

# WE ARE FACING EXTINCTION

ESCALATING ANTI-LGBTI SENTIMENT, THE WEAPONIZATION OF LAW AND THEIR HUMAN RIGHTS IMPLICATIONS IN SELECT AFRICAN COUNTRIES



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First published in 2024  
by Amnesty International Ltd  
Peter Benenson House, 1 Easton Street  
London WC1X 0DW, UK

Index: AFR 01/7533/2024  
Original language: English

Illustrations: Dinah Rajemison

Flag images: David Krupa, Muhammad Fadlan, Biyal Syirullah




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“Those most impacted by oppression hold the deepest knowledge of the manifestations, impact, and solutions of that oppression.”<sup>1</sup>

We extend our heartfelt gratitude to our partners and the LGBTI activists and organizations who contributed to these discussions. Their unwavering commitment to upholding the rights of LGBTI people has played a pivotal role in shaping the content of this publication. It is through their courage and willingness to provide vital insights that we are able to shed light on the challenges faced by LGBTI persons in the continent. The collaboration and contributions of our partners and rights holders serve as a testament to the power of collective action. With their support, we can continue to amplify the voices of those who are often silenced, challenge discrimination and hatred, and work towards a brighter and more inclusive future for all.

<sup>1</sup> Astraea Lesbian Foundation for Justice. (September 2023). Global Resistance to Anti-gender Opposition: LGBTQI+ Activism in Colombia, India, Kenya, Peru, and Serbia available at [amazonaws.com](https://amazonaws.com)

# WE ARE FACING EXTINCTION


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## INTRODUCTION

For many LGBTI (lesbian, gay, bisexual, transgender and intersex) persons in Africa, 2023 was nothing short of a dystopian nightmare. Last year witnessed a surge in fear and attacks among LGBTI persons, as well as increased oppression and growing hostility towards their identities. The struggle for the realisation of rights of LGBTI people has been marked by significant challenges and a systematic denial of their basic human rights.

Across Africa, LGBTI persons find themselves contending with a disturbing regression of progress, facing relentless [protests against their identities](#), and confronting formidable obstacles to their [legal](#) and [social](#) rights. In some of the legislation emerging across the continent and during national debates, it is deeply distressing to witness the promotion of propositions and practices like “anal testing,” “castration,” “genital verification,” and so-called “conversion therapy” as if they are acceptable practices in a just and rights-respecting society. Harmful practices such as non-consensual surgeries on intersex children and the absence of gender-affirming care for transgender persons continue to persist. Arbitrary arrests and detentions of LGBTI people have become all too common, with authorities treating the mere act of being oneself as a criminal offense. The shrinking civic space, poisoned by advocacy of hatred, threatens to suffocate the voices of those seeking justice and equality for LGBTI people. In some places, the [death penalty](#) looms as a terrifying spectre, a cruel punishment for simply being who they are.

These injustices stand in stark contradiction to the principles enshrined in international and regional human rights law and standards which unequivocally champion equality, non-discrimination, and the *inherent dignity of every human being*, regardless of their sexual orientation or gender identity. While international and regional law provide a crucial framework for protecting the



rights of every individual, the lived experiences of many LGBTI persons in Africa underscore a profound disconnect between these legal principles and the reality they face. The harsh reality is that in many African countries, deeply entrenched cultural, religious, and legal norms - often dating back to the colonial era – persist, marginalizing and excluding LGBTI persons from enjoyment of their rights as enshrined in domestic and international law.

The pursuit of recognition and justice remains ongoing as LGBTI persons endeavour to live their lives authentically in a world that frequently seeks to deny them their very existence.

While the struggle for LGBTI persons to have their rights recognised and realised is not new in Africa, recent times have seen a troubling surge in homophobic attitudes, behaviours, actions and sentiments. This uptick in anti-LGBTI rhetoric, fuelled by political, religious, and societal figures, signals escalating hostility that together with [existing punitive laws](#) foster a climate of both state-sanctioned and societal discrimination and violence. This shift in rhetoric positions LGBTI persons as antithetical to cultural and religious norms, thereby exacerbating their vulnerability and undermining their access to equal rights, protections, and services.

At the core of this review lies the recognition that the burgeoning anti-LGBTI sentiment is not an isolated occurrence, but rather a facet of a broader regional trend marked by heightened homophobia and prejudice. Additionally, it reflects a global assault on the rights of LGBTI persons propelled by increasingly influential anti-rights and anti-gender movements. This trend urgently necessitates coordinated regional and international intervention to counter these detrimental narratives and attitudes and uphold the human rights of all people, irrespective of their sexual orientation, gender identity and expression and sex characteristics.

This review explores cases from select African countries, namely Botswana, Burundi, Eswatini, Ghana, Kenya, Malawi, Mozambique, Namibia, Tanzania, Uganda, Zambia, Zimbabwe, casting light on the rights violations faced by LGBTI individuals in the African context.



## METHODOLOGY

This content of this review draws upon monitoring conducted by Amnesty International and our partner organizations in the region, primarily throughout 2022 and 2023. To provide a comprehensive understanding, information from preceding years has been incorporated for context. To capture the first-hand experiences of rights holders (LGBTI activists and survivors), a total of 39 interviews were conducted with Amnesty International, utilizing various formats such as phone interviews, text correspondence, email exchanges, and online interviews.

The document also integrates [previous research](#) and [advocacy efforts](#), including information obtained from online regional meetings which took place in June and December 2022. Parts of it also reflects the insights gathered during an in person cross regional gathering held in Johannesburg in September 2023. This event, hosted jointly with the Southern Africa Litigation Centre, Transbantu Association Zambia, and Nyasa Rainbow Alliance, served as a platform for sharing knowledge, experiences, and strategies to counter growing anti-LGBTI narratives and policies in the region.

While its contents are not meant to be statistically representative and certainly do not cover all relevant countries and the full extent of LGBTI rights violations in Africa, the document sheds light on the often-underrepresented lived experiences of LGBTI persons in the region. It also highlights the incredible work carried out by advocates who persevere despite increasingly challenging circumstances and underscores the far-reaching implications of governments' use of the law as a tool of violence against marginalized persons.



# COUNTRY PROFILES

## BOTSWANA

### Protests defer legislation for same-sex relations

In 2019, a significant legal milestone was achieved in Botswana when the High Court in the [Letsweletse Motshidiemang v. Attorney General](#) (2019) case ruled in favour of activists seeking the abolishment of jail sentences for consensual same-sex sexual acts between adults, citing that such penalties were unconstitutional. Among other findings, the Court ruled that the word “sex” in section 3 of the Constitution of Botswana should be “generously and purposively interpreted to include ‘sexual orientation.’” The government of Botswana appealed the High Court ruling but their appeal proved unsuccessful. In another milestone, in 2021 [the Court of Appeal in Botswana](#) emphasised that sections 164(a) and (c) of the Penal Code “have been rendered unconstitutional by the march of time and the change of circumstances” and “incentivise law enforcement agents and others to become key-hole peepers and intruders in private spaces.” The Court accentuated that this was “neither in the public interest nor in the nature of Botswana.” In [January 2022](#) it was reported that the President of Botswana had assured LGBTI rights NGO, LEGABIBO which intervened as friends of the Court in the cases above that “the Government of Botswana is led by principles of democratic governance and the rule of law.” He noted that the government will stand on the decision of the Court of Appeal.

In July 2023, a crucial victory was expected as the parliament was set to remove Sections 164(a) and (c) from the penal code, aligning it with the 2019 decision of the Court. However, leading up to this pivotal moment, an unexpected turn of events occurred. [Early July](#), in Molepolole, large groups, predominantly motivated by religious beliefs, gathered to protest against the anticipated legislative changes. Among the demonstrators, media reports show photos of seemingly young children holding signs that read ‘we say no to homosexuality’ and ‘protect our children against homosexuality.’

Weeks later, on 22 July, in Botswana’s capital, Gaborone, [an unprecedented demonstration](#) unfolded a few days before the bill was supposed to be discussed in parliament. Hundreds of people took to the streets to voice their opposition to the legislation aimed at giving effect to the Court ruling, legalizing consensual same-sex acts. These protesters, backed by various religious groups, marched through the city with signs bearing slogans such as ‘we say no to homosexuality’ and ‘protect our children.’

Pastor Pulafela Mabiletswane Siele, representing the Evangelical Fellowships of Botswana, a Christian organization, conveyed the concerns of the protesters by delivering a petition to the parliament. Siele alleged that if the bill were to pass, it “would open floodgates of immorality.”

On the day, opposition lawmaker Wynter Mmolotsi received the petition on behalf of the parliament. He assured the protesters that the views of religious groups would be considered in the legislative discussions, saying, **“Well, this is what Christians believe should happen, and Christians clearly do not agree with this. And therefore, they are giving us a guideline on how we should debate the law.”**

Ultimately, the discussion on the bill was [deferred](#), Minister of Justice Machana Shamukuni addressed parliament, explaining that public concerns over the bill’s introduction had necessitated further consultation. The Minister cited the importance of considering the views and concerns of all stakeholders in interpreting the Constitution and the need to ensure clarity in the revision of the law’s provisions. As a result, the bill was removed from the pending debate in parliament, with the possibility of it being revisited at a later stage. It did not make that sitting of parliament which ended in August 2023.

An activist from BlackQueerDox, a grassroots feminist collective in Botswana, said to Amnesty International in October 2023, **“We began to realize that these people [anti-gender actors] were incredibly organized. At first, we didn’t see much activity on social media, but as the time for parliament to convene and discuss legislative changes approached, it became clear that they were strategically planning their moves. They seemed to be a step or two ahead of us, and with the upcoming elections next year, the situation is even more uncertain. There’s a looming sense of polarization in the air, and we’re left in the dark about what might unfold. Perhaps the most worrisome aspect is their push for a referendum, which could potentially nullify the Court of Appeal’s decision.”**<sup>2</sup>

WoMen Against Rape (WAR), an NGO based in Maun, said to Amnesty International after the protests, **“It was with great hope and pride that Botswana celebrated the landmark order by our highest court to repeal laws criminalizing same-sex intercourse. The decision represented a monumental stride towards building a more inclusive and progressive society, where every citizen’s dignity and rights are respected, irrespective of their sexual orientation. However, we are deeply troubled by the**

**emerging trends in our government’s parliament, wherein certain factions are seeking to erode the hard-earned progress on equality and non-discrimination.”**<sup>3</sup>

Even more concerning, is that this is not the first instance of the Botswana government failing to adhere to court rulings impacting the rights of LGBTI persons. Notably, in 2017, the High Court, through the [ND v. Attorney General](#) case, unequivocally asserted that denying transgender persons the right to change their gender marker without unnecessary legal barriers violates fundamental rights such as identity, dignity, privacy, protection from discrimination, and freedom of expression. The court’s clear instruction was for the State to take all requisite legislative and administrative actions to ensure that identity documents accurately reflect a person’s self-defined gender identity.

Moreover, the High Court, in the same case, clarified that individuals have the right to change their gender marker under the National Registration Act of 1986. This act, under Section 16, outlines that changes to registered individuals’ particulars are warranted in the event of a ‘material change’ to their details. The court affirmed that a gender identity different from the

one assigned at birth, as recorded in the birth register, constitutes such a ‘material change.’ Upon implementing this change, the Registrar is obligated to issue a new identity document.

