill me, you know? So that's why thinking of committing suicide does come into my head every now and then."

Source: All Africa.com



This story also highlights the need for free and fair environments in which LGBTI communities can fully realise their human rights and be safe and secure. The time is now to put in place legislation and policies that will decriminalise LGBTI activities and provide social protections for LGBTI people.

[9] https://allafrica.com/stories/202004290781.html

SADC: Can a new society emerge from the crisis?



Amid the COVID-19 pandemic, some LGBTI people have struggled to adhere to regulations in the face of increasing stigmatisation, discrimination, and violence as many live in lockdown with prejudiced families and communities.

Sade, an LGBTI activist and dancer in South Africa, had no option but to leave her family during the pandemic because she received constant physical and verbal abuse from them. Relying on friends and forced to choose between safety and legality, she broke lockdown regulations to move out of her family home.

At the same time, activists in the #AllBlackLivesMatter movement in the United States also broke regulations there - fuelled by the murders of Black trans women Riah Milton and Dominique Fells - to demand an end to ongoing violence against LGBTI people. Their message calls for expanding the perception of what constitutes gender-based violence (GBV) to dismantle the culture of violence.

In SADC, with stereotypes of homosexuality as "un-African," regardless of its legality in South Africa, some families and communities act antagonistically. Many LGBTI people face severe long-term trauma from verbal, physical, and emotional abuse.

Counselling psychologist Thomas Geffen explains, "from a psychological perspective, verbal, emotional and psychological abuse is as harmful as physical abuse. It can be just as damaging and frightening."

Activists from the #EndGBV and #TotalShutDown movement of 2018 emphasised the importance of unpacking rape culture and its subtle forms of violence, such as inappropriate jokes. To steer away from a violent society, individuals need to contemplate the ways they have contributed to, or allied with, antagonistic behaviour towards the LGBTI community.

Source: Nazlee Arbee is a multimedia artist and journalist based in Cape Town, South Africa. This story is part of the GL News Service

A frightening dimension of the current COVID-19 crisis includes widespread uncertainty about the funding and sustainability of LGBTI organisations. Donor priorities have shifted to COVID-19 emergency responses that widely prioritise large implementers over community-led groups.

As governments continue to discriminate against LGBTI people, denying them essential services, these persecuted groups will turn to community-based and -led organisations, making them more important than ever.

Gender Links (GL) is managing the Canadian Government Women's Voice and Leadership (WVL) project in South Africa. This initiative arises from Canada's Feminist International Assistance Policy (FIAP) which has six main elements: promoting gender equality and the empowerment of women and girls; human dignity; growth that works for everyone; environment and climate action; including governance; peace and security. The WVL Fund augmented by United Kingdom's Department for International Development (UKAID), is supporting 18 organisations with small grants to manage the impact of COVID-19. Three of the grantees are LGBTI organisations.

WVL stands with the LGBTI community in lockdown



When COVID-19 hit South Africa in March 2020, many LGBTI persons had to go into lockdown with hostile families. Some lost their jobs and income.

Fear, depression and anxiety escalated drastically. **Queerwell** is hosting online weekly expert led discussions covering different topics on mental health and wellbeing of LGBTI persons in South Africa.

Transhope Caregivers is using its WVL-SA Grant to carry out home visits educating community members in the KwaZulu-Natal province, South Africa on COVID-19 prevention. Transhope Caregivers provide support to LGBTI individuals who are bedridden living with HIV and AIDS and tucerculosis. They also train family members on how to provide care to the infected individuals in ways that are safe, and educate them on nutrition and dietary requirement for persons on ARV treatment. To destigmatise COVID-19 and negative attitudes towards LGBTI persons, Transhope airs radio shows that discuss these matters in local languages. The organisation created online and telephonic peer support groups that currently support 60 LGBTI individuals.

Gala Queer Archives (GQA) aims to provide education and awareness around risks associated with COVID-19 and mental health, prevention of the virus, mental health management and access to mental health services, care and support to the vulnerable LGBTI people within South Africa. During this time of uncertainty and precariousness GQA provides monthly food parcels, flu and hygiene packs (containing flu medication and soap).



Food parcels for LGBTI beneficiaries.
Photo courtesy of Gala

Legal and policy frameworks

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.

Global instruments

The UN is the sum of its member states, many of which do not tolerate LGBTI rights. As such, the SDGs do not include any specific references to LGBTI people or issues. 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.[10]

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.[11] Although stakeholders first adopted the "Yogyakarta Principles" in 2007, and updated them in 2017, they remain non-binding. However, they provide comprehensive guidance to states, including:

- ***Rights to universal enjoyment of human rights, non-discrimination, and recognition before the law:*** Principles one through three 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 four 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

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

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.[12]

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

Table 8.2: Overview of key UN instruments and SADC commitments[13]

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

Table 8.2 provides an overview of the relevant UN instruments and the status of SADC member state commitments. All instruments promote equality, non-discrimination for all citizens, and protection from hate crimes. It classifies the status of commitments in three ways:

- None means a state has not committed to the instrument, indicated with an "N."
- Signatory means a state has signed an agreement but has not ratified it at national level, indicated with an "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.

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://www.pgaction.org/inclusion/pdf/handbook/en.pdf
[13] https://ilga.org/downloads/Treaty_Bodies_SOGIESC_references_2016_ILGA.pdf

Continental instruments

Two binding treaties that apply at the regional level strengthen the fight to curb violence against people based on their real or imputed sexual orientation or gender identity. The African Charter on Human and Peoples' Rights (also known as the Banjul Charter), represents the principal treaty and 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.[14]

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 member states to:

- Ensure that human rights defenders work in an enabling environment free of stigma, reprisals, or criminal prosecution because 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.[15]

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

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

Angola is the only country in SADC that has specific hate crime legislation that protects LGBTI people from violence and discrimination. Other countries should urgently bring in similar legislation.

The 2019/2020 *South African Institute of Race Relations study LGBTQ rights in Sub-Saharan Africa: Perspectives of the region from the region* provides anecdotal accounts of the status of LGBTI people and organisations based on interviews with activists. Analysis of progress on legal and social protections in selected SADC countries shows varying degrees of progress despite their commitments to global and continental frameworks.

No SADC instruments currently exist specifically to address LGBTI rights

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

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 remains the exception, with some of the most progressive laws, policies, and practices in the world. Given the policy-rich global and continental environment, activists need to continue to lobby and advocate for a regional Protocol on the Rights of LGBTI people - one that includes global and continental provisions within a SADC context.

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 (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, men who sleep with men (MSM) and LGBTI, migrants, refugees, mobile populations, people living with disabilities, and victims of sexual exploitation).[16] The SRHR strategy makes no other specific reference to the needs of LGBTI people.

The **SADC Regional Strategy for HIV Prevention, Treatment, Care and Sexual and Reproductive Health and Rights** does not include LGBTI people among key populations at all. However, it does identify Men who have Sex with Men (MSM) and transgender people as key populations. All key populations named in this strategy face elevated levels of stigma and discrimination, which impede 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.[17]

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; and
- 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.[18]

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

[16] https://genderlinks.org.za/wp-content/uploads/2018/11/1-Final-signed-SADC-SRHR-Strategy-2019-2030.pdf
[17] https://www.sadc.int/files/2715/3060/7629/SADC-regional-strategy-hiv-srhr-key-pops_FINAL.pdf
[18] http://www.integrainitiative.org/wp/wp-content/uploads/2015/12/tmp-11285-SADC-Min-Stds-Eng-final-1158402048.pdf

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 for LGBTI people. Fourteen SADC countries include equality and non-discrimination clauses in their constitutions, but do not include sexual orientation. The Constitution provides fundamental foundational principles that apply to all citizens. Governments should not use a constitution to exclude any individuals or groups.



