Sexual Diversity 8



LGBTQ activists march in South Africa in 2021 to pressure the country's parliament to expedite a Hate Crimes Bill currently awaiting approval.
Photo courtesy of Unsplash / Tanushree Rao

KEY POINTS

- Four Southern African countries (Angola, Mozambique, Seychelles, and South Africa) have decriminalised same-sex relationships.
- Madagascar allows same-sex relationships for those older than 21, while the Government of Botswana has appealed a 2019 High Court decision to decriminalise same-sex relations.
- COVID-19 has exacerbated vulnerabilities in LGBTQ communities, especially those relating to economic survival, healthcare and gender-based violence.
- Three countries (Mauritius, Namibia, and South Africa) allow LGBTQ people to change their gender markers. The inability for transgender people to change their gender marker presents challenges in their everyday lives including in banking, accessing healthcare and in legal processes.
- Mauritius and South Africa ban conversion therapy, which experts note causes physical and psychological damage.
- Only one SADC country, Angola, has hate crimes legislation that explicitly protects LGBTQ persons from violence and discrimination.
- The UN Human Rights Office has called on all countries to outlaw sporting regulations that pressure female athletes to undergo "unnecessary" medical interventions.
- COVID-19 health efforts must include long-terms strategies towards the attainment of universal health care that incorporates inclusive and distinct care for LGBTQ people.

Introduction



Members of the LGBTQ community in Namibia commemorate the country's first Pride event in July 2017. Photo courtesy of Hildegard Titus/AFP

Lesbian, gay, bisexual, transgender and queer (LGBTQ) people in Southern Africa continue to face discrimination and violence because of their sexuality or gender identity and expression.

COVID-19 lockdowns have severely affected the rights of LGBTQ persons and compromised their access to health and essential services

To assess the depth and nature of social exclusion and the dangers faced by LGBTQ people across the region, the Other Foundation commissioned studies of ten countries in Southern Africa in 2016: Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe. The studies also sought to help activists unpack the dominant narratives about sexual orientation and gender identity in the region so that LGBTQ groups can organise better to advocate for change.[1]

In Namibia and Botswana, the nature of the public discourse about LGBTQ people has shifted dramatically over the past decade, from what the Other Foundation refers to as the "backlash" cycle to a "progress" cycle, illustrated by a more positive or neutral stance. In Mauritius and Mozambique, the studies found public discourse on the subject to be positive or neutral.

[1] Canaries Summaries, https://theotherfoundation.org/wp-content/uploads/2016/10/Canaries_Summary_epub_Draft4_MJ6-2.pdf, 11 October 2021.

These four countries share a sympathetic or neutral media (often due to sensitisation training by LGBTQ organisations and their allies); effective strategic advocacy by LGBTQ organisations through the judicial, legislative or executive systems; and mobilisation of effective alliances with other human rights actors and with state agencies.

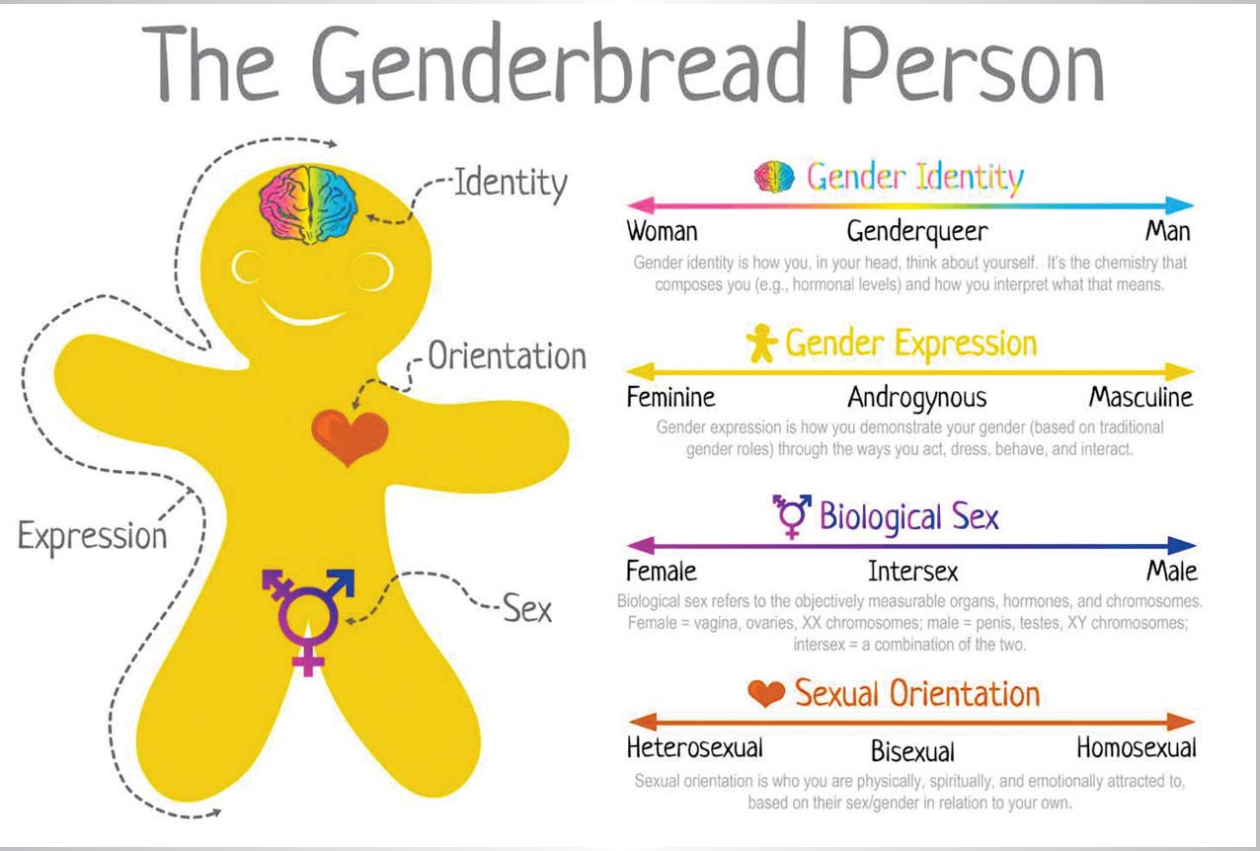
Meanwhile, Malawi, Zambia, Zimbabwe and, to a lesser extent Eswatini, have seen inflamed public discourse against LGBTQ people. In these countries, activists perceive this in part as a backlash against assertive LGBTQ rights movements or individuals.

Since March 2020, states in the Southern African Development Community (SADC) have been in varying stages of lockdown due to the COVID-19 pandemic. These have severely affected the rights of LGBTQ persons and restrictions on movement have compromised their access to health and other essential services. Additionally, the economic consequences of COVID-19 resulted in the loss of livelihoods for LGBTQ people, forcing some to move into unsafe homes.

It is imperative that governments implement sustainable strategies to address these issues and guarantee LGBTQ rights and access to services.

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 or non-binary - 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 emotional, romantic or sexual attraction. Sexual orientation may include same-sex attraction (homosexuality), attraction to someone of a sex different from your own (heterosexuality), attraction to both men and women (bisexuality), to all genders (pansexual), or neither (asexuality). 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).

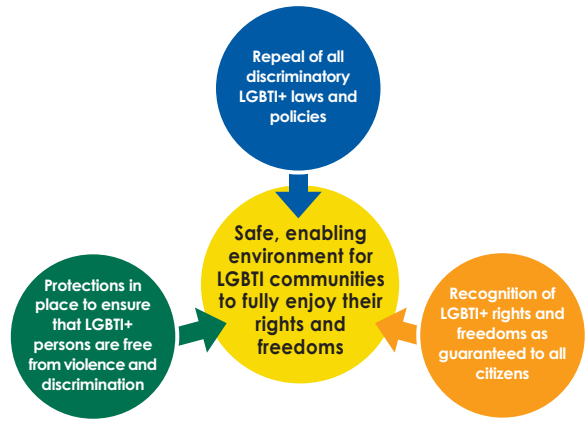
Queer is an umbrella term to refer to a person whose attraction and/or identity goes beyond the traditional definitions associated with sexual orientation and gender identity. Different people use this term to mean different things.

It is important for legislators in member states to recognise that their populations include people of diverse sexual orientations, gender identities and expressions. LGBTQ refers to all people across the sexual orientation, gender identity and expression and sex characteristics (SOGIESC) spectrum and all have a right to equal and dignified treatment and to live freely and safely.

The decriminalisation of same sex consensual acts is an important part of the struggle to advance LGBTQ rights. Decriminalisation is part of a bigger set of changes required to secure the human rights of LGBTQ communities.

In 2014, the African Union's major human rights body, the African Commission on Human and Peoples' Rights, adopted Resolution 275. It calls on state parties to the African Charter on Human and Peoples' Rights to refrain from, investigate and punish acts of violence and discrimination against people based on their sexual orientation and gender identity.[2]

Figure 8.2: Three-pronged approach to advocating for LGBTQ rights



[2] Abolition of Angola's anti-gay laws may pave the way for regional reform, The Conversation, http://theconversation.com/abolition-of-angolas-anti-gay-laws-may-pave-the-way-for-regional-reform-111432, accessed 15 July 2021.

As outlined in Figure 8.2 the *#VoiceandChoice* campaign advocates for a three-pronged lobbying and advocacy strategy. These include legal reform and policy development, social protections and the recognition of LGBTQ rights as basic human rights guaranteed to all citizens.

Successful LGBTQ lobbying and advocacy efforts must include public education on LGBTQ rights.

The Southern Africa Gender Protocol Alliance administered the 25-question Southern African Gender Progress Study (GPS) survey to 34 323 women and men of all age groups in 15 SADC countries between January 2019 and May 2021. The GPS included two questions relating to LGBTQ rights.

Table 8.1: Regional responses to questions on sexual diversity in the GPS

Question	Agreed or Strongly Agreed
Homosexuality is a psychological disease	30%
It bothers me when a girl acts like a boy	31%

Figure 8.3: Differences in responses to questions in the GPS



Table 8.1 and Figure 8.3 show that, when respondents answered questions about sexual diversity, 30% agreed or strongly agreed with the statement "Homosexuality is a psychological disease" and 31% agreed or strongly agreed with the statement, "It bothers me when a girl acts like a boy." The study also found male respondents likelier to agree with these statements.

Although researchers identified this statistical difference between male and female responses, the difference is negligible. While it is encouraging to note that about 70% of respondents did not agree to both statements, 30% explicitly stated that homosexuality and diverse gender identities bother them. These numbers point to the need for widespread public education on sexual diversity and LGBTQ rights.

Social, religious and cultural biases drive negative attitudes towards LGBTQ rights. Anti-LGBTQ groups have employed the notion that LGBTQ communities are "unchristian" to fuel opposition to the recognition of LGBTQ rights. In October 2020, Pope Francis, head of the Catholic Church, publicly declared his support for same sex civil unions, challenging these attitudes. Activists underscore the importance of working with religious, cultural and traditional leaders in lobbying and advocacy for the recognition of LGBTQ rights.

Pope Francis supports same-sex civil unions



Pope Francis speaks at an inter-religious ceremony for peace in Rome in October 2020. Photo courtesy of AP Photo/Gregorio Borgi

Pope Francis has called for the recognition of civil union laws that would provide legal protection for same-sex couples

As part of this recognition, Pope Francis emphasised that gay and lesbian people are "children of God and have a right to a family," and that "nobody should be thrown out, or be made miserable because of it."

In the past, the Vatican has publicly opposed violence and discrimination against LGBTQ people, including the criminalisation of same-sex activity.

