Sexual diversity

8



Protesters rally outside South Africa's Parliament in solidarity with LGBTIQ victims and survivors of violence during the End Queer and Trans Hate Campaign in Cape Town in April 2021.
Photo: Gallo Images/Brenton Geach

KEY POINTS

- Botswana recently joined four Southern African countries (Angola, Mozambique, Seychelles, and South Africa) and decriminalised same-sex relationships.
- Courts rejected challenges to allow for the registration of LGBTIQ organisations in Eswatini and same sex marriages in Namibia.
- There is growing evidence that diversity and inclusivity increase productivity and business performance.
- Activists continue their push to include affirmative action for LGBTIQ persons in economic policies and legislation.
- As the pandemic wanes, governments should revisit their health responses and redesign them according to the ASPIRE principles: acknowledge, support, protect, prevent indirect discrimination, ensure representation and be evidence based.
- Religious and cultural fundamentalism continues to fuel violence and discrimination against LGBTIQ persons.
- There is a need for discussions and strategies to address the growing prevalence of conversion therapy across the region.
- Increased intersections between LGBTIQ, feminist and youth movements help strengthen each of them and create more sustainable impact through joint initiatives.

Introduction

The *Equality Index*, produced by EqualDex in 2022, shows that most Southern African countries lag behind other parts of the world on equality for the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community. *Equaldex*, a collaborative knowledge base for the LGBTIQ movement, aims to crowdsource every law related to LGBTIQ rights to provide a comprehensive and global view of the LGBTIQ rights movement.

The *Equality Index* uses a ranking from zero to 100 (with 100 being the most equal) to help visualise the legal rights and public attitudes towards LGBTIQ people in different countries. It represents an average of two measurements: the legal index and the public opinion index.



Equality is a fundamental human right. Photo: Centre for Human Rights, Faculty of Law, University of Pretoria

The LGBTIQ legal index measures the current legal status of 13 different issues and the public opinion index measures attitudes towards LGBTIQ people using surveys and polls. Note that public opinion data is not available in every country. In these cases, the Equality Index represents only the legal rights of LGBTIQ people in the country.

Table 8.1: Equality Index for Southern Africa[1]

COUNTRY	EQUALITY INDEX	LEGAL INDEX	PUBLIC OPINION INDEX
South Africa	78	97	59
Seychelles	68	68	-
Angola	63	79	47
Mozambique	62	69	56
Mauritius	62	71	52
Namibia	58	62	55
Botswana	56	75	37
Democratic Republic of the Congo	52	52	-
Lesotho	44	68	19
Madagascar	38	65	11
Eswatini	33	44	22
Zimbabwe	29	50	8
Malawi	22	39	5
Zambia	22	37	7
Comoros	21	21	-
Tanzania	20	26	13

Source: Equality Index, 2022.

[1] https://www.equaldex.com/, accessed 9 September 2022.

Table 8.1 ranks countries from highest to lowest on the Equality Index, illustrating that LGBTIQ persons do not enjoy equality in SADC. Rankings range from a high of 78% in South Africa to 20% in Tanzania. Eight countries score less than 50% and only one is more than 70%. Notably, legal scores rank higher than - or equal to - public opinion scores in all countries where both exist. South Africa scores highest at 97% in the legal index as well as the public opinion index at 59%, with a gap of 38 percentage points between the two indicators. This shows that public opinion needs to catch up with legal provisions. Eswatini, Lesotho, Madagascar, Malawi, Tanzania and Zimbabwe score less than 20% on the public opinion index.

These findings and others in this chapter point to the need for vigorous advocacy and lobbying for policy and legislative changes accompanied by public education and awareness on LGBTIQ rights.



Tanzania: Government continues its crackdown on LGBTIQ people

People who distribute materials related to same-sex partnerships on social media will face the music, the government of Tanzania warned in September 2022.

The Minister of Information, Communication and Information Technology called upon administrators of social networking platforms like WhatsApp to take immediate action or face consequences.

Homosexual acts remain illegal in Tanzania and those found guilty of the offence face a jail term of up to 30 years.



Nape Nnauye, Tanzania's minister for information, communications and information technology. Photo: The Citizen

Recent crackdowns on LGBTIQ people and groups have sparked a pushback from human rights groups and other governments.

"It is extremely regrettable that Tanzania has chosen to take such a dangerous path in its handling of an already marginalised group of people," said Joan Nyanyuki, Amnesty International's regional director for East Africa, the Horn and the Great Lakes.[2]

Nnauye said some internet users have been republishing same-sex materials online. He cited numerous instances of information shared on social media that included movies with same-sex relationships, which he claimed sparked controversy in the community.

He said it is the responsibility of everyone to protect children from inappropriate content, especially on social networks. Further, Nnauye warned that the government would go after all content, even when users share it to raise awareness in support of LGBTIQ rights.

Source: Muyonga Jumanne, The Citizen, 12 September 2022.

[2] Tanzania: 'Dangerous' plans for homophobic taskforce must be abandoned immediately, https://www.amnesty.ca/news/tanzania-dangerous-plans-for-homophobic-taskforce-must-be-abandoned-immediately/, accessed 24 September 2022.

Table 8.2: Sexual diversity baseline indicators in 2022[3]

INDICATORS	Angola	Botswana	Comoros	DRC	Eswatini	Lesotho	Madagascar	Malawi
Criminalisation of same sex consensual acts								
Consensual same-sex acts decriminalised	Yes	Yes	No	Never criminalised	No	Never criminalised	Yes, for those over 21	No
Gender/s			Male only		All genders		All genders	All genders
Years in prison/other			Up to five or a fine		Undeter-mined			14
Protection								
Protection against discrimination								
Specific constitutional provisions	No	No	No	No	No	No	No	No
Broad protections	Yes	No	No	No	No	No	No	No
Employment	Yes	Yes	No	No	No	No	No	No
Criminalisation of violence/discrimination against LGBTI communities								
Hate crimes/ aggra-vated circumstances	Yes	No	No	No	No	No	No	No
Incitement to hatred/ violence	Yes	No	No	No	No	No	No	No
Ban on conversion therapy								
CT banned	No	No	No	No	No	No	No	No
Recognition of LGBTI+ rights								
Same sex marriages	No	No	No	No	No	No	No	No
Civil unions	No	No	No	No	No	No	No	No
Joint adoption of children	No	No	No	No	No	No	No	No
Second parent adoption of children	No	No	No	No	No	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
Name change	Nominally possible	Possible	Not possible	Possible	Possible	Possible	Possible	Nominally possible
LGBTI+ organisations								
Able to register	Yes	Yes	No	No	No	Yes	No	No
Able to operate freely	Yes	Yes	No	No	No	Yes	No	No

[3] https://www.equaldex.com, Accessed August 2022.

INDICATORS	Mauritius	Mozambique	Namibia	Seychelles	South Africa	Tanzania	Zambia	Zimbabwe
Criminalisation of same sex consensual acts								
Consensual same-sex acts decriminalised	No	Yes	No	Yes	Yes	No		No
Gender/s	Male only		Male only			All genders		Male only
Years in prison/other	Five		Undeter-mined			Life		One
Protection								
Protection against discrimination								
Specific constitutional provisions	No	No	No	No	Yes	No		No
Broad protections	No	No	No	No	Yes	No		No
Employment	Yes	Yes	No	Yes	Yes	No		No
Criminalisation of violence/discrimination against LGBTI communities								
Hate crimes/ aggra-vated circumstances	No	No	No	No	No	No		No
Incitement to hatred/ violence	No	No	No	No	No	No		No
Ban on conversion therapy								
CT banned	Yes	No	No	No	Yes	No		No
Recognition of LGBTI+ rights								
Same sex marriages	No	No	No	No	Yes	No		No
Civil unions	No	No	No	No	Yes	No		No
Joint adoption of children	No	No	No	No	Yes	No		No
Second parent adoption of children	No	No	No	No	Yes	No		No
Changing identity								
Changing sex/ gender markers	Possible	Nominally possible	Possible	Not possible	Possible	Not possible		Not possible
Name change	Possible	Nominally possible	Possible	Possible	Possible	Not possible		Possible
LGBTI+ organisations								
Able to register	Yes	Yes	Yes	Yes	Yes	No		Yes
Able to operate freely	Yes	No	Yes	Yes	Yes	No		No

Table 8.2 shows that:

- Five out of 16 SADC countries have decriminalised same-sex consensual acts: Angola, Botswana, 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 LGBTIQ people.
- Six countries (Angola, Botswana, Mauritius, Mozambique, Seychelles and South Africa) have employment protections for LGBTIQ people.
- Only Angola criminalises hate crimes and incitement to violence against LGBTIQ 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).[4]
- Some countries, like Mauritius, have contradictory legislation, criminalising homosexual sex acts yet protecting LGBTIQ people from discrimination in the workplace and banning conversion therapy.
- Only South Africa recognises same sex unions, civil unions, joint adoption of children and second parent adoption of children.
- Four countries explicitly allow people to change sex and/or gender markers[5] and their names (Mauritius, Namibia, South Africa, and Zambia), while four others nominally allow these changes (Angola, Botswana, Malawi and Mozambique).
- LGBTIQ 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.

Sections on global, continental, and national legislative frameworks align with last year's Barometer with one significant change. In Botswana, the High Court rejected the government's appeal to overturn its judgement that decriminalised homosexuality. Despite the government's initial opposition to the decriminalisation of homosexuality, the president of Botswana has now committed to promote LGBTIQ rights.

In Botswana, the High Court rejected the government's appeal to overturn its judgement that decriminalised homosexuality

[4] https://en.wikipedia.org/wiki/Conversion_therapy, accessed 15 July 2019.
[5] When state and government agencies change the gender identifier, sex marker, sex identifier on official documents such as a birth certificate or driver's license.



Botswana: After a rejected appeal, government vows to honour LGBTIQ rights[6]

Botswana's president vowed to implement a High Court ruling decriminalising homosexuality after losing an appeal to overturn the ruling in November 2021.

President Mokgweetsi Masisi attempted to assure the country's LGBTIQ community that he would respect the court's decision and protect their rights.