While the petitioner in the case was able to change his identity documents to reflect his gender identity, it remains troubling that in 2023, the Southern Africa Litigation Centre (SALC) [reported](#) that numerous transgender persons in Botswana still encounter formidable challenges in their quest for legal gender recognition.

<sup>2</sup> Phone interview with Amnesty International on 4 October 2023

<sup>3</sup> Phone interview with Amnesty International on 27 September 2023

## BURUNDI

### LGBTI rights struggles in a climate of discrimination

At a national prayer breakfast on 1 March 2023, President Evariste Ndayishimiye made a deeply troubling statement during the event, where he [called](#) upon Burundians to “**curse those who indulge in homosexuality because God cannot bear it**”, and went on to say that “**God never intended same-sex marriages**”. This was not the first time that the president had made such homophobic remarks. At his inauguration in June 2020, he described same-sex marriage as a “[social deviation](#)”, and in August of the same year he [suggested](#) that the countries most affected by Covid-19 were those who supported LGBTI people. Other high-level officials have made similarly homophobic public remarks, which amplify the marginalization and stigmatization of LGBTI persons in the country.

Shortly before this statement, on 22 February 2023, a group of 24 people were [arrested](#) in Burundi’s political capital Gitega, infringing on their rights to freedom of assembly and expression. They attended a workshop on economic inclusion organized by an organization focusing on HIV/AIDS and were accused of “homosexuality” (Article 590 of the Penal Code). Some were also accused of “inciting debauchery” (Art 562). Two other people were added to the casefile during the trial without being interrogated or officially charged. On 21 August, the court acquitted 19 defendants and found seven people guilty, including two in absentia.

Of particular concern is the delay in releasing those that were acquitted. While 10 of those acquitted had already been provisionally released before the court decision, the nine others should have been released following the court decision. **One of the people acquitted, Mevain Shurweryimana – described as a “family man” – died before the prosecutor agreed to sign his release papers.** His health had deteriorated in detention. The other eight people acquitted remain in detention at the time of writing in November 2023. The prosecution has appealed the initial judgment.

On the situation a Burundian human rights lawyer and activist said: “**There is a contradiction between, on the one hand, the national guidelines relating to the fight against HIV/AIDS, in particular the Integrated National Strategic Plan for the fight against HIV/AIDS, Sexual Transmitted Infections and Viral Hepatitis, and on the other hand, the push backs of the efforts in the fight against HIV/AIDS as a consequence resulting from the charges brought by the Public Prosecutor’s Office and imprisonment of community actors involved in it.**”<sup>4</sup>

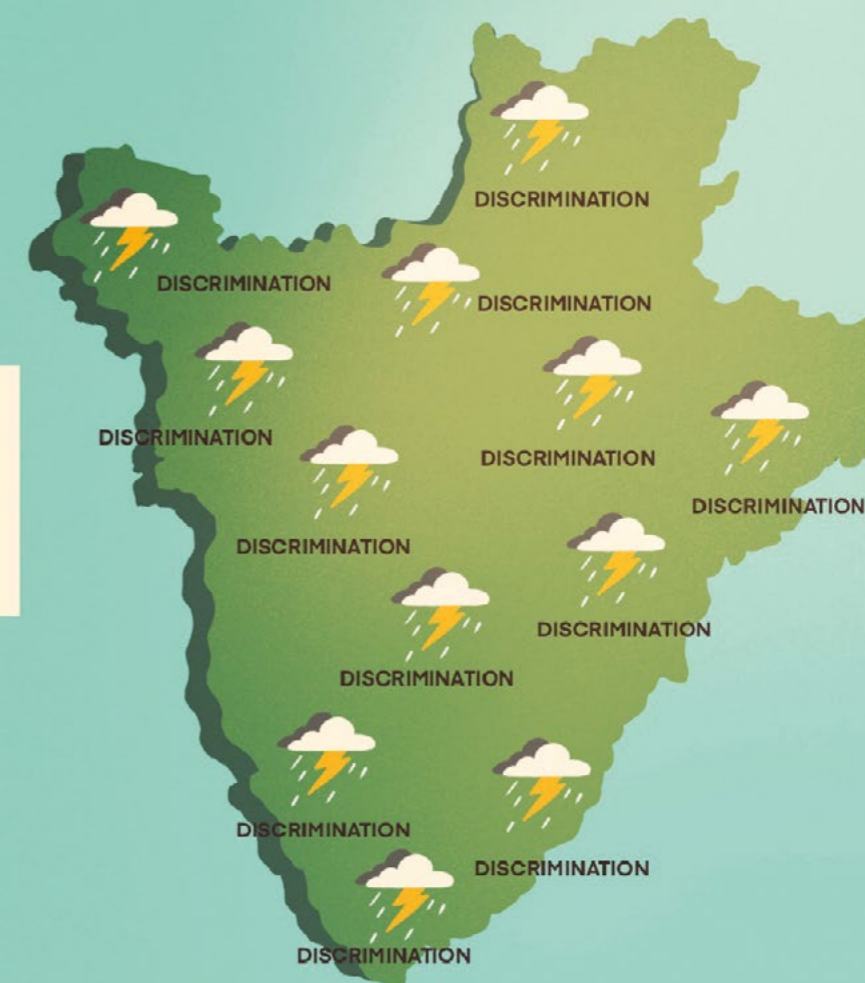
Burundi’s criminalization of same-sex conduct dates back to 2009 when a provision was introduced into the new Penal Code, following the instructions of the late President Pierre Nkurunziza. This provision was maintained in the updated 2017 Penal Code (Art. 590). The legal framework has

created a hostile environment for LGBTI persons in the country, leaving them vulnerable to discrimination, harassment, and persecution.

President Ndayishimiye’s inflammatory remarks have only served to further marginalize and stigmatize LGBTI persons in Burundi. Rather than undermining respect for the universality of human rights and perpetuating a climate of fear and discrimination, the government should take all necessary measures to guarantee rights to freedom of assembly, association and expression without any discrimination; ensure that the judicial process upholds the principles of equality before the law and equal protection of the law; and take all necessary measures to effectively protect the rights of all Burundians against attacks on their physical integrity and against discrimination of all kinds.

<sup>4</sup> Email correspondence with Amnesty International on 24 November 2023

## LGBTI FORECAST WEATHER





## ESWATINI

### Unaddressed legal ambiguities affecting the enjoyment of human rights by LGBTI persons

Eswatini functions under a dual legal and governance system of Swazi Law and Custom and Roman Dutch law. While the Constitution, guarantees all citizens the “right to equality under the law,” Eswatini does not have specific laws protecting the rights of LGBTI persons. Instead, consensual same-sex relations between men are criminalized under section 185(5) of the Criminal Procedure and Evidence Act – which exists as a remnant of colonial-era Sodomy Act of 1907. The law is silent on provisions criminalizing consensual same-sex relations between women.

The criminalization of same-sex relations between men appears to be largely obsolete in practice, with the Eswatini government, in its 2012 United Nations Universal Periodic Review, reporting that no one had been charged under the law. Nevertheless, the presence of restrictive laws that criminalise consensual same-sex relations is itself a basis of discrimination which [contributes to the violations of human rights](#) faced by LGBTI persons in Eswatini.

In Eswatini, the Constitution under Section 20 guarantees that ‘no person’ may be discriminated against on several grounds. While this broad protection theoretically includes LGBTI persons, it does not explicitly mention sexual orientation or gender identity. The rights enshrined in the constitution are universal and meant to apply to all persons equally, however, without explicit legal provisions safeguarding LGBTI persons from discrimination, there remains a practical vulnerability. This gap in legal protection can result in LGBTI persons being at risk of job termination, housing denial, or refusal of services based on their sexual orientation or gender identity. The concern arises from the potential for differing interpretations and enforcement of these rights, which can undermine the effective protection of the rights of LGBTI persons.

In 2022, [research](#), conducted as part of the *Out & Proud: LGBTI Equality and Rights in Southern Africa project*, found that in Eswatini, only one in ten survey respondents thought that LGBTI persons were treated equally to everyone else. The research expounds that half of the respondents thought it was unlikely that an LGBTI person could exist and express themselves in public spaces without fear of discrimination.



**Despite the high incidence of discrimination reported in the research findings, Eswatini lacks coordinated and comprehensive mechanisms to monitor and respond to discrimination, exclusion, and violence against LGBTI persons. When instances of discrimination or violence are reported to the police, the likelihood of being brought before the magistrate is low, meaning LGBTI persons rely on private litigation to get remedy for any human rights abuse.** This is exacerbated by the limited support services available to LGBTI persons, including the absence of public services tailored to the needs of the LGBTI community. The Out & Proud research finds that deep-seated social stigma against LGBTI persons may lead to reluctance in accessing social services and reporting discrimination and violence. More than half of respondents thought that it was not likely that an LGBTI person could seek police protection from violence without experiencing discrimination, and half of all respondents thought it was unlikely that LGBTI persons could access social welfare or grants without discrimination.

In September 2019 the Eswatini Registrar of Companies rejected an application by Eswatini Sexual and Gender Minorities (ESGM), a community-based advocacy organization working to advance the protection of the rights of LGBTI persons, for registration as a non-profit organisation. The Registrar cited several reasons behind the rejection, including that same-sex sexual acts are criminalized in Eswatini and therefore the government cannot

register an organisation that promotes the interest and aspirations of the LGBTI persons.

In response to the Registrar's decision, ESGM filed a case before the high court challenging the refusal to register them in 2019. In 2020, the High Court upheld the Registrar's decision to deny ESGM's registration, although it is important to note that a dissenting judgment argued for ESGM's registration as a not-for-profit company. In May 2022, ESGM filed a notice of appeal against the decision of the High Court and in July 2023, the Supreme Court [ruled in their favour](#), publicly declaring that "the approach undertaken by the Registrar in this regard does not meet the legal requirements contained in Section 33 of the Constitution." The acting minister of Commerce and Trade was ordered by the court to reconsider ESGM's application. **However, despite the Supreme Court judgement, the ministry declined the organisation's application and directed the registrar of companies not to register ESGM.** In [a letter](#) dated 27 September 2023, the acting minister communicated his decision citing Roman Dutch Law as well as the absence of clear prohibition against discrimination on grounds of sexual orientation and gender identity in the Eswatini Constitution. In a statement provided to Amnesty in October 2023, ESGM said:

**"The proceedings of the court case have had a negative impact on LGBTI human rights advocacy [and] triggered a lot of interest from society, local and international human rights structures and activists.**

**[While] the organisation has gained a lot of support from its own members and from political formations... it is still sad news that the human rights of the LGBTI in the country are still not recognized."**<sup>5</sup>

While the Supreme Court's decision set the stage for LGBTI organizations to register, the response by the Ministry of Commerce and Trade is another example of how laws criminalizing sexual orientation and gender identity place LGBTI persons in precarious situations and violate their rights, including their rights to freedom of association, expression, equality before the law, and of non-discrimination, a fundamental principle of all international human rights treaties including regional treaties such as the African Charter on Human and Peoples' Rights.

This has other knock-on effects; for instance, LGBTI persons may face discrimination in healthcare settings, leading to inadequate or biased medical treatment. A [study](#) showed that LGBTI people have higher levels of mental health concerns, have experienced more violence, and have faced barriers to healthcare directly linked to their sexual orientation, gender identity or gender expression.