The Pope's remarks are likely to resonate in contexts where basic legal recognition is badly needed. But they also boost support for LGBTQ families at a time when lawmakers and right-wing groups are attempting to weaken non-discrimination protections in areas like adoption and foster care, often in the name of religion.

The Pope's remarks may not immediately translate into stronger protections for LGBT people, but they offer a powerful reminder that LGBT families deserve respect and recognition at a time when that fact is too often ignored.

Source: Ryan Thoresen, Human Rights Watch, October 2020.

[3] Human Rights Watch, 'Pope Francis Supports Same-Sex Civil Unions', https://www.hrw.org/news/2020/10/21/pope-francis-supports-same-sex-civil-unions, accessed 11 October 2021

Table 8.2: Sexual diversity baseline indicators in 2024

INDICATORS	Angola	Botswana	Comoros	DRC	Eswatini	Lesotho	Madagascar	Malawi	Mauritius	Mozambique	Namibia	Seychelles	South Africa	Tanzania	Zambia	Zimbabwe
Criminalisation of same sex consensual acts																
Consensual same-sex acts decriminalised	Yes	Pending	No	Never criminalised	No	Never criminalised	Yes, 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

[4] ILGA, 2020. World State Sponsored Homophobia report global legislation overview update, ENG-CovArtboard 1 (ilga.org), accessed 11 October 2021.

Table 8.2 shows that:

- Four out of the 16 SADC countries have decriminalised same-sex consensual acts: Angola, Mozambique, Seychelles, and South Africa. DRC and Lesotho have not ever criminalised homosexuality, so laws in those countries require further clarity. Madagascar decriminalises homosexuality for those older than 21 but criminalises it for anyone younger than 21.
- Four countries (Comoros, Mauritius, Namibia, and Zimbabwe) criminalise homosexuality for men only.
- Only South Africa has constitutional provisions to protect LGBTQ people.
- Six countries (Angola, Botswana, Mauritius, Mozambique, Seychelles and South Africa) have employment protections for LGBTQ people.
- Only Angola criminalises hate crimes and incitement to violence against LGBTQ communities, while 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).[5]
- Some countries, like Mauritius, have contradictory legislation, criminalising homosexual sex acts yet protecting LGBTQ 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[6] and their names (Mauritius, Namibia, South Africa, and Zambia), while four others nominally allow these changes (Angola, Botswana, Malawi and Mozambique).
- LGBTQ organisations can legally register in nine countries (Angola, Botswana, Lesotho, Mauritius, Mozambique, Namibia, Seychelles, South Africa, and Zimbabwe) and operate freely in seven countries in Angola, Botswana, Lesotho, Mauritius, Namibia, Seychelles and South Africa.

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

Governments need to develop strategies that address the unique impact of COVID-19 on the LGBTQ community

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

[5] 'Conversion therapy' (2021) Wikipedia, https://en.wikipedia.org/w/index.php?title=Conversion_therapy&oldid=1049182454, accessed 15 July 2021.
[6] 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 vaccine justice



COVID-19 continues to devastate large segments of the LGBTQ community. In many countries, LGBTQ people work predominantly in the informal sector, relying on daily wages and surviving without job protections. This makes them especially vulnerable to economic slowdowns and restrictions on movement.

Many LGBTQ people must choose between risking infection to earn enough money to pay for food and shelter or adhering to lockdown requirements and risk going without basic necessities.

The COVID-19 pandemic has overwhelmed health systems, which have been experiencing shortages of personal protective equipment, test kits, and specialised equipment such as ventilators. During this crisis, health systems have not prioritised LGBTQ people or their specific needs. Even in the absence of a pandemic, LGBTQ communities face discrimination, stigma, refusal of services, and confidentiality breaches when accessing health services in SADC. This may contribute to reluctance among members of the LGBTQ community to access the COVID-19 vaccine.



Zimbabwe: LGBTQ people wary of public COVID-19 vaccination sites



Healthcare workers from the Ministry of Health prepare to vaccinate LGBTQ people in Harare in July 2021 at a vaccination site championed by GALZ.
Photo: GALZ

The Gays and Lesbians Association of Zimbabwe (GALZ) says its members have avoided public COVID-19 vaccination centres because of discrimination.

In response, the sexual minority rights group has worked with government to establish safe sites at which LGBTQ people can access safe and non-discriminatory healthcare services.

A GALZ official, who requested anonymity, said the rights organisation had initiated the "private" jabbing campaign to protect sexual minorities from unwarranted attacks.

"We received information that some members felt wary of going to public health facilities to access the jabs because Zimbabwean society remains largely homophobic, using the guise of religion and culture, to discriminate and violate LGBTQ persons," said the official.

Common violations include hate speech, blackmail, unlawful arrest and detention, disownment by families, excommunication from religious institutions, eviction, forced marriage, extortion, invasion of privacy and loss of employment, the GALZ officer noted. Because of this stigma, discrimination and harassment, LGBTQ persons face hardships accessing healthcare services.

"There may be judgement from members of the public at the facility. For example, in queues, or where health professionals may not know what to do when dealing with an intersex or transgender person for the very first time."

They added, "GALZ is complementing government efforts to ensure all people are vaccinated. As a [United Nations Population Fund] UNFPA-Global Fund implementing partner under the key populations programme, we have a referral network for members in other cities and towns to access health facilities.

"Since the advent of COVID-19, GALZ has been running a weekly health services satellite clinic. This is an extension of the sexual and gender-based violence (SGBV) clinic at Wilkins Hospital."

To ensure its members access COVID-19 vaccines, GALZ and its partners mobilised resources to set up safe and non-discriminatory sites to curb the further spread of the deadly pandemic, which has not spared its membership.

"COVID-19 does not discriminate; as such members did fall ill while some sadly lost family members just like other citizens. Travel bans made it difficult for persons who were used to accessing the pre-exposure prophylaxis (PrEP) and antiretrovirals (ARVs) and other family planning services at friendly facilities."

The global pandemic also affected the livelihoods of GALZ members and LGBTQ people in Zimbabwe as successive lockdowns disrupted businesses and resulted in job losses. GALZ set up online counselling units to provide psychosocial support to affected individuals.

Source: James Muonwa for AllAfrica, August 2021.[7]



Cyril Ramaphosa, South Africa's president, referred to GBV as a parallel pandemic.
Photo courtesy of UN Women

During the initial phase of the pandemic, Cyril Ramaphosa, South Africa's president, referred to gender-based violence (GBV) as a parallel pandemic. LGBTQ people suffer from this second pandemic and they faced increased vulnerability to GBV as many returned to violent homes or environments due to job losses and homelessness. Mandatory lockdowns to curb disease transmission may also trap them in households with unsupportive families or their abusers, isolated from the people and resources that can help them.

Many LGBTQ people experience increased isolation, which leaves them cut off from chosen families and support networks. The inability to connect in person with LGBTQ communities and friends during this time of physical distancing exacerbates feelings of seclusion and even fear.

[7] Muonwa, J. (2021) Zimbabwe: LGBT People Shun Public Covid-19 Vaccination Sites, allAfrica.com, https://allafrica.com/stories/202108040573.html, accessed 10 August 2021.

Botswana: A snapshot of how COVID-19 has affected the LGBTQ community



Botswana-based activist and poet Kutlwano "Bubbly" Seladledi, died during the COVID-19 pandemic. Photo: @dilotsotlhe/LEGABIBO

In the early weeks of the lockdown, I attended a memorial service on Facebook Live to remember and celebrate the life of Kutlwano "Bubbly" Seladledi, an LGBTQ activist and spoken-word poet from Botswana, who passed away on 2 April 2020.

Bubbly, as their name suggests, was one of the nicest, warmest, most good-humoured people and welcomed me in Botswana just a few years ago. I will never forget their laugh and kind smile.

Bubbly wasn't a direct casualty of the coronavirus. Rather, their death was the result of a hard-fought struggle with depression brought on by the stigma and discrimination LGBTQ Batswana are far too familiar with.

Lesbians, Gays & Bisexuals of Botswana (LEGABIBO), Botswana's central LGBTQ organisation, understands deeply that their community's mental health challenges do not dissipate when their country shuts down. In fact, they are often amplified by sudden social isolation and increased anxieties around employment, housing, and accessing critical health services. Stuck in difficult and unsafe home situations, LGBTQ Batswana are confronted with domestic violence, suicidality, depression, anxiety, death threats, homelessness, unemployment, and hunger.

Forced to operate remotely, LEGABIBO staff are working diligently to continue to provide psychosocial support, offer sexual and reproductive health services, assist on domestic violence cases, distribute food parcels, and link persons to emergency shelter. In an already difficult and often hostile environment, LEGABIBO and LGBTQ organizations worldwide are working even harder to keep queer people safe during the COVID-19 pandemic.

Bubbly will be remembered by their friends and colleagues for, "their quest for social justice for the LGBTQ community and their involvement with many initiatives that sought to promote inclusion and connect each and every one of us to love, dignity, and Botho." I hope we can honour Bubbly by remembering that while we may be physically apart, we are not alone. Our communities need each other now more than ever.

Source: Michelle Samuels for Boston University's BU Today in June 2020.[8]

[8] A Snapshot of How COVID-19 Is Impacting the LGBTQ Community, Boston University, https://www.bu.edu/articles/2020/how-covid-19-is-impacting-the-lgbtq-community/, accessed 11 October 2021.

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 LGBTQ rights. As such, the Sustainable Development Goals (SDGs) do not include any specific references to LGBTQ people or issues. Nevertheless, to ensure that the global development agenda does not leave LGBTQ communities behind, the United Nations Development Programme (UNDP) developed the lesbian, gay, bisexual, transgender and intersex (LGBTI) Inclusion Index to inform evidence-based development strategies to advance their inclusion. Following extensive multi-sectoral and civil society consultations, the five priority dimensions for measurement in the LGBTQ Inclusion Index comprise political and civic participation, economic well-being, personal security and violence, health, and education.[9]

> The SDGs do not include any specific references to LGBTQ people

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 based on the application of international law to human rights violations based on sexual orientation and gender identity.[10] Although stakeholders first adopted these 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; rights to human and personal security; economic, social, and cultural rights; rights to expression, opinion, and association; freedom of movement and asylum; rights of participation in cultural and family life; rights of human rights defenders; and rights of redress and accountability.[11]

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

[9] Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians', p. 76. https://www.pgaction.org/inclusion/pdf/handbook/en.pdf , accessed 8 October 2021.
[10] Introduction to the Yogyakarta Principles - Yogyakartaprinciples.org', http://yogyakartaprinciples.org/introduction/, accessed 11 October 2021.
[11] Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians', p. 76. https://www.pgaction.org/inclusion/pdf/handbook/en.pdf , accessed 8 October 2021.

Table 8.3: Overview of key UN instruments and SADC commitments

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
Comoros	S	S	SP	SP	SP	SP	SP
DRC	SP	SP	SP	SP	SP	SP	SP
Eswatini	SP	SP	SP	SP	SP	SP	SP
Lesotho	SP	SP	SP	SP	SP	SP	SP
Madagascar	SP	SP	SP	SP	SP	SP	SP
Malawi	SP	SP	SP	SP	SP	SP	SP
Mauritius	SP	SP	SP	SP	SP	SP	SP
Mozambique	SP	N	SP	SP	SP	SP	SP
Namibia	SP	SP	SP	SP	SP	SP	SP
Seychelles	SP	SP	SP	SP	SP	SP	SP
South Africa	SP	SP	SP	SP	SP	SP	SP
Tanzania	SP	SP	N	SP	SP	SP	SP
Zambia	SP	SP	SP	SP	SP	SP	SP
Zimbabwe	SP	SP	N	SP	SP	SP	SP

Source: ILGA, 2016.[12]

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

1. None means a state has not committed to the instrument, indicated with an "N."
2. Signatory means a state has signed an agreement but has not ratified it at national level, indicated with an "S."
3. State party means a state has ratified the instrument at national level, which means it must domesticate it, 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 Botswana, Tanzania and Zimbabwe have not signed the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

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

While progress by countries in SADC to implement relevant instruments has stalled in some areas, the UN has increasingly focused on sexual diversity at the global level. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World) conducted an analysis of thematic reports submitted to the UN Human Rights Council and General Assembly.