"We ask and expect everyone to respect the decisions of our court," he said during a meeting with members of the Lesbians, Gays and Bisexuals of Botswana (LEGABIBO).



LGBTIQ activists gather outside the Botswana High Court following its decision to reject a government appeal in early 2022. Credit: Monirul Bhuiyan

He assured them that political concerns and not animosity towards the LGBTIQ community motivated his appeal to the court, which it rejected in November 2021, recalling, "We live in a rather conservative society."

The president's invitation to members of the LGBTIQ community marks a major turning point in Botswana. Five years ago, the LEGABIBO group went to court to circumvent a government ban on its existence. In 2019, the court in Botswana's capital, Gaborone, ordered the government to amend laws punishing same-sex relationships, calling them "relics of the Victorian era" that "oppress a minority."

The government appealed the decision in October 2021, arguing that Parliament should decide on this "political issue," not the courts. Botswana's LGBTIQ citizens have lived in "constant fear of being discovered or arrested," Justice Ian Kirby said in November. "This has sometimes led to depression, suicidal behaviour, alcoholism or drug abuse."

Source: Rédaction Africanews with AFP, 25 January 2022.

The impact of COVID-19

A new report by Pan Africa International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-PAI) on the resilience of the LGBTIQ community during the COVID-19 pandemic underscores the need for investment in strengthening LGBTIQ organisations.[7]

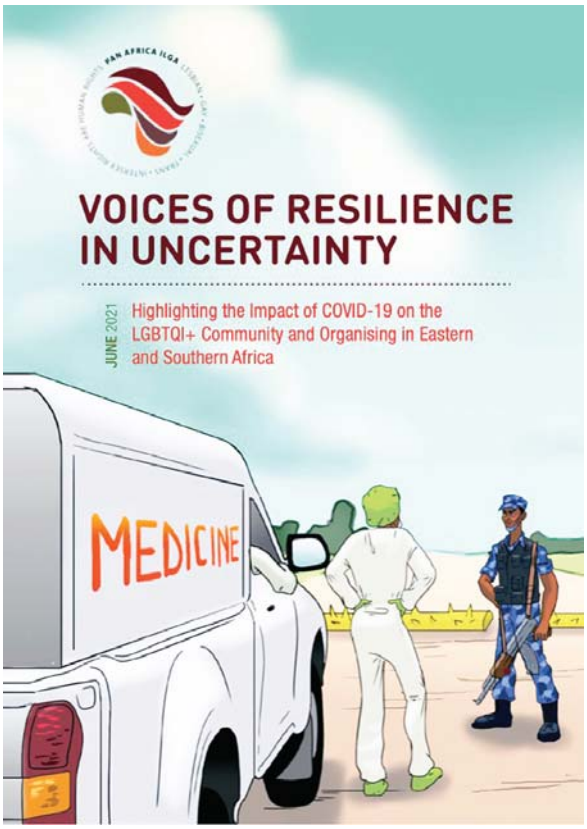
The report, titled *Voices of Resilience in Uncertainty*, highlighted the impact of COVID-19 on the LGBTIQ communities and their organisations in Botswana, Eswatini, Namibia, Malawi, South Africa, Tanzania, Zambia and Zimbabwe as well as in the East African nations of Burundi, Ethiopia, Kenya, Rwanda and Uganda.

The report covers the period from mid-March 2020 (the intensive phase of most countries' public health response) to April 2021, when

[6] https://www.africanews.com/2022/01/25/botswana-president-vows-to-honour-gay-rights-judgment//

[7] https://76crimes.com/2021/10/22/report-covid-19-threatens-lgbtiq-africans-and-their-organisations/, accessed 10 September 2022.

researchers surveyed communities. It notes that LGBTIQ communities experienced some of the worst economic impacts of COVID-19 lockdowns, including loss of income and lack of basic treatments for themselves and their household members.



Researchers also found that many LGBTIQ organisations struggled to adapt their operations to the new normal and had to adopt trial-and-error strategies. At first, the organisations adjusted reasonably well to lockdowns but, as months progressed, most of them encountered problems, the report said.

"For example, shelters that remained operational during the lockdown period lacked specific guidelines on response to instances where residents test positive for COVID-19 or require testing incoming residents," the report stated.

The report called for the following priority actions:

- Access to government relief;
- Increased access to primary health, HIV and AIDS, sexual and reproductive health and rights (SRHR), mental health services, and to shelter services;
- Bridging the digital divide and access to information;
- Providing free legal aid;
- Creating a just economic landscape for LGBTIQ persons;
- Engagement with local authorities on the lack of services for LGBTIQ communities;
- Strengthening LGBTIQ organisations' institutional capacity; and
- Public awareness and education to reduce stigma and discrimination.



Mauritius: Young Queer Alliance used "e-outreach" to reach beneficiaries during COVID-19 lockdowns

Due to the COVID-19 pandemic, the Young Queer Alliance (YQA) organisation in Mauritius faced challenges in conducting its normal activities, such as the distribution of condoms and gels, HIV testing, street advocacy, space safe activities (hiking, film viewing, and workshops), and counselling.

COVID-19 also significantly affected the core funding for the non-governmental, youth-led and apolitical organisation that seeks to empower individuals and organisations and promote equality for LGBTIQ people.

Restrictions imposed by the government also limited its mobility and its work with beneficiaries across the country. Thus, the organisation came up with a new strategy of "e-outreaching" its recipients. This strategy includes contacting beneficiaries through social media platforms (Facebook and WhatsApp), telephone and email to provide online

counselling, sharing of information on HIV and AIDS, and facilitating online activities to ensure continuity of its services.

To respond to these unique challenges, YQA developed a COVID-19 guide for LGBTIQ people in Mauritius, which includes HIV-related precautions to take during COVID-19. This toolkit is the first of its kind in Mauritius and YQA turned it into an animated video.

YQA also conducted an online survey during the pandemic, which showed the challenges faced by LGBTIQ Mauritians due to COVID-19. These mainly include violence and stigma in family settings leading to heightened levels of anxiety and mental health issues.

Using its strategic plan as a baseline, the YQA intends to develop a comprehensive social support package for LGBTIQ people.

Source: Young Queer Alliance in Mauritius Pride Profile, NDI, accessed 12 September 2022.

Legal and policy frameworks

This section covers the global, continental and regional instruments that promote the rights of LGBTIQ 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 LGBTIQ rights. As such, the Sustainable Development Goals (SDGs) do not include any specific references to LGBTIQ people or issues. Nevertheless, to ensure that the global development agenda does not leave LGBTIQ communities behind, the United Nations Development Programme (UNDP) developed the lesbian, gay, bisexual, transgender and intersex (LGBTI) Inclusion Index to inform evidence-based development strategies to advance their inclusion. Following extensive multi-sectoral and civil society consultations, the five priority dimensions for measurement in the Inclusion Index comprise political and civic participation, economic well-being, personal security and violence, health, and education.[8]

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.[9] 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.[10]

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

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

Table 8.3: Overview of key UN instruments and SADC commitments[11]

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

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

1. None means a state has not committed to the instrument, indicated with an "N."
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: DRC, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Namibia, Seychelles, South Africa, and Zambia. Botswana, Tanzania and Zimbabwe have not signed the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Angola has not ratified the CAT and 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.

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

Table 8.4: UN thematic reports with good or strong LGBTQ references in 2020[12]

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 LGBTIQ and sexual orientation and gender identity (SOGI): cultural rights include LGBTIQ 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 LGBTIQ, sexual minorities (suppression of LGBTIQ 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 LGBTIQ (women with multiple and intersecting forms of marginalisation, police violence and restrictions on overseas funding)
Special Rapporteur on Freedom 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	Freedom of religion or belief and gender equality: August 2020 (43th Session HRC) COVID-19 and the right to adequate housing: July 2020 (75th Session GA)	Very strong reference to SOGI-based violence and discrimination in the name of religion or belief Strong references to LGB, transgender and gender-diverse persons and SOGI. (A separate section on LGBTIQ 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 LGBTIQ 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 LGBTIQ and SOGI (example from Thailand; recommendation to pay attention to the situation of Indigenous LGBTIQ persons; call to collect and analyse data on indigenous LGBTIQ 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 sexual orientation, gender identity and expression, and sex characteristics (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

[12] https://ilga.org/lgbti-rights-special-procedures-UN-experts-push-for-better-protection

Mandate	Report topic	References
		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 LGBTIQ 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 of stigma and discrimination; and analyses measures adopted in the context of the pandemic aimed at persecuting LGBTIQ 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 LGBTIQ 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 LGBTIQ people, LBTI women, LT journalists and LGBTIQ issues (in the context of attacks, abuses and harassment experienced by journalists, and retaliation for covering certain issues)

Table 8.4 illustrates that most thematic reports submitted to the UN Human Rights Council and General Assembly contain information on LGBTIQ communities. In 2020, 39 reports (more than 50% of all thematic reports) mentioned some LGBTIQ-related topics, with 12 of these reports - as shown in Table 8.4 - including good or strong references to LGBTIQ populations.

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

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Conversion therapies cause “unimaginable suffering,” says UN expert

Young LGBT people drop out of school three times more than non-LGBT people and trans people contract HIV 47 times more than gay men and 76 times more than the general population, according to a UN expert.

The reason for these gigantic discrepancies, says Victor Madrigal-Borloz, the UN independent expert on protection against violence and discrimination based on sexual orientation and gender identity, “is that too often a trans person who is ill will not seek health services for fear of being ridiculed and will not receive the care they really need.”

In his unique role, Madrigal-Borloz advocates for a world free of the criminalisation of gender orientation and gender identity, including the elimination of conversion therapies.

He notes that countries that criminalise different sexual orientations or gender identities often encourage the use of "conversion therapies," which aim to change a person's sexual orientation or gender identity on the false premise that LGBT and gender variant people are sick.

According to a report by Madrigal-Borloz to the UN Human Rights Council, at least 68 countries practice conversion therapies. This includes an estimated 700 000 lesbians, gay, trans, or gender variant people in the United States and 14 000 in Switzerland.

Conversion therapies cause profound physical and psychological trauma to people of all ages, he says. UN mechanisms against torture have called these practices tantamount to acts of torture or cruel, inhuman or degrading treatment.