In the National Multisectoral HIV and AIDS Strategic Framework (NSF) 2018 – 2023, The Eswatini government [reported](#) that two-thirds of gay men experience stigma related to their sexual orientation in health care settings. A different [report](#) from 2018, which surveyed lesbian, gay,

bisexual, trans and gender-nonconforming Swazis, found that 40% of all respondents had been insulted in a healthcare facility, with almost one third denied care because of their sexual orientation or gender identity. The report further indicates the stigma against LGBTI persons has engendered a mental health crisis among LGBTI persons in Eswatini.

Transgender or gender non-conforming people face particular challenges accessing gender affirming practices due to stigma, discrimination and exclusion. While not all transgender and gender non-conforming people need or desire gender affirming healthcare, [only 8%](#) of respondents had access to hormone treatment, and none had access to surgical interventions.

<sup>5</sup> Email correspondence with Amnesty International on 18 October 2023



## GHANA

### Challenges and threats to LGBTI rights amidst controversial legislation

LGBTI people continue to face discrimination and other human rights violations in Ghana and might face increased risks if the Ghanaian Parliament passes one of the most [draconian](#) anti-LGBTI rights bills in the continent.

[The Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021](#) was officially introduced in Parliament for its first reading on 2 August 2021. After that, the Bill was referred to the Constitutional Legal and Parliamentary Affairs Committee which held public hearings on the Bill for almost two years. In March 2023, the Committee released its report on the Bill. The Committee's final report was presented to Parliament on 5 July, the same day that there was the second reading of the Bill.

After this second reading, the Bill will move to the Consideration Stage during which the proposed amendments and clauses by the Constitutional Legal and Parliamentary Affairs to the Bill should be debated and voted on by Parliament.

Since its official presentation in Parliament in 2021, the Bill has been strongly criticized by national and international human rights organizations. The original Bill gravely contravenes the principles of equality and non-discrimination, the rights to freedom of expression, freedom of association and privacy, and the prohibition of torture enshrined in the 1992 Constitution of Ghana and international human rights treaties ratified by the country. More specifically, it denies LGBTI persons their inviolable human dignity guaranteed to all persons under section 15 of the country's Constitution.

A positive development in the ongoing debate is the proposal by the Committee on Constitutional, Legal, and Parliamentary Affairs to remove the "conversion therapy" clause from the Bill. Which is an important step as the practice of so-called "conversion therapy" remains a highly dangerous and harmful practice, inflicting severe psychological distress on its recipients and potentially constituting torture or cruel, inhumane, and degrading treatment as [stated](#) by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

The latest version of the Bill has undergone changes, and the clause has been replaced with a broader definition of “medical treatment.” According to the new definition, “medical treatment” encompasses various services aimed at helping individuals overcome any biological, psychological, or emotional challenge related to a sexual activity prohibited under the Act. This revised approach has effectively removed the specific mention of “conversion therapy” and has introduced a more generalized framework. However, it remains important to carefully monitor how this alteration might impact the protection of individuals from harmful practices and ensure that the new definition doesn’t inadvertently permit or enable any form of harmful conversion therapy under the guise of medical treatment. Other proposed amendments align the punishments and sentences with existing laws such as the Penal Code.

However, if passed into law, the bill will encourage even more hatred and intolerance, and promote persecution against people on the basis of their real or perceived sexual orientation and gender identity simply because they do not or cannot conform to dominant social and gender norms. It intends to impose restrictions and criminal penalties against a range of people, including LGBTI people and anyone who expresses support or sympathy towards LGBTI people. It also places a positive obligation on everyone in Ghana to report any conduct perceived to be of an ‘LGBTI nature’ to the police or to a list of chosen people in the community in the absence of the police.

The proposed law would impose a penalty of imprisonment for being LGBTI and a penalty for anyone who engages or participates “in an activity that promotes, supports sympathy for, or a change of public opinion towards an act prohibited under the Bill.” This vague and overly broad provision potentially places anyone in Ghana at risk of being accused under the bill, and creates an environment of hostility, discrimination, and stigmatization of people who are LGBTI or perceived to be such; or anyone linked to them socially, through family, profession, or otherwise.

Human rights defenders or anyone registering, operating or participating in an activity to support an organization working on LGBTI people’s rights could face imprisonment. The bill also criminalizes any production and dissemination of so called LGBTI “propaganda” with imprisonment.

These provisions are in clear violation of the Ghanaian Constitution which universally protects all persons’ rights to freedom of association and expression. It also contradicts the [2014 Resolution of the African Commission on Human and Peoples’ Rights](#) which calls on State Parties “to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities.”

The bill restricts transgender people from accessing gender affirming treatment, thereby violating their right to the highest attainable standard of health, which is protected under international human rights law, including by the UN Covenant on Economic, Social and Cultural Rights (CESCR, Article 12). In line with this, The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the CESCR, has [stated](#): “The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.” Transgender people should be able to obtain legal gender recognition through quick, accessible and transparent procedures and in accordance with their own perceptions of gender identity.

The bill, if enacted into law, also places medical professionals at risk of criminal penalties between

three to five years imprisonment for providing medical services for gender affirmation procedures. This is deeply worrying because it makes it impossible for transgender people to access gender affirming care they need from health professionals.

Additionally, in clause 23, titled ‘Assistance for Questioning or Intersex People,’ the Ghanaian government is vested with the authority to establish partnerships with accredited service providers for the provision of support to individuals who are in the process of questioning their gender identity, as well as parents of intersex children. The objective of this provision is to offer necessary guidance and assistance, which may encompass therapeutic interventions and other relevant support mechanisms.

Specifically, this clause allows for the potential “realignment” of intersex children to conform to the “appropriate” binary gender designation as determined by a qualified medical practitioner. However, certain aspects of this clause are ambiguous and open to varying interpretation. One notable point of ambiguity pertains to the question of whether these interventions, including “corrective therapy” or surgical procedures, could be mandated or enforced by the state.

According to a group of experts from the UN special procedures who made a common analysis of the bill, it “describes a system of State-sponsored discrimination and violence of such magnitude that its adoption (...) would appear to constitute an immediate and fundamental breach of State’s obligations under [international human rights law](#)”.

As one LGBTI Ghanaian activist says: **“If the Bill is finally passed, it is going to worsen an already bad situation for the LGBTI community. LGBTI organizations will be banned, and they will not be able to work. Cases against LGBTI people are going to double or triple as it has happened in Uganda. Ghanaian organizations are not going to be able to respond to all emergency cases.”**<sup>6</sup>

**“Many people are going to be evicted from their homes. In some families, they are already throwing out their own relatives or kids because they don’t want to be a family which has a gay or a lesbian child. Some other people are going to lose their jobs when their employers find out that they are queer.”**<sup>7</sup>

In the courts, there has been an attempt to halt the introduction of the Bill on procedural grounds: on 7 July 2023, Dr Amanda Odoi, a feminist, gender, and social justice advocate and academic [filed a lawsuit](#) (Civil motion no: J1/13/2023) against the Speaker of Parliament and Attorney-General in the Supreme Court. The case purported that the Bill was incompatible with article 108 of the Ghanaian Constitution given that, among other things, there had been a lack of objective financial analysis by the State conducted about the Bill’s implications for public funds. On July 19, Ghana’s Supreme Court refused to grant the orders sought in the application, [as reported by local media](#). In a unanimous decision, the nine-member panel led by Chief Justice Gertrude Torkornoo ruled that the applicant had failed to sufficiently convince the court to grant the relief she sought.

Some LGBTI organizations have already observed that since The Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill was introduced in parliament in 2021, there has been an increase in violence against LGBTI people. **A locally based NGO has documented more than 70 human rights attacks against LGBTI people from January to September 2023.**<sup>8</sup> According to the organization, these attacks are not isolated to a specific geographic area; they are alarmingly widespread and occurring throughout the country. Previously, it was challenging to obtain information about cases in certain regions. However, with the rise of homophobic sentiments, NGOs have seen a surge in cases coming from all corners of the country.

The NGO told Amnesty International that in most of the cases when LGBTI people are victims of

<sup>6</sup> Online interview with Amnesty International on 2 October 2023

<sup>7</sup> Online interview with Amnesty International on 2 October 2023

<sup>8</sup> Online interview with Amnesty International on 2 October 2023

attacks or abuses, physical or on social media, they don't report it to the police. They are scared. They know that if they report the aggression to the police, they will most likely be intimidated and accused of being homosexual. **"Sometimes the victims go to the police to report what happened and they feel intimidation, the police say to them 'So does it mean that you are gay? Do you know that we can arrest you?'"**<sup>9</sup>

Some LGBTI Rights organizations in Ghana consider that homophobia and homophobic rhetoric has always been present in the country, but before it was not as mobilized and organized as it is presently, especially by the anti-gender and anti-LGBTI movements from US religious evangelical groups. LGBTI rights organizations claim that those evangelical groups increased their presence in the country when in 2019 they [held](#) the World Congress of Families Conference in Ghana,<sup>10</sup> stating that **"This is an imported hate which is coming. Before there were people that hated gay people, but they were not organized they were not resourced until these evangelical anti-LGBTI group started coming into our country."**

They accuse these groups of being behind The Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021 as well as resourcing the local groups and personalities in Ghana to attack the LGBTI people. They tell Amnesty that, they liken what is happening in Ghana similar to what is happening in other countries in Africa such as Uganda or Kenya, and they also see great similarities between the content of all the anti-LGBTI laws that are being passed or debated in these countries.<sup>11</sup>

With this [environment of hostility](#) against LGBTI people and this homophobic rhetoric in the Ghanaian society, LGBTI human rights defenders face a lot of challenges when doing their legitimate work. They face a lack of resources to confront the need from the increasing attacks.

LGBTI organizations also report to Amnesty International that it is becoming increasingly difficult to find safe spaces to carry out their human rights work because a lot of doors are being closed to organizations that are seen or perceived as LGBTI organizations. Safe spaces that they used

to use, like hotels' conference rooms, are always 'booked' when they want to reserve them. **"You feel that indirectly you are being told you are not welcome here anymore, this is making difficult for us to mobilize, to organize, to find space to empower people."**<sup>12</sup>

Organisations also report safety concerns, recounting that on 31 January 2021, the LGBT+ Rights Ghana Association opened its premises, which were later subjected to a raid and [shut down](#) by security forces on 24 February 2021. Prior to this incident, religious leaders and politicians had publicly called for the closure of the office, creating an atmosphere of hostility. The rented premises became a target when the landlord, who initially leased the property to the organization, reported them to the authorities, citing intolerance towards activities supporting the rights of LGBTI persons. The group faced threats to their safety, including prior warnings from traditional leaders about burning down the office, all exacerbated by a lack of police assistance.

In light of past incidents, organizations have expressed to Amnesty International their apprehension of potential reprisals and the looming threat of their offices being targeted. As a precautionary measure, some LGBTI organizations opt to temporarily close their premises in response to perceived threats or when their organizations are mentioned elsewhere, elevating potential risks.<sup>13</sup>

Notably, in June 2022, Ghanaian LGBTI organizations took legal action by filing two lawsuits against the Inspector General of Police and the Attorney General of Ghana. This legal action aimed to seek justice for activists who were [unlawfully arrested](#) by the police in 2021. The case is currently pending.