[12] ILGA, 2016, Treaty Bodies SOGIESC references, https://ilga.org/downloads/Treaty_Bodies_SOGIESC_references_2016_ILGA.pdf, accessed 11 October 2021.

Table 8.4: UN thematic reports with good or strong LGBTQ references in 2020

Mandate	Report topic	References
Special Rapporteur in the Field of Cultural Rights	Cultural rights defenders January 2020 (41st Session Human Rights Council (HRC))	Good references to LGBTQ and SOGI (cultural rights includes LGBTQ rights, challenges defenders face and need for protection)
Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression	Artistic Freedom of Expression: July 2020 (44th Session HRC)	Good reference to LGBTQ, sexual minorities (suppression of LGBTQ activists, artists, and artistic events and expression)
Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association	Celebrating women in activism and civil society: the enjoyment of the rights to freedom of peaceful assembly and of association by women and girls: July 2020 (75th Session General Assembly (GA))	Good reference to LGBTQ (women with multiple and intersecting forms of marginalisation, police violence and restrictions on overseas funding)
Special Rapporteur on Freedom of Religion or Belief	Freedom of religion or belief and gender equality: August 2020 (43th Session HRC)	Very strong reference to SOGI-based violence and discrimination in the name of religion or belief
Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard Of Living, and on the Right to Non-Discrimination in this Context	COVID-19 and the right to adequate housing: July 2020 (75th Session GA)	Strong references to LGB, transgender and gender-diverse persons and SOGI (A separate section on LGBTQ persons' right to housing during the pandemic; a recommendation on data collection)
Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context	Guidelines for the implementation of the right to adequate housing: December 2019 (43rd Session HRC)	Good references to LGBTQ and "sexual identity" (vulnerability and discrimination in housing)
Special Rapporteur on the Rights of Indigenous Peoples	The impact of COVID-19 on the rights of Indigenous peoples: July 2019 (75th Session GA)	Good references to LGBTQ and SOGI (example from Thailand; recommendation to pay attention to the situation of Indigenous LGBTQ persons; call to collect and analyse data on indigenous LGBTQ and two-spirit persons in the health-care system; no discrimination based on SOGI)
Special Rapporteur on the Right To Privacy	Summary of activities on surveillance, health data, business enterprises use of personal data and protection against gender-based privacy infringements: February 2020 (43rd Session HRC)	Good references to SOGIESC (considerations of the right to privacy of people with diverse SOGIESC in relation to treatment of persons deprived of their liberty; changing rooms and health-related data)
Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity	"Conversion therapies" practices: May 2020 (44th Session HRC)	Explores practices of so-called "conversion therapy" across the globe, including their impact on victims, their human rights implications and their connection with violence and discrimination based on sexual orientation and gender identity, as well as measures adopted to prevent them and to penalise or prosecute those who perform them and remedies provided to victims
Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity	COVID-19: July 2020 (75th Session GA)	Discusses the impact of COVID-19 on the human rights of LGBTQ and gender-diverse persons, communities and/or populations; analyses the impact of the pandemic on social exclusion and violence and the interaction with institutional drivers

Mandate	Report topic	References
		of stigma and discrimination; and analyses measures adopted in the context of the pandemic aimed at persecuting LGBTQ and gender-diverse persons or with indirect or unintended discriminatory effects and identifies good practice
Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence	The gender perspective in transitional justice processes: July 2020 (75th Session GA)	Strong reference to LGBTQ and gender perspectives considered in conceptualisation, design and implementation of national transitional justice strategies and mechanisms
Special Rapporteur on Violence Against Women, its Causes and Consequences	Violence against women journalists: May 2020 (44th Session HRC)	Good references to LGBTQ people, LBTI women, LT journalists and LGBTQ issues (in the context of attacks, abuses and harassment experienced by journalists, and retaliation for covering certain issues)

Source: ILGA, 2020.[13]

In 2020, 39 reports (more than 50% of all thematic reports) mentioned some LGBTQ-related topics, with 12 of these reports - set out in Table 8.4 - including good or strong references to LGBTQ populations.

Activists welcome the ongoing attention to LGBTQ human rights issues by the UN structures and encourage mandate holders to strengthen their analysis of specific populations within LGBTQ communities and to look into the situation of LGBTQ persons who are not necessarily activists. This includes LBQ women, trans or intersex persons and LGBTQ persons with disabilities.

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 LGBTQ communities. Resolution 275 calls on member states to:

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

[13] ILGA, 2020. LGBTI rights | UN experts push for better protection across a range of topics, https://ilga.org/lgbti-rights-special-procedures-UN-experts-push-for-better-protection, accessed 3 October 2021.
[14] African Commission on Human and Peoples Rights Resolution 275, http://cfnhri.org/uploads/files/resolution_275_eng.pdf , accessed 10 October 2021.

their human rights protection activities, including the rights of sexual minorities; and
2. 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 LGBTQ 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.

The second clause commits member states to creating a legal environment that criminalises violence against LGBTQ 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 LGBTQ people from violence and discrimination. Other countries should urgently bring in similar legislation.

During the week of 15 March 2021, the UN Human Rights Council discussed the Forum on Minority Issues' recommendations to tackle hate speech on social media. The document includes LGBTQ people among the particularly vulnerable populations to online hostility.

Hate speech on social media forces LGBTQ people back into silence

The United Nations describes hate speech as "any kind of communication that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are." This is language that has the potential to generate intolerance and hatred, and our communities are constantly confronted with it.

The online space has been revolutionary for LGBTQ people: it has helped build communities. But with more visibility, also came backlash: 84% of respondents to a survey conducted by ILGA World in 2020 said that those spaces have exposed them to hate speech and threats.

With more people forced to engage online, attacks against the LGBTQ community intensified during the COVID-19 pandemic, further disrupting what was left of any safe space.

The UN Forum on Minority Issues rightfully called on states and tech companies to "ensure an inclusive access to the digital world." However, hate speech is consciously hampering such opportunities: it is yet another form of intimidating LGBTQ and other communities back into silence.

Trans persons are currently particularly under attack, especially whenever legitimate debates on legal reforms are used as a pretext to deny trans people their right to existence.

Clearly, neither withdrawing from online spaces nor going back to the closet are viable options. But enduring constant abuse can be extremely difficult, especially when perpetrators don't seem to be sanctioned for their behaviour. It is high time for states and social media companies to take action.

[15] http://www.achpr.org/sessions/55th/resolutions/275/

The business of social media platforms depends on data analysis: they should investigate how exactly hate speech targets each community. If access to this data were open, states would have further evidence of the need to improve laws and policies on the matter.

Let us be clear: everyone is entitled to their opinions, but not to destroy others in the process. Freedom of speech is precious, but this cornerstone of the international human rights framework must never become an excuse to legitimise hatred and intolerance.

Hate speech thrives whenever inequalities rise. Change starts by fostering inclusive and just societies. It continues with empowering netizens to use social media as a space where more speech and dialogue - not less - can happen, provided that everyone is ready to recognise and reject hate. This is not a responsibility of governments and platforms alone: all of us share virtual spaces, and we all must act.

Addressing hate speech means keeping it from escalating into incitement to discrimination, hostility and violence. It is a human rights issue, and a matter of basic human decency.

Source: Daniele Paletta for ILGA, March 2021.[16]

Regional instruments

No SADC instruments currently exist specifically to address LGBTQ 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 LGBTQ people - one that includes global and continental provisions within a SADC context.

Three SADC instruments speak to improving SRHR in member states:

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

The ***SADC SRHR strategy*** includes LGBTQ 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 LGBTQI, migrants, refugees, mobile populations, people living with disabilities, and victims of sexual exploitation).[17] The SRHR strategy makes no other specific reference to the needs of LGBTQ people.

The ***SADC Regional Strategy for HIV Prevention, Treatment, Care and Sexual and Reproductive Health and Rights*** does not include LGBTQ people among key populations at all. However, it does identify 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 healthcare settings, the workplace, families, and within communities.[18]

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

[16] ILGA, 2020. Hate speech on social media is forcing LGBTI people back into silence. It's time to take action, https://ilga.org/hate-speech-social-media-forcing-lgbti-back-silence-take-action, accessed 17 July 2021.
[17] SADC SRHR 2019-2030, https://genderlinks.org.za/wp-content/uploads/2018/11/1-Final-signed-SADC-SRHR-Strategy-2019-2030.pdf, 9 October 2021.
[18] Regional strategy for HIV prevention, treatment and care and sexual and reproductive health and rights among key populations (2018). Gaborone, Botswana: SADC Secretariat, https://www.sadc.int/files/2715/3060/7629/SADC-regional-strategy-hiv-srhr-key-pops_FINAL.pdf, 10 August 2021.

states to:

1. Review and revise or develop new policies that support access to integrated SRH and HIV services for key populations, especially adolescents, youth, migrant populations, LGBTQ persons, and people with disabilities; and
2. 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.[19]

All SADC states have signed up to the 2019 SADC SRHR Strategy and the 2018 SADC Regional Strategy for HIV Prevention, Treatment, Care and Sexual and Reproductive Health and Rights. However, some member states have yet to implement the provisions of these guiding instruments. Since the adoption of the 2019 SADC SRHR Strategy, none of the states has submitted reports on their performance towards achieving the stipulated targets.

This raises important questions about accountability and the enforcement of SADC instruments. Should there be sanctions for countries that do not domesticate the relevant instruments?

No SADC instruments currently exist specifically to address LGBTQ rights

Tanzania: Government attacks against LGBTQ health and rights on the rise

One of the most significant casualties of the Tanzanian government's overt hostility to LGBTQ people is the right to the highest attainable standard of health, guaranteed under international treaties that Tanzania has ratified. Even in comparison to other countries that criminalise same-sex relations, Tanzania has become an outlier in its efforts to render LGBTQ-friendly health services inaccessible.

Until 2016, although Tanzania criminalised same-sex conduct its health sector acknowledged and made some efforts to address the specific vulnerabilities of men who have sex with men and other groups considered "key populations." This means that public health initiatives should take particular efforts to address the needs of these groups as part of their national HIV prevention and treatment efforts. Government bodies included gay men and transgender people in discussions around HIV prevention and treatment. Activists considered Tanzania's overall approach to HIV and AIDS largely successful, because it was evidence-based and relatively inclusive.



An HIV-positive gay man attends a clinic in Dar es Salaam in November 2016.
Photo courtesy of HRW

In contrast, since 2016, the Ministry of Health has prohibited community-based organisations from conducting outreach on HIV prevention

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

to men who have sex with men and other key populations based on the pretext that such organisations engage in the "promotion of homosexuality." The Ministry closed drop-in centres that provided HIV testing and other services to key populations, run in many cases by international agencies, asserting that these centres, too, are involved in "homosexuality promotional activities." It banned the distribution of lubricant, an essential HIV prevention tool for key populations and for much of the wider public, including post-partum women.

The Health Ministry asserts that public health centres in Tanzania provide discrimination-free services to LGBTQ people and key populations and that there is no need for specialised services run by civil society organisations. Human Rights Watch research has found, however, that discrimination on the basis of sexual orientation and gender identity in government health centres remains common.