The **Namibia** Legal Assistance Centre (LAC) published a report *Namibian Law on LGBTI issues* in 2015 that explored the Namibia legal framework regarding LGBTI issues. It noted that:

- Article 10(2) of the Namibian Constitution [...] constitutes a "closed list" of impermissible grounds of discrimination, which does not include sexual orientation or gender identity. (It also excludes some other obvious categories such as age or disability.) However, this does not mean that sexual minorities are not protected. First, the equality provision in Article 10(1) is absolute. Everyone is equal before Namibian law, including LGBTI persons. Secondly, the word "sex" in Article 10(2) can be interpreted to include sexual orientation - as it has been in other countries and under international law. Thirdly, in countries like Botswana, constitutions with a "closed list" of protected grounds have at times been interpreted as constituting examples rather than being exhaustive.[19]
- Article 14 [of the Constitution] does not expressly guarantee anyone's right to family. Instead, it appears to protect (i) the right of adults to marry; and (ii) the family as a unit. It should be noted that there is no indication in the references to marriage that marriage must be a union between a man and a woman. The Namibian Constitution merely provides that men and women may marry, and that the "spouses" must enter into the union of their own free will. In considering the meaning of "family" in the Namibian Constitution, the Frank case [...] interpreted the wording of Article 14(1) in the Namibian Constitution to mean that "marriage is between men and women - not men and men and women and women"; it stated that homosexual relationships, "whether between men and men and women and women, clearly fall outside the scope and intent of Article 14."[20]

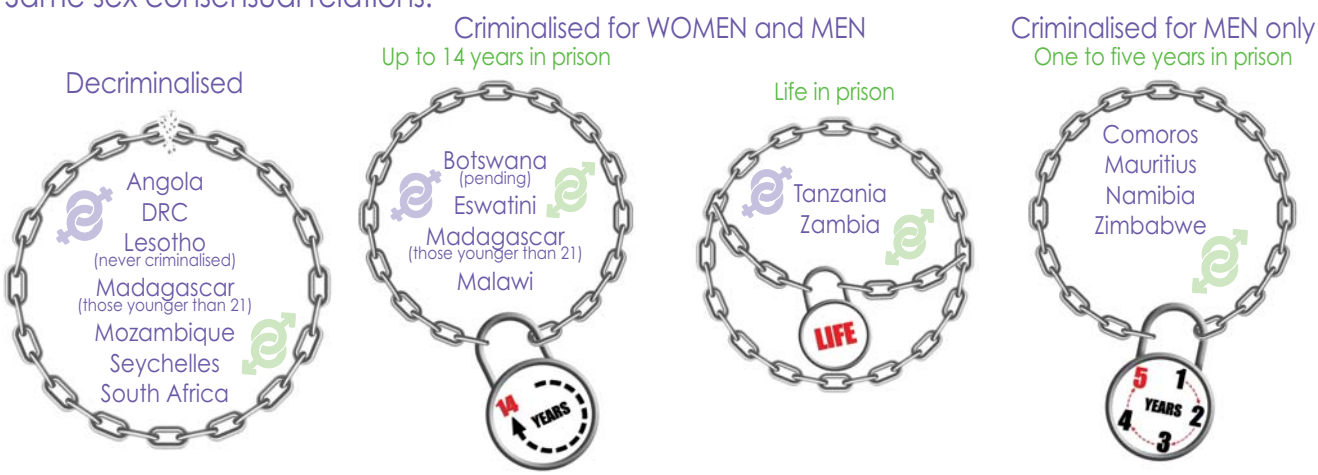
As is clear in the Namibia example, the lack of specific references to LGBTI rights in constitutions leave room for interpretation and could affirm or refute certain inalienable rights. The ruling on marriage being only between women and men represents one such example. Thus, activists must lobby for broad protections and recognition of LGBTI rights in constitutions. Legislative reform should start with constitutions and cascade to all other laws and policies.

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 requisite rights in place. Political will and strong religious opposition remain a major challenge.

[19] LAC, Namibian Law on LGBT Issues (p35), 2015
[20] LAC, Namibian Law on LGBT Issues (p.38), 2015

Figure 8.3: Legal status of same-sex relationships in SADC



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

Figure 8.3 shows that five countries (Angola, DRC, Mozambique, Seychelles, and South Africa) have decriminalised homosexuality. In Lesotho, homosexuality was never criminalised. In Madagascar, homosexuality is decriminalised for those over 21 years of age. Meanwhile, nine countries have laws in place criminalising same-sex consensual relations. In Madagascar, homosexuality remains a crime for people younger than 21. Only Angola, Mozambique, and South Africa provide broad protections for the LGBTI community.



Angola passed legislation in January 2019 making it a criminal act to discriminate based on sexual orientation, with punishment of up to two years' imprisonment.[21] This law accompanied decrimi-nalisation of same-sex consensual relations in the country.



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.

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

These conditions create legal uncertainty and ambiguity. The latter three countries do not restrict lesbians, and the reason for this anomaly remains unclear. It could be gender blindness; an implicit acknowledgement that legislators believe gay relationships between men to somehow be more serious and/or threatening. The different ways that laws treat gay men and women points 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. In Tanzania and Zambia, men and women both receive life sentences for engaging in same-sex consensual relations.

Religious conservatism drives prejudice and discrimination against LGBTI people. Activists urgently need to develop lobbying, advocacy, and communication strategies to guard against increasing prejudice and to ensure that LGBTI communities have access to basic services, safely, and security. LGBTI communities, civil society organisations, government, and other stakeholders must work in consultation to identify and implement effective strategies.

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

Working to change the LGBTI landscape



LGBTI activist, Linda Bauman, presenting at an Alliance meeting in August 2019. Photo: Gender Links

The Southern African Gender Protocol Alliance (the Alliance) has been working to strengthen Sexual and Reproductive Health and Rights (SRHR) at national and local level. The Alliance National SRHR clusters mapped 121 organisations working on SRHR; nine LGTBI organisations. The nine organisations constitute an LGBTI subgroup in the SRHR cluster.

There are three categories of SADC countries: seven in which homosexuality is legal; those where there is growing tolerance and those that remain closed on LGBTI issues. GL and the SADC Protocol Alliance targeted the middle category to prize open the door further and strengthen the LGBTI voice, presence and advocacy in the network.

Through the support of an Amplify Change Networking grant GL as secretariat of the Alliance is working with LGBTI organisations in five countries (Botswana, Eswatini, Malawi, Mauritius and Namibia) to strengthen their institutional capacity. The organisations identified monitoring and evaluation as an important foundational area to be strengthened in order to track advocacy strategies to decriminalise homosexuality: a key entry point to creating an enabling environment for LGBTI communities. To this end:

- GL conducted an institutional capacity building needs assessment in June 2019.
- The results were analysed and all organisations identified monitoring and evaluation as the most important capacity need in their organisations.
- GL ran a monitoring and evaluation training workshop in August 2019.
- Organisations developed theory of change and results frame works including indicators to measure goals, outcomes and outputs.
- This led to the creation of a results chain which then linked to organisations work plans and the relevant monitoring and evaluation tools.
- Organisations have been implementing their result frame works over the last year.
- On site workshop planned for April to June 2020, pivoted to virtual interventions due to COVID-19.
- An assessment of the implementation of the monitoring and evaluation systems will be conducted by September 2020. The table summarises progress to date:

Country	Organisation	Progress towards decriminalisation
Botswana	Lesbians, Gays & Bisexuals of Botswana (LEGABIBO)	• Homosexuality was decriminalised in June 2019. • The Botswana Attorney General appealed the decision. • LEGABIBO has been pushing for the Appeal to be heard. • The Appeal hearing was scheduled for July 2020 but has been remanded due to COVID-19. • There is no scheduled date as at July 2020.
Eswatini	Eswatini Sexual and Gender Minorities (ESGM)	• Melusi Simelane and Others are challenging Eswatini's Registrar of Companies to register the organisation Eswatini Sexual and Gender Minorities (ESGM). • This will represent an important first step towards the decriminalisation of homosexuality and the recognition of LGBTI rights.

Country	Organisation	Progress towards decriminalisation
Malawi	Centre for the Development of People (CEDEP)	• CEDEP continues to call for the repeal of Malawi's anti-homosexuality laws. • Same-sex sexual relations are illegal in Malawi under Sections 137, 153, 154 and 156 of the Penal Code and are punishable by up to 5 years imprisonment for women and up to 14 years for men. • The organisation has not been able to move on the legal front due to the country's May 2019 election being declared illegal and a new democratic election was only concluded in June 2020.
Mauritius	Young Queer Alliance (YQA)	• Najeeb Ahmad Fokeerbux from the YQA, one of four men, brought a legal case challenging the constitutionality of Section 250, a law that punishes gay sex. • The Supreme Court heard the case for the first time in December 2019. • After a number of hearings, on the 12 of June 2020, the Supreme Court granted leave to lodge the case for constitutional redress. • The organisation will be focusing on the Constitutional challenge over the next six to 12 months.
Namibia	Namibian NGO Forum Trust (NANGOF)	• OUTRIGHT Namibia, a member of NANGOF, is engaging with the government to decriminalise homosexuality. • Due to the tolerant environment and lack of active state opposition to homosexuality this is proving challenging. • As this process is unfolding OUTRIGHT Namibia has been documenting and responding to human rights violations within the LGBTI community around the country. • As a result of the complaints submitted, the organisation identified the need for engagement and training of safety and health officials. • LGBTI community faces secondary victimisation when contacting or seeking help from the police or health professionals. • OUTRIGHT is engaging the police, health authorities, and traditional and religious leaders to seek solutions on how to increase the accessibility of public services offered, and to sensitise these officials on the unmet needs of LGBTI persons in Namibia.