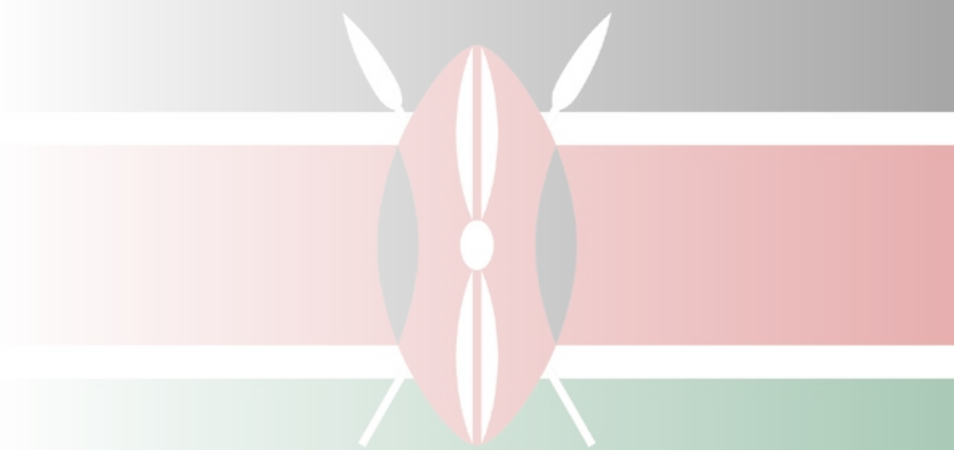
<sup>9</sup> Online interview with Amnesty International on 2 October 2023

<sup>10</sup> Online interview with Amnesty International on 2 October 2023

<sup>11</sup> Online interview with Amnesty International on 2 October 2023

<sup>12</sup> Online interview with Amnesty International on 2 October 2023

<sup>13</sup> Online interview with Amnesty International on 2 October 2023



## KENYA

### From legal victories to persevering struggles

The struggle for equal rights in Kenya carries significant weight for LGBTI persons who have been unjustly stigmatized with degrading labels. To compound the issue, various facets of homosexuality, including consensual private acts, remain criminalized under Sections 162, 163, and 165 of the Kenya Penal Code. This legal framework criminalizes consensual “carnal knowledge of any persons against the order of nature” and imposes harsh sentences of up to 14 years’ imprisonment. **The criminalization of homosexuality was unsuccessfully challenged as the High Court of Kenya in 2019 [declined](#) to strike down the criminalization and found sections 162, 163 and 165 to be consistent with the Constitution of Kenya.**

In April 2022, Sheila Lumumba, a non-binary lesbian was found [raped and killed](#) in her room in Nyeri, a county in Central Kenya. The perpetrator was [arrested](#), and the matter is actively being prosecuted in court.

On 3 January 2023, heartbreaking news went round both social and mainstream media, announcing the [violent death](#) of one Edwin Kiprotich Kiptoo also known as Edwin Chiloba. Edwin was an activist, fashion designer and model. When the news first emerged, there were initial suspicions of a hate crime. However, as more details came to light, it became evident that this was a case of Intimate Partner Violence (IPV). Sadly, instead of empathetic understanding, certain anti-LGBTI groups exploited the situation to perpetuate a homophobic narrative that persisted for several weeks.

In February 2023, in a case whose proceedings spanned over 10 years, the Supreme Court of Kenya [declared](#) in its judgment that the National Gay and Lesbian Human Rights Commission had a right to register as an NGO. In its justification, the Court recognized that “given that the right to freedom of association is a human right... an essential prerequisite enjoyment of other fundamental rights and freedoms, this right is inherent in everyone irrespective of whether the views they are seeking to promote are popular or not.” The court [also found](#) that it would be unconstitutional to limit the right to associate through denial of registration of an association, purely on the basis of the sexual orientation of the applicants.



LEGAL VICTORIES

STRUGGLES

The judgment was widely celebrated by organizations within Kenya and internationally, often described as a “jurisprudential milestone.” However, reports from partner organisations indicate that the Kenyan Supreme Court’s ruling, which affirmed the rights of LGBTI persons to freedom of association, has created a complex and somewhat volatile environment. They say that alongside the positive reception of the ruling, there have also been [negative reactions](#). This newfound legal recognition has had the unintended consequence of [amplifying](#) anti-LGBTI rhetoric and raising concerns about the potential for increased violence and discrimination against LGBTI people in the country. For instance, activists have reported to Amnesty International that the negative responses to the Judgment included those from political figures who fueled violence against LGBTI persons by offering to “pay those who will attack members of the community.”<sup>14</sup> An [online](#) advocacy of hatred campaign ([#SayNotoLGBTQ](#)) further exacerbated the situation. It is reported that this [resulted](#) in direct attacks on LGBTI persons in Kenya, forcing many to flee their homes, with some facing forced eviction based solely on their sexual orientation. Additionally, offices and health facilities providing support to this marginalized group had to shut down due to the intensified hostility.

It is in this context that, on March 9, 2023, George Kaluma submitted an application to the court, seeking a review of the Judgment and Orders issued. Among other reasons, the application submitted that judgment (of February

2023) usurped the sovereign power of the people of Kenya, the legislative role and authority of Parliament and that it allegedly sought to amend Article 27(4) of the Constitution; that the Court disregarded the views of the people of Kenya on ‘sex’ and ‘gender’ contained in the Final Report of the Constitution of Kenya Review Commission and that the Supreme Court had already dealt with the issue of the constitutionality of Sections 162 (a), (c) and 165 of the Penal Code. **The Supreme Court dismissed the application as the applicant was not a party to the earlier February 2023 decision and is therefore not competent to seek review of the decision.**

Kenya is the only country in the East and Horn of Africa that offers asylum to individuals who seek protection because of their sexual orientation, gender identity and/or expression and sex characteristics. Despite this, LGBTI refugees in Kakuma camp are experiencing worsening conditions where host communities and other heterosexual refugees attacked them. In Nairobi, wanton arrests, and harassment of urban LGBTI refugees have become a common phenomenon. Below is an excerpt of a joint 2023 [report](#) by the National Gay and Lesbian Human Rights Commission and Amnesty International which documents the extremely dangerous situation of hate crimes, discrimination and other human rights violations suffered by LGBTI asylum seekers and refugees in Kenya, specifically those living in Kakuma refugee camp, between 2018 and February 2023.

**Esther**, a 41-year-old lesbian woman, reported being raped twice in Kakuma camp. In early 2018 she was attacked by two men carrying knives while she was showering in a plot near the camp gate. One raped her while the other held her down. Later that year she was raped a second time by four men during a burglary at her house, in the presence of her seven-year-old son with whom she was sharing a bed. She told the researchers that she fears most for her kids, who have been harassed because of their mother’s sexual orientation: a man grabbed her daughter’s breasts and told her that he would rape her so that she doesn’t become a lesbian like her mom. Winnie, a lesbian woman, had a business in the market, where LGBTI friends used to buy. She told the researchers that one day in 2019 she was away from work and left one of her children to take care of the business. A group of people destroyed the stall and injured the child, saying that the LGBTI customers were affecting other businesses. When she went to report the crime, the police told her to look for the attackers and bring them to the police station to be arrested.

**Diana**, a lesbian woman, arrived in Kakuma camp in December 2019. She was greeted with homophobic abuse from other camp residents, who threatened to beat her and her house mates. The following night, a group of men carrying pangas (large, curved knives) and sticks attacked their house with stones, yelling at them to come out of the house. As Diana fled, she was hit by a stone and a stick. She went to the police station and reported the attack. She was given an OB reference number but said that police took no further action. Diana told researchers about seven different episodes between December 2019 and April 2020 during which she suffered violence, threats, or intimidation at the hands of other camp residents. She reported all these incidents to the police and obtained OB reference numbers. In two occasions the police told her to go back to the station, should she see her attackers anywhere again. In May 2020 Diana met two of the men who had attacked her previously, who pushed her on the ground. When she ran to the police station, the police gave her another OB reference number, her eighth one in five months. However, she told researchers that police failed to follow-up on her reports as she had not been provided any further information regarding the outcome of any police investigation. She said that the feeling of unsafety is her greatest concern.

The above are just a few of the many cases that sometimes go unreported primarily due to a prevailing lack of trust in the justice system within the LGBTI community. The failure of security agencies to take action inadvertently perpetuates attacks on LGBTI persons, leaving them in a constant state of fear and intimidation.

In April 2023, a Member of the Kenyan Parliament submitted the Family Protection Bill. The 2023 draft Family Protection Bill proposes punitive measures that, among others, limit the rights to assembly, privacy, and access to sexual and reproductive health information, services, and education. The Preamble of the Bill says that it is

14 Correspondence with Amnesty International in March 2023

aimed at providing for the protection of the family in furtherance of Article 45 of the Constitution, to prohibit homosexuality and same sex marriage and related activities and to proscribe activities that seek to advance, advocate, promote or fund homosexuality and unnatural sexual acts, to protect children, persons with disabilities, older members of society and other vulnerable persons from harmful sexual activities, to prescribe parental rights in education of their children, and for connected purposes.

**Among many things the Bill provides that any persons who engages in sexual acts with a person of the same sex shall be guilty of an offence and if found guilty, shall be sentenced to death.**

Property owners of premises that are used for same-sex relations may be fined \$USD14,000 or serve a seven-year jail term. The Bill suggests life imprisonment for persons who changes his or her sex, undergoes medical procedures that are intended to change his or her sex, or takes prescriptions to change their sex. The Bill prohibits same sex marriages including those entered into in another country. The Bill seeks to obligate the Kenyan government to deny asylum or expel LGBTI refugees based on their sexuality or sexual orientation.

Of this a queer social activist from Kenya said to Amnesty International in November 2023, **“It’s crucial to interrogate the origins of Kenya’s proposed ‘family bill,’ which runs much deeper than the assumed cultures of homophobia in Africa. It is propelled by a surge in anti-gender and anti-rights movements funded by religious and fascist entities in the global North. This includes support from U.S. evangelical churches for the current administration led by Ruto. Amidst anti-poor economic policies, attempted deployment of a violent policy force in the Haiti conflict, and silence on the Gaza genocide, it’s evident that this administration isn’t championing the rights of its people. Instead, it aligns with ideals of fascism and imperialism, distorting the very concept of Kenyan society and family.”**<sup>15</sup>

CitizenGO Africa have started a started this [petition](#) intended for the Speaker of the Kenyan National Assembly to express their support for the Family Protection Bill and urge the speaker to pass the Bill into law. The petition submits that the Bill a positive move towards protecting the family structure in Kenya.

A Human Rights Lawyer, who works at the National Gay & Lesbian Human Rights Commission said

to Amnesty International in October 2023. **“The tragic reality of the horrendous effects of the Hate Legislation rooted in hate and prejudice that is currently unfolding in our home Kenya, not only affects LGBTIQ+ Kenyans, but it also dangerously weakens the very foundations of Kenya’s systems of Justice, Rule of Law, democracy, equity, and Unity for the entire generation. Systems that our fore parents fought blood sweat and tears to put in place for our current generations to enjoy basic human rights systems.”**<sup>16</sup>

They further continued that:

**“The present wave of hate legislation against LGBTIQ+ Kenyans and Eastern Africans which is a colonial product doesn’t just criminalize our existence, love and identity, the hate legislation perpetuates a dangerous narrative that further marginalizes a section of Kenyan Citizens forcing us to live in shadows and fear of becoming refugees in our own Country. These hate legislations rather than safeguard societal values, corrode the very essence of human rights, equality, and dignity for all. It’s not just about ultimate decriminalization, it’s about recognizing our shared humanity.”**<sup>17</sup>

Notwithstanding, in September 2023 [a Court in Kiambu](#) affirmed a decision by a school to expel a learner over claims that she was a lesbian. The Court maintained that the school was justified in expelling the student due to her sexual orientation and other behaviours considered to be in violation of the school’s rules.