The authorities have also undermined the right to health through a series of police raids on meetings and workshops organised by health and rights activists and their allies, arresting participants, including foreign lawyers, in an effort to silence and instil fear within activist communities as well as service provision groups and their beneficiaries.

Police continue to conduct arbitrary arrests based on sexual orientation or gender identity. In some cases, police enlist health care providers to carry out forced anal examinations in attempts to find proof of homosexual conduct. This practice is a medical travesty and a grave violation of human rights that can amount to torture. Arrests and mistreatment of LGBTQ people not only violate rights to privacy, non-discrimination, and the right to be free from torture, they also drive vulnerable communities underground and away from health services, further undermining the right to health.

Source: Human Rights Watch, February 2020.[20]

Constitutional provisions

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

It is important to include protections for gender and sexual orientation in country constitutions. This guarantees long-term protections for LGBTQ people. Fourteen SADC countries include equality and non-discrimination clauses in their constitutions, but do not include sexual orientation. A constitution provides fundamental foundational principles that apply to all citizens. Governments should not use a constitution to exclude any individuals or groups.

The Comoros Constitution of 2018 guarantees equality in Article 2 as follows: "The Union of the Comoros equally recognises the equality of all citizens before the law, without distinction of race, sex, religion, political belief, and it assures all citizens the full enjoyment of fundamental freedoms."[21]

[20] Human Rights Watch, 2020, "If We Don't Get Services, We Will Die": Tanzania's Anti-LGBT Crackdown and the Right to Health, https://www.hrw.org/report/2020/02/03/if-we-dont-get-services-we-will-die/tanzanias-anti-lgbt-crackdown-and-right, accessed 4 October 2021.
[21] Comoros Constitution 2018, https://www.constituteproject.org/constitution/Comoros_2018.pdf?lang=en , accessed 3 October 2021.

Article 3 further elaborates on these rights: "All Comorians of the two sexes enjoying their civil and political rights are electors, within the conditions determined by the law." This clause does not recognise any other genders except for female and male. This has a fundamental impact on gender non-conforming persons.

LGBTQ activists have lauded South Africa for its progressive constitution, often referred to as one of the best in the world

LGBTQ activists have lauded South Africa for its progressive constitution, often referred to as one of the best in the world. The efficacy of a constitution is only as powerful as the manner in which citizens and lawmakers leverage it in specific legislation to advance equality for all citizens. Legislators tabled the Prevention and Combatting of Hate Crimes Bill in South Africa in 2016 but they have not yet propagated it into law.

In 2008, the South African Human Rights Commission (SAHRC) took a case against the late Jon Qwelane, a journalist and former South African ambassador to Uganda, for his article "Call me names, but gay is not ok" published in the Sunday Sun in 2008. The case highlighted important gaps in the South African Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) and the role of the Constitution.

Despite the progressive Constitution in South Africa providing strong human rights foundation, the Qwelane case emphasises the need for ongoing vigilance and accountability.



Gay Pride march in Johannesburg, South Africa.

Photo courtesy of Laurie Adams



South Africa: Constitutional Court says late journalist committed hate speech



South Africa's Constitutional Court found Jon Qwelane, the late broadcaster and ambassador, guilty of hate speech. Photo courtesy of Kempton Express

The Constitutional Court on 30 July 2021 ruled that an anti-gay column penned by the late broadcaster and ambassador Jon Qwelane was hate speech.

The unanimous ruling by the apex court overturned a previous decision in the Supreme Court of Appeal (SCA). The SCA had said that although Qwelane's article, "Call me names, but gay is not ok," was strident and provocative bigotry, it still fell within the realm of freedom of expression.

The article, carried in the *Sunday Sun* in 2008, led to a flood of complaints to the South African Human Rights Commission (SAHRC), which instituted legal action, initially in the Equality Court.

"Homophobic speech is part and parcel of the broader system of homophobia and transphobia in South African society... It contributes to an environment that serves to delegitimise their very existence and their right to be treated as equals," said Justice Steven Arnold Majiedt.

Judge Majiedt said hate speech regulations ought to be grounded in the express anti-racist and anti-sexist tenets of the Constitution. He said Qwelane had "significant stature" and influence, and had clear intent to instigate hatred against the community and "it was difficult to conceive a more egregious assault" on the dignity of LGBTQ people. "There can be no question that his statements constituted hate speech."

The other issue before the court was the ruling by the Supreme Court of Appeal that the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), generally known as the Equality Act, was "vague and over-broad." This was especially so because PEPUDA went much further than the Constitution in outlawing speech that was "hurtful."

The SAHRC had argued that while the section of the Act infringed on the right to freedom of expression, the limitation was reasonable and justifiable, in light of the right to dignity. "Sexual orientation" is not included in the Constitution under the freedom of expression section that prohibits "advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm."

Majiedt said "sexual orientation" should be added to the list of protected groups as "it would not be possible to protect the rights of the LGBTQ community without prohibiting hate speech based on sexual orientation."

Source: Tania Broughton for GroundUp, July 2021.[22]

[22] Broughton, B.T. (2021) Constitutional Court rules that Jon Qwelane did commit hate speech, GroundUp News, https://www.groundup.org.za/article/constitutional-court-rules-ambassador-committed-hate-speech/, accessed 2 August 2021.

Status of same-sex consensual sexual relations in SADC

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

Table 8.5: Status of same-sex consensual sexual acts

Country	Current status
Angola[23]	***Decriminalised*** Sexual orientation is an aggravating factor for several crimes as discrimination (art. 212) or incitement to discrimination (art. 380), injury (art. 213) and defamation (art.214), and corpse desecration (art. 223, in conjunction with articles 221 and 222). Sexual orientation is also included as a characteristic of persecution, which constitutes a crime against humanity (art. 382), protecting sexual minorities in times of extreme violence and internal turmoil.
Botswana[24]	***Pending a government appeal*** Botswana Penal Code sections 164(a), 164(c), 165, and 167. High Court ruled unanimously that the relevant sections are unconstitutional; the attorney requested and received leave to appeal the decision. The appeal is set for 12 October 2021.
Comoros[25]	***Criminalised*** Penal Code of the Federal Islamic Republic of Comoros 138, Article 318. "(3) Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex.
Democratic Republic of the Congo[26]	***Never explicitly outlawed*** On 22 October 2010, the Congolese parliament sent the Sexual Practices Against Nature Bill to the Socio-Cultural Committee. The Bill gained widespread support both publicly and within the government, and the National Assembly considered it constitutional. Legislation had yet to be drafted.
Eswatini	***Criminalised*** Eswatini criminalises same-sex sexual activity despite no law explicitly outlining this, as Section 252(1) of the Constitution (2005) states that Roman-Dutch Common Law, as interpreted in 1907, applies to any regulations or laws in place prior to independence in 1968 and not subsequently overturned. As such, "sodomy" remains a crime. In 2005, media reported that the government had plans to include prohibitions of all male homosexual acts and lesbian acts in its revision of the Sexual Offences laws with proposed penalties of imprisonment for a minimum period of two years.[27]
Lesotho	***Not criminalised*** Under Article 52 of the Penal Code Act (effective 2012), "sodomy" is not mentioned among the unlawful sexual acts. Furthermore, the Code does not have any provisions criminalising same-sex consensual relations, therefore revoking the previous common law crime of "sodomy." In this sense, Section 2(2) of the Code states, "no person shall be tried, convicted or punished for an offence other than an offence specified in this Code or in any other written law or statute in force in Lesotho."[28]
Madagascar	***Criminal for those younger than 21*** Prior to and following its independence from France in 1960, the Criminal Code (2005) has not prohibited consensual same-sex sexual acts between adults in Madagascar. However, article 331 sets the age of consent at 14 for heterosexual sexual acts and 21 for same-sex sexual acts.
Malawi	***Criminalised*** Section 153 of the Penal Code states that anyone who has had "carnal knowledge of any person against the order of nature" is guilty of a felony and is liable to face imprisonment for up to 14 years. Additionally, Section 156 criminalises "indecent practices between males," whether in public or private, imposing a penalty of imprisonment for five years and/or corporal punishment. In December 2010, the parliament passed a bill amending the Penal Code (effective in January 2011), which introduced Section 137A to criminalise "indecent practices between females," imposing a penalty of imprisonment of five years.

[23] Law, I.-W.N. in P. (2021) 'Decriminalisation of consensual same-sex acts in Angola and the progress of LGBTI human rights in Lusophone Africa', Africa Law, 5 March, https://africlaw.com/2021/03/05/decriminalisation-of-consensual-same-sex-acts-in-angola-and-the-progress-of-lgbti-human-rights-in-lusophone-africa/, accessed 17 July 2021.
[24] 'Decriminalising Homosexuality: Reshaping the Landscape in Botswana and a Missed Opportunity in Kenya', https://harvardhrj.com/2020/03/decriminalising-homosexuality-reshaping-the-landscape-in-botswana-and-a-missed-opportunity-in-kenya/, accessed 17 July 2021.
[25] Human Rights Watch Country Profiles: Sexual Orientation and Gender Identity, https://www.hrw.org/video-photos/interactive/2020/06/22/human-rights-watch-country-profiles-sexual-orientation-and, accessed 6 October 2021.
[27] ILGA World: Eddie Bruce-Jones Lucas Paoli Itaborahy, State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults (2012), 36.
[28] Southern Africa Litigation Centre, Laws and Policies Affecting Transgender Persons in Southern Africa: Lesotho (Johannesburg: SALC, 2017), 92

Country	Current status
Mauritius	***Criminalised*** The Criminal Code (1838) Article 250 (1) states that any person found guilty of "sodomy or bestiality" shall be liable to up to five years' "penal servitude." In 2007, the government introduced the Sexual Offences Bill, which would have deleted the crime of sodomy (see Section 24), and set an equal age limit of 16 years for sexual acts (Sections 11 to 14). However, parliament never passed the bill.[29] In June 2020, the Supreme Court of Mauritius authorised four young activists to challenge the constitutionality of Section 250(1) of the penal code.[30]
Mozambique	***Decriminalised*** In July 2014, the parliament approved Law 35/2014 repealing earlier criminalising provisions, namely articles 70 and 71 of the 1886 Penal Code, as modified by Law No. 177 (1912) and Executive Order-Law No. 39688 of 1954. These colonial provisions imposed penalties on people who "habitually practiced vices against nature." The revised Penal Code came into force in June 2015.
Namibia	***Criminalised*** No codified legislation in Namibia directly criminalises same-sex sexual activity; as such, lawmakers derive criminalisation from interpretations of Roman-Dutch Common Law. However, the Criminal Procedure Act 25 (2004) outlines in Article 299 the need for verifiable evidence that an accused person committed the "offence of sodomy or attempted sodomy," providing clear evidence of *de jure* criminalisation.
Seychelles	***Decriminalised*** In July 2016, an amendment to the country's Penal Code (1955) repealed Sections 151(a and c), removing them from the updated version of the provision, which criminalised "carnal knowledge of any person against the order of nature."
South Africa	***Decriminalised*** Following a case decided by the Constitutional Court of South Africa, the state abrogated laws carried through from the Penal Code of 1955 in which Article 600(1) and 601 criminalised consensual same-sex sexual conduct between adults, including the common-law crime of sodomy. Lawmakers retroactively applied the ruling to all cases of "sodomy" dating back to 1994.[31]
Tanzania	***Criminalised*** Section 154 of Tanzania's Penal Code (1998) prohibits "carnal knowledge of any person against the order of nature," with a prescribed penalty of 30 years to life imprisonment. Sections 138a and 157 also prescribe a five-year imprisonment for "gross indecency."
Zambia	***Criminalised*** Per Amendment Number 26 of 1933, Article 155 of the Penal Code states that any person who "has carnal knowledge of any person against the order of nature" has committed a felony and is liable to receive a sentence of up to 14 years in prison. Additionally, Article 178(g) of the Penal Code (1930) criminalises any act of "soliciting for immoral purposes in a public place."
Zimbabwe	***Criminalised*** Article 73 (1) of the Criminal Law (Codification and Reform) Act (Act No. 23) (2004) criminalises anal intercourse between males as well as "any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act." For these two types of conduct, the Code imposes a penalty of imprisonment for up to a year and/or a fine.