The independent expert makes observations and advises states on corrective measures. In light of the suffering caused by conversion therapy, Madrigal-Borloz explicitly recommends that member states prohibit these practices, repealing laws that permit them as well as those that criminalise diversity of sexual orientation and gender identity.



Victor Madrigal-Borloz is the UN's independent expert on protection against violence and discrimination based on sexual orientation and gender identity.
Photo: UN Photo/Jean-Marc Ferré

For example, Ghana lawmakers are considering a law that would punish anyone suspected of being LGBTIQ with five years in prison and conversion therapy. Along with nine other human rights experts, Madrigal-Borloz wrote to Ghana's head of state to note that the law constituted "a fundamental departure from the State's international obligations" and to give him “examples of the pernicious effects the law would have on people living in Ghana - including the unimaginable suffering that conversion therapy would cause.”

Source: UN News, accessed 12 September 2022.

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 women, regardless of their sexual orientation or gender identity.[13]

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 based on their real or imputed Sexual Orientation or Gender Identity. It provides clarity on the import of the clauses in the African Charter for LGBTIQ 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 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.[14]

The first clause in resolution 275 commits member states to allowing LGBTIQ 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 LGBTIQ 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 LGBTIQ people from violence and discrimination. Other countries should urgently adopt similar legislation.

Progress and setbacks on LGBTIQ rights in Africa: An overview of the last year

June 2022 marked the anniversary of the 1969 Stonewall riots over the treatment of LGBTIQ people by New York City police, which activists commemorated a year later with a protest march. Pride marches and parades are now ubiquitous in many countries.

Pride month is a time to reflect on progress but also ongoing challenges in advancing the rights of LGBTIQ people.

Many countries in Africa have poor reputations when it comes to LGBTIQ rights. The anthro-

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

pologist Zethu Matebeni has parodied this uniformly gloomy view in a piece entitled "*How Not to Write About Queer South Africa.*" But the same volume also highlights the ways in which "African political, religious and traditional leaders" marginalise sexual and gender minorities.

When it comes to the rights of sexual and gender minorities in Africa, the past year has been a mixed bag.

South Africa, notwithstanding strong legal protections, continues to battle violence directed against LGBTIQ people. In 2021, at least 24 people were reportedly murdered in bias-motivated attacks. The Ministry of Justice is revising its policy and approach to combating systemic gender-based violence in the country.

Of the 69 countries that criminalise same-sex relations, 33 are in Africa. In most cases, these laws represent remnants of colonial rule, and the vague wording of these prohibitions, such as "carnal knowledge against the order of nature" resonates with the decorum of that era. Although the examples are few, there has been some progress over the last year on the protection of LGBTIQ rights in Africa.

In November, the Botswana Court of Appeal upheld a lower court decision to decriminalise consensual same-sex conduct. The court found that the Penal Code provisions outlawing "carnal knowledge of any person against the order of nature" were unconstitutional as they violate the right to privacy, the right to liberty, security of person, and equal protection under the law, and the right to freedom from discrimination. Judges on the Botswana high court said that these archaic laws belong "in the museum or the archives."

In Mauritius, three cases are challenging the constitutionality of a law that punishes consensual same-sex conduct with up to five years in prison.



Pride participants in Eswatini call for stronger rights and protections for LGBTQ organisations.
Photo: Africa Revisita

At the same time, Mauritius' Equal Opportunities Act 2008 protects against discrimination based on sexual orientation, including in employment, education, and accommodation.

Freedoms of expression and association have also been tested during the past year. Despite decriminalising same-sex relationships in 2015, Mozambique has still not allowed a prominent LGBTIQ rights group, Mozambique Association for Sexual Minority Rights (LAMBDA), to officially register as a non-governmental group. In neighbouring Eswatini, the high court asserted that LGBTIQ people, like anyone else, had rights to freedom of association and expression, but nevertheless upheld a decision to deny the registration request of Eswatini Sexual and Gender Minorities, a local LGBTIQ rights group.

Within the African regional human rights system, the African Union used the pretext of objecting to the observer status granted to the Coalition of African Lesbians to limit the autonomy of the African Commission, berating the body for acting contrary to African values by recognising the lesbian group.

Source: Graeme Reid, Director, Lesbian, Gay, Bisexual, and Transgender Rights Program, Daily Maverick, 22 June 2022.

Regional instruments

No SADC instruments currently exist specifically to address LGBTIQ 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 LGBTIQ 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 LGBTIQ 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 LGBTIQ, migrants, refugees, mobile populations, people living with disabilities, and victims of sexual exploitation).[15] However, the SRHR strategy makes no other specific reference to the needs of LGBTIQ people.

The ***SADC Regional Strategy for HIV Prevention, Treatment, Care and Sexual and Reproductive Health and Rights*** does not include LGBTIQ people. 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.[16]

The ***Minimum Standards for the Integration of HIV and Sexual and Reproductive Health in the SADC Region*** takes a similar approach by referencing LGBTIQ persons as a key population. It calls on 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, LGBTIQ 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, LGBTIQ persons, and people with disabilities.[17]

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? Recent developments in Botswana and Seychelles point to high-level support for LGBTIQ rights as the presidents of both countries committed to guaranteeing LGBTIQ rights.

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



Seychelles: "Open and frank" discussion heralds new era as president welcomes LGBTIQ activists

"We should live in a society where anyone be free to live their lives as they please regardless of gender or orientation. As long as we respect one another and are tolerant to others views."

These sentiments, spoken by Seychelles President Wavel Ramkalawan, marked a turning point for government and LGBTIQ relations in the country in 2022 as Ramkalawan met with Naddy Vidot, the chairperson of the LGBTI Seychelles Association at State House. LGBTI Seychelles is a non-government organisation that advocates for sexual orientation and gender identity rights.

Members of the LGBTI Seychelles Board accompanied Vidot, including Emily Gonthier, the organisation's vice chair, and its secretary, Sasha Alis.

The president said he welcomed the opportunity and briefing on the work of their association, its objectives and plans for the future.

During the meeting, Vidot and other members of LGBTI Seychelles shared information about their strategies in relation to three main areas of focus: legal reforms, health and education. The discussions also touched on national education, anti-bullying awareness in schools, health services, human rights matters, adoption process and other legal reforms.



Seychelles LGBTI leaders pose with President Wavel Ramkalawan in Victoria in 2022.
Photo: LGBTI Seychelles

Speaking to the local media after the meeting, Alis expressed appreciation for the discussion.

"It is a momentous historic moment for LGBTI, for us to have been able to meet with the President. We had an interesting discussion on tangible issues such as national education, sensitisation in schools, legal affairs, and health, and the possibility for LGBTI people in Seychelles to obtain equal rights and access to different facilities and services. The discussion with the President was open and frank. We are all satisfied with our meeting."

Source: Colin Stewart, Erasing 76 Crimes, August 2022.

Constitutional provisions

It is important to include protections for gender and sexual orientation in country constitutions. This guarantees long-term protections for LGBTIQ 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.



Only **South Africa** has specific provisions in its constitution recognising the rights of LGBTIQ 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."



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."[18] 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.



LGBTIQ 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.

Table 8.5 overleaf shows the slow and steady progression of the South African legal and constitutional context concerning LGBTIQ rights and it demonstrates the need for a concerted and strategic lobbying and advocacy plan to advance LGBTIQ rights and protections. It is also evident that political will to bring in progressive legislation has waned. Legislators tabled the Prevention and Combatting of Hate Crimes Bill in South Africa in 2016 but they have not yet propagated it into law.

The law remains stalled because some legislators say the Bill contradicts freedom of speech. Activists maintain that it is necessary to address violence, noting the murders of 40 lesbians since 2000; with an average of ten lesbians raped each week by men who subscribe to the view that rape "corrects" one's sexual orientation. Qualitative studies have revealed perpetrators' claims that rape will "cure" lesbians and make them heterosexual. Gay men have also been victimised and terrorised.

Thus, despite constitutional protection, the brutal violence faced by the LGBTIQ community continues. The Forum for the Empowerment of Women (FEW) and others have spoken out against this form of violence since the 2000s. Activists established the Anti-Hate Crime Task Force and mandated it to develop a response to violence against LGBTIQ communities. However, police do not keep separate statistics on murders motivated by homophobia or transphobia, making it difficult to develop a viable policy to combat hate crime.[19]

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

[18] https://www.constituteproject.org/constitution/Comoros_2018.pdf?lang=en
[19] https://ourconstitution.constitutionhill.org.za/todays-issues-the-constitution-is-beautiful-on-paper-but-in-reality-it-is-not/

Table 8.5: Constitutional and legal rights timeline for LGBTIQ rights in South Africa