15 Text correspondence with Amnesty International on 9 November 2023

16 Email correspondence with Amnesty International on 30 October 2023

17 Email correspondence with Amnesty International on 30 October 2023



## MALAWI

### Persecution and discrimination against LGBTI persons

In Malawi, LGBTI persons face an [alarming and hostile](#) environment, with [discriminatory legislation](#) and ongoing human rights violations creating an atmosphere of fear and oppression. The [denial](#) of registration to organizations advocating for the rights of LGBTI persons has exacerbated the vulnerability of LGBTI persons to daily harassment and discrimination. This obstruction has not only impeded the ability of LGBTI persons to organize effectively, but it has also perpetuated a climate where LGBTI persons continue to face increased challenges in asserting their fundamental rights. For instance, LGBTI persons in Malawi grapple with [high levels](#) of unemployment and struggle to [access](#) affirming healthcare services throughout the country.

An advocate for the rights of LGBTI persons said to Amnesty International **“The situation for queer folks remains a pressing concern, with government actions aggravating their plight. The government has weaponized cultural and religious factors as determinants for how people should live, often using them to justify discriminatory policies and practices. Human rights violations against members of the LGBTQI+ community are distressingly common. For instance, some individuals have been subjected to invasive medical examinations without their consent, a flagrant violation of their bodily autonomy and privacy.”**<sup>18</sup>

At least one LGBTI organisation in Malawi received reports of police forcibly and illegally undressing transpeople for genital verification. For example, **Jana Gonani, a transgender woman who was arrested in September 2021 in Mangochi, was subjected to genital examination by a male officer, placed in a male holding cell, and sent to a hospital under the pretext of confirming her mental state, simply for identifying as trans.** Following the arrest, Jana Gonani was convicted of, among other offences, an offence under Section 153(c) of the Penal Code which criminalises consensual carnal knowledge and was sentenced to 8 years imprisonment.

<sup>18</sup> Interview with Amnesty International on 5 September 2023



Following the conviction, Gonani approached Malawi's Constitutional Court to challenge to Section 153(c) of the Penal Code to the extent that it is inconsistent with the provisions of the Constitution of Malawi, including the rights to personal liberty, dignity, equal and effective protection by the law, privacy and the right to be informed with sufficient particularities of the charge. The empanelled Constitutional Court of Malawi joined Gonani's case to the Akster vs Attorney General case which was seeking to challenge the constitutionality of sections 153(a) (offence of carnal knowledge of any person against the order of nature), 154 (offence of related to carnal knowledge) and 156 (offence of gross indecency with another male) of the Penal Code as unconstitutional to the extent that they violate rights guaranteed in the Constitution of Malawi. The case with both parties joined is still pending in the Constitutional Court of Malawi. **Gonani has received support from Nyasa Rainbow Alliance who have been subjected to abuse and physical threats for this support. On 18 June 2023 their offices were raided by unknown individuals.**

The Centre for the Development of People (CEDEP), the Centre for Human Rights and Rehabilitation (CHRR) and the Registered Trustees of Network of Religious Leaders Living with or Personally Affected by HIV and AIDS (MANERELA+) were accepted as amici curiae (friend of the court). They submitted that the Anti-Homosexuality Provisions (i.e., sections 137A, 153 including 153(c), 154 and 156 of the Malawi Penal Code) are contrary to the Constitution of Malawi and international law to the extent that they criminalize consensual same-sex sexual conduct between adults in private. They explained

that these provisions violate the right to personal liberty under section 18 of the Constitution; the right to dignity under section 19(1) of the Constitution; the right to non-discrimination under section 20(1) of the Constitution; and the right to personal privacy under section 21 of the Constitution, among others.

Apart from the support from the organisations above, the Gonani case has been met with much resistance from interfaith religious groups. In the wake of the trial, religious leaders in Malawi have led street [protests](#) against same-sex marriage. Archbishop Thomas Luke Msusa, who led the protests in Blantyre, firmly asserted that same-sex marriages are a sin, expressing concerns that allowing such unions would lead to the extinction of the human race. Similar sentiments were repeated by the [Reverend Alemkezzeke Chikondi Phiri](#) of the Malawi Council of Churches who helped organise similar marches in Lilongwe, Blantyre, Mzuzu and Zomba. The protests garnered support from both Christian and Islamic groups, the two major religions in the country.

Some of the religious institutions involved intervened in the Gonani case as friends of the Court. This includes the Malawi Council of Churches which explained, among other things, that it fully supports the criminalisation unnatural sexual behaviour which it argued was “against the will of God and the natural order in which man and woman are created.” The Episcopal Conference of Malawi also intervened as a friend of the Court and argued that the Penal Code of Malawi was constitutionally valid and any contrary claims should be dismissed because, among other reasons, “unnatural sexual encounters or sodomy have never been morally accepted in Malawi society.”

An important aspect to note about the situation in Malawi is that the protesters' intended messaging has deliberately conflated the very distinct issues of LGBTI organization registration, the decriminalization of same-sex relations, and same-sex marriage. While the court is considering the decriminalization of consensual same-sex sexual conduct (repealing section 153 of the Penal Code), **the concerned religious groups are purposefully conflating these issues in the media to misrepresent the case as one about same-sex marriage to incite public outrage, further complicating the discourse.**

Amnesty International was told that enjoyment of the right to health for LGBTI persons in Malawi is now more restricted. Nurses in Zomba have also been reported to engage in discriminatory practices and exhibit judgmental sentiments towards LGBTI persons, exacerbating the challenges faced by queer persons seeking healthcare. A 2019 [study](#) showed that compared to the general population in Malawi, LGBTI people were more likely to experience violence, discrimination in healthcare, and mental health concerns – all because of stigma, discrimination and prejudice based on sexual orientation, gender identity and expression. The situation is further complicated by faith communities that have organized marches to condemn same-sex relations. These marches have found solidarity among nurses, and even the Minister of Information joined demonstrations during anti-queer marches, sending a message that the government may condone violence against LGBTI persons.

The advocate continued that **“Internationally, the Malawian government may project an image of defending the human rights of queer persons, but**

**domestically, they appear to promote and enable the harassment of queer people, showcasing a troubling double standard!”**<sup>19</sup>

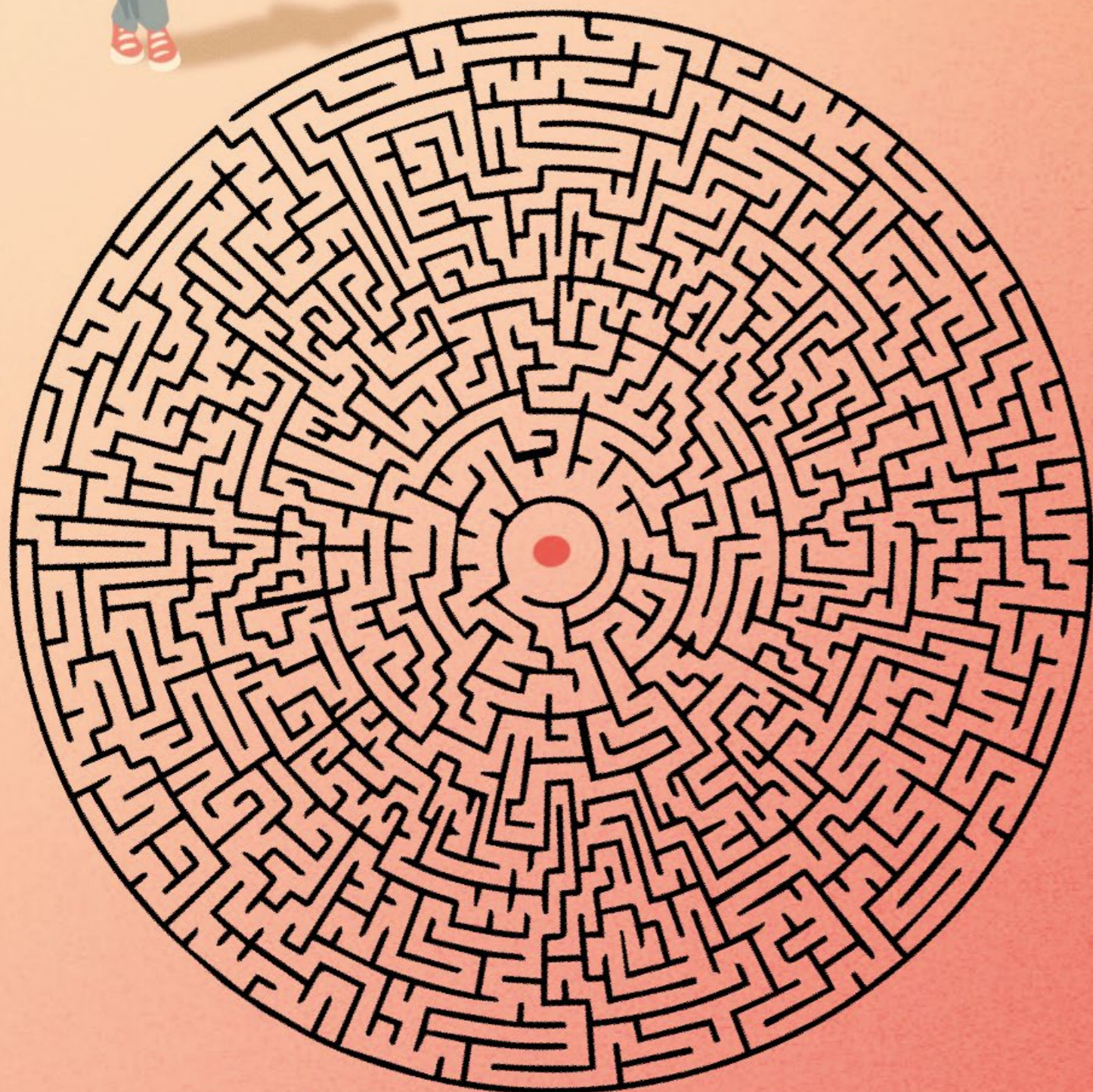
Interviewees also informed Amnesty International that there is also a selective application of the penal code, with certain sections being selectively enforced, particularly the vague and undefined provision “against the order of nature.” This unequal application disproportionately targets LGBTI persons, despite heterosexual individuals engaging in similar activities.

**In Malawi, LGBTI persons are being deliberately targeted, facing systemic discrimination and violence. Laws that criminalise consensual same-sex sexual acts disproportionately and negatively affect LGBTI people, in violation of human rights, including rights to non-discrimination and dignity.** Addressing these issues requires concerted efforts from both domestic and international actors to challenge discriminatory legislation and policies, protect human rights, and advocate for the well-being and safety of LGBTI persons in the country.