All five organisations are in the process of writing up case studies, gathering first-hand accounts of experiences LGBTI persons, and administering an LGBTI attitude quiz that is aligned to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) global attitudes survey.



Alliance LGBTI strategy meeting, 2019. Photo: Colleen Lowe Morna

The Attitudes survey will include questions that measure public perceptions on:

- Knowing and being in close proximity of different sexual orientations.
- Different gender identities and expression.
- How individuals would deal with different SOGIEs in their family.
- Religion and SOGIE.
- How and where SOGIE occurs and where it originates.
- Recognition of SOGIE as human rights and the need for legal protections.

The three-pronged monitoring and evaluation strategy that assesses the environment, individual experiences as well and public perceptions will be concluded at the end of September and the report launched during the 2020 Sixteen Days of no Violence Against Women campaign running from the 25 November to the 10 December.



Botswana: Interview with an LGBTI activist[22]

Civicus, which represents a global alliance of civil society organisations (CSOs), spoke to Dumiso Gatsha, a young LGBTI rights activist, about the recent High Court decision to decriminalise gay sex. Gatsha founded Success Capital Organisation, a youth-led CSO that supports civic action and promotes the rights of LGBTI people.

How significant was the June 2019 court decision that decriminalised homosexuality in Botswana?
This ruling is very significant on two fronts. The first is that this decision eliminates the risk of persecution altogether. Although the prohibition was not necessarily implemented by law enforcement agencies, it could have been, as it added elements of uncertainty and arbitrary treatment. The second is that it essentially provides an avenue for building protections and safeguards in health, employment, business, governance, service delivery and, more importantly, eliminating systemic stigma and discrimination.

Was civil society in Botswana instrumental in bringing about this decision?
LGBTI civil society has been very active since the 1990s. Litigation for decriminalisation was led by civil society, on behalf of a young gay man. Procedurally, only an individual can bring such a challenge to the courts, not an organisation. The most progressive of recent court cases (in terms of gender marker changes) were led by people. Civil society partnerships helped ensure financial and technical assistance.

However, it is very difficult to bring the rest of the community along. Decriminalisation does not mean protection or that it will be any easier for people to navigate difficult conversations about sexual orientation and gender identity with family members or educators, or in the workplace.

Has the court decision prompted any backlash against LGBTI rights?
I think society is divided, and attitudes may take longer than laws to change. The ruling political party initially said that it would abide by the court decision. The president released a statement commemorating 16 Days against gender-based violence and spoke about discrimination experienced by people in same-sex relationships. This was the first time a sitting head of state publicly recognised and acknowledged the gay community affirmatively.

A new opposition party saw an opportunity to use the decriminalisation ruling to seek votes. They blamed the president for decriminalising same-sex intercourse. The decriminalisation case became a political issue rather than a rights issue. Since the court ruling, religious institutions, mostly evangelical groups, became more vocal in their intolerance of LGBTI people. Some churches stated that the court ruling was an avenue for same-sex marriage and adoption of children by LGBTI people.

What is next for LGBTI civil society in Botswana?
If the High Court ruling survives the appeals and any other further legal challenges, a gap will remain. There have been some fragments of civic action aimed at educating people on LGBTI issues. There is an urgent need to work on changing the hearts and minds of people. More importantly, there is a lot of work needed in moving LGBTI people from surviving to thriving. A lot of advocacy strategies and narratives are pre-determined and attached to funding. There is a lot of gatekeeping in terms of the narratives that are considered relevant and valid, and therefore granted access to funding and to policymakers. The main narrative currently appears to be around public health. We need to move towards a community-led narrative. In sum, I would say it is very important to diversify both the forms of advocacy that are undertaken and the ways that they are being supported.

Source: CIVICUS, 2020

[22] https://www.civicus.org/index.php/media-resources/news/interviews/4005-botswana-anti-right-groups-are-emerging-in-reaction-to-progressive-gains



On 11 June 2019, the **Botswana** High Court decriminalised same-sex sexual conduct among consenting adults. The Attorney General of Botswana lodged an intention to appeal the decision immediately after the ruling. There has been no further legal action since. Legislators have not yet promulgated the High Court decision into law due to the impending appeal, leaving it in limbo.



Comoros, a Muslim country and the only country in SADC governed by Sharia law, criminalises homosexuality and gay sex, regardless of age. The Penal Code provides a punishment of up to five years' imprisonment, and a fine of 50 000 to 1 000 000 Comoran francs (USD $166 to 3333). The age of consent is 13. Most LGBTI people do not publicly discuss their sexual orientation due to societal pressure. Comoros does not have any LGBTI organisations.[23] In January 2013, then-President Ikililou Dhoinine promulgated a law declaring Sunni Islam as the country's official religion.[24] The four leading Sunni schools of thought and most Islamic scholars believe homosexual acts are a major sin.[25]



In **Malawi**, conservative laws represent a major symbol of oppression, targeting anyone who looks, acts, or dresses differently from the norm. While authorities do not enforce such laws, they create an atmosphere of fear and prejudice. However, Malawi was one of few countries in Africa to prevent US pastor Steven Anderson (who gained infamy for advocating for the extermination of gay people) from establishing a church.[26] Yet, at the same time, the Malawian government refused to take action against homophobic politician Ken Msonda (spokesperson of the former ruling People's Party), who described homosexuals as being worse than dogs and said gays and lesbians are the sons and daughters of the devil. He wrote, "Arresting them won't address this problem because sooner or later they are being released on bail. The best way to deal with this problem is to kill them!"



In **Mozambique**, LGBTI programmes usually do not go beyond targeting MSM as a key population. Focusing on the health aspect of this community has helped to direct more attention to people most vulnerable to HIV and AIDS, such as MSM. MSM work and HIV and AIDS-related initiatives by the public health sector provide space, visibility, and funding for MSM and LGBTI activism in Mozambique. However, focusing only on MSM and HIV and AIDS when it comes to LGBTI rights also creates a specific - and very stigmatised - narrative. Other areas of focus should include education and awareness campaigns.



In **Zambia**, the government uses LGBTI issue as a way of deflecting attention from more pressing problems that result from governance failure, such as corruption, poor service delivery, and high taxes. LGBTI activists and civil society organisations lobbied successfully to include gay and transgender rights in HIV and AIDS strategies. Public health strategies also now include LGBTI people. LGBTI organisations have created safe spaces where LGBTI people can talk openly about issues concerning their community.

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

[23] https://www.globalgayz.com/gay-comoros-africa/2035/
[24] https://www.gov.uk/foreign-travel-advice/comoros/local-laws-and-customs#:~:text=Homosexuality%20is%20illegal%20in%20Comoros,LGBT%20community%20before%20you%20travel.
[25] https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2322&context=ilj
[26] Collison, 2016



Zimbabwe: Homophobia on the rise[27]

While some SADC countries have amended laws over the past two decades to increase protections for LGBTI citizens, Zimbabwe has changed its laws to expand discrimination.

A 2006 revision to Zimbabwe's criminal code broadened the penalty for sodomy to include acts that "would be regarded by a reasonable person as an indecent act." To many in the country, this includes two men holding hands or embracing - acts that could now result in extended time in prison.

Laws like this make life more difficult for gay people in the country as well as the heterosexual people they often marry to blend in and protect themselves. Many LGBTI people give in to pressure from parents and their extended family and agree to heterosexual marriages, thus living a lie, an emotionally draining situation that leads to extreme psychological distress.

For others who do not take this route, discrimination, exclusion, and violent attacks can cause permanent fear and loneliness. Many suffer from poor mental health. Some local civil-society organisations provide help, but policy must change.

Many LGBTI people in Zimbabwe suffer from low self-esteem; they are isolated and often depressed. "I have no place in society," a young lesbian in Harare told Gays and Lesbians of Zimbabwe (GALZ), a group that advocates for LGBTI rights in the country. "Where do I run to?"