YEAR	CONSTITUTIONAL AND LEGAL RIGHTS[20]
1996	**The new Constitution** The inclusion of a specific prohibition of discrimination based on sexual orientation in the 1996 Constitution represented a significant achievement. South Africa became the first country in the world to explicitly prohibit the discrimination of gays and lesbians. However, at the time legislators passed the Constitution, laws remained on the statute books that criminalised same-sex sexual identities and the country provided no legal recognition to same-sex relationships.
1999	**The first court judgment on LGBTI rights** In the case of the National Coalition for Gay and Lesbian Equality v. Minister of Justice and Others, NCGLE and the South African Human Rights Commission challenged the constitutionality of existing laws, which criminalised sodomy. The court focused on the equality clause and drew on previous tests for determining unfair discrimination. In its landmark ruling, the court considered the harmful social and psychological impact of the criminalisation of sodomy on gay men and found that it fundamentally affected their dignity. The court found the provisions of the Sodomy Act to be unfair and declared them unconstitutional.
2000	**Recognising the rights of lesbian and gay partnerships** In the case National Coalition for Gay and Lesbian Equality and Others v. Minister of Home Affairs and Others, the Constitutional Court considered the constitutionality of a provision of the Immigration Act. The provision allowed a foreign opposite-sex partner of a South African citizen to live in South Africa but denied the same treatment to a foreign same-sex partner of a South African. The court found that the statute unfairly excluded same-sex couples. It introduced the notion of "reading in" particular words to a statute rather than sending it back to Parliament and ordered that the words "or partner in a permanent same-sex life partnership" be added to the act.
2002	**Extending the rights accorded to same-sex life partners** The LGBTIQ community steadily continued to make significant gains in the courtroom to expand their freedoms. Once government recognised lesbian and gay partnerships in the Immigration Act, several other cases followed which accorded rights to same-sex life partnerships. These included pension benefits (Satchwell v. President of the Republic of South Africa, 2002), adoption rights (Du Toit v. Minister of Welfare and Population Development, 2003) and the right of a lesbian couple to artificial insemination (J v. Director General, Department of Home Affairs, 2003). All of these cases focused on the unfair discrimination of particular laws and the infringement of the dignity of the partnership. They resulted in the court order to read in the words "or permanent same-sex life partnership" to extend the rights in question to same-sex couples.
2006	**The Civil Union Act** The institution of marriage - with its symbolic and practical implications - came under the spotlight in the case of Minister of Home Affairs v. Fourie, Marié Fourie and Cecelia Bonthuys. Fourie and Bonthuys, who had been living together in a committed relationship since 1994, claimed that government had unfairly discriminated against them because they could not marry under the Marriage Act 25 of 1961. In a landmark judgment, the Constitutional Court found the Marriage Act unconstitutional, stating that it violated section 9 of the Constitution - the Right to Equality. The Court gave Parliament one year to pass new legislation. The Civil Union Act 17 came into force in 2006, making South Africa the first country in Africa, and the fifth in the world, to legalise same-sex marriages.
2016	**The Prevention and Combating of Hate Crimes and Hate Speech Bill**[21] The Bill aims to reduce offensive speech and curb hate crimes in South Africa. Legislators introduced the Bill in 2016 and it sits before the South African National Assembly. Some of the stated intentions of the legislation include to "provide for the prevention of hate crimes and hate speech" and to "provide for effective enforcement measures" against those who express their "prejudice or intolerance towards the victim." The bill has been subject to much debate, with some groups expressing concern over the implications of restricting speech. Others have contended that the bill is necessary given the level of discrimination in South Africa.

[20] https://ourconstitution.constitutionhill.org.za/timelines/sexual-orientation/
[21] https://en.wikipedia.org/wiki/Prevention_and_Combating_of_Hate_Crimes_and_Hate_Speech_Bill

South Africa: Open letter rejects "unconstitutional fatwa" against LGBTIQ Muslims



Queer Muslims and their allies participate in a 2019 Pride march. Photo: Ben Gingell

The Muslim Judicial Council (MJC) and the Jamiatul Ulama of South Africa have announced that those who consider themselves homosexual are out of the fold of Islam. They have called for *takfir* (excommunication) of the Muslim lesbian, gay, bisexual, transgender, queer, intersex community.

The MJC is a self-appointed, unelected and entirely male body, save for the head of their Women's Forum, that does not represent the Muslim community on any democratic basis. They also do not have religious authority, as Islam is not a system that is organised along the lines of such religious intermediaries between people and God.

Section 9 of the Constitution forbids discrimination on the basis of sex, gender or sexual orientation, and applies to government and private parties. Section 15 provides for the recognition of religious legal systems and marriages that are not inconsistent with the Constitution. The rights of LGBTIQ people under the South African Constitution cannot be trumped by cultural or religious authority, especially the right to life.

The MJC's fatwa amounts to hate in a context where the lives of LGBTIQ people are already in danger. The fatwa is based on ignorance and reinforces oppression and injustice rather than supporting just, fair and equal rulings.

The MJC and associated bodies such as the Jamiatul Ulama South Africa have published other articles and statements which incite hate against LGBTIQ persons. LGBTIQ persons in South Africa are clearly protected by the Constitution and other laws. We encourage them to use the available channels (Equality Court, Commission for Gender Equality or South African Human Rights Commission) to hold persons/institutions accountable for homophobia/transphobia.

All people deserve to enjoy a life free from oppression and discrimination. Together we can dismantle oppressive institutions and build safe, affirming and kind spaces for LGBTIQ Muslims and all persons.

Source: Rumana Akoob, Gabriel Hoosain Khan, Fatima Shabodien, Nelisiwe Msomi, Shireen Hassim, Seehaam Samaai, Shaazia Ebrahim, Mahomed Jameel Abdullah, Safia Khan, Rumain Akoob, Ty Khan, Shahra Sattar, Jamilla Jade Madingwane, Mangaka Molaqa, Shabir Madingwane, Nompilo Molaqa, Gulshan Khan, Mishka Wazar, Nokuthula Mjwara, Fairoze Diedricks, Maushami Chetty, Lorenzo Wakefield, Shiraz Soeker, Sharon Cox, Phumi Mtetwa and Elsbeth Engelbrecht, Muhsin Hendricks, Haroon Wadee, Shameez Joubert, Waseem Imam Saheb, Alex Sutherland, Seth Deacon, Simone Cupido, Shakira Qwabe and Zama Mthunzi, Daily Maverick, 12 July 2022.

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 8.6: Status of same-sex consensual sexual acts

Country	Current status
Angola[22]	***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[23]	***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[24]	***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[25]	***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.[26]
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."[27]
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.

[22] https://africlaw.com/2021/03/05/decriminalisation-of-consensual-same-sex-acts-in-angola-and-the-progress-of-lgbti-human-rights-in-lusophone-africa/
[23] https://harvardhrj.com/2020/03/decriminalising-homosexuality-reshaping-the-landscape-in-botswana-and-a-missed-opportunity-in-kenya/
[24] https://www.hrw.org/video-photos/interactive/2020/06/22/human-rights-watch-country-profiles-sexual-orientation-and
[25] https://www.refugeelegalaidinformation.org/democratic-republic-congo-lgbti-resources
[26] 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.
[27] 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.[28] In June 2020, the Supreme Court of Mauritius authorised four young activists to challenge the constitutionality of Section 250(1) of the penal code.[29]
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.[30]
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.

An analysis of Table 8.6 shows:

- Seven countries - Angola, Botswana, DRC, Lesotho, Mozambique, Seychelles and South Africa - have decriminalised consensual same-sex sexual acts or never criminalised them in the first place. In Madagascar, same-sex consensual sexual acts are legal for citizens older than age 21 but against the law for everyone else.
- In Mauritius, four young LGBTIQ people have taken a legal challenge to the country's Supreme Court.
- 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, Eswatini, Malawi, Mauritius, Namibia, Tanzania, Zambia and Zimbabwe.

[28] 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.
[29] "Code pénal: La communauté LGBT obtient l'autorisation pour une plainte constitutionnelle" Le Mauricien, 17 June 2020.
[30] Pat Reber, "South Africa Court Upholds Gay Rights" Associated Press, 9 October 1998 (as reproduced in Sodomy Laws, 11 July 2004).

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 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.



Mauritius: Gay activists challenge criminalisation of same-sex relations at top court

Section 250 of Mauritius' Criminal Code criminalises sodomy with up to five years in prison. That may soon change after four young LGBTIQ people challenged the law in the country's Supreme Court.

The four plaintiffs, members of the Young Queer Alliance, a Mauritian LGBTIQ rights group, brought their case in 2019. They come from Hindu, Christian and Muslim backgrounds and three of them were the first public officers to come out as gay.

The Young Queer Alliance in a statement notes two of the plaintiffs have been in a committed relationship for seven years. They and the other two plaintiffs argue Section 250(1) does not have a place in a modern and democratic Mauritius.

"LGBTIQ people should benefit from the same protection afforded to other citizens such as protection from discrimination and should enjoy the same freedom of expression and right to privacy as them," says the Young Queer Alliance. "Section 250 is contrary to the values of democracy and treats LGBTIQ people as second-class citizens. There is no justifiable reason why section 250(1) should be maintained in our criminal code when it concerns two consenting adults."



LGBTQ activists march for the recognition of their rights. Photo: Anjelee Beegun, Collectif_Arc-En-Ciel

The Young Queer Alliance notes the plaintiffs have requested the Supreme Court to declare that "sexual orientation forms part of and is implied in the definition of sex as enacted under Sections 3, 3 (a) and 16 of the Constitution of Mauritius, a declaration that Section 250 of the Criminal Code Act is unconstitutional and alternatively, a declaration that Section 250 of the Criminal Code does not apply to consensual acts of sodomy performed by consensual adults."

Jean Daniel Wong of Collectif Arc-en-Ciel, an NGO that focuses on human rights issues in Mauritius, noted that case is a historic moment for the country. "This was a truly historic moment for our nation, which has always placed equality and non-discrimination at the heart of the very fabric of our society," said Wong. "Section 250 stands in stark contrast to the ideals of our Constitution. LGBTIQ rights are human rights. Who we are and who we love should never be reasons for discrimination or abuse. It is time for our country to provide us with the same legal protections and equality before the law as all citizens of Mauritius."

The Supreme Court last considered the case on 1 June 2022. If it repeals Section 250(1), Mauritius will join South Africa, Angola, Botswana and other African countries that have decriminalised consensual same-sex sexual relations.

Source: Daniel Itai, Washington Blade, 21 June 2022.

Employment

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

Around the world, LGBTIQ persons face exclusion, stigma, discrimination, violence and harassment based on their actual or perceived sexual orientation, gender identity, gender expression or sex characteristics. Documented acts of violence include attacks, targeted killings, sexual violence, threats and hate speech, perpetrated by both state and non-state actors. Such mistreatment occurs within families, on the streets, at schools, and within business and workplaces.[31]

Increasing evidence bolsters the business case for LGBTIQ inclusion

A growing body of research that presents economic arguments and a "business case" for inclusion of LGBTIQ people in workplaces and wider economic activity has proven persuasive among some policymakers.

The emergence of economic arguments for inclusion is due in part to the fact that the utilisation of human rights discourse to overcome criminalisation, discrimination, exclusion and violence against LGBTIQ people has had significant limitations in some settings. Thus, advocates have sought pragmatic approaches to make their case in a way that they hope garners the attention of policymakers.

Additionally, in some contexts, multilateral corporations provide incentives for partners that demonstrate social responsibility through enhanced engagement with historically excluded groups in their workforce, as well as among their consumers.