<sup>19</sup> Interview with Amnesty International on 5 September 2023



## • LGBTI RIGHTS



## MOZAMBIQUE

### Navigating the nuanced complexities of LGBTI rights

In 1990, Mozambique adopted a new Constitution, which underwent its first revision in 2004, aiming to transition the country toward democratic governance and align its legal framework with international human rights standards. In June 2015, Mozambique enacted a new Criminal Code, introducing modern criminal laws and [removing](#) outdated colonial-era clauses, including one that criminalized “vices against nature.” Despite not having previous prosecutions under the previous code, this legal revision brought about notable changes in Mozambique’s legal framework. However, it’s important to clarify that while some progress has been made, the framework does not fully align with the international standards for the rights of LGBTI persons.

There are few laws that ensure the protection of LGBTI people’s rights in Mozambique. For instance, the Labour Law (Law No. 23 of 2007), is one law in the country that provides protection from discrimination on the basis of sexual orientation. Article 4 of this law prohibits discrimination based on sexual orientation, among other characteristics. Article 5 emphasizes an employer’s obligation to respect an employee’s right to privacy, including aspects of the workers’ intimate and personal life. Article 108 of the same law ensures wage equality and equal benefits for equal work, with explicit prohibition of distinctions based on sexual orientation and other criteria. This law, however, does not protect from discrimination on the basis of gender identity, which leaves, for instance, trans persons vulnerable to such discrimination.

Amnesty International interviewed a member of an organisation working for the visibility and protection of transgender persons in Mozambique who noted that many transgender persons still resort to sex work because of the discrimination they face during recruitment processes: **“The labour law is not being abided by employers. If I bring my CV for a job vacancy, I will be questioned by the employer about the clothes I wear or the name on my identity card. Our organisation is working with public institutions to increase awareness about transgender people, but the process to change is a longer one, and we still face discrimination and stigmatization.”**<sup>20</sup> This is in line with another activist who spoke to Amnesty International who said, **“I think trans people are the worst affected, they don’t have access to hormone therapy or gender reassignment, they are going through an employment crisis, people here just don’t understand what being trans is, they think they are just gay men dressed as women, so their problems aren’t taken seriously, and they are discriminated against.”**<sup>21</sup>

<sup>20</sup> Phone interview with Amnesty International on 2 November 2023

<sup>21</sup> Phone interview with Amnesty International on 2 November 2023

Additional challenges in Mozambique include the absence of legal provisions for people to change their gender identity marker or name on their identification documents to align with their true gender identity. However, there is a legal avenue provided by the *Código do Registo Civil* (Code for Civic Registration) that grants the civil registrar the authority to make changes in cases where there is a modification of facts that affect a person's legal identity or status. In theory, this Code could be used by transgender persons to alter the sex description on their identity documents. Moreover, same-sex adoption remains illegal, and transgender persons are prohibited from serving in the military, even though lesbians, gays, and bisexuals are permitted to do so. Lesbians are excluded from the National Strategic Plan on HIV, resulting in their denial of access to sexual and reproductive health rights in many cases. Additionally, same-sex marriage remains unrecognized in Mozambique, primarily due to the definition of marriage within the civil code, which specifies it as a union between a man and a woman.

A particular situation worth noting in Mozambique is the challenges faced by LGBTI non-governmental organizations (NGOs) in their efforts to obtain official registration, even after the decriminalization of consensual same sex acts in 2015. Lambda, one of the country's most prominent LGBTI organizations, initiated its registration process in January 2008. Lambda encountered multiple rejections from the Ministry of Justice during its registration attempts. These refusals were rooted in the provisions of the Law of Associations (Law No. 8/91), which stipulated that associations could only be registered if they contributed to the "moral, social, and economic order of the country" and did not infringe upon the rights of third parties or the public good. In a significant development, the Mozambique Constitutional Council, through its Judgment No. 07/cc/2017, declared Article 1 of Law No. 8/91 unconstitutional, particularly in terms of the exceptions it provided regarding the right to freedom of association, including the reference

to "moral code." Despite this victory, as of November 2023, Lambda has yet to be granted legal recognition as an organization, even though they have fulfilled all substantive and formal requirements outlined in the Law No. 8/91, which governs the right of association. In his 2019 report, the former UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity [recommended](#) that the Mozambican authorities grant Lambda organization the juridical personality required by law.

Partners tell Amnesty International that in Mozambique, the social landscape, like in many African countries, exhibits some degree of hostility towards the LGBTI community. Although the country isn't overtly hostile, it maintains a complex, unspoken social contract whereby LGBTI persons are tacitly encouraged to remain inconspicuous. Activists report that same-sex relationships remain a contentious issue in a society where religious beliefs hold significant sway. Expressing or promoting homosexuality is sometimes perceived as a challenge to these religious convictions, potentially leading to violence against the LGBTI community. Within this nuanced context, the rights of LGBTI persons in Mozambique remain largely ambiguous. For example, while there are no laws explicitly forbidding the public discussion or promotion of LGBTI topics, the lack of clear anti-discrimination laws means that prosecution of homophobic or transphobic crimes remains elusive. In the words of grass roots activist based in Maputo, **'Being gay is not a crime in Mozambique, but homophobia is not a crime either.'**<sup>22</sup>

This reality was observed by the former [UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity](#), Victor Madrigal-Borloz, in his report on his official visit to Mozambique in 2018 where he stated, **"the State cannot – and will not – take measures that can be seen as promoting the fact that some people are**

**gay and, by extension, lesbian, bisexual or trans. (...) The tacit social agreement is not to attack lesbian, gay, bisexual or trans people as long as their true nature remains invisible. However, in accordance with their human rights, every lesbian, gay, bisexual and trans person is entitled to be able to live free and equal, openly and proudly."**

An activist Amnesty International spoke to suspects that this may be a key factor contributing to the prolonged process of Lambda's registration. The government seems to implicitly acknowledge the existence of LGBTI persons, but they prefer it not to be overtly conspicuous in promoting their rights. **"It's like the government is saying to us 'you should be happy we are letting you do your things, but don't ask for too much, you're not worth it!'"**<sup>23</sup>

Activists tell Amnesty that this sentiment extends to religious institutions as well. While some churches might incorporate messages of acceptance towards LGBTI persons in their sermons, there is often an undercurrent subtly implying that such lifestyles are at odds with religious beliefs, nudging individuals to consider compromising their identities for the sake of faith. This can be particularly disheartening for religious LGBTI persons, as they can readily discern that they are the intended recipients of these insinuations, **"those sermons weigh heavily on your mind and some of us have been forced to choose between our identities and the church, which we don't want to do"**.<sup>24</sup>

However, while the prevailing approach is to avoid confrontations. Activists spoken by Amnesty International say there is an increasing awareness of the regional dynamics and the challenges faced by the LGBTI persons in other parts of Africa **"We can see that they are coming for our rights."**<sup>25</sup> They reflected that recent October elections in Mozambique were [marked by violence](#). Although this violence didn't have a direct impact on them as LGBTI persons per se, they say it heightened their sensitivity to the political discourse. There

is a realization of the potential risks associated with some politicians using anti-LGBTI rhetoric to gain votes, which could threaten the current rights of LGBTI persons in the country. They said this situation calls for a sustained sense of vigilance among LGBTI persons.<sup>26</sup>

Ending the conversation, a young activist said to Amnesty International that they believe that the true liberation of LGBTI persons lies in economic empowerment, **"My dream is for the community to be economically empowered in Mozambique. I strongly believe that we should expand our efforts beyond HIV programming. Currently, 90% of our funding comes from donors for HIV-related initiatives. To make a real impact and influence policy, we must be in decision-making roles, and that can be achieved by ensuring economic empowerment for our community. I see this as the next crucial step in increasing the visibility of LGBTI people in Mozambique, and it's the work I am committed to doing."**<sup>27</sup>

22 Phone interview with Amnesty International on 2 November 2023

23 Phone interview with Amnesty International on 2 November 2023  
24 Phone interview with Amnesty International on 2 November 2023  
25 Phone interview with Amnesty International on 2 November 2023  
26 Phone interview with Amnesty International on 2 November 2023  
27 Phone interview with Amnesty International on 2 November 2023



## NAMIBIA

### Legislation banning same sex marriage passed in parliament

In May 2023, the Namibian Supreme Court took a significant step towards recognizing the rights of LGBTI people by striking down a [high court judgement](#), which dismissed an application to recognise same-sex unions concluded abroad for immigration purposes ([the Digashu case](#)). The Namibian Supreme Court's finding, however, was primarily based on the common law principle that a marriage duly concluded according to laws of another foreign jurisdiction is valid in Namibia and not on recognizing the right of same-sex couples to marry in Namibia. While same-sex marriages cannot be legally performed in Namibia, the Supreme Court stated that refusing to recognise lawful same-sex marriages concluded outside Namibia violated the applicants' constitutional rights to equality and dignity. Specifically, the Court held that interpreting Namibian laws to exclude a spouse in a same-sex marriage infringed the right to dignity of same sex spouses. Among other recognitions, the Supreme Court, rejected another statement by the High Court that "equality before the law for each person does not mean equality before the law for each person's relationship." The Court found this statement to be incompatible with the right to equality and a failure to consider the human worth and dignity of all human beings including same-sex partners.

The minority decision of the Supreme Court explained that while the common law principle relied on by the majority decision was sound, Namibia is not under any obligation to recognise marriages that do not comply with its laws and policies. The minority decision explained that same-sex marriages are not consistent with Namibian laws and policies as there is no Constitutional provision, statutory provision or Court decision recognising same-sex marriages. The minority decision went on to state that homosexuality was a complex issue best left to the Parliament which is equipped to deliberate and engage with the consequences of same-sex marriages, not the Court.

The ruling was met with cautious optimism by Namibian LGBTI rights advocates, but it also cast a shadow of uncertainty. As one advocate, who chose anonymity due to safety concerns, explained, **"The Supreme Court's decision was a significant step forward, but it left the fate of same-sex marriage in the hands of Parliament."**<sup>28</sup>

<sup>28</sup> Interview with Amnesty International on 6 September 2023

This optimism was soon confronted by a fierce backlash, primarily driven by faith and religious leaders who vehemently opposed the recognition of same-sex unions. Their vocal opposition ignited a heated debate within Namibian society.

In response to the Supreme Court's decision, some parliamentarians introduced what is now known as the '[Ekandjo's Bill](#).' This proposed legislation seeks to amend the Marriage Act to clearly define 'spouse' as a union between a man and a woman. Additional [legislation](#) was passed which also amends the definition of 'spouse' to exclude transgender persons from legal unions, specifying that 'spouse' refers to "one half of a legal union between a genetically born man and a genetically born woman of the opposite sex." Notably, the Ekandjo Bill explicitly references Articles 81 and 45 of the [Namibian Constitution](#), which makes provision for the reversal of a Supreme Court decision if it is "contradicted by an Act of Parliament lawfully enacted." The Bill was [endorsed](#) by the National Union of Namibian Workers.

The advocate further elaborated, **"This bill not only seeks to amend the definition of marriage, limiting it to a union between a man and a woman, but it also poses a threat to the rights of transgender individuals and could potentially undermine the merits of the Digashu judgment."**<sup>29</sup>

However, the 'Ekandjo's Bill' goes beyond mere definitions. It also criminalizes any celebration, witnessing, promotion, or propagation of same-sex marriage. Those found guilty of these acts could face severe penalties, including up to six years in jail and fines of up to 100,000 Namibian dollars (\$5,500).