Current legislation makes specific sexual acts illegal but falls short of criminalising LGBTI status. According to widespread belief, however, homosexuality is a crime in the country. An uninformed media perpetuates this belief. Homophobic statements by government leaders also contribute to a misinformed, highly discriminatory socio-political environment.



Gays and Lesbians of Zimbabwe (GALZ) activists in Harare in 2019.
Photo courtesy of GALZ

Gay people experience violence and marginalisation because of this. Aggression ranges from verbal abuse and bullying to social discrimination, physical violence, and psychological torture.

According to a 2018 GALZ survey, 50% of gay men in Zimbabwe said they had been physically assaulted, and 64% said their family had disowned them. Meanwhile, 27% of lesbians reported disownment. Often, parents accuse their gay children of exposing them to "blame and shame."

Some families in rural areas assume that demons have possessed a gay son or lesbian daughter. Traditional leaders evict gay people from their villages. A young man from western Zimbabwe, who preferred to remain anonymous, said that people in his village believed that "even with a handshake, I would transfer homosexuality." Elders decided that he was unfit to stay in the community.

Another frequent problem relates to healthcare workers, who mistreat people from the LGBTI community. Hospital staff "are afraid to touch me," recounts a gay man about his experience accessing health care in Zimbabwe. "Some will even start preaching the Bible." Consequently, LGBTI people avoid seeking support, even for essential health services.

Source: GALZ, 2019, and Development and Cooperation

[27] https://www.dandc.eu/en/article/homophobia-zimbabwe-hurts-mental-health-lgbti-people

Employment

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

The Vulnerability amplified: The impact of the COVID-19 pandemic on LGBTIQ people report delves a little deeper into how COVID-19 has impacted employment in the LGBTI community. It found rising food and shelter insecurity in the community due to job loss, and economic consequences because of its over-representation in the informal sector.

In South Africa Queer Women in Business + Allies is one of the organisations supported by the Global Affairs Canada Women Voice and Leadership Fund. The organisation aims to launch and develop African queer women owned businesses through access to business coaching, skills development, funding and long-term mentorship for business sustainability. Research by the organisation shows that 60% of queer women entreprenuers be-lieve that the lack of business know-ledge, resources and funding stunts their business growth and is a significant barrier to entry into business. The Network will include queer women owned start-ups in urban and non-urban areas.

In many countries, LGBTI people predominantly work in the informal sector, relying on daily wages and surviving without job protections, making them especially vulnerable to economic slowdowns and restrictions on movement like those that occurred during the COVID-19 pandemic.

Southern Africa: LGBTI persons among the most at risk from COVID-19[28]

Interviews conducted by Human Rights Watch revealed that, during the COVID-19 pandemic, many LGBTI people had to choose between risking infection to earn enough money to pay for food and shelter or adhering to lockdown requirements and risking going without basic necessities.

With imposed lockdowns, mandatory curfews, and physical distancing requirements, millions of businesses have closed, at least temporarily, and countless people have been laid off. Those who survive in cash-based, informal economies and live day-to-day to make enough to subsist represent those who COVID-19 hit the hardest.

These include LGBTIQ people living on the margins, many of whom may have been excluded from education and employment due to stigma and discrimination, with little access to formal employment and the corresponding job security.

According to the World Food Programme, 130 million additional people across up to 36 countries may be "pushed to the brink of starvation" due to the COVID-19 pandemic, effectively doubling the total number of people suffering from severe hunger globally.[29]

The reality is that COVID-19 forced many among the world's poorest into even more difficult situations. As state and local governments moved to enforce curfews and physical distancing orders, those relying on day-to-day incomes faced an increased risk of arrest and violence, as well as exposure to the virus.

Staying at home provides no guarantee of safety, especially for those in overcrowded housing, densely populated neighbourhoods and settlements, and communities with limited or no access to clean water.[30] Because of discrimination and marginalisation, many LGBTI people across the SADC region live in these conditions.

Source: ILGA and Human Rights Watch, 2020. Accessed 22 July 2020

[28] https://www.hrw.org/news/2020/05/20/south-africa-end-bias-covid-19-food-aid#
[29] United National World Food Programme,"WFP Chief warns of huger pandemic as COVID-19 spreads (Statement to the UN Security Council)" April 21, 2020. https://www.wfp. org/news/wfp-chief-warns-hunger-pandemic-covid-19-spreads-statement-un-security-council
[30] CARE International, 2020.

Violence and discrimination

LGBTI people face elevated levels of discrimination and violence across the region. In some instances, such as in Tanzania, homophobic politicians encourage it. In other countries, a lack of progressive legislation creates unsafe environments for these communities. Where enabling environments exist (such as in South Africa) there is need for ongoing advocacy to ensure that public values and attitudes align with the legal and constitutional environment.

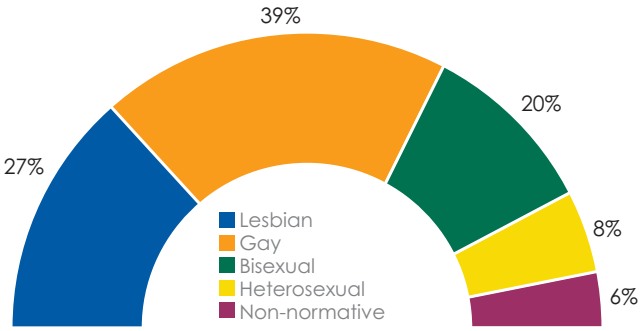
At its worst, violence and discrimination manifests in hate crimes and mob violence. Bullying and public humiliation represent other common forms. The 2019 research report *Are we doing alright? Realities of violence, mental health, and access to healthcare related to sexual orientation and gender identity and expression*, a community-led study in nine countries, provides insights into the experiences of violence and discrimination in six Southern African and three East African countries. The University of Cape Town's Gender, Health and Justice Research Unit conducted the study with support from the Netherlands Ministry of Foreign Affairs, in partnership with LGBTI organisations.

Table 8.3: Breakdown of the sample by country

Country	Number of respondents
Botswana	583
Eswatini	103
Lesotho	171
Malawi	197
South Africa	831
Zimbabwe	343
Total	**2228**

Table 8.3 shows the number of respondents in the six SADC countries: Botswana, Eswatini, Lesotho, Malawi, South Africa, and Zimbabwe. Researchers spoke to 2228 respondents in these countries, with the largest proportion from South Africa (831) followed by Botswana (583). The results presented here link to the findings for these six countries.

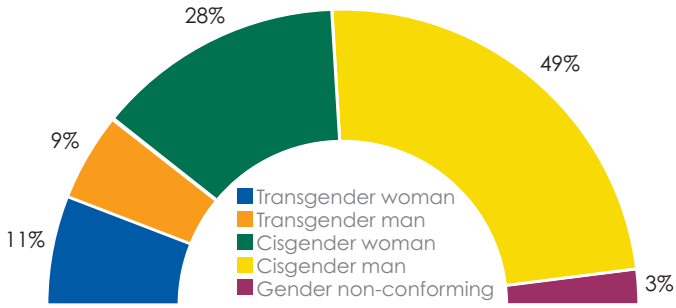
Figure 8.4: Sexual orientationof the sample



Source: University of Cape Town's Gender, Health and Justice Research Unit, 2019.

Figure 8.4 shows the proportion of the sample for lesbian, gay, bisexual, heterosexual, and non-normative respondents. At 39% gay men represented the largest proportion of the sample, followed by lesbians and heterosexuals at 27% and 20% respectively.