Researcher Lee Badgett (2014) conducted one of the first studies to attempt to cost LGBTIQ exclusion. She presented clear evidence of stigma and exclusion of LGBTIQ people in India and argued that the effects can be costly to the Indian economy. Badgett developed a conceptual model linking exclusion of LGBTIQ people with economic development through the factors of lower productivity and output because of employment discrimination and constraints on labour supply. Other factors included inefficient investment in human capital because of lower returns to education and discrimination in educational settings; lost output because of health disparities linked to exclusion; and social and health services required to address the effects of exclusion that might be better spent elsewhere.



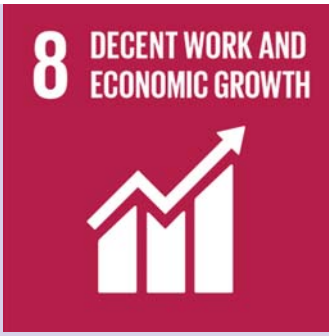
LGBTIQ people and allies campaign for human rights and justice.
Photo: National LGBT Chamber of Commerce

[31] https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_846108.pdf

Estimates using the model suggest that just the two factors of exclusion of LGBTIQ people - health disparities and workplace discrimination - could lead to a loss of 0.1% to 1.4% of India's GDP.

In their inception report making the business case for LGBTIQ inclusion for the Open for Business coalition of multinational corporations, Miller and Parker (2015) analysed the economic opportunities associated with improving LGBTIQ inclusion and found that it bolsters economic performance demonstrated by stronger growth and higher levels of entrepreneurialism at a macro-economic level.

At a corporate level, they contend that inclusion leads to superior performance and innovation, and, at the level of the individual LGBTIQ employee, leads to enhanced productivity. They also summarise what they believe to be the risks for businesses operating in countries that criminalise LGBTIQ people and have high legal levels of discrimination in society. These include threats to employee safety and security, including criminal conviction, harassment and violence; compliance concerns when business codes conflict with national law; and brand and reputational risks including negative opinions held by employees and consumers; and the possibility of activism against businesses, such as boycotts.



In response to the significant legal, social, and economic challenges of LGBTIQ people, activists and researchers increasingly push the private sector to respond to these issues by actively promoting the well-being of LGBTIQ employees and consumers. One important emerging method involves benchmarking in the form of workplace equality indices that track and promote corporate policies of diversity and inclusion.

Source: Felicity Daly, African Human Rights Policy Paper 4, Developing Evidence for LGBTIQ Inclusive Policy in Africa: A Literature Review, accessed 12 September 2022.

Violence and discrimination

LGBTIQ people are entitled to equal respect for their dignity and equal respect, protection and fulfilment of their fundamental human rights, just like everyone else. Yet widespread violations of these rights continue: killings, torture, sexual violence, criminalisation, and arbitrary detention. Harmful practices such as conversion therapy, forced sterilisation, surgery and treatment on trans and intersex people, and degrading examinations remain far too common in the region. Widespread stigma, harassment, bullying and discrimination at work, at home, in education, health, housing, sports and access to public services also persist across Southern Africa.

Tackling these issues means more than changes in laws and policies - it requires greater acceptance, support and celebration of LGBTIQ people by everyone in society, including within the family.[32]

LGBTIQ people are entitled to equal respect for their dignity and equal respect, protection and fulfilment of their fundamental human rights, just like everyone else

[32] https://www.ohchr.org/en/calls-for-input/2021/call-input-thematic-report-gender-sexual-orientation-and-gender-identity, accessed 12 September 2022.



Despair as landmark LGBTIQ billboard vandalised in Zimbabwe

Excitement at the historic placement of a billboard affirming LGBTIQ equality in the Zimbabwe city of Bulawayo in 2021 soon turned to anger and sadness when vandals targeted the inclusive message.

Local LGBTIQ rights group Gays and Lesbians of Zimbabwe (GALZ) placed their groundbreaking billboards in the country's two largest cities, Bulawayo and the capital, Harare - an unthinkable move just two years ago. The signs marked Pride Month in the region and aimed to increase public awareness of the importance of LGBTIQ human rights.

The billboards, installed in high visibility areas, shared the message: *"Munhu Munhu/Umuntu Ngumuntu [a person is a person]: Dignity, Rights and Respect for all Zimbabweans."*

The signs feature a person's open hands holding a rainbow ribbon and include the organisation's website www.galz.org. Activists associated with the organisation expressed frustration when, just days after they erected the billboard in Bulawayo, it was completely defaced with black paint.

The organisation said the vandalism "is a stark reminder of the culture of hate, intolerance and impunity which still affects sections of Zimbabwean society." The group added that the act "only reaffirms our belief that the message has been received and it further emboldens our quest to keep pushing boundaries and expressing ourselves."

The billboards represented a bold initiative in a country in which same-sex relationships remain illegal and government has historically suppressed LGBTIQ people's right to free expression.

In a statement, GALZ noted that the signs represent "strong advances in the battle for freedom of expression in Zimbabwe." It also expressed its "utter contempt [for] any persons resorting to primitive acts of violence when putting across their point of view."

Source: Robert Igual, Mambaonline, 27 October 2021.



Before and after: Criminals vandalised the LGBTIQ billboard just days after activists installed it in Bulawayo. Photo: Mambaonline

The Armed Conflict Location & Event Data Project (ACLED) is a disaggregated data collection, analysis, and crisis-mapping project. ACLED collects information on the dates, actors, locations, fatalities, and types of all reported political violence and protest events around the world. In December 2021, ACLED launched a report entitled *Political Violence Targeting LGBT+ Communities in Africa*, which covered the period October 2020 to October 2021.[33]

Figure 8.1: Political violence targeting LGBTIQ communities in Africa by sub-event type

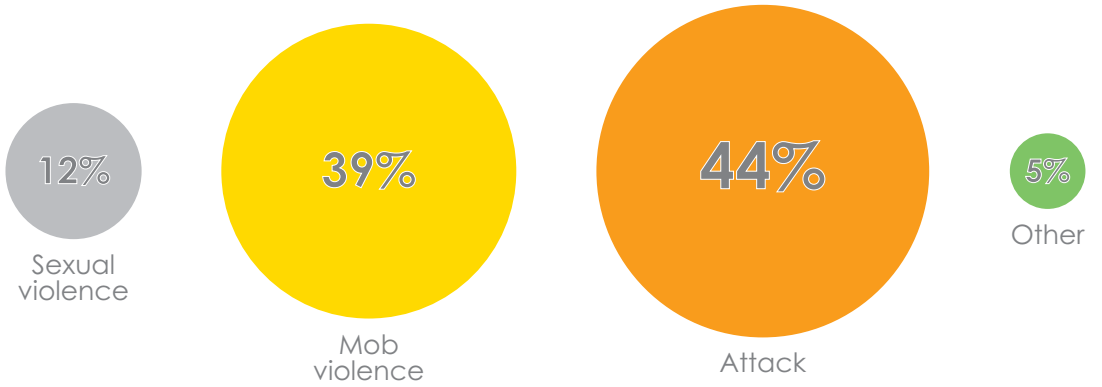


Figure 8.1 includes research from all 16 SADC countries combined with data from across the continent. It shows that violent mobs represent one of the primary perpetrators of political violence targeting LGBTIQ civilians, with mob violence accounting for more than a third of all political violence targeting this vulnerable group.

The often anonymous nature of these acts allows perpetrators to enjoy impunity for the violence. Furthermore, in countries with anti-LGBTIQ legislation, perpetrators often assume the role of vigilantes. Vigilante groups believe they deliver justice, emerging to address perceived failures in local security structures and enforce the laws, as they understand them.

Non-sexual attacks account for nearly half of all political violence targeting LGBTIQ civilians in Africa. Anonymous or unidentified armed groups carry out about half of these attacks. In some cases, both state and non-state actors have carried out attacks and raids against organisations, shelters, and clinics, as well as activists working on LGBTIQ issues.

Additionally, 12% of political violence targeting LGBTIQ civilians in Africa takes the form of sexual attacks by organised armed groups. This figure is notably high when compared to the civilian population at large, where sexual violence constitutes less than 3% of all violence targeting civilians in Africa. This suggests that this type of political violence disproportionately targets the LGBTIQ population. State forces, namely police, carry out the vast majority - more than 80% - of such violence in Africa.

Oppressive legislative environments - as well as homophobic and transphobic political rhetoric - can embolden perpetrators of political violence targeting LGBTIQ civilians. This includes mobs, state forces, or non-state armed groups. State actors, at times, exploit anti-LGBTIQ and other discriminatory legislation to justify extrajudicial acts of violence, as violent mobs take enforcement of what they believe to be the law into their own hands.[34]

These findings point to a critical and urgent need for public education and awareness, particularly around changing attitudes and behaviours towards LGBTIQ communities.

[33] https://acleddata.com/2021/12/14/political-violence-targeting-lgbt-communities-in-africa/, accessed 10 September 2022.
[34] https://acleddata.com/2021/12/14/political-violence-targeting-lgbt-communities-in-africa/, accessed 10 September 2022.



South Africa: Activists celebrate verdict in gang rape case while lamenting ongoing violence against LGBTIQ community

A South African court in 2021 found three men guilty in the gang rape of a gay man - the first time a court in the country issued a guilty verdict in a male rape case.

Austin Fritz, Rodney Beukes and Peter John Adams kidnapped a young gay man in the Western Cape's Ceres region in August 2017 and repeatedly raped him, lawyers told the Worcester Regional court.

Lawyers said it was the second time the trio had targeted the victim, who did not report the first attack.

"A young gay man, gang-raped by three straight men, and all three have been found guilty of kidnapping and rape, which is a great win for us," Sharon Cox, from LGBTIQ outreach organisation The Triangle Project, told Eyewitness News. "We've had these cases before and we've never had success with them. This is the first time that we have a guilty verdict in a gay male rape."

However, the judge could not sentence the three men, because a 2016 hate crime bill that would protect LGBTIQ South Africans remains pending. The conviction has renewed calls from LGBTIQ advocates for the government to implement the 2016 legislation, the Prevention and Combating Hate Crimes and Hate Speech Bill.