A litigant of the Digashu case stated the toll the case took on his life speaking to Amnesty International in November 2023: **"Regardless of the backlash that we are all facing as a community, I am a completely different person after the litigation. So, just as the community deals with**

**that, I also have to deal with it, topped with a sort of guilt attached to it? The immense toll the whole litigation journey has taken on me and my family, is unimaginable. I get panic attacks now, just randomly, really. Most hectic ones I've had was while I was driving. It feels like I've lost all those 7 years of my life, my youth and will never get them back. Totally, worth it, yes. But, has it come at a price? Yes, one day I'll be able to tell my story."**<sup>30</sup>

As of the present moment, the fate of the proposed legislation hangs in the balance, subject to the scrutiny of the Attorney General to ensure its compliance with the constitution. The subsequent step in this process involves awaiting the crucial nod from the President, who holds the power of presidential assent to sign the legislation into law. The outcome will undoubtedly have profound implications for LGBTI people in the country.

In other recent developments, in [November 2023](#) a full bench of the High Court of Namibia heard arguments in a landmark case filed in June 2022 by Friedel Dausab, a gay man seeking to challenge the offence of sodomy and related unnatural sexual offences. Dausab made the argument that the offences of sodomy and unnatural offences are inconsistent with the Constitution of Namibia and international human rights law as they violate the entrenched rights to equality, dignity, privacy, freedom of association and freedom of expression. While the offences are rarely enforced, the Court was informed that their existence in the Namibian legal system is considered as justification for discrimination against LGBTI persons. Dausab is seeking two critical legal remedies. Firstly, he aims to have the Court declare the offenses of sodomy and unnatural acts unconstitutional and, as a result, invalid. Secondly, he seeks to have the Court nullify convictions related to private, consensual same-sex activities.

The Attorney General Festus Mbandeka opposed Dausab's application on behalf of the Namibian government and he is [quoted](#) to have stated that "homosexuality is a highly controversial and

emotional question, and that for many Namibians homosexual conduct is immoral and unacceptable" and that "the public sentiment has not reached a point where the people of Namibia, through their elected representatives, have decided that it is time to repeal laws against homosexual conduct." Mbandeka is also quoted as explaining that **"the Constitution's article protecting equality and freedom from discrimination does not include sexual orientation as one of the grounds on which discrimination is prohibited."**

The [case was supported](#) by some who gathered outside the Court with placards that read '**we stand with Friedel**' and '**Decolonise my sexuality**' among others. The case was also [criticised](#) by some who called upon the country's parliament to take steps to abolish same-sex marriages. Following the hearing, the High Court reserved its decision which is expected on 17 May 2024, which incidentally will be on International Day Against Homophobia, Biphobia and Transphobia.

Mr Dausab said the following to Amnesty International in November 2023, **"I am challenging these laws as a lifelong and dedicated activist because I am acutely aware that criminalization is a clear obstacle to living a full, open, honest and healthy life. Through my own personal experience, I can also attest that they [criminalisation laws] hinder the prevention of HIV infections and access to lifesaving treatment that prevents AIDS, whilst making gay men like me easy targets for abuse. But most of all, I am tired of feeling like a criminal on the run in my own country simply because of who I am. Just like most Namibians, I want the chance to find love and to know that I belong."**

The challenges faced by LGBTI persons extend beyond the realm of legislative battles. Reports from partner organisations suggest that LGBTI persons in Namibia allegedly face a crackdown by certain religious groups, with law enforcement seemingly more permissive of religious assemblies while not affording similar liberties to queer

persons and their associations. Furthermore, the upcoming elections in 2024 add complexity to the situation. Marginalized groups, including LGBTI persons, often find themselves in vulnerable positions, frequently targeted and scapegoated by politicians seeking to gain support.


Another LGBTI activist in Namibia also shared distressing accounts of violent cyber-attacks and a surge in online harassment. **"Queer men in Namibia,"** they revealed, **"have had to delete apps like Grindr as anti-LGBTI individuals were downloading the application solely to spew homophobic sentiments and extort money from queer persons."**<sup>31</sup>

In the face of these challenges, the fight for the realisation of the rights LGBTI persons in Namibia continues. While there have been moments of progress, the road ahead remains uncertain. LGBTI persons continue to face discrimination, harassment, and the looming threat of regressive legislation.

29 Interview with Amnesty International on 5 September 2023

30 Text Correspondence with Amnesty International on 10 November 2023

31 Interview with Amnesty International on 5 September 2023

An illustration of a hand with dark skin writing on a piece of paper. The hand is holding a red pencil and is in the process of underlining the word 'DEATH'. The paper has two lines of text: the top line is 'HOMOSEXUALITY IS A FELONY' with 'FELONY' crossed out by a red line, and the bottom line is 'HOMOSEXUALITY MUST GET DEATH' written in red. The background is a purple-to-pink gradient.

HOMOSEXUALITY IS A ~~FELONY~~

HOMOSEXUALITY  
MUST GET  
DEATH

## TANZANIA

### Push to further criminalize homosexuality

In Tanzania, sexual acts between men are already criminalised under [The Penal Code](#) of 1945 (as revised by the Sexual Offences Special Provisions Act, 1998) and **they carry a maximum penalty of thirty years in prison**. Despite this being one of the harshest prison sentences for homosexuality in the world according to [Human Rights Watch](#), there is still a growing wave of pressure from various groups, including religious organizations and political leaders, for harsher [punishment](#) for homosexuality, **including the death penalty**.

This escalating campaign has raised significant concerns about the rights and safety of LGBTI persons in the country. LGBTI advocacy groups have been at the forefront of raising awareness about the deteriorating situation in Tanzania. They have reported instances of anti-homosexuality demonstrations and attacks in cities like Arusha, and in Zanzibar, where LGBTI persons face increasing threats to their safety and well-being.

The government's stance on LGBTI issues has become evident through its actions. In [February 2023](#), a children's book titled "The Diary of a Wimpy Kid" was banned by the government, citing alleged violations of cultural norms. Additionally, the Ministry of Education also [banned](#) a comprehensive sex education book titled "Sex Education: A Guide to Life," which included information about LGBTI terms. These bans represent a concerted effort to suppress discussions about sexual orientation and gender identity within the country.

In March 2023, religious leaders organized a public workshop aimed at strategizing against homosexuality in Tanzania. This event underscores the role of religious groups in fuelling the push for anti-LGBTI measures in the country. In the same month [calls](#) were made by the head of the women's wing of Tanzania's ruling party to castrate male homosexuals; she was reported as saying **"We ask the government to make stiff penalties to offences related to same-sex activities. Such people should be castrated."**

During the *budget* debate on 12 April 2023, MP Abubakar Assenga [proposed](#) further criminalization of same-sex conduct and advocated for the death penalty as a punishment in certain instances when individuals are found guilty. This extreme proposition highlights the seriousness of the threat faced by the LGBTI persons in Tanzania.

In September 2023, a rights advocate in Tanzania confirmed the [reports](#) regarding the forced anal testing of people assumed to be gay in Tanzania. This deeply humiliating and invasive practice is not only occurring but is reportedly becoming increasingly common. The rights holder stated, **“it happens all the time, these days we get a case almost every week.”**<sup>32</sup>

Forced anal testing is a grave violation of human rights, as it lacks scientific validity and subjects people who undergo it to severe physical and psychological consequences, leading to trauma, anxiety, and long-lasting emotional distress. This practice perpetuates discrimination against LGBTI persons, as it is based on harmful stereotypes and assumptions about sexual orientation. [General Comment No 4 of the ACHPR defines forced anal testing as a form of sexual and gender-based violence that could amount to torture and ill-treatment in violation of Article 5 of the African Charter](#). This characterization underscores the seriousness of this practice and highlights its incompatibility with international human rights standards.

As the pressure mounts to stiffen punishment for, and the enforcement of laws criminalising homosexuality, human rights organizations

and activists both within and outside Tanzania have expressed deep concern over the erosion of the human rights of LGBTI persons in the country. The situation is characterized by a hostile environment where LGBTI persons are increasingly marginalized, harassed, and subjected to violence.

For many years, the laws criminalising homosexuality were not enforced, as noted in a 2009 Federal Court of Canada [judgement](#) in *Mamoon v Canada*, which stated that criminal laws prohibiting homosexuality are rarely applied in Tanzania. Similarly, in 2013, Human Rights Watch [reported](#) that in the preceding several years there was a lack of prosecutions for same-sex conduct in Tanzania. Despite the limited number of convictions and prosecutions, these laws still served as a basis for [arbitrary](#) targeting and [arrests](#) of LGBTI persons on occasion. However, the year 2023 witnessed a significant shift, with at least [one](#) widely reported instance of the active enforcement of laws criminalizing homosexuality. **In April of 2023, the Kilwa District Court convicted Muharami Hassan Nayonga of violating the provisions of the Penal Code which that criminalize “unnatural offenses” and “indecent practices between males” and convicted him to 30 years in prison.**

An LGBTI activist said to Amnesty International in November 2023 **“I may say that in Tanzania and across the continent, the alarming surge in homophobic sentiment reflects not only a social challenge but a profound human rights crisis. The weaponization of laws against queer persons not only perpetuates discrimination but also threatens the fundamental principles of equality and dignity. As we navigate these troubled waters, it is imperative to amplify the voices of those affected, fostering understanding, empathy, and, ultimately, positive change. Addressing these issues head-on, we call upon the leadership, including President Samia Suluhu, to champion inclusivity and advocate for policies that protect the rights of all citizens, regardless of their sexual orientation. A commitment to diversity will not only enhance Tanzania’s global standing but also strengthen the fabric of our shared humanity.”**<sup>33</sup>

International advocacy groups and diplomatic efforts have been essential in drawing attention to this issue and pressing the Tanzanian government to respect and protect the rights of all its citizens, regardless of their sexual orientation or gender identity. The ongoing struggle for the rights of LGBTI persons in Tanzania is a stark reminder of the challenges faced by marginalized communities in their fight for equality and non-discrimination.

32 Interview with Amnesty International on 6 September 2023

33 Email Correspondence with Amnesty International on 10 November 2023



## UGANDA

### Death penalty for homosexuality

On 29 May 2023, President Yoweri Museveni signed the Anti-Homosexuality Bill into law after the Ugandan parliament on 21 March 2023 passed it with 387 out of 389 MPs voting in favour. The law, now the Anti-Homosexuality Act (AHA), 2023 criminalizes same-sex conduct between consenting adults and has retained the death penalty as a maximum penalty in cases of “aggravated homosexuality,” which it defines as sexual intercourse with a person older than 75 or younger than 18, who either does not give consent, is unable to give consent, or is a person living with a disability or mental illness.

Under the country’s Penal Code Act of 1950, same sex conduct is listed under offences termed as “unnatural offences.” Section 145 and 146 of the Act punishes the unnatural offence with imprisonment for life. Unnatural offences in the context of sexual preferences are unspecified, vague, and arbitrary.

There are ongoing attempts to challenge the constitutionality of the AHA 2023 and its affront to human rights law and standards in domestic and regional courts.