Source: ?

An analysis of Table 8.5 shows:

- Six countries - Angola, DRC, Lesotho, Mozambique, Seychelles and South Africa -have decriminalised consensual same-sex sexual acts or never criminalised them in the first place. In Madagascar, same-sex consensual sexual acts are legal for citizens older than age 21 but against the law for everyone else.
- In Botswana, the government is appealing a High Court ruling decriminalising same-sex consensual sexual acts.
- In Eswatini, lawmakers have enshrined the criminalisation of same-sex consensual sexual acts in the country's constitution.
- Consensual same-sex sexual acts remain a crime in Comoros, Malawi, Mauritius, Namibia, Tanzania, Zambia and Zimbabwe.

There is an urgent need for these countries to embark on penal and criminal code reviews to decriminalise same-sex consensual acts. The situation in Eswatini represents an especially

[29] National Report submitted in accordance with paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Mauritius, A/HRC/WG.6/17/MUS/1, 17 July 2013, para. 17.
[30] "Code pénal : La communauté LGBT obtient l'autorisation pour une plainte constitutionnelle" Le Mauricien, 17 June 2020.
[31] Pat Reber, "South Africa Court Upholds Gay Rights" Associated Press, 9 October 1998 (as reproduced in Sodomy Laws, 11 July 2004).

challenging case because the decriminalisation process will require a constitutional amendment. In the absence of enabling policy and legislative frameworks, state-sponsored homophobia and transphobia will persist.

Regional: Crusading couple demand gay rights and support LGTBQ refugees

Shingirai Musekiwa and Elton Chibhebhe fled Zimbabwe to come to South Africa because they are gay.

Now based in Langa, the couple are activists fighting for the human rights of Zimbabwean homosexuals and the repeal of section 78 of the Zimbabwean Constitution, which criminalises homosexuality. They have dubbed their movement Zimbabwe LGBTQ+ Crusader and say they have had interest from about 200 people.

"We are demanding that the section of the Zimbabwean Constitution that criminalises gay people be abolished. It does not allow us to be who we are and to love one another," says Chibhebhe.

Musekiwa grew up in Harare and came to South Africa in 2012 after his preacher uncle who raised him disowned him, he says. His parents died when he was young.

"Instead of talking to me openly at home, my uncle would say horrible things and attack me during his sermons. Fearing that the [Pentecostal] church may attack or report me to the police, I ran away," says Musekiwa.

Chibhebhe fled Bulawayo in 2017. He says his mother accepted his sexuality but not his father.

"Growing up, I used to think I am the only gay in Zimbabwe. Some of the gay people have confessed that they [only have] wives and children because the environment forced them," says Chibhebhe.

The couple has set up a Facebook page, where Zimbabweans ask for help with coming out, coping with discrimination and dealing with family rejection. The couple plans to also run an online awareness campaign on Instagram and Twitter and to hold a march to the Zimbabwe embassy in Cape Town.



Elton Chibhebhe (23) and Shingirai Musekiwa (32) pictured in Cape Town in 2021. The couple left Zimbabwe because it still criminalises homosexuality.
Photo courtesy of Tariro Washinyira

After many people lost jobs during the COVID-19 lockdown, the couple was at one point housing 18 people at their rented two-bedroomed house in Langa. Currently, they have five people in their home. Musekiwa and Chibhebhe both work as bartenders in a five-star hotel.

Victor Chikalogwe of People Against Suffering and Oppression (PASSOP) said they have helped the couple with food parcels and paying rent. He says many gay Africans seeking asylum are still undocumented in Cape Town because of the closure of the Cape Town refugee reception office. They cannot raise enough money to go to Gqeberha (Port Elizabeth) or Pretoria.

"We have a case of someone who went in 2019 and was given an appointment for 2021. When they go there, sometimes they are teased, asked silly questions about their sexuality, and told to prove they are gay," said Chikalogwe.

"So some, even if they have resources to go there, they choose not to go. Some of them end up getting fake papers. Without a paper you cannot find a job, you cannot get any service... If you go to the bank they demand a document. If your family or friends send you money from out of South Africa, you cannot collect it and you cannot apply for a residence permit."

Source: By Tariro Washinyira for GroundUp, July 2021.[32]

Employment

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

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



South Africa: Building LGBTQ-inclusive workplaces

Discrimination and violence against people of diverse sexual orientations and gender identities and expressions represents a serious problem around the world, and South Africa is not immune despite its progressive laws. LGBTQ workers face discrimination in the labour market throughout their employment cycle.

Some common challenges for LGBTQ workers include:

- Limited access to employment, refusal of employment, dismissals, or denial of training opportunities and promotions, and access to social security;
- Evidence of a pay gap between LGBTQ and non-LGBTQ workers - same-sex partners rarely enjoy the same benefits as married couples;
- Limited avenues for workplace dispute resolution around harassment and bullying; and
- Animosity from co-workers and supervisors, e.g. name-calling and physical and sexual violence.

The International Labour Organisation (ILO) undertook country-specific studies to identify the extent and forms of discrimination faced by LGBTQ workers. The Labour Research Service (LRS) and Gay and Lesbian Memory in Action (GALA) conducted the research in South Africa.

Findings from the study, titled *Pride at Work: A study on discrimination at work on the basis of sexual orientation and gender identity in South*

[32] Washinyira, B.T. (2021) Zimbabwean couple demand gay rights, GroundUp News, https://www.groundup.org.za/article/zimbabwean-couple-demand-gay-rights/, accessed 26 July 2021.

Africa, indicate that employers in South Africa need to do much more to make workplaces more welcoming and inclusive for LGBTQ employees.

Key concerns included:
Stereotyping: This is multifaceted, complex and difficult to define in any neat way. For example, while some lesbian women are depicted as sexual predators, other employers see them as a better employment choice compared to heterosexual women, assuming that they will not need time off for pregnancies. Correspondingly, study participants reported that some employers frowned upon lesbian women requesting maternity rights.

Gender policing: Dress code, along with freedom in relation to workplace attire that affirms an LGBTQ worker's identity represents a key factor in participants' sense of belonging, safety and inclusion in the workplace. LGBTQ participants shared numerous examples of how colleagues or employers used clothes and appearance, particularly those affirming an alternative gender, to alienate and marginalise workers in the workplace to the point of dismissal.

Safety: The issue of safety in the workplace is important for LGBTQ workers. Participants spoke about witnessing or personally experiencing sexual harassment, derogatory statements, homophobia, and general religious and cultural prejudices related to LGBTQ identities.

Coming out: Given that workers spend a large part of their day in the workplace, the question of whether or not to come out is an important one for many LGBTQ workers. Study participants spoke about discrimination, prejudice and bias in the workplace as something that constantly wore them down.

Lack of information: One of the main challenges cited by both transgender and non-transgender participants was the lack of information on transgender rights in the workplace as well as how to support transgender colleagues. A person may enter a workspace as a female but then decide to transition during the course of their employment and change the gender marker on their identity documents.

Recommendations included:
Change laws, policies and practices: Given the gaps and weaknesses in existing policy and practice, the study noted an urgent need to address gaps in existing legislative and policy frameworks relating to LGBTQ rights. First, it suggested focusing on broad strategies such as education and raising awareness, which would in turn influence policy; and, second, a focus on the specific issues in each workplace.

More education and training: Given the clear lack of information among all stakeholders in relation to LGBTQ issues, researchers cited an urgent need for training and further information for a wide range of stakeholders on LGBTQ workplace rights. This would include different educational interventions, ranging from broad dialogues and diversity workshops, to work on mainstreaming LGBQ issues in existing programmes.

Leadership development: Findings from the study indicate a clear openness towards LGBTQ workplace rights. However, the study also found a lack of leadership in furthering these rights in South Africa. There is a need for programmes to develop an awareness of LGBTQ issues and foster leadership in this area across all sectors.

Submission of an LGBTQ policy to NEDLAC by the ILO: Given the key role of the National Economic Development and Labour Council (NEDLAC) in terms of furthering LGBTQ workplace rights, the ILO ought to submit an LGBTQ policy for discussion by NEDLAC.

Source: Pride at Work - A study on discrimination at work based on sexual orientation and gender identity in South Africa, 2019.[33]

[33] Labour Research Service, 2019. 'What will it take to build LGBT inclusive workplaces in South Africa?, https://www.lrs.org.za/2019/05/09/what-will-it-take-to-build-lgbt-inclusive-workplaces-in-south-africa/, accessed 3 October 2021.

Violence and discrimination

LGBTQ people face elevated levels of discrimination and violence across the region, which sometimes include hate crimes and even murder. LGBTQ persons experience these crimes at the hands of both the public and the state. By criminalising LGBTQ people and spaces, states create environments that perpetuate violence and discrimination against LGBTQ communities. This includes violence and discrimination from police, the justice system and other authorities.

According to Daniela Paletta, communications coordinator at ILGA World, hate speech on social media forces many LGBTQ people back into silence and isolation. The UN describes hate speech as "any kind of communication that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are." It represents language that has the potential to generate intolerance and hatred, which bigots frequently use to confront and denigrate LGBTQ communities.

As with other groups that face marginalisation in everyday life, the online space also represents a revolutionary one for LGBTQ people: it has helped build and strengthen communities. However, with more visibility, came a backlash: 84% of respondents to a survey conducted by ILGA World in 2020 said that online spaces exposed them to hate speech and threats. For many within the LGBTQ community, hate speech represents an inescapable daily reality.

With more people forced to engage exclusively online, attacks against the LGBTQ community intensified during the COVID-19 pandemic, further disrupting the community's safe spaces. The UN Forum on Minority Issues called on states and tech companies to "ensure an inclusive access to the digital world."

Transgender people currently face particularly aggressive attacks, including during legitimate debates on legal reforms, which some transphobic people use as a pretext to deny trans people their right to existence.

Clearly, neither withdrawing from online spaces nor going back to the closet represent viable options. Yet enduring constant abuse can be extremely difficult, especially when perpetrators do not face consequences for their behaviour. It is high time for lawmakers and social media companies to take action.



For many in the LGBTQ community, hate speech online represents a daily reality, which makes effective hate crime legislation increasingly urgent.
Photo courtesy of Anastasya Eliseeva

Online platforms must improve their content moderation policies: harmful content often remains accessible for far too long, further endangering those it targets. Seeing as the business model of social media platforms depends on data analysis, these companies should investigate the insidious ways that hate speech targets different online communities. If they made access to this data open, legislators would have further evidence of the need to improve laws and policies on the matter.

Let us be clear: all citizens are entitled to their opinions, but they cannot aggressively destroy or target others in the expression of their views. Freedom of speech is precious, but this cornerstone of the international human rights framework must never become an excuse to legitimise hatred and intolerance.

Hate speech thrives whenever inequalities rise. Change starts by fostering inclusive and just societies. It continues with empowering people to use social media as a space for more speech

and dialogue, not less. Recognising hate is not the responsibility of governments and tech companies alone: all citizens share virtual spaces and we must work together to call out and prevent hate speech and online discrimination.