South African LGBTIQ activists also lamented government delays in passing the bill while protesting in early 2021 following the murders of four LGBTIQ people in less than a month. The



People march through the streets of Cape Town to Parliament to demand justice for the 2021 murder of Andile "Lulu" Ntuthela in the Eastern Cape. Photo: Ashraf Hendricks

brutal murders of Lonwabo Jack, Nathaniel Mbele, Andile "Lulu" Ntuthela and Sphamandla Khoza led to protests at the South African parliament in April 2021 as LGBTIQ people demanded tangible action over the rise in hate crimes.

But just two months later, in June, violence continued with the murder of two lesbians, Anele Bhengu and Lulama Mvandaba.

Such horrifying attacks claimed the lives of at least 16 LGBTIQ people in the first six months of 2021 in the country. However, the true scale of violence remains unclear as most hate crime cases go unreported, according to the Department of Justice and Constitutional Development. Fear and discrimination in the justice system mean witnesses do not always come forward.

Source: Ashraf Hendricks, Ground Up, 17 April 2021.

LGBTIQ people and the media

Mainstream media contributes to the ongoing backlash against LGBTIQ people, according to the Other Foundation's *Canaries in the Coalmine* report, which includes data from several SADC countries. The connection between the two has long been associated with Malawi, where the state arrested Tiwonge Chimbalanga and Steven Monjeza in 2009 after the Nation newspaper

portrayed their engagement party as a freak-show. The media sensationalised the subsequent trial of the two, garnering international headlines and denunciation.

Journalists have fuelled similar "moral panic" in sensationalist reporting connected to sodomy cases in Botswana, Zambia and Zimbabwe; in Eswatini around the public outing of activists; and in Zambia when several men attempted to marry their foreign male partners. While the reporting associated with these stories causes harm, some activists also see them as an opportunity to raise awareness and bring visibility to a group of people that media often ignores. These stories can prompt empathetic or supportive responses as well as criticism and further victimisation.

Increasingly, with the growth of social media across the region, activists have been tailoring their messages and sharing positive stories that target stigma and misconceptions. LGBTIQ organisations increasingly depend on social media for this awareness raising as well as to make connections with other groups across communities and borders.[35]



Malawi: Journalists learn from past mistakes that prompted attacks against LGBTIQ people

In the one-bedroom shack where she lives in the Cape Flats township of Tambo Village, Tiwonge Chimbalanga keeps a file containing press clippings.

It is close on 12 years since Chimbalanga, a transgender woman, made world headlines after Malawian police arrested her for marrying her then-partner, Steven Monjeza, in what many believe was the country's first same-sex marriage. Among the press clippings in her file, however, there is only one report from a Malawian newspaper.

On a torn black-and-white page (making it difficult to tell which publication printed it), the report speaks of how "the issue of gays has caused a lot of stress to the nation."

Chimbalanga says she refused to speak to journalists from her country and the story does not quote Chimbalanga (or "Aunty Titi," as she is affectionately known).

"Me, I did not talk to any journalists from Malawi," she says, firmly. "Only my lawyers talked to those journalists. Me, Aunty Titi, I did not speak to anyone. No."



Tiwonge Chimbalanga still keeps a file of media clippings that documented her wedding to Steven Monjeze, which led to the couple's arrest and detention.
Photo: David Harrison

Victor Chikalogwe a founding member of the Centre for the Development of People, (CEDEP), recalls: "Journalists would be there, asking her, 'So, are you a woman?'; 'Do you have a vagina as well?'; 'Who does who with your so-called husband?' And people are there, laughing. It was chaos. It was terrible. So terrible."

Journalist James Chavula says "the Chimbalanga case [took] journalists by storm... it showed us that some of us have allowed ourselves to be so biased that our newsrooms have become extensions of the religious groups that we belong to. So it really exposed us. We talk about objectivity. We talk about being balanced in our reporting. We talk about accuracy. But all

[35] https://theotherfoundation.org/wp-content/uploads/2016/10/Canaries_Summary_epub_Draft4_MJ6-2.pdf

that was shattered in the way that case was reported."

A 2019 report, *Under Wraps: A survey of public attitudes to homosexuality and gender non-conformity in Malawi*, found that 3.5% of Malawians older than 16 identify as LGBTIQ. This, the report noted, is more than double the ratio for South Africa (1.4%) and "well above the 2% rate that many countries are clustered at."

Spurred by the "horrendous" reporting on LGBTIQ issues, Chavula formed a group of journalists determined to "start debunking the myths" and addressing what he calls "our gaps."

"A few of us came together. We approached the organisations that were involved in human rights and we put forward the idea that we needed training to understand LGBTI issues to start reporting [on] them correctly, to start debunking the myths and misconceptions, and to start reporting it with a human face," Chavula says.

With assistance from CEDEP and the Centre for Human Rights and Rehabilitation, the group formed "an underground movement of journalists who want to correct these narratives." In their bid to achieve this, the group took part in a number of training sessions.

The distrust the country's LGBTIQ people have of the media may persist for a long while, but Chavula believes that "putting a face to these stories; putting a name to these stories" can do a great deal towards healing the rift - as well as fostering acceptance."

Source: Carl Collison, Daily Maverick, 31 December 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, LGBTIQ 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.

[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] https://ilga.org/downloads/ILGA_World_Curbing_Deception_world_survey_legal_restrictions_conversion_therapy.pdf

- The wide array of practices that were (and still are) employed with the aim of modifying a person's sexual orientation or gender identity 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. Conservative cultural and religious ideologies and restrictive legal environments that criminalise consensual same-sex relations legitimise these harmful practices and embolden conversion therapy practitioners. Conversion therapy takes on various forms, including exorcism, drinking herbs, rape and other forms of sexual assault, prayer, or laying of hands for healing as well as beatings and coercion into relationships, sex or marriage.[38]



"I" Story: How they tried to pray my gay away and why it is not okay

It was June 2016 when I stood scared, cold, and alone at a campsite at Wemmershoek, roughly one hour's drive from my university in Stellenbosch, considering whether it was worth living. It was well past 22:00, and inside roughly 100 students were praising a god I have come to learn hated my existence.

I was a youth councillor at a Christian camp, and hours earlier, I told a best friend - a fellow councillor - that I was gay. Her response was: "James, you know I'll never be able to condone it." Her words felt like glass piercing my skin, and I cried because all I wanted was to know that I'm okay, that I'm loved, and that I didn't have to prove my worth anymore.

I was 21, and by this time, I'd been "suffering" from homosexuality for nine years - battling every year to pray the gay away. When I was 13, a charismatic church first started trying to change my sexuality, and from that point, my shame grew every year. It became a dark cloud - a shadow - that followed me wherever I went and broke any semblance of self-confidence.

Hours were spent in prayer groups trying to get to the "root" of what might have been the "open door" that allowed the "demon" of homosexuality



to enter my life. Days were spent at "freedom weekends" where the church studied every bit of my family tree to see whether I might have had a gay uncle or aunt who might have led to me being queer.

In small groups dedicated to "recovering homosexuals," we were made to watch documentary upon documentary about how gay people can never be happy and can never have healthy relationships - a ruthless fear I carry to this day.

But Sundays at church were always the worst. Every week, like clockwork, the pastor would call upon his congregants to "repent" for their sins. I would go to the front, lying on the ground, crying - pleading with god to relieve me from my curse.

[38] https://gmhan.org/news/member-blog-conversion-therapy-remains-prevalent-in-africa-governments-must-protect-lgbtq-persons-from-this-form-of-abuse, accessed 10 September 2022.

And random strangers - always men - would, without asking, lay their hands on my back and pray that god restores my "masculinity," my "manhood," and show me his "fatherly" love.

And all I ever experienced was shame - someone not worthy to speak to the god above. I was depressed and I was afraid: I felt like a small child hiding in the corner while all the world did was point out my flaws; sin clinging like dirty oil to my skin. Would I ever be happy?

I became a captive of my sexuality, so afraid that someone would spot my homosexuality or allude to it in conversations. When I started interning at News24 at the age of 23, a colleague remarked: "But you're gay, aren't you?" I could feel my heart rate increase and tears formed in my eyes. Because, even after all those years of begging and praying, all those years of crying, and the perpetual shame, god could still not "heal" me.

And what made things worse was that no matter how much I tried to police my behaviour and act like a heterosexual man, people could still see the gay in me. I had hoped that it was a phase, something I would outgrow, but somehow I had to accept that it was something I had to live with. And that thought nearly pushed me over the edge.

In South Africa, we rarely speak about conversion therapy, even though it is still happening. At my former church in Stellenbosch alone, I know of at least 20 people who have been negatively affected by these harmful practices. And I know for a fact that it happens in many other churches like the one I attended.

I tremble to think of the many lives that have been destroyed by conversion therapy. Often, I think of the men in my "recovering homosexuality" small group, and my heart breaks over the self-hatred they experience. And I feel ashamed that I too prayed that god would "heal" them - so indoctrinated I was.

The truth is, for more than ten years, I tried to pray the gay away, and the result is someone struggling to accept their inherent self-worth and battling with bouts of depression. Someone who became petrified of dating, petrified that he would end up dying alone. And someone whose biggest desire is to have a wholesome relationship, but who has been brainwashed to think that for him it is simply unattainable.

And I've come to learn that God is not a God of shame. He will never make his children feel unworthy. Accepting my sexuality has been one of my most liberating experiences because I no longer have to apologise for being alive. I feel a freedom I could never have imagined, almost like I can breathe for the very first time. Shame is no longer a marker of my existence. And I know that one day I too will have a happy partnership and a wholesome family - something the church so badly wanted to take away from me.

Source: James De Villiers, News24, 16 June 2022.

Recognition of LGBTIQ rights

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

> ...to ensure that members of the LGBTIQ community enjoy the same rights and freedoms as all other citizens

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. Namibia had an opportunity to recognise same sex marriages in January 2022 but its high court ruled against it.



Namibia: Court rules it cannot recognise same-sex marriages

On 20 January 2022, Namibia's High Court ruled that it could not force government to grant legal recognition to same-sex marriages conducted outside of the country.

The couples represented in the case, both legally married in South Africa and Germany, launched the challenge against Namibia's failure to recognise same-sex marriages because the non-Namibian spouse in each partnership was unable to obtain work or residency permits.