Domestically, at least 2 cases are pending before the Constitutional Court of Uganda which are expected to be heard together in the later part of 2023 as they pertain to the same subject matter. Notably, the case brought by a sitting member of parliament, Hon Fox Odoi-Oywelolo and Ors v Attorney General, challenges the AHA 2023 on procedural and substantive grounds. The applicants in Hon Fox make clear in their submissions to court that the AHA 2023 is in flagrant violation of the following rights enshrined in international law: (i) the right to life, (ii) the right to equality and to be free from discrimination, (iii) the right to human dignity, (iv) the right to privacy, (v) the right to freedom of expression guaranteed under the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights , African Charter on Human and Peoples’ Rights, Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and protected in protected under Articles 21, 22, 23, 27 and 29(1)(a), 45 and 8A of the Constitution of Uganda.

Regionally, on 25 July 2023, three individuals and one legal person as applicants – filed in the East African Court of Justice (EACJ) in the case of *Muhumuza and ORS vs AG Uganda* which challenged the AHA 2023 on three grounds. These were that (i) the adoption of the AHA did not



include public participation, (ii) that the procedure and process of adoption indicates bias and partiality on the part of the Speaker of the House; and (iii) that the process and procedure of adoption of the AHA was contrary to the Constitution of Uganda. Among the relief the applicants seek is that the adoption of the AHA 2023 violates the African Charter and is null and void.

A second case pending before the EACJ was filed on 26 June 2023: *Mabirizi Kiwanuka v Attorney General of the Republic of Uganda*. This case was filed by a Ugandan lawyer, who submits, among other things, that the AHA 2023 is unlawful and an infringement on the principles and provisions enshrined in The Protocol on The Establishment of East African Community Common Market, which include the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, and gender equality.

It remains to be seen how the Constitutional Court of Uganda and the EACJ will rule on the abovementioned cases.

On 1 August 2014, the Constitutional Court of Uganda struck down a similar law, the Anti-Homosexuality Act (AHA), 2014 which had come into force in March 2014. Since the striking-down of AHA, 2014, there have been repeated efforts to proscribe homosexuality. In 2021, [Parliament approved the Sexual Offenses Bill](#), which criminalized any “sexual act between persons of the same gender,” as well as anal sex between people of any gender, with a penalty of up to 10 years in prison. In August 2021, President Museveni rejected to assent to the law. In October 2019, then Ugandan Ethics and Integrity Minister Simon Lokodo’s announced that the government was [planning to introduce the death penalty](#) for consensual same-sex sexual acts.

**The introduction of AHA 2023 came after months of increasing hostile rhetoric against the LGBTI community in Uganda by government officials, politicians, church leaders and senior police/**

**military officers.** In addition to the inciteful statements, the government cracked down on LGBTI groups through the closure of Sexual Minorities Uganda (SMUG) in August 2022 and the listing of about 30 NGOs operating in Uganda suspected of promoting homosexuality by the NGO Bureau in February 2023. On [8 October 2022](#), President Museveni said that homosexuals are still considered social [deviants](#) in Ugandan society.

**The introduction of the legislation also came at a time when there is increase in the presence of anti-rights actors in the region, initiating and advocating for anti-homosexuality initiatives. Since the passing of the Act, increasing cases of violence and human violations against the LGBTI people in Uganda have been documented.**

By outlawing the “promotion of homosexuality” with a prison sentence of up to 20 years for anyone who advocates for LGBTI rights or provides financial support to organizations that do so, AHA is shaping societal attitudes, sending a clear message of, at best, second-class citizenship to people who identify as LGBTI, or anyone who engages in any form of consensual same-sex sexual conduct, or those whose self-defined gender identity or gender expression differs from acceptable “norms” of gender and sexuality. This has already had a chilling impact.

In the first three months of AHA 2023, state authorities and certain members of the public targeted real or perceived LGBTI individuals and their supporters. This resulted in the enforcement of arrests, evictions from homes and business premises, and, in some cases, acts of violence against LGBTI persons and their allies. According to [reports](#) from Human Rights Awareness and promotion Forum (HRAPF), a non-governmental human rights advocacy organisation whose mission is to promote respect and protection of human rights of marginalised persons and most at risk populations, a total of 220 cases of violations involving LGBTI persons have been handled across the HRAPF legal aid network since the coming

into force of the law. Out of the 220 cases, 146 (66.4%) targeted LGBTI people based on their sexuality, affecting a total of 176 persons.

**Accordingly, another report by Convening for Equality (CFE) one of the main LGBTI coalitions working on responding to AHA and violations against LGBTI persons reported 18 instances in which the police conducted forced anal examinations of people in their custody to gather “evidence” of homosexuality.**

On 18 August 2023, police in Soroti, eastern Uganda arrested a 20-year-old man alongside another individual, aged 41 and detained the 20-year-old at Soroti Central Police Station on allegations of engaging in sexual relations with a person of the same sex, an allegation that the accused person denied. The police officers further alleged that they caught the two men half-naked and charged the 20-year-old with the “aggravated homosexuality” which carries the death penalty after deciding that the 41-year-old, a person the [prosecution claims was living with a disability](#) was the victim. The 20-year-old became the second person to be [charged with the offence of “aggravated homosexuality”](#) under the swingeing law after another, a 30-year-old man was charged on 8 August in Wakiso district, central Uganda in relation to violating children. The police forced the two men to undergo anal examinations.

On 25 August, a week after the second potential death penalty case, the Director of Public Prosecutions (DPP), Justice Jane Abodo published a circular directing that all charges under AHA together with a legal opinion be first directed to her office headquarters before proceeding to arraign accused individuals. Subsequently, the DPP, through the circular has recalled all the files related to cases under the anti-LGBTI law for review, including those on the case in eastern Uganda.

In many cases, the state has either failed to act urgently to end violence and discrimination against LGBTI persons or encouraged it through impunity

for attacks and stigmatising statements made by public officials that have created an environment conducive to violence against the community and allies. On 3 August 2023, two male persons were beaten up by members of the public on suspicion that they had been having sex. They were taken to a police post in Kyegegwa district, western region where they were held for 5 days before being released on police bond. In August, a female individual, who identifies herself as a lesbian woman was repeatedly threatened by her uncle, who said that he knew that she was a homosexual and that he would beat her and further get men to “show her the right way.” She was forced to flee from her home to avoid the implied threat of ‘corrective’ rape.

In September 2023, Amnesty International conducted interviews with 19 people residing in upcountry Uganda, each identifying under different categories of the LGBTI spectrum. **These interviews revealed distressing accounts of experiencing or witnessing various instances of witch hunts, violence, and mob-assisted arrests. These actions were reportedly carried out by individuals known within their communities, all in the name of enforcing the AHA 2023 legislation.**<sup>34</sup>

Already, intergovernmental organizations and world leaders like US President, [Joe Biden, have condemned the law](#) terming it as “a tragic violation of universal human rights.” The [UN](#), the [European Parliament](#) and the World Bank have condemned the law and demanded its repeal. In August 2023, the [World Bank announced its decision](#) to stop new financing to Uganda over the law.

The state must stop prosecuting people based on their real or perceived sexual orientation or gender identity and repeal the AHA and sections 145 and 146 of the Penal Code Act. And in this context, it becomes abundantly clear that the international community must come together to protect the rights and well-being of LGBTI persons Uganda. As Ugandan queer activist Papa De [noted](#), **“Visibility without protection is a death sentence.”**

34 19 Phone interviews with Amnesty International September 2023 (various dates)



## ZAMBIA

### Rising hostility and challenges faced by LGBTI persons

In Zambia, a troubling surge in homophobic sentiment has been observed, driven by a combination of existing laws, cultural factors, and recent political events.

The country's outdated Penal Code, specifically Sections 155 (unnatural offences), 156, and 158 (indecent practices), criminalizes "unnatural offences," "attempts to commit unnatural offences," and "indecent practices" between persons of the same sex." Article 178(g) of the Penal Code criminalises any act of "soliciting for immoral purposes in a public place." This provision has been used as the legal basis to [prosecute](#) individuals who promote the rights of LGBTI persons. In addition to the Penal Code, the Societies Act enacted in 1958 aims at "control of societies by registration and supervision." Section 8 of this Act permits the Registrar of Societies to refuse to register any society that is "likely to pursue or to be used for, any unlawful purpose or for any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia, or that the interests of the peace, welfare or good order in Zambia would otherwise be likely to suffer prejudice by reason of the registration, or exemption from registration, of such society." In the past this law has been used to [refuse](#) registration of LGBTI organisations. **These archaic laws provide a legal basis for the persecution of LGBTI persons in Zambia.**

While activists say that homophobia and transphobia have always been present in Zambia, the dynamics surrounding these issues underwent a notable transformation in 2021 with the change of regime from the Patriotic Front to the United Party for National Development (UPND). The political landscape has since seen a pronounced shift, leading to the increased politicization and polarization of discussions on various topics, including matters related to homosexuality. This trend is not entirely new, as instances of heightened politicization during election periods, such as those in 2011 and 2016 have been observed. In the current discourse some factions have framed this debate in a way that aligns support for UPND with being seen as pro-homosexuality. This development has prompted President Hakainde Hichilema of the UPND to address the issue on public platforms, clarifying that the UPND [does not endorse](#) homosexuality. The heightened politicization of this matter has brought it to the forefront of public discourse in a worrying way.

In May 2022 anti-gay sentiment became heightened when the Swedish and Finnish embassies in Lusaka flew the rainbow flag alongside their national flags to show support for the rights of LGBTI persons. Instead of fostering inclusivity as intended, this act was met with animosity. An activist, using the pseudonym “Alex,” expressed, **“Over the past year, the crackdown on LGBTI rights began after bilateral partners flew the pride flag, which was received as ‘Western gayism.’”**<sup>35</sup> Alex told Amnesty International that this act of solidarity, intended to promote acceptance, paradoxically triggered a backlash that intensified the challenges faced by LGBTI persons in Zambia. This prompts critical questions about the effectiveness of embassies flying pride flags and whether it can lead to greater vulnerability for the very communities they aim to support.

**Zambia’s identity as a constitutionally Christian nation as stated in the Preamble of its Constitution plays a pivotal role in shaping government narratives. This constitutional stance often contributes to an environment that is hostile to LGBTI rights, further complicating the struggle for recognition of and respect for the human rights of LGBTI people including their right to equality and non-discrimination.**

The International Day Against Homophobia, Biphobia, and Transphobia (IDAHOT) is typically celebrated with a series of activities aimed at promoting tolerance and understanding. However, following the 2022 IDAHOT fashion show organised by local civil society organisations, the media reported negatively and falsely on the events, fuelling an anti-LGBTI narrative in Zambia. Alex shared, **“After the 2022 IDAHOT fashion show, the media’s negative and false portrayal of the events exacerbated an already hostile environment for LGBTIQ+ people in Zambia. This misrepresentation further compounded the challenges faced by the LGBTIQ+ community.”**<sup>36</sup>

In August 2022, an anti-LGBTI campaign was launched on social media by Dr Brian Sampa, known as #BanNdevupaNdevu (#BanBeardOnBeard or #BanHomosexuality). This campaign utilized WhatsApp to spread hate and misinformation about the LGBTI persons in Zambia. “In August last year ” recounted Alex, “the #BanNdevupaNdevu campaign unleashed a torrent of hateful comments and disinformation on WhatsApp, contributing to a hostile climate for LGBTIQ+ people in the country.”

As this campaign gained momentum, several organisations, including the Transbantu Association Zambia (TBZ), an organization dedicated to, among other things