Figure 8.5: Sample by gender identity

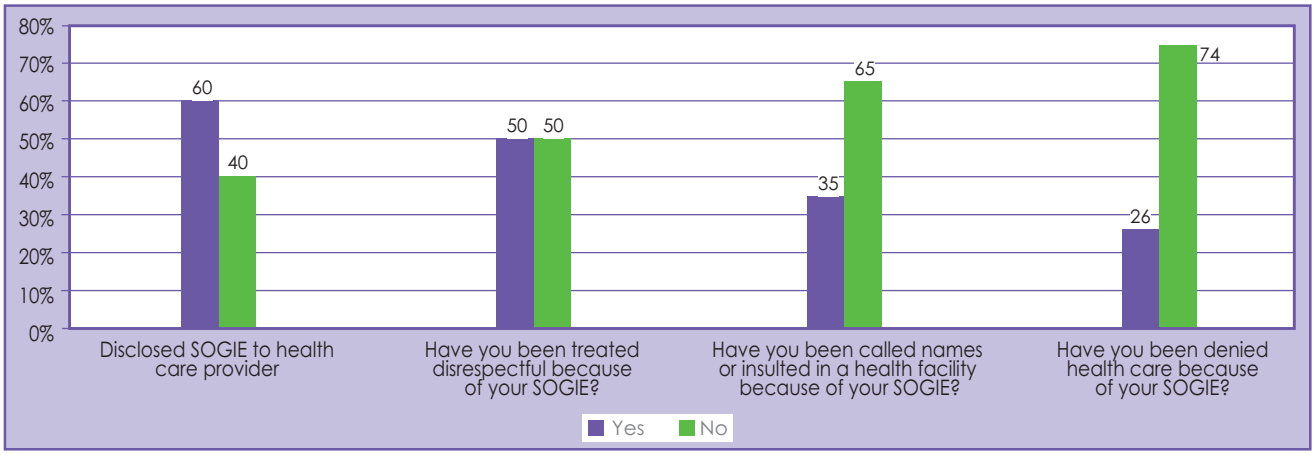


Source: University of Cape Town's Gender, Health and Justice Research Unit, 2019

Figure 8.5 illustrates that cisgender[31] men made up the largest number of respondents, followed by cisgender women at 28%. Of the total sample, 11% included transgender women and 9% transgender men.

[31] A person whose sense of personal identity and gender corresponds with their birth sex.

Figure 8.6: Discrimination in healthcare

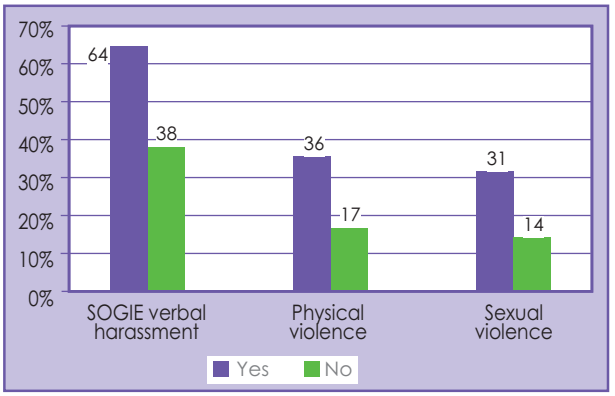


Source: University of Cape Town's Gender, Health and Justice Research Unit, 2019.

Figure 8.6 shows that a high proportion of respondents (40%) did not disclose their sexual orientation or gender identity (SOGIE) to healthcare providers. A third of respondents said health care providers had called them names or insulted them because of their SOGIE, while a quarter had their healthcare denied. Equitable access to health care is a basic human right. The findings in the study point to gatekeeping in the healthcare system that prevents LGBTI people from utilising health facilities. Better health worker training will help address this type of discrimination. Health facilities must be held accountable when they withhold healthcare from, or provide sub-standard care to, LGBTI persons.

Figure 8.7 illustrates an alarming amount of violence against LGBTI people in the region. Of the total sample, 64% reported that they had experienced verbal harassment in their lifetime with 38% experienced it in the last year. About a third of all respondents experienced physical and sexual violence in their lifetime. Similar proportions of LGBTI people experienced physical (17%) and sexual violence (14%) in the last year.

Figure 8.7: Violence against LGBTI persons



Source: University of Cape Town's Gender, Health and Justice Research Unit, 2019.

Hate crimes and incitement to hatred and violence

A hate crime typically involves violence motivated by prejudice based on race, religion, sexual orientation, or other grounds.[32] In criminal law, incitement is the encouragement of another person to commit a crime.[33] Angola is the only country that has specific hate crime legislation.

The Human Dignity Trust, on behalf of the Equality & Justice Alliance, conducted research on *Hate Crimes against the LGBTI Community in the Commonwealth: A Situational Analysis*. The study provides important insights into hates crimes in particular Southern African countries.

[32] Dictionary.com
[33] IBID

The study reveals physical and sexual homophobia and transphobia across African Commonwealth countries. Men frequently rape lesbian and bisexual women in a purported attempt to "turn" them straight.[34] Families force lesbian women into heterosexual marriages to preserve their "honour" and that of their family. This may involve forced impregnation through rape, physical violence, and degrading treatment.



In **South Africa**, a report by the Centre for Risk Analysis at the Institute of Race Relations[35] found that 49% of black members of LGBTI communities are likely to know someone who murdered for being LGBTI, compared to 26% of white community members.

The study also found that black people were the most likely to be victims of physical violence, while white people tended to experience verbal abuse. However, the report notes increasing tolerance for the LGBTI community. Half (51%) of South Africans surveyed agreed that LGBTI people should be afforded the same human rights as the rest of the population. More than half (61%) disagreed that sexual orientation should be criminalised.

The torture and subsequent attack on the transgender woman in Namibia and the burgeoning hate crimes against LGBTI persons across the region underscore the need for countries to develop holistic and inclusive hate crimes legislation.



Namibia: Civil society group condemns abuse of trans woman[36]

The Namibian Civil Society, a local human rights agency, recently condemned the gross dehumanisation, unlawful detention, and torture of a trans woman on a farm near Gobabis in April 2020. The perpetrators filmed the attack and circulated it on social media.

Following the release of the video, the survivor faced community scrutiny, threats, and further discrimination, exacerbating her trauma. "Criminal charges have been opened against the assailants and despite the lack of safe houses and shelters, especially catering for transwomen, the survivor of this violent act has been relocated to a place of safety and psychosocial support has been provided," the Society noted in a statement.

The group also commended the Ministry of Justice and Gender, the Namibian police and law enforcement agents for apprehending the perpetrator and accomplices. It highlighted Chapter 3 of the Namibian Constitution, the "Fundamental Rights and Freedoms of all citizens," which includes LGBTI Namibians.

"As a country we have been progressive in policy and law, however, the widespread hate speech, transphobic attacks, legitimisation and sensationalism of the tortuous act, by the community and online responses, removes the human dignity of the survivor and violates so many of the rights that we all expect for the advancement and betterment of our country," the group said.

"We call on the Namibian government to stand by its zero tolerance stance against human rights violations, including those faced by the LGBTI community, and for the nation to restrain from homophobic and transphobic hate speech, harassment and discrimination towards members of the LGBTI community." The statement also called on the media to "ethically and objectively report on the case by avoiding sensational headlines and misrepresentation of the gender identity/gender expression of members of the transgender community."

Source: The Namibian Economist, 2020

[34] ActionAid, 2009
[35] "We're queer and we're here!" report, South African Institute of Race Relations, 2017
[36] https://economist.com.na/52720/extra/civil-society-condemns-abuse-of-transgender/

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. Most mainstream medical and mental health organisations have rejected such practices for decades, but due to continuing discrimination and societal bias against LGBTI people, some practitioners continue to conduct conversion therapy. Minors can be especially vulnerable, and conversion therapy often leads to depression, anxiety, drug use, homelessness, and suicide.[37]

Mauritius and South Africa both ban conversion therapy. The Office of the United Nations High Commissioner for Human Rights has called on all nations to ban conversion therapy, stating that it represents a form of torture and a violation of human rights.

Global: "Conversion therapy" a form of torture, says UN expert

Conversion therapy is cruel, degrading, and inhuman, according to a UN Independent Expert on sexual orientation and gender identity. Speaking at the Human Rights Council, where he presented his latest report, Victor ," Madrigal-Borloz called on all states to "work together to institute a global ban on practices of conversion therapy."

He added that, "depending on the severity or physical or mental pain and suffering inflicted to the victim, [conversion therapy] may amount to torture."

"Conversion therapy" describes interventions that purport to achieve a change in a person's sexual orientation or gender identity, and thus claim to aim at changing people from gay, lesbian or bisexual to heterosexual, and from trans or gender diverse to cisgender - meaning whose gender identity corresponds to the sex they were assigned at birth.

"Practices of conversion therapy are rooted in the belief that persons of diverse sexual orientation and gender identity are somehow inferior, either morally, spiritually or physically because of their orientation or identity, and



that they must modify that orientation or identity to remedy that inferiority," Madrigal-Borloz said. "Practices of conversion therapy are not only ineffective, but they can also be extremely harmful.

"They often lead to pain and suffering that will last far beyond their occurrence, leaving indelible scars on a person's body and mind... The combined effects of feeling powerless and extreme humiliation generate profound feelings of shame, guilt, self-disgust and worthlessness, which can result in a damaged self-concept and enduring personality changes."

Source: United Nations Human Rights Council, 2020

Recognition of LGBTI rights

Recognition of LGBTI human rights is an integral part of a 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. All other SADC countries define marriage as a union between a woman and a man.

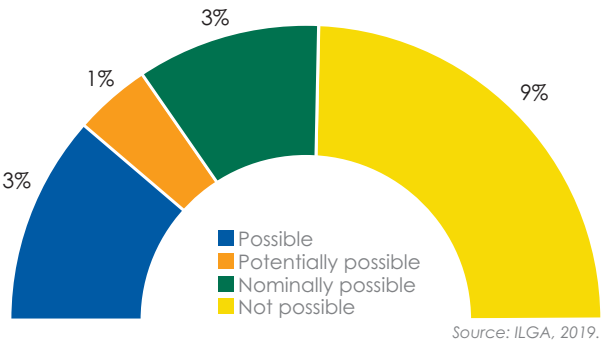
Joint/second parent adoption of children

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

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 people cannot change gender markers, the ability to change names represents a 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 8.8: Changing gender markers in SADC



Source: ILGA, 2019.

[37] https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy

Figure 8.8 shows that only three SADC countries allow for changing gender markers unconditionally: Namibia, South Africa, and Zambia. Changing a gender marker is potentially possible in Botswana and nominally possible in Angola, Malawi, and Mozambique. Citizens cannot change their gender markers in the Comoros, 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:[38]

- 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 people often need to complete 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.

Table 8.4: Conditions under which citizens can change gender markers[39]

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.

[38] https://www.betrue2me.org/resources/be-true-2-me-guideline-legal-gender-marker-and-forename-change/
[39] https://ilga.org/downloads/ILGA_Trans_Legal_Mapping_Report_2017_ENG.pdf

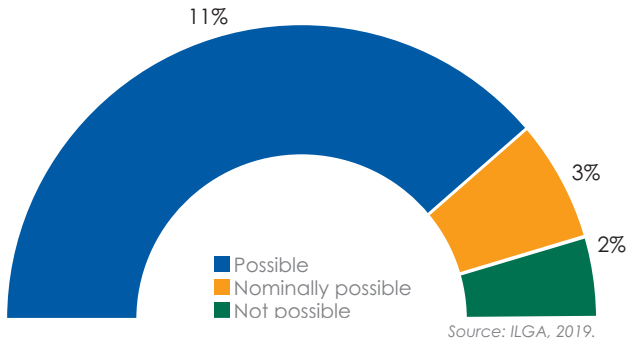
Country	Relevant law	Conditions	Issue
Namibia	Births, Marriages and Deaths Registration Act 81 of 1963; Identification Act 2 of 1996	The Secretary may on the recommendation of the Secretary of Health, alter in the birth register of any person who has undergone a change of sex, the description of the 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.	Unclear, no specific reference to trans and diverse gender identities. 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.

Table 8.4 lists the relevant laws and conditions applicable to changing gender markers in those SADC countries that allow it in some way. It illustrates that a variety of acts and laws provide for the change, but issues arise when trans people attempt to attain their rights under these laws.

Name change

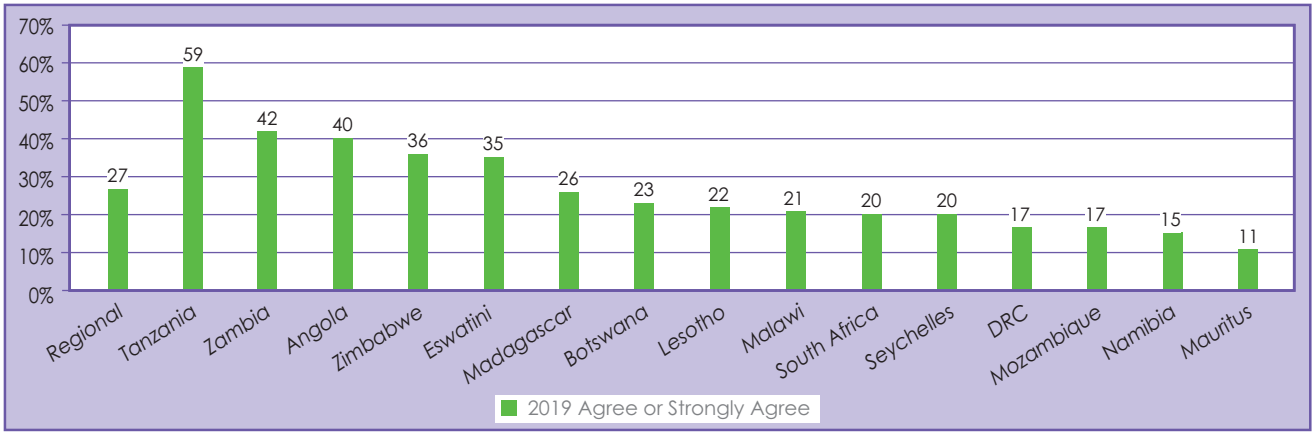
Figure 8.9: Ability to change a name



Source: ILGA, 2019.

Figure 8.9 illustrates that changing names in SADC countries appears to be easier than changing gender markers. People can legally change their 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 legally change a name in Comoros or Tanzania. While not ideal, trans and gender diverse people may use this option until countries allow changes in gender markers.

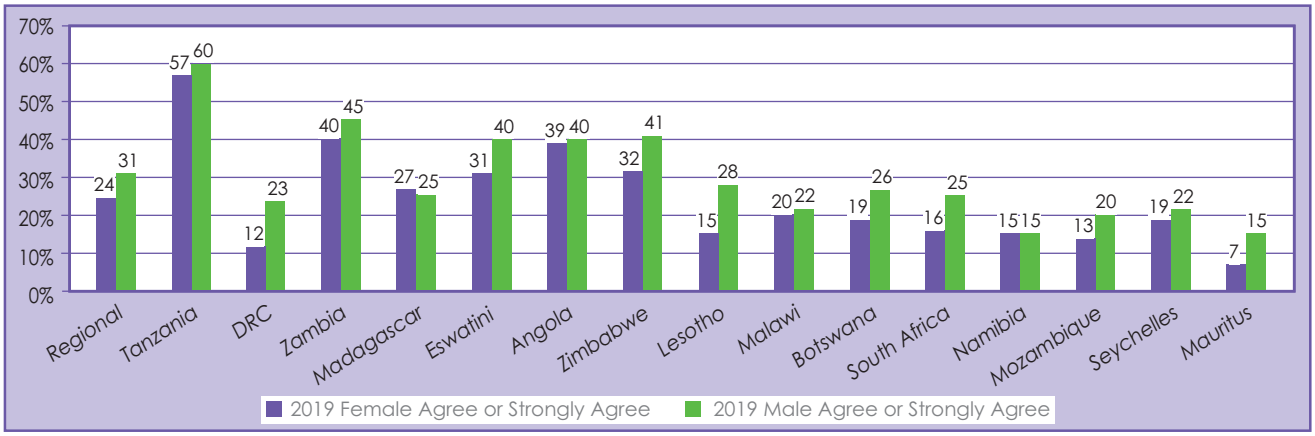
Figure 8.10: Attitudes in SADC in 2019: It bothers me when a girl acts like a boy



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

Figure 8.10 shows that, in response to the statement "It bothers me when a girl acts like a boy," between 40% and 59% of respondents to the Southern Africa Gender 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. The research did not include Comoros. These scores point to relatively high levels of intolerance of gender diversity.

Figure 8.11: It bothers me when a girl acts like a boy, male vs female



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

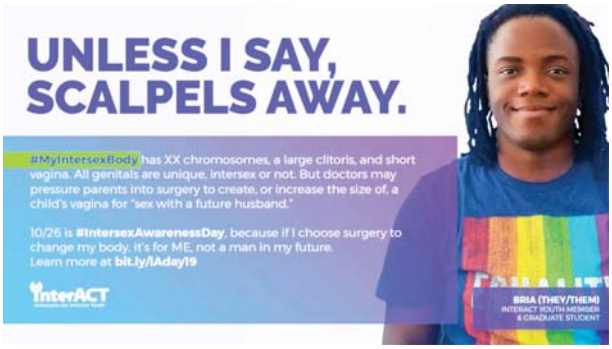
Changing names in SADC countries appears to be easier than changing gender markers

Figure 8.11 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, fewer women agreed or strongly agreed with the statement.

Intersex

Intersex is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical definitions of female or male. For example, a person might be born appearing to be female on the outside but having mostly male-typical anatomy on the inside.