In its decision, the court expressed sympathy with the couples' position and emphasised that discrimination based on sexual orientation is unacceptable under domestic and international law. Nevertheless, it concluded that a decades-old Supreme Court judgment binds it. That ruling found that the Immigration Control Act, which provides certain benefits to spouses of Namibian citizens, does not recognise same-sex relationships.

Linda Baumann of Namibia Diverse Women's Association, a feminist organisation, pointed to other recent court victories in Namibia and told Human Rights Watch that the ruling represents a step in the right direction because judges affirmed "the existence of LGBTI people as part of our community."

The couples will likely appeal to overturn the Supreme Court's old ruling, or lawmakers could act to change the status quo.

Source: Ryan Thoreson, Human Rights Watch, 25 January 2022.



Namibian Johann Potgieter and his South African spouse Daniel Digashu are parties in the high court case. Photo: Mambaonline

Joint adoption of children and second parent adoption of children

Preventing LGBTIQ people from adopting children violates their rights, yet South Africa is 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.

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

Country	Relevant law	Conditions	Issue
Angola	Código do Registo Civil 2015, Section 87	Although s. 78 of the Code does not allow alterations of details entered in the registration of records of the Civil Registrar, s.87 permits changes, including change of name where there is a change of facts which alter the legal identity or status of the person.	Unclear, no specific reference to trans and diverse gender identities.
Botswana	National Registration Act 26 of 1986, s.16	Section 16. Material change. (1) Where the registrar is of the opinion that any change in the particulars relating to a registered person materially affects his registration, he shall record the change and notify the Registrar of National Registration of the circumstances and recommend that the person concerned should be issued with a new identity card. […] (3) The particulars relating to the new identity card and its holder shall be recorded in the national register and the register of the area in which that person is registered.	At the discretion of the registrar not an unconditional right.
Malawi	National Registration Act 13 of 2010 (not trans specific).	Section 20(1) provides that where a change in particulars of a registered person materially affect his registration, the district registrar shall record the change and notify the Director of the circumstances and recommend that the person be issued with a new identity card. Section 21(1) provides that every registered person may, when he is satisfied that his appearance has changed so as to make it likely that his identity may be questioned, apply to the district registrar for the issue of a new card with a more recent photograph.	Unclear, no specific reference to trans and diverse gender identities.
Mozambique	Código do Registo Civil 2004	Section 85(1) gives the Civil Registrar general authority to make changes when there is a change of facts which alter the legal identity or status of the person registered.	Unclear, no specific reference to trans and diverse gender identities.
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	Comprehensive legislation, barrier in the public health system.

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

Country	Relevant law	Conditions	Issue
		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.	
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 Home Affairs.
Zambia	National Registration Act 19 of 1964	Section 9(2): In any case where a national registration card issued to a registered person ceases in any material particular to accurately represent his identity, such person shall, without undue delay, produce his national registration card and give such particulars as shall be necessary for the issue of a new national registration card to a registrar who… shall issue to such person a new national registration card	Unclear, no specific reference to trans and diverse gender identities.
Not possible currently, or a law or policy needed in Comoros, DRC, Eswatini, Lesotho, Madagascar, Mauritius, Seychelles, Tanzania and Zimbabwe.			

Source: ILGA, 2017.

Table 8.7 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.

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

Intersex

> Though we speak of intersex as an inborn condition, intersex anatomy does not always show up at birth

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.

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 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.[41]

In 2013, the third International Intersex Forum issued the Malta Declaration,[42] 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.



Zambia: Female footballer ousted from competition due to "too high" testosterone levels

Football authorities blindsided Barbra Banda, a top player on the Zambian women's team, when they found her ineligible to compete in the Women's Africa Cup of Nations in July 2022 after a "gender verification procedure" determined her testosterone levels are "too high."

Fédération internationale de Football Association (FIFA), the highest global authority in football, encourages such tests, which contradict the organisation's human rights responsibilities.

FIFA's policy states that any football association or medical officer's request for a player to undergo an involuntary "gender verification procedure," based on suspicion about her sex, is permissible.

The outdated and discriminatory FIFA policy dates back to 2011. In Banda's case, the Confederation of African Football (CAF) appears to have carried out the sex test, though a CAF spokesperson later denied this.

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

A representative of the Football Association of Zambia said CAF conducted the test, but conceded that the national organisation must also test its players. Policies like FIFA's mean women footballers face surveillance based on gender stereotypes and bodily characteristics.

There is precedent for this harm and of athletes effectively pushing back. In 2014, the Athletics Federation of India ousted one of its women runners for having high testosterone, and banned her from competition. That athlete, Dutee Chand, took her case to the Court of Arbitration for Sport, which reinstated her and scrapped the global sex testing regulations for women runners. Unfortunately, it introduced new, narrower regulations in 2018.

Caster Semenya, the famed South African runner, is currently challenging a similar ruling at the European Court of Human Rights.

Regardless of who conducted the sex test on Banda, her medical information is now public - a clear violation of her right to privacy. To meet its international human rights responsibilities, FIFA needs to change course, adjust its policy, and stand firm on the side of current and aspiring women athletes.



Zambia's Barbra Banda (11) celebrates after scoring a goal against China during a women's soccer match at the 2020 Summer Olympics. Photo: Andre Penner

Source: Kyle Knight and Minky Worden, Human Rights Watch, 13 July 2022.

Transgender

Transgender denotes or relates to a person whose sense of identity and gender does not correspond with their birth sex. 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.

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.[43]



[43] https://www.plannedparenthood.org/learn/gender-identity/transgender



Meet "The Sheriff," Lesotho's first openly trans political candidate



Sheriff Mothopeng will stand in the Lesotho election in October 2022.
Photo: Lesotho Express

Sheriff Mothopeng, a trans man, will have made history with a run for a seat in Lesotho's upcoming parliamentary election, hoping to represent the Thaba Putsoa district. The Lesotho Express called Mothopeng, the first openly trans person to run for political office in the country, "an activist that never tires." Sadly, Mothopeng lost his position in the Revolution for Prosperity (RFP) political party's list due to a legal challenge from other members in the party.

After interviewing all the potential candidates, the Party finalised it's electoral list. Members of the party who won constituencies were removed and replaced by those who performed well in the interview process. Mothopeng was one these candidates. The candidates who were removed challenged their removal citing that it was unconstitutional. Their challenge was upheld and Mothopeng was removed from the RFP.

Mothopeng, 43, is an LGBTIQ activist and archaeology professional who grew up in Maphotong Ha Elia in Roma, which then had about 30 households and has since grown to a bigger village of more than 70 households.

"Issues around human rights, service delivery and equal access to resources and opportunities and community service are very close to my heart," he told Lesotho Express, noting he has advocated for human rights for the past 14 years.

"I want to bring about a change in my time. I want to be a voice of the voiceless with influence and a change that I would like to see in my country, hence I joined politics," he says. "This is not new to me; I have dedicated my life to representing and protecting Basotho basic human rights throughout Africa and beyond.

"Lesotho, like most other African countries, is faced with a handful of economic, social and political challenges, where history has shown how HIV and other related co-morbidities have been used for self-enrichment by those in power at the expense of our people."

Mothopeng says he believes that a win in his Thaba Putsoa constituency come October would be a win for LGBTIQ inclusion in the country and recognition in the Parliament of Lesotho. He noted that he has fought stigma and discrimination, as Lesotho remains conservative, legally silent, and "less supportive" of LGBTIQ people.

These challenges have not deterred nor dampened his political quest. He said he must stand up and be counted and be the change that he wants to see in the world, hence he questions "If not us, then who will bring the change to our doorstep?"

Source: 'Marafaele Mohloboli, Lesotho Express, 12 August 2022.

LGBTQ sexual and reproductive health and rights

Every person has a right to the highest attainable standard of physical and mental health without discrimination. The right to health includes freedom to control one's health and body, including sexual and reproductive freedom, and freedom from non-consensual medical treatment and interference, as well as entitlements.

A UN human rights report found that LGBTIQ and gender diverse people face discriminatory and often violent barriers impeding their full and equal enjoyment of the right to the highest attainable standard of physical and mental health.[44]An independent UN expert identified structural drivers of exclusion in the research and gave an overview of health-related violence and discrimination.

It also highlighted sexual orientation and gender identity and their relation to the health-related commitments of the Sustainable Development Goals (SDGs), with a particular focus on SDG3 - "ensure healthy lives and promote wellbeing" - identifying obstacles and challenges to implementation, as well as good practices. As the midpoint of SDG implementation draws near, the report outlines six fundamental steps aimed at ensuring the SDGs' pledge to "leave no one behind" becomes a reality for all despite the challenges presented by the COVID-19 pandemic. It bases these on the mandate's ASPIRE guidelines: acknowledgment, support, protection, identifying and addressing indirect discrimination, representation, and evidence-based action.[45]

The ASPIRE guidelines are:

- **A**cknowledge that LGBT and gender diverse persons live everywhere. Denying the existence of LGBTIQ persons in any society is a violation of their human rights at all times, but it is particularly harmful in times of a pandemic, when understanding the different ways it impacts their lives is the key to effective and efficient responses.
- **S**upport the work of LGBTIQ civil society and human rights defenders (and learn from their significant achievements). Civil society organisations are vital to fill in the gaps left by states. They have forged a complex system of early warning, sense of community, advocacy and follow-up over the last five decades. That system is an asset of profound value for the global community.
- **P**rotect LGBTIQ persons from violence and discrimination in the pandemic context (and prosecute perpetrators). Humanitarian situations exacerbate pre-existing inequalities, putting the most vulnerable at further risk. Governments must limit measures to combat the pandemic to the protection of public health; they must not advance anti-LGBTIQ agendas.
- **I**ndirect discrimination represents a real and significant risk (and stigmatisation against LGBTIQ persons must be prevented). Indirect discrimination occurs when an otherwise neutral provision or practice puts a marginalised population at a disadvantage compared to others or disproportionally affects them.
- **R**epresentation of LGBTIQ persons in the process of design, implementation and evaluation of specific measures is essential (and it needs to be meaningful). Policymakers should not rely on intuitive thinking when designing responses that will affect the LGBTIQ community. Only the effective involvement of concerned populations will create responses with increased positive impact.
- **E**vidence and data concerning the impact of COVID-19 on LGBTIQ persons must be collected (and states must follow good practices). Disaggregation of data ensures decision makers understand how the pandemic affects different populations. States also need to ensure that victims of human rights violations perpetrated during the pandemic will have access to redress, including reparations.