Addressing hate speech means keeping it from escalating into incitement to discrimination, hostility and violence. It is a human rights issue, and a matter of basic human decency.[34]



Namibia: Transgender advocate sues government over abuse

Namibian media personality and human rights advocate Mercedez von Cloete is suing the country's Ministry of Safety and Security for transphobic violence she says she suffered at the hands of police in 2017.

The trial hearing concluded on 16 May 2021 and von Cloete is awaiting the verdict. She spoke to African Arguments about her experience:

"A few years ago, I had a very traumatic experience with the Namibian Police, where I was unlawfully detained and brutally assaulted, repeatedly. This was not the first time that something like this had happened to me, but I promised myself that I could not allow it to persist. And so, for the last four and a half years I've been trying to get justice and hold the police accountable.

I always imagined activists to be angry people with posters, shouting and protesting on the streets. As someone who is in no way confrontational, it didn't look anything like me. I've since learned that leaving injustices unchecked is an injustice in and of itself. That's what made me realise that activists are really just people who no longer accept the things they cannot change but instead seek to change the things they cannot accept.

Just like how we need the intelligence and courage to look past complexion and see the community to eliminate racism, I feel we need to look past gender and genitalia or who and how we love to live in a just, accepting and equal society.

I now consider myself an advocate for change, for all the trans and gender diverse people who don't have the agency or support to ensure their rights are upheld. Or who are denied certain fundamental services, rights, protections and freedoms because of who they are. For those who experience continual harassment and police brutality, something which has remained unaddressed for far too long.

Personally, the emotional, psychological and physiological distress cannot be quantified. I'm still healing and just hoping that in November when the final judgement is made, that justice will prevail."



Mercedez von Cloete is suing Namibia's Ministry of Safety and Security.
Photo courtesy of African Arguments

Source: Chris De Beer Proctor for African Arguments, August 2021.[35]

[34] ILGA, 2020. Hate speech on social media is forcing LGBTI people back into silence. It's time to take action, https://ilga.org/hate-speech-social-media-forcing-lgbti-back-silence-take-action, accessed 17 July 2021.
[35] African Arguments, 2021.'Where we belong: Inside the reckoning for queer rights in Namibia | African Arguments', //africanarguments.org/2021/08/where-we-belong-inside-the-reckoning-for-queer-rights-in-namibia/, accessed 12 October 2021.

Conversion therapy

"Conversion therapy" has become a common umbrella term to refer to any sustained effort to modify a person's sexual orientation, gender identity or gender expression. Originally conceived in the mid-20th century as a response to what scientists then considered a "pathology," the medical field framed and administered these approaches as "therapies." Under such a paradigm, doctors at the time understood heterosexuality and the alignment of the sex assigned at birth with the gender identity as "the biologic norm" and characterised sexual diversity as a deviation, a perversion or a mental illness that they could cure, shift or "convert" with specific "treatment."[36]

Now, LGBTQ activists and most members of the medical field view the use of these approaches as problematic for various reasons:[37]

- Common definitions of the word "therapy" refer to any treatment "of a physical problem or an illness," or "someone with a particular illness," or a "treatment that helps someone feel better, grow stronger, etc., especially after an illness." Therefore, using this term to refer to efforts that aim to change a person's sexual orientation, gender identity or expression implies that these characteristics constitute illnesses or that there is something to "heal" or "cure" in those who are not cisgender, gender conforming or heterosexual.
- The use of the term "therapy" conveys that adherents of these approaches ground their practices on sound medical or scientific research but an extensive list of reputable medical and mental health professional associations have repudiated these practices precisely because they lack scientific support.
- The wide array of practices that were (and still are) employed with the aim of modifying a person's SOGIE is so vast and diverse that the term "therapy" does not accurately reflect the nature of many of the practices involved. This



is especially the case when practitioners employ brutal or heinous methods. In this sense, the use of the word "therapy" is clearly inadequate in cases during which a "patient"/victim faces humiliation, debasement, intimidation, abuse or even rape.
- The term "conversion" implies that people can actually be changed or "converted," whereas most serious medical practitioners question the efficacy of any of these attempts.

Mauritius and South Africa both ban conversion therapy. The Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIESC) Unit of the Centre for Human Rights of the Faculty of Law at the University of Pretoria in South Africa urges the adoption of the following recommendations by all countries:[38]

- Enact laws to ban coercive conversion therapies and implement policies that discourage non-coercive conversion therapies, with a particular focus on the use of conversion therapy practices on minors perceived to be sexual or gender minorities;
- Institute guidelines and policies to reinforce technology ethics in the area of conversion therapy and prohibit the coercive use of technology to alter sexual orientation;
- Investigate and prosecute incidents of coercive conversion therapies, particularly those involv-

[36] See, generally: Eli Coleman, "Changing Approaches to the Treatment of Homosexuality: A Review", American Behavioral Scientist 25, No 4 (1982); Jack Drescher, "I'm Your Handyman: A History of Reparative Therapies" in Sexual Conversion Therapy: Ethical, Clinical and Research Perspectives (New York: Haworth Medical Press, 2001); Tom Waidzunas, The Straight Line: How the Fringe Science of Ex-Gay Therapy Reoriented Sexuality (Minneapolis: University of Minnesota Press, 2015), 35-66.
[37] ILGA, 2020, Curbing_Deception,https://ilga.org/downloads/ILGA_World_Curbing_Deception_world_survey_legal_restrictions_conversion_therapy.pdf, accessed 9 October 2021.
[38] Centre for Human Rights, University of Pretoria, Current practices in conversion therapy and emerging technology, https://www.chr.up.ac.za/images/centrenews/2021/Current_practices_in_conversion_therapy_and_emerging_technology_14_May_2021.pdf, accessed 7 October 2021.

ing torture and cruel, inhumane, or degrading treatment;
- Include sexual diversity in the training curriculum of service providers across healthcare, welfare, and policing services;
- Establish a reporting process for informing the institution on human rights abuses resulting from conversion therapies;
- Establish processes to provide remedies for human rights abuses resulting from conversion therapies;
- Design and implement campaigns to promote an end to all forms of conversion therapies; and
- Liaise with community-based organisations to promote awareness on the harmful effects of conversion therapies.

Recognition of LGBTQ rights



Recognising LGBTQ human rights and enshrining them in law and policy represents an integral part of a multi-pronged process to ensure that members of the LGBTQ community enjoy the same rights and freedoms as all other citizens. These include, amongst others, the right to marriage, adopt children, and free expression.

Same sex marriages and civil unions

Only South Africa provides for same sex marriage and civil unions in its legal frameworks. All other SADC countries define marriage as a union between a woman and a man.

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

Joint adoption of children and 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 LGBTQ people from adopting children violates their rights.

Changing sex designation, name, or gender marker

The ability to change a gender marker or name represents a critical right for transgender and gender-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 ILGA suggests that, even where it is possible to change names and gender markers, the process remains inordinately difficult.

Table 8.6: Conditions under which citizens can change gender markers

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. Section 16. Material change.	Unclear, no specific reference to trans and diverse gender identities.
Botswana	National Registration Act 26 of 1986, s.16	(1) Where the registrar is of the opinion that any change in the particulars relating to a registered person materially affects his registration, he shall record the change and notify the Registrar of National Registration of the circumstances and recommend that the person concerned should be issued with a new identity card. […] (3) The particulars relating to the new identity card and its holder shall be recorded in the national register and the register of the area in which that person is registered.	At the discretion of the registrar not an unconditional right.
Malawi	National Registration Act 13 of 2010 (not trans specific).	Section 20(1) provides that where a change in particulars of a registered person materially affect his registration, the district registrar shall record the change and notify the Director of the circumstances and recommend that the person be issued with a new identity card. Section 21(1) provides that every registered person may, when he is satisfied that his appearance has changed so as to make it likely that his identity may be questioned, apply to the district registrar for the issue of a new card with a more recent photograph.	Unclear, no specific reference to trans and diverse gender identities.
Mozambique	Código do Registo Civil 2004	Section 85(1) gives the Civil Registrar general authority to make changes when there is a change of facts which alter the legal identity or status of the person registered.	Unclear, no specific reference to trans and diverse gender identities.
Namibia	Births, Marriages and Deaths Registration Act 81 of 1963; Identification Act 2 of 1996	The Secretary may on the recommendation of the Secretary of Health, alter in the birth register of any person who has undergone a change of sex, the description of the sex of such person and may for this purpose call for such medical reports and institute such investigations as he may deem necessary. The Act does not define "change of sex". Applications in terms of s.7B are done on a case-by-case basis- as long as a person can provide medical reports of their "change of sex". Once the application is granted, a trans person can apply for a new identity document and passport. Namibia does not provide gender affirming healthcare in the public health system, making the Act largely inaccessible. A transgender person who has not had a "change of sex" could use s.12(1)(a) of the Identification Act 2 of 1996. It states that "if an identity document does not reflect correctly the particulars of the person to whom it was issued, or contains a photograph which is no longer a recognizable image of that person", the person shall hand over the identity document to the Minister. Section 12(3) states that the Minister shall cancel it and replace it with an improved identity document. The majority of trans people who have made applications to update their photographs have not been successful.	Unclear, no specific reference to trans and diverse gender identities.
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 public health system.
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	Comprehensive legislation, barrier in the Home Affairs.
Not possible currently, law or policy needed in DRC, Eswatini, Lesotho, Madagascar, Mauritius, Seychelles, Tanzania, Zimbabwe			

Source: ILGA, 2017.[39]

[39] ILGA, 2017. Trans Legal Mapping Report, https://ilga.org/downloads/ILGA_Trans_Legal_Mapping_Report_2017_ENG.pdf, accessed 10 October 2021.

Table 8.6 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 transgender or gender-diverse people attempt to attain their rights under these laws.

At a practical level, the inability to change gender markers affects trans people in several ways:[40]

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



In **Botswana**, ND and Ricki Kgositau, two transgender individuals, both filed separate cases as part of a collective litigation strategy challenging the Registrar of National Registration's refusal to change the gender markers on their identity documents.[41] In the landmark judgment, handed down in 2017, the High Court affirmed transgender people's right to have the gender with which they identify reflected in their legal documentation. Importantly, in reaching their decision, the court held that the refusal to issue a transgender person with the congruent legal documentation contravenes the right to protection from discrimination, to privacy, freedom of expression and to equal treatment before the law.



In **South Africa** in 2019, Jade September, a trans woman incarcerated in a prison space designated for males, successfully challenged the Department of Correctional Services for preventing her from expressing her gender.[42] September, who wants to undergo a surgical transition, has not yet been able to access the necessary medical care to do so. The court found the prison's operating procedures - which prevent transgender inmates from expressing their gender - unconstitutional. Significantly, the judgment provided the option for September to transfer to a prison space designated for females. The judgment de-pathologises transgender and gender diverse identities by recognising that biomedical requisites to legal gender change constitute an arbitrary barrier to accessing the full protection of the law.

This judgment is in line with activism across the continent calling for change that addresses the material conditions of transgender and gender diverse people's lives. These rulings represent noteworthy examples of African judiciaries upholding Resolution 275 of the African Commission by effectively applying appropriate laws in ways that respond to the needs of transgender and gender diverse people.[43] Thus, it is critical for all SADC countries to enact and implement laws and policies to facilitate the process of changing gender markers.

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 fit the typical definitions of female or male. For example, a person might be born appearing to be female outwardly but having mostly male-typical anatomy.

[40] 'Be True 2 Me Guideline: Legal Gender Marker and Forename Change - Be True 2 Me Org', https://www.betrue2me.org/resources/be-true-2-me-guideline-legal-gender-marker-and-forename-change/, accessed 5 October 2021.
[41] ND v Attorney General of Botswana and others; Tshepo Kgositau v Attorney General of Botswana and others [2017].
[42] September v Subramoney NO and Others [2019] 4 All SA 927 (WCC) (23 September 2019).
[43] ILGA, 2017,Trans Legal Mapping Report 2017, https://ilga.org/downloads/ILGA_World_Trans_Legal_Mapping_Report_2019_EN.pdf, accessed 10 October 2021.