Alternatively, a person may be born with genitals that seem to be in-between the usual male and female types. For example, a girl may be born with a noticeably large clitoris, or lacking a vaginal opening, or a boy may be born with a notably small penis, or with a scrotum that is divided so that it has formed more like labia. A person may be born with mosaic genetics, so that some cells have XX chromosomes and some of them have XY. Though we speak of intersex as an inborn condition, intersex anatomy does not always show up at birth. Sometimes a person does not discover their intersex anatomy until they reach puberty or find out they are infertile. Some people live and die with intersex anatomy without ever knowing.[40]



In 2013, the third International Intersex Forum issued the Malta Declaration,[41] 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 their 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 can be amended 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;
- Create and facilitate supportive, safe, and celebratory environments for intersex people, their families, and surroundings;
- Ensure that all professionals and healthcare providers that have a specific role to play in intersex people's wellbeing receive adequate training to provide quality services;
- Ensure that intersex people have the right to full information and access to their own medical records and history;
- 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;

[40] https://isna.org/faq/what_is_intersex/
[41] https://oiieurope.org/malta-declaration/

- 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 can 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
- Psychosocial, and peer support for intersex people throughout their life (as self-required), as well as to parents and/or care providers.



South Africa: Semenya still fighting for a role in women's sport[42]

Caster Semenya, who is currently banned from participating in 800m and 1500m athletics, has welcomed a UN report calling for revoking of sporting regulations that pressure athletes into medical procedures. Semenya thanked the UN High Commissioner "for highlighting the discrimination and harm faced by women and girls in sport." Semenya, widely believed to be intersex, has been fighting the Court of Arbitration for Sport to participate in world athletics.

Semenya has backed a UN report, launched on 30 June 2020, calling for countries to outlaw sporting regulations that pressurise athletes like her to undergo "unnecessary" medical interventions. "It is time for white men to stop telling women and girls how they should look and to stop messing with our bodies," said the double 800m Olympic champion and poster girl for those with differences of sexual development (DSD).

Semenya said sports governing bodies should "review, revise and revoke eligibility rules and regulations that have negative effects on athletes' rights, including those addressing athletes with intersex [DSD] variations."

The UN High Commissioner for Human Rights, Michelle Bachelet, conducted an inquiry into the "intersection of race and gender discrimination in sport" following a resolution presented to the council by South Africa in March last year as Semenya fought to overturn World Athletics' eligibility regulations for DSD athletes. Semenya, who the rules prevent from competing against other women in the 800m or 1500m unless she takes testosterone suppressants or undergoes a gonadectomy, lost her landmark case at the Court of Arbitration for Sport and has been awaiting the outcome of an appeal to the Swiss Federal Tribunal.

A spokeswoman for World Athletics said of Bachelet's report: "We have common ground in that we both believe it is important to preserve fair competition in female sport, so women are free to compete in national and international sport.

"To do this, it is necessary to ensure the female category in sport is a protected category, which requires rules and regulations to protect it. Otherwise, we risk losing the next generation of female athletes, since they will see no path to success in female sport.

Source: The Telegraph, 2020

[42] https://www.telegraph.co.uk/athletics/2020/06/30/caster-semenya-welcomes-un-report-calling-revoking-sporting/

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 to talk about their 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. LGBTI groups can only register in eight or half of all SADC countries (Comoros, DRC, Eswatini, Madagascar, Malawi, Tanzania, Zambia and Zimbabwe).[43]



Eswatini's High Court heard arguments in the case of Simelane and Others versus the Minister of Commerce and Industry and Others on 24 July 2020. The applicants sought a review of the Registrar of Companies' decision to refuse Eswatini Sexual and Gender Minorities (ESGM) legal registration. ESGM and its members argue that the Registrar's refusal violated ESGM members' right to dignity, to associate and express themselves freely, to be treated equally and not to be discriminated against. ESGM aims to advance the protection of human rights of LGBTI people in Eswatini. ESGM assists those who experience stigma, discrimination and violence as a result of their sexual orientation, gender identity and expression.[44]

LGBTI Sexual and Reproductive Health Rights

LGBTI communities face prominent levels of exclusion from SRHR services. For example, health centres throughout the region will turn trans people away because they do not resemble their photograph in an identity document.

The lack of, or disparities in, healthcare available to LGBTI persons represents a denial of their civil and human rights and illustrates 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 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.[45]

The ability to organise and operate freely is a vital right for LGBTI organisations advocating for change

[43] Canaries in the Coal mine, 2017, accessed 1 July 2020, http://theotherfoundation.org/canaries-in-the-coal-mines/
[44] https://www.southernafricalitigationcentre.org/2020/06/25/media-advisory-eswatini-high-court-postpones-case-on-the-refusal-to-register-an-lgbt-advocacy-group/
[45] http://catalogue.safaids.net/sites/default/files/publications/LGBTI%20Southern%20Africa%202014.pdf



Tanzania: Government cracks down on LGBTI community[46]

The government of Tanzania's health policies continue to deny adequate services to LGBTI people and others who are particularly vulnerable to HIV, jeopardising public health.



An HIV positive man in Tanzania in 2016 said he had been afraid to pick his medicine up for two weeks despite the risks to his health.
Photo courtesy of Kevin Sieff /Getty Images

Activists have called on Tanzania to reverse these policies, end arbitrary arrests of LGBTI people, and ban forced anal examinations that some use as spurious evidence of homosexual conduct.

The 2020 Human Rights Watch report *If We Don't Get Services We Will Die: Tanzania's Anti-LGBTI Crackdown and the Right to Health* documents how, since 2016, the government of Tanzania has cracked down on LGBTI people and the community-based organisations that serve them.

The Health Ministry in mainland Tanzania has prohibited commu-nity-based organisations from conducting outreach on HIV pre-vention to MSM and other key populations vulnerable to HIV. It closed drop-in centres that provided HIV testing and other tar-geted and inclusive services, and banned the distribution of lubricant, essential for effective condom use for HIV prevention among key populations and much of the wider public.

"The Tanzanian authorities have orchestrated a systematic attack on the rights of LGBTI people, including their right to health," said Neela Ghoshal, senior LGBTI rights researcher at Human Rights Watch. "Manufactured threats around the so-called 'promotion of homosexuality' have displaced best practices and evidence-based approaches in guiding HIV policy in Tanzania."

In April 2019, the government's Non-Governmental Organisation Co-ordination Board withdrew registration from Community Health Education and Advocacy Services (CHESA), a key organisation serving LGBTI people, on grounds of "promoting unethical acts." Hamad Masauni, former deputy home affairs minister, publicly called for arrests of gay men while visiting Zanzibar in September 2019.

"The Tanzanian authorities should ensure that not one more Tanzanian is arrested for being gay or trans - or for attending an HIV education session," Ghoshal said. "Concrete steps forward should also include banning forced anal examinations and reforming health policies so that they are based on evidence, not prejudice."

One of the people interviewed in the report, Kim (not their real name), a gender non-conforming person from a small town, spoke about being subjected to a forced anal examination at a government health facility. "These doctors did an anal test. It was by force. The police officers were there with guns, so many of them... We went to the maternal ward where the women go and give birth. They took this metal instrument and they stick it - they penetrate it in our [anus], and it was very, very painful. And then they say 'Cough, try to cough' while the steel is inside our [anus], and when I coughed, they were pressing the metal into me. It was very brutal and painful. They were pressing the testicles and the penis. Everything about that testing was very brutal," Kim said.

[46] https://www.hrw.org/news/2020/02/03/tanzania-obstructions-lgbt-health-rights

Universal Health the Care (UHC) is goal 3.8 in the SDGs. The vulnerability of key populations like the LGBTI community highlighted during the COVID-19 crisis illustrates the need for strengthened public health systems and accelerated UHC. The measures governments take to address COVID-19 must remain relevant beyond the immediate response to the pandemic. Strategies should include the long- term objective of UHC for all by 2030.



Zimbabwe: LGBTI people face healthcare discrimination during COVID-19

Nomvula Nkiwane, a gay man from Bulawayo, says he has been praying that he does not test positive for COVID-19. "I used to go to private health practitioners before the COVID-19 outbreak, but now I am being forced to seek medical attention from public health institutions where I face discrimination."

Zimbabwe's laws do not recognise LGBTI rights. As a result, LGBTI people in the country have been forced to operate underground for fear of victimisation. "We had our own challenges of discrimination and stigmatisation before the outbreak of the coronavirus," Nkiwane told Gender Links. "Now with this lockdown and social distancing measures; it has been tough for us. Just recently I struggled to get to Population Services International (PSI), where I collect my anti-retroviral therapy medication."

In 2016 Gays and Lesbian Association of Zimbabwe (GALZ) entered into partnership with three private health facilities as part of facilitating increased access to decent care for its LGBTI constituency. As a result, the organisations offered a broad range of sexual and health services to key populations, mainly in Harare and Bulawayo.

While the LGBTI community has managed to engage government on some SHSR issues, more needs to be done so the community has full access to public health institutions.



Zimbabwean gay rights activist and GALZ director Chester Samba.
Photo courtesy of Washington Blade

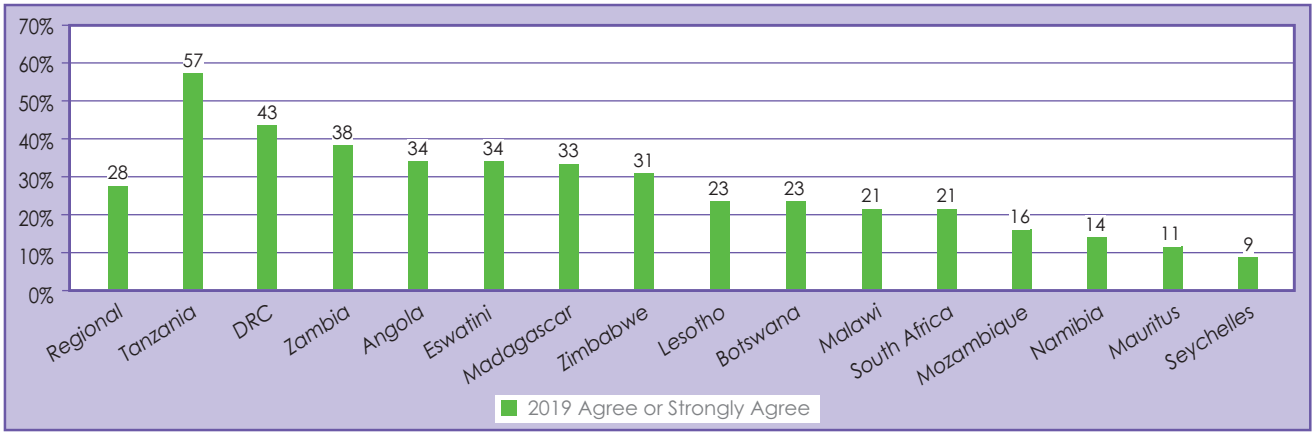
GALZ director Chester Samba said their members have faced a plethora of challenges be-cause of the COVID-19 out-break. "We have reported cases of mental health issues," he said. "Depression and anxiety have increased among LGBTI people. The closure of drop-in-centres where LGBTI community was getting psychosocial therapy and other recreational services has left community more vulnerable."

Source: Jeffrey Muvundusi is a journalist working for Daily News in Zimbabwe. This article follows GL media training on Reporting SRHR in Zimbabwe. This article is part of the GL News Service, Gender and COVID-19 news series

Changing attitudes

Every year GL administers the Gender 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 2020 SRHR Barometer, GL used the 2019 results due to restrictions in data collection resulting from the COVID-19 pandemic. In 2019, GL and its Alliance partners collected 11 068 responses from 5985 women and 5083 men.

Figure 8.12: "Homosexuality is a psychological disease," 2019



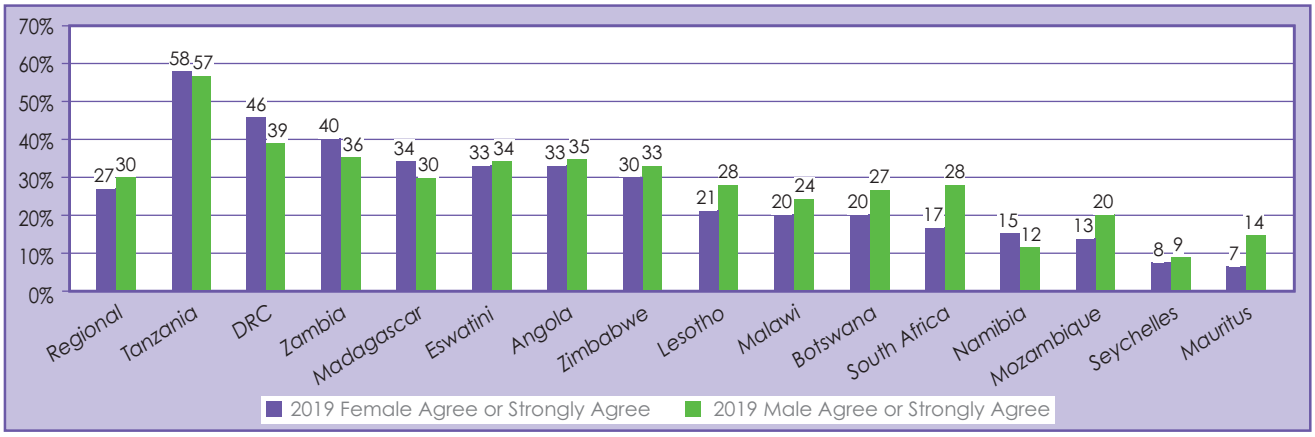
Source: Agenda 2030 SADC Gender and Sustainable Development Attitudes Survey.

Figure 8.12 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 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%).

A concerning number of respondents, between 33% and 43% agreed or strongly agreed with the statement in three countries in which 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.

Figure 8.13: "Homosexuality is a psychological disease, by sex



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

Figure 8.13 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 remains 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.



Angola has seen increased dialogue between LGBTI groups and certain ministries, especially the justice ministry. The LGBTI community now has a seat at the table. However, families and schools still reject many LGBTI people. Women in the LGBTI community remain largely "invisible" and often excluded from the political, economic, and social aspects of the movement. Transgender people have received increased exposure in recent years thanks to a few popular Angolan artists who talk openly about their sexuality and gender identity.



In **Botswana**, Lesbians, Gays & Bisexuals of Botswana (LEGABIBO), an agency that works with the community, runs campaigns to address the negative attitudes of health workers towards the LGBTQI community. Many in the community continue to face discrimination from health providers and religious leaders. Botswana has seen violence against LGBTQI people during COVID-19, which may affect future work in this area as activists wait for the cases to make their way through the country's court system. Further research needs to be carried out on attitudes around decriminalisation of same-sex relationships as the government addresses this topic.



Eswatini has seen a visible shift of perceptions about homosexuality amongst young people. Many young people came out to support Eswatini's first Pride March in 2018. LGBTI issues and people has become more visible in Eswatini society. News outlets used to regularly promote anti-gay propaganda, but this has changed. Homophobic comments in the media are now rare, a sign the country has made progress.

Next steps

The lack of recognition of LGBTI rights represents a fundamental violation of human rights and requires urgent action in all SADC countries. Researchers have divided recommendations into two sections: overarching and those related to COVID-19.

Overarching recommendations

- Enact comprehensive anti-discrimination legislation and adopt public policy that specifically addresses violence and discrimination based on real or imputed sexual orientation and/or gender identity.
- Adopt measures to prevent, investigate and punish arbitrary arrests and extortion based on sexual orientation and/or gender identity and expression.
- Conduct training with the police and law enforcement on human rights and the need to respect the rights of LGBTI people.
- Adopt comprehensive measures to prevent, investigate and punish GBV, including sexual violence.
- Adopt measures to combat hate speech.
- Conduct public awareness campaigns geared towards youth, in schools and health care facilities, and towards society in general, to promote respect for the human rights of people with diverse sexual orientations, gender identities and expressions, including the right to be free from discrimination.
- Strengthen civil society capacity to hold governments and other decision-making bodies accountable for creating a safe, enabling environment for LGBTI communities to full enjoy their rights and freedoms.

COVID-19 recommendations[47]

- Ensure that all emergency measures adopted in the face of the pandemic as well as emergency support and compensation and socio-economic support measures leave no one behind, but take the particular vulnerability of the most marginalised in society into account, including specific vulnerabilities in the LGBTI community.
- In support efforts, pay attention to those working in informal and insecure settings, including ensuring access to social protection and heath care, as well as basic needs.
- Speak out and condemn any incorrect information and hate speech that blames the LGBTI community or other minorities for the pandemic.
- Specific initiatives to tackle increased domestic violence must also account for the increased risks to LGBTI people, and especially young people.
- Focus on non-discrimination in the policing of emergency measures.
- Any quarantine legislation and controls must allow people to choose where they quarantine. This will allow people to quarantine in a safe space that is free from violence.

[47] ILGA Europe, 2020