[44] The UN Report to the UN Human Rights Council on the realisation of the right of persons affected by violence and discrimination based on sexual orientation and gender identity to the enjoyment of the highest attainable standard of physical and mental health, in relation to SDG3.
[45] https://www.ohchr.org/en/documents/thematic-reports/ahrc5027-report-right-enjoyment-highest-attainable-standard-physical-and

LGBTQ organisations

The ability to organise and operate freely represents a vital right for LGBTIQ organisations advocating for change. As well as organising events and promoting their rights, these groups often provide safe spaces and shelter for LGBTIQ youth to talk about their sexuality or gender identity. In countries where registration of an LGBTIQ organisation remains impossible, LGBTIQ 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. LGBTIQ groups can only legally register in nine SADC countries, with seven others (Comoros, DRC, Eswatini, Madagascar, Malawi, Tanzania and Zambia) outlawing it.[46]



DRC queer rights activist forced to go into hiding

Crammed into a boat with more than 100 people, Cherie* prayed nobody would recognise her. "I wore a hat and a balaclava," the transgender woman, 33, says of her attempts to remain under the radar. A few hours earlier, shortly before midnight, she had fled her home in the eastern Democratic Republic of the Congo (DRC) after the police tried forcing her front door in the hope of arresting her.

After the six-hour boat ride to a neighbouring province, Cherie, a founding member and head of the non-profit queer rights organisation Rainbow Sunrise Mapambazuko, made her way to where she is now living in hiding.

"It all started with threatening messages and insults from the youth in our neighbourhood," she said. "I could not walk in the streets of our neighbourhood because the community did not want to see me. My presence bothered them.

"They accused me of inciting the youth of our neighbourhood to become homosexuals and that I promote homosexuality. They insulted me by saying, 'You, *pede* [faggot], we will kill you. We will burn you alive. You bewitch our neighbourhood youth to become homosexual. You are a curse. You bring bad luck. We will burn your house.'"



LGBTQ person in the DRC are subject to police attacks and imprisonment.
Photo: Jana Ašenbrennerová

Difficult as the almost daily barrage of threats was, Cherie's decision to flee her home came after facing the prospect of arrest. "This is when I called my lawyer, who went to the prosecutor's office to find out the reason for the warrant," she said. "My lawyer then asked me to leave that neighbourhood because the people there wanted me to be arrested and put in prison."

[46] Canaries in the Coal mine, 2017, accessed 1 July 2020, http://theotherfoundation.org/canaries-in-the-coal-mines/

According to the lawyer, who chose to remain anonymous, Cherie faces charges of criminal association, rape and pimping. "All these charges against Cherie were brought by young people and religious groups in her neighbourhood who consider her a public danger because of her work and her [sexual] orientation [and gender identity], which they consider contrary to Congolese morals," he said. "They want to see Cherie in prison at all costs."

The lawyer said the case against Cherie would close if "there is the financial means to pay for justice." Failing this, she faces a maximum sentence of ten to 15 years in prison "with fines that can reach $10 000."

Cherie and other queer rights activists established Rainbow Sunrise Mapambazuko in 2010. "What prompted us to create our organisation was the context of violence against LGBTIQ people in our region. We created our organisation to help people in difficulty and to promote our rights," she said.

Cherie's case is not the first time Rainbow Sunrise Mapambazuko has been targeted. In December 2012, the police surrounded the organisation's offices "in an apparent attempt to arrest the group's leader," one report noted. Although they did not succeed, Rainbow Sunrise Mapambazuko activists "would continue to be targeted."

In May the following year, police arrested the then head of the organisation on charges of promoting homosexuality. While detained, police tortured him and denied him food and water. He also said he had been "raped with sticks at least three times and beaten by inmates." Authorities released him after he paid $400. After a failed attempt to assassinate him on his return home, he fled to neighbouring Uganda and, eventually, Europe.

Cherie vowed, however, that she will continue her work as an activist once her ordeal is over. "Activism is very important to me. I really care about my fellow human beings who are victims of rights violations every day. I have made it my goal to defend their rights, our rights."

** Not her real name.*

Source: Carl Collison, New Frame, 22 September 2022.

Intersectionality

In its 2021 annual report, the ILGA World makes the case for the integration of feminist movements and youth voices in the LGBTIQ vision for an equal and just society. It states that the many intersections between these movements will strengthen each and create bigger impact through joint initiatives. Oxford Dictionary defines intersectionality as "the interconnected nature of social categorisations such as race, class, and gender, regarded as creating overlapping and interdependent systems of discrimination or disadvantage."



Uniting feminist and LGBTIQ movements[47]

The past year saw amplified attacks against gender equality and inclusivity from many angles and aggressors. These attacks often ignore one important feature of the groups they go after: LGBTIQ movements have feminist and women's organisations as consistent allies, and trans, bisexual, and lesbian women have been contributing to feminist movements since their inception.

In a ground-breaking initiative, ILGA World brought women, feminist movements, LGBTIQ groups, and trans-led organisations together to launch the Affirmation of Feminist Principles. It outlines values that the coalition sees as fundamental to the achievement of gender equality, and it amplifies the inclusive positions that feminists have long taken in relation to understanding gender, sex, and sexuality.

To date, more than 2000 individuals and human rights groups from across the world have signed on to this statement and encouraged others in their networks to do the same. Throughout the year, ILGA World also deepened its cooperation with women-led organisations and those working on sexual and reproductive health rights, and held three days of dialogue with different organisations, institutions, permanent missions and donors: uniting all to respond to gender backlash and anti-trans narratives.

Young people: the leaders of tomorrow[48]

In recognition of International Youth Day 2022, the Global Queer Youth Network, supported by ILGA World, called for intergenerational solidarity and communication in the ongoing push for an equal world for all - with particular focus on the future of the global LGBTIQ community.

They noted that, as LGBTIQ activist elders continue to progress through life, young people must increasingly listen, learn, and advocate on the issues that affect LGBTIQ communities. Similarly, the wider LGBTIQ community must listen to, meaningfully support, and advocate on behalf of, LGBTIQ young people.

Creating an equal world for all ages requires intentional intergenerational partnerships and reciprocal knowledge sharing, as recent statistics suggest increasing numbers of young people identify with, and find safe spaces within, the LGBTIQ community. Advocacy for intergenerational LGBTIQ solidarity must be sustainable, participatory, and community oriented.

The first suggestion for progress towards a future of intergenerational solidarity is to ensure meaningful participation of LGBTIQ youth voices in discussions, processes, and systems that affect their lives, now and in the future. Meaningful participation means creating avenues to access high-level advocacy spaces and ensuring these spaces recognise the intersectional needs of LGBTIQ youth. Barriers to access for LGBTIQ youth can range from financial capacity to personal safety concerns, from geographic barriers to the digital divide.

Meaningful participation in the context of the work of the Global Queer Youth Network has always meant taking a holistic and intersectional approach to accessing advocacy spaces. In practice, this has manifested as providing financial support for participation in consultations (such as The Together Conference), ensuring individuals are supported throughout their preparation and engagement in the advocacy space (such as speaking on panels with high-

[47] https://ilga.org/downloads/ILGA_World_Annual_Report_2021.pdf
[48] https://ilga.org/international-youth-day-22

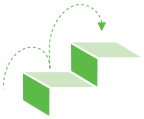
level officials), and creating in-community networks to share advocacy opportunities and resources. This multi-method support approach allows for increased participation from individuals who would otherwise have limited capacity to engage in advocacy.

Additionally, within the space of meaningful participation, it is vital to consider inputs from LGBTIQ youth advocates and activists from an intersectional understanding of age and experience. As reported by many within our network of activists, youth voices are not equally respected to those of their older peers and colleagues. The youth voice must be considered within the context of the individual's lived experience and consider this experience as expertise.

The intersectional issue of access to educational spaces and professional workplaces remain key to understanding the needs of, and developing solutions to, limited participation or meaningful input from young LGBTIQ people. Without providing clear pathways to engage in procedural, civil society, and other stakeholder spaces of power, we will continue to leave out LGBTIQ young people's voices. These pathways must consider equity for those who already exist at the margins of access to education, employment, and personal safety.

Moreover, the intensity of LGBTIQ advocacy can be emotionally, mentally, physically, and financially draining. Without appropriate support and information on how to develop healthy self-care practices, LGBTIQ youth advocates will continue to burn-out from engagement in advocacy spaces.

The elements proposed above sit at the core of the work of the Global Queer Youth Network and its Together Statement. This document links to a comprehensive and multi-issue informed consultation with LGBTIQ youth and covers five key issue areas: health, housing, education, employment, and political participation. Meaningful and sustainable consultation with, support for, and celebration of, LGBTIQ youth is vital for an equal future for all.



Next steps

- Gender activists and LGBTIQ groups should come together to create concerted, coordinated and intersectional campaigns across the region to challenge discriminatory laws and policies. These should include timelines and key deliverables, including the elimination of conversion therapy and the passage of hate crimes legislation.
- The SADC media requires diversity training to ensure that they fairly and appropriately represent the LGBTIQ community and its concerns.
- Continue to lobby and advocate for LGBTIQ sensitive policies that address workplace discrimination and violence.
- Policymakers must ensure comprehensive sexuality education, including the promotion of mutual tolerance and respect in schools, regardless of sexual orientation or gender identity.
- To level the playing field, lobby for affirmative action policies for LGBTIQ people in the labour market.
- Engage with, and support, sports associations to develop awareness-raising activities that highlight discrimination against LGBTIQ persons in sport.
- Representation is key, so policymakers, business owners and others must support greater visibility for LGBTIQ persons and issues and provide opportunities for them to participate in decision-making structures in all sectors.
- Increase data collection and research on LGBTIQ concerns across all sectors and countries; new resources will help establish baselines in key areas, thus allowing researchers and activists to understand the issues and challenges as well as track progress.

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