Alternatively, a person may be born with genitals that combine the typical male and female reproductive organs and sexual anatomy. For example, a girl may be born with a noticeably large clitoris, or lacking a vaginal opening; a boy may be born with a notably small penis, or with a divided scrotum that has formed more like labia. A person may also 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.[44]

In 2013, the third International Intersex Forum issued the Malta Declaration,[45] 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 numerous calls for change related to healthcare, legal issues, surgery, and participation.

Regional: Sex testing violates rights and ruins lives, says Human Rights Watch



Human Rights Watch has found that women athletes from the Global South, such as like Caster Semenya (pictured), experience physical and psychological damage from "sex testing" procedures. Photo courtesy of Stylist

Women track and field athletes, largely from the Global South, increasingly face abuse and harm due to "sex testing" regulations, Human Rights Watch said in a recent report. The regulations target women in running events between 400-metres and one mile, and compel women they target to undergo medical interventions if they want to remain in competition.

The 120-page report, *"They're Chasing Us Away from Sport": Human Rights Violations in Sex Testing of Elite Women Athletes*, documents the experiences of more than a dozen women athletes from the Global South who have undergone sex-testing regulations. Human Rights watch found that global regulations that encourage discrimination, surveillance, and coerced medical intervention on women athletes result in physical and psychological injury and economic hardship. The International Olympic Committee - the supreme body in global sports - is developing guidelines to address human rights violations caused by sex testing policies.

"World Athletics has targeted women from the Global South for decades, treating those with high testosterone as less than human," said Payoshni Mitra, scholar and athlete rights advocate. "These regulations demean women, make them feel inadequate, and coerce them into medical interventions for participation in sports. Modern sport should adapt itself to support inclusion and non-discrimination rather than perpetuate exclusion and discrimination."

Human Rights Watch partnered with Mitra and Katrina Karkazis to conduct research in 2019,

[44] What is intersex? | Intersex Society of North America, https://isna.org/faq/what_is_intersex/, accessed 10 October 2021.
[45] 'Malta Declaration' OII Europe, https://oiieurope.org/malta-declaration/, accessed 10 October 2021.

interviewing affected athletes, coaches, and other officials and experts relevant to this issue, as well as reviewing court and medical documents.

For decades, sport governing bodies have regulated women's participation in sport through "sex testing" regulations that target women athletes with some variations in their sex characteristics that cause their natural testosterone levels to be higher than average. The regulations deny these women the right to participate as women for running events between 400-metres and one mile, unless they submit to invasive testing and medically unnecessary procedures. These practices violate fundamental rights to privacy, health, and non-discrimination. Women from the Global South - including runners such as Dutee Chand from India and Caster Semenya from South Africa - have been disproportionately harmed.

To identify those covered by the regulations, officials subject all women athletes' bodies to public scrutiny and require those who seem "suspect" to undergo degrading and often invasive medical examinations. They amount to policing women's bodies based on arbitrary definitions of femininity and racial stereotypes. There is no scientific consensus that women with naturally higher testosterone have a performance advantage in athletics. Despite a wide range of testosterone levels among men, there have never been analogous regulations.

In addition to the human rights violations inherent in the regulations, the impact of their enforcement extends beyond sport. Success in athletics can deliver economic stability for women. From scholarships to housing and food, the benefits can come early and may lead to stable employment outside of sport. Many athletes interviewed grew up in abject poverty. Their success in athletics often became a source of livelihood for their extended families. In some cases, their abrupt departure from sport after disqualification devastated their and their families' economic well-being.

Health experts, human rights advocates, and elite athletes have increasingly spoken out against the regulations. In a 2020 report, the Office of the United Nations High Commissioner for Human Rights recommended immediately revoking sex testing regulations for women athletes. The World Medical Association has recommended that physicians around the world should not observe the regulations as they violate medical ethics.

Governments across the world have committed to gender equality and non-discrimination against women. Governments are obligated to protect the rights of athletes representing their countries and competing on their soil. Human rights standards apply to all. Policies that are inherently discriminatory - such as sex testing regulations - fly in the face of the Olympic movement's commitments to dignity and equality for all, Human Rights Watch said. Regulating fair play is a valid undertaking for sport authorities; committing human rights violations in the process is not.

Source: Human Rights Watch, December 2020.[46]

Transgender

Transgender is a term that includes the many ways that people's gender identities can be different from the sex they are assigned at birth. Transgender (or trans) people use different terms and pronouns to describe themselves. It is always best to clarify these descriptors and use the language and pronoun that a person prefers.

[46] Human Rights Watch, "They're Chasing Us Away from Sport": Human Rights Violations in Sex Testing of Elite Women Athletes (2020). Human Rights Watch. Available at: https://www.hrw.org/report/2020/12/04/theyre-chasing-us-away-sport/human-rights-violations-sex-testing-elite-women , accessed 12 October 2021.

Transgender people express their gender identities in many different ways. Some people use their dress, behaviour and mannerisms to live their lives in the way that feels right for them.

Others take hormones and may have surgery to change their body so it matches their gender identity.[47]



Lesotho: A grandmother's transformative love for her transgender grandchild

Mampolokeng Mosolo is the picture of a dignified, proud African *gogo* (granny). Dressed in her Sunday best - pressed white shirt, knee-length black pencil skirt, impeccable hair and sensible heels - Mosolo commands a soft power during the Khoelenya Community Council meeting in Mohale's Hoek, a remote area in the west of Lesotho.

As the council members discuss sexual and reproductive health and rights, Mosolo addresses her peers with the quiet assurance of someone who has been on a life-changing journey she could not have imagined for herself as a younger woman.

When Mosolo first found out that her grandchild - who was assigned female at birth and raised as a girl - identified as a boy, she thought Mpho had been sucked into a satanic cult.

"I didn't take it very well to hear that my grandchild thought of herself as a transgender boy," Mosolo says, a term she heard for the first time when Mpho broke the news of his gender identity to her.

When Mpho was 16, he would wear trousers to school as the institution's policy gave girls the option to wear dresses or slacks. "When girl students were then told to wear dresses, he refused and stopped going to school," Mosolo says.



Mampolokeng Mosolo, a member of the Khoelenya community council and the grandmother of a transgender man. Photo courtesy of UNAIDS/M. Hyöky

Mpho eventually went back to school later that year to take exams but failed his assessments. He dropped out and then went to a local vocation school to learn sewing. That did not last long either, Mosolo says, as her grandchild faced stigma and discrimination from students and teachers for being a member of the LGBTQ community.

Tampose Mothopeng, a Mosotho activist and human rights defender, says LGBTQ people in the small mountainous country often face a backlash from their families, peers and members of the broader community. "LGBTQ people face a lot of challenges daily," he says. "Rejection, limited access to healthcare services, stigma and discrimination and psychological issues. For instance, the health-

[47] What Does Transgender Mean? | Gender Identification Facts, https://www.plannedparenthood.org/learn/gender-identity/transgender, accessed 7 October 2021.



Members of the Khoelenya Community Council in Lesotho work with Phelisanang Bophelong, a community organisation that provides HIV prevention and treatment support to people living with HIV.
Photo courtesy of UNAIDS/M. Hyöky

care system is designed by the very system that rejected you. We must challenge the system until it sees us as human beings," he emphasises.

Mothopeng runs the People's Matrix Association, a community-based organisation that advocates for LGBTQ and gender-nonconforming people in Lesotho. He says it is essential to have a community driving its own mandate, otherwise organizations cannot fully understand, "the true challenges that communities are going through.

Mosolo and Mpho's relationship took a positive turn after participants at an HIV and gender-based violence workshop referred Mosolo to the People's Matrix Association. The workshop raised issues of sexual orientation and gender identity, and she wanted to know more.

"I received training from the People's Matrix Association. I then sat Mpho down and said, 'My child, I have accepted this because this is something that exists. They say that you are born with it and that you feel it in your blood,'" she says.

The People's Matrix Association works with a wide range of partners, including faith-based organizations, to conduct sensitisation workshops on LGBTQ issues and foster a culture of acceptance between the church and LGBTQ people.

The Khoelenya Community Council works in partnership with Phelisanang Bophelong (PB), a community-based organisation that provides HIV prevention and treatment support to people living with HIV. PB, with the support of the Joint United Nations Programme on HIV/AIDS (UNAIDS), supports the council to run HIV, sexual and reproductive health and rights and gender-based violence sensitisation dialogues with the local community.

Through this forum, Mosolo met many LGBTQ people and, through this experience, came to understand Mpho better.

Mpho is now 23 and working in Cape Town, South Africa. Mosolo hopes he will return home to Lesotho one day. She says she would like to build him and his future wife a home on her land. "I would rest knowing Mpho has a place to call his own," she says.

Mosolo's journey has brought her a great deal of acceptance, a quality she promotes to her peers on the council and to people in her community. She too has become a human rights defender.

"As people we need to accept and embrace that this is here. I have seen with my own eyes that some men fall in love with men. We need to embrace it for children to progress with their lives," she says.

Source: UNAIDS, May 2021.[48]

[48] A grandmother's transformative love for her transgender grandchild, https://www.unaids.org/en/resources/presscentre/featurestories/2021/may/20210520_lesotho, accessed 20 July 2021.

LGBTQ sexual and reproductive health and rights

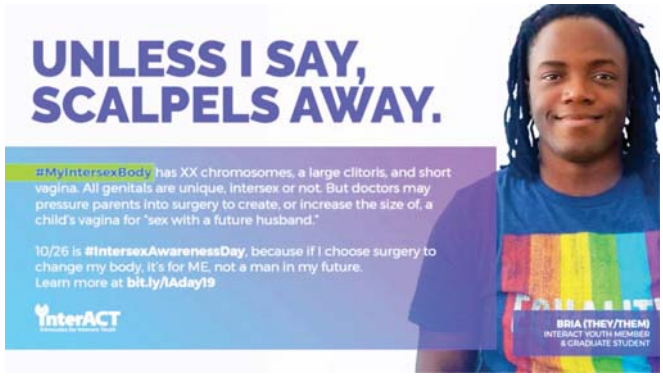
Emergency restrictions due to the COVID-19 pandemic have included limitations to freedom of movement. Access to health services is often one of the exceptional instances in which lawmakers relax these restrictions. However, some countries have required that citizens provide documentation to law enforcement agents that proves their destination before they can access health services, a situation that can lead to invasion of privacy.

Access to equitable health care is a critical concern for LGBTI people during and post-COVID-19

Enforcement agents and lawmakers in contexts with laws criminalising consensual same-sex conduct may not recognise organisations providing health services for LGBTQ people as essential services, forcing many of these providers to close during regional lockdowns. Similarly, law enforcement agents may victimise or harass their clients when they attempt to access health services. The high prevalence of HIV infections in LGBTQ persons in Africa compounds the potential for disproportionate impact to the community. This is especially worrisome because the World Health Organisation has indicated that individuals with underlying conditions and compromised immune systems are more vulnerable to COVID-19.[49]

"Among the many severe impacts of the COVID-19 pandemic is the increased vulnerability of LGBTI people," UN Secretary-General António Guterres acknowledged in a statement in May 2020. "Already facing bias, attacks, and murder simply for who they are or whom they love, many LGBTI people are experiencing heightened stigma as a result of the virus, as well as new obstacles when seeking healthcare."[50]

Access to equitable health care is a critical concern during and post-COVID-19. All SADC states need to put the requisite health care systems and services in place for LGBTQ communities.



[49] Centre for Human Rights , Understanding the disproportionate Impact of Covid-19 on LGBTIQ+persons in Africa, https://www.chr.up.ac.za/images/researchunits/sogie/documents/sogiesc_covid19_pamphlet_.pdf , accessed 8 October 2021.
[50] Guterres, A (2020). May 17 Is International Day Against Homophobia, Transphobia, Biphobia, https://www.voanews.com/a/usa_may-17-international-day-against-homophobia-transphobia-biphobia/6189421.html, accessed 3 October 2020.

Regional: Survey finds that COVID-19 has increased vulnerability of LGBTQ people



The COVID-19 pandemic has made life more difficult for LGBTQ people, according to a new study.
Photo courtesy of The New Humanitarian

The opening session of the 2020 International AIDS Conference shared the findings of a rapid online survey demonstrating the increased socioeconomic vulnerability of LGBTQ people due to COVID-19.

UNAIDS, the LGBTQ Foundation and researchers from the Johns Hopkins Bloomberg School of Public Health and other universities around the globe convened a COVID-19 disparities working group. It surveyed more than 20 000 LGBTQ people in 138 countries in April and May 2020 and found that three quarters (74%) were fully or partially locked down, leading to economic consequences for many.

About 13% of survey participants had already lost their jobs in the wake of the pandemic and a fifth (21%) expected to lose it in the near future. Nearly half the survey participants (47%) faced economic difficulty, with a quarter unable to meet their basic needs, skipping meals or reducing meal sizes.

Of concern, 21% of participants living with HIV reported that they had experienced "interrupted or restricted access" to refills of antiretroviral therapy and 42% of those said they had less than a month's supply on hand.

The survey also found worrisome disruptions for pre-exposure prophylaxis and access to HIV testing. The study also highlighted that racial and ethnic minorities consistently have lower access to HIV services.

Erik Lamontagne, senior economist at UNAIDS and one of the members of the working group, reported at the conference that the crisis had pushed 1% of respondents to start engaging in sex work and that 2% had to continue to sell sex during the COVID-19 pandemic, risking exposure to the coronavirus. The pandemic reduced the ability to negotiate safer sex for 13% of respondents, potentially increasing their risk of acquiring HIV. Respondents also reported reduced access to safe injecting equipment and opioid substitution therapy.

"What worries us is that socioeconomic factors, such as limited access to health care, lower income, unemployment and food insecurity, combined with higher anxiety and depression rates, may place some at higher risk of contracting HIV and affect treatment adherence among people living with HIV," said Lamontagne.

The study shows that COVID-19 increases the vulnerability of groups that already face disproportionately high rates of HIV. Solutions and targeted programmes are required from the global community and governments to sustain prevention, testing and treatment services and to help the LGBTQ community to survive and emerge safely from the crisis.

Source: UNAIDS, July 2020.[51]

Universal Health Care (UHC) is goal 3.8 in the SDGs. The vulnerability of key populations such as the LGBTQ community 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.

[51] Survey shows that the COVID-19 pandemic increases vulnerability of LGBTI people, https://www.unaids.org/en/resources/presscentre/featurestories/2020/july/20200710_survey-covid19-lgbti-people, accessed 12 October 2021.



Malawi: LGBTQ community engaged in battle over healthcare

Eighteen-year-old Precious (not his real name but a pseudonym chosen to protect his identity) has never faced a reporter before, but he is anxious to tell his story nonetheless.

Dressed in a red checked shirt and a pair of camouflage shorts, sporting his signature Mohawk hairdo, he sits in the office of the minority rights group Centre for Development for People (CEDEP) in Lilongwe.

"I realised I was gay at the age of 14 while in secondary school," he said. "My family knows I am different, but no one has ever approached me to find out about my sexual orientation, though I suspect some members of my community know I am gay as I have received some death threats because people think I am evil.

"I had a sexual health issue that required medical attention. I was disappointed with the way the nurse at the health facility handled the situation. After the routine diagnosis, she asked me if I was homosexual. I said 'yes' because I wanted help. She told me that I was evil and my future was doomed because God does not allow that," he said.

The nurse's harassment did not end there.

"She then called her colleagues to come and see me. They took turns pouring insults on me. One of them openly said I did not deserve medical attention. Instead, I should be arrested for indulging in homosexuality, which is an offence. I was totally upset and I left the clinic for a drug store so I could treat myself," he added.

Precious's case is not an isolated one. Many LGBTQ Malawians have had similar experiences when seeking healthcare at public and private facilities in the country.



Malawian LGBTQ activists take part in a protest advocating for their health rights in 2017 in Lilongwe. Photo courtesy of Rodger Bosch/AFP/ Getty Images

CEDEP is campaigning for an end to this discrimination and hostility. Maria Ngulube runs Linkages, a project through which CEDEP and other organisations endeavour to ensure that everyone, including the LGBTQ community, has equal access to healthcare.

"We have had cases of the community complaining of maltreatment at the health centres and clinics, so the project decided to engage the health workers themselves," said Ngulube.

CEDEP and its partners have trained more than 50 health workers in Malawi since the programme started in April 2016. The programme, which Ngulube plans to expand, offers guidance in how to address the specific health needs of sexual minorities.

Ngulube says the religious beliefs and affiliations of health workers and the institutions often contribute to LGBTQ discrimination. Apart from turning to the few public hospitals in the country, much of Malawi's LGBTQ population accesses health care at church-owned facilities operated by the Christian Health Association of Malawi.

Fatsani Kalino is a health worker at Bwaila Referral Hospital, a public facility in Lilongwe, where she works in HIV testing and counselling

[47] What Does Transgender Mean? | Gender Identification Facts, https://www.plannedparenthood.org/learn/gender-identity/transgender, accessed 7 October 2021.

within the sexual transmitted infections (STI) department. She described the pervasive stigma that surrounded the treatment of sexual and gender minorities before CEDEP began its training programme.

"Sometimes we were regarded as LGBTQ health workers. If colleagues learned that we treated an LGBTQ member, they said it means we are promoting sin," Kalino said.

Health workers shunned members of the LGBT community for that very reason. On average, she said she treats between 40 and 80 LGBTQ people each month. "The CEDEP training has helped us to treat clients without stigma and accept them as anyone else, but I wish the society accepted them so that they may be using the social services freely," she added.

Source: Mirriam Kaliza for DW, 2017.[52]

LGBTQ organisations

The ability to organise and operate freely represents a vital right for LGBTQ organisations advocating for change. As well as organising events and promoting LGBTQ rights, these groups often provide safe spaces and shelter for LGBTQ youth to talk about their sexuality or gender identity. In countries where registration of an LGBTQ organisation remains impossible, LGBTQ activists often register using generic umbrella names, such as those used by women's groups or human rights groups. Inability to formally register and operate freely also impedes fundraising. LGBTQ groups can only legally register in nine SADC countries, with seven others (Comoros, DRC, Eswatini, Madagascar, Malawi, Tanzania and Zambia) outlawing it.[53]



In the **DRC**, Article 3 of Decree-Law No. 4 (2001) requires civil society organisations seeking registration to undergo a two-tiered process, with legal personality granted by the minister of justice after the ministry responsible submits a favourable opinion for the sector in which the organisation hopes to engage. According to a joint submission by six LGBTQ NGOs to the 2017 Universal Periodic Review (UPR), DRC legislators have denied most organisations registration when they make reference to LGBTQ people in their constitutions.[54]



In **Tanzania**, a vast body of laws and regulations set the regime for NGOs, many of which pose legal barriers to the registration and operation of organisations working on sexual and gender diversity issues. For instance, various provisions within Chapter 337 of the Societies Act (2002) allow the Tanzanian Registrar to reject, deregister, or outlaw any organisation with "any purpose prejudicial to, or incompatible with, the maintenance of peace, order and good government." Additionally, Section 14(1) of the Non-Governmental Organisations Act (2002) states that the NGO Coordination Board may refuse the registration of NGOs whose activities are "not for public interest or are contrary to any written law."[55] In 2019, lawmakers replaced the expression "order and good government" included in the Societies Act with "order, morality and good governance," as per Article 34(b) of the Written Laws (Miscellaneous Amendments) (No.3) Act (2019). This explicit reference to "morality" increases even more the already sizeable legal barriers to the registration of

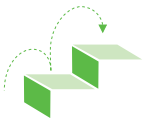
[52] Malawi's LGBT battle for health care, DW, https://www.dw.com/en/malawis-lgbt-battle-for-health-care/a-37280415, accessed 11 October 2021.
[53] Canaries in the Coal mine, 2017, http://theotherfoundation.org/canaries-in-the-coal-mines/, accessed 1 July 2020.
[54] MOPREDS et al., Human Rights Violations Against LGBT People in the Democratic Republic of the Congo (DRC) (2017), 16.
[55] In addition to the laws mentioned in this entry, also see: The National Policy on Non-Governmental Organizations (2001), the NGO Regulations (2004), and the NGO Regulations Amendment Act (2019).
[56] For a comprehensive overview of the numerous thus-related laws currently in force, see Tanzania's entry within the Criminalisation section of the State-Sponsored Homophobia report's thirteenth edition, pp. 373-377.

organisations working on sexual and gender diversity issues, especially because Tanzania lawmakers actively enforce provisions that criminalise consensual same-sex sexual acts.[56]



Zambia's Section 8 of the Societies Act (1958) empowers the Registrar of Societies to refuse to register any society that is prejudicial to, or incompatible with, the peace, welfare or good order in Zambia. In 1998, the Registrar of Societies refused to work with activists who tried to register their group, Lesbians Gays and Transgender Association (LEGATRA), and said that the group could not register the group "any more than I could a satanic organisation."[57] While Zambia has several LGBTQ human rights organisations, they operate underground and strategically negotiate the dangerous legal landscape. In 2016, several UN Special Procedures[58] expressed concern regarding undue delays, the subsequent refusal to register and arrests of civil society and defenders in the registration of the Engender Rights Centre for Justice on grounds of "soliciting for immoral purposes."[59] In October 2019, a Zambian MP raised a motion seeking to ban political parties and organisations that support LGBTQ rights in Zambia. The motion eventually expired.[60]

LGBTQ groups can only legally register in nine SADC countries



Next steps

The lack of recognition of LGBTQ rights represents a fundamental violation of human rights and requires urgent action in all SADC countries. Key recommendations are:

- Ensure that all SADC countries have specific constitutional protections that protect the rights of LGBTQ communities; decriminalise same-sex consensual sexual acts; and recognise the rights of individuals of all sexual orientations, gender identities and expressions.
- Review Penal Codes to remove any clauses that criminalise same-sex consensual sexual acts.
- Advocate for public policy and legislation that criminalises hate crimes; discrimination in the work place based on sexual orientation, gender identity and expression; conversion therapy; and discrimination in all forms.
- Lobby for the legalisation of same sex marriages and the right of same sex couples to adopt children.
- Enshrine in law the ability for sex, gender identity and name changes for people who have transitioned from one sex to another or want to change their gender marker.
- Remove legal barriers to the registration or operation of civil society organisations working on LGBTQ issues.
- Ensure that all measures adopted to mitigate the effects of COVID-19, including socio-economic support, address and respond to the specific vulnerabilities in the LGBTQ community.

[57] Scott Long et al, More Than a Name: State-Sponsored Homophobia in Southern Africa (Human Rights Watch, 2003), 46.
[58] Lily Phiri, Canaries in the Coal Mines: An Analysis of Spaces for LGBTI Activism in Zambia (The Other Foundation, 2017), 18.
[59] The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.
[60] For more information, see ZMB 4/2015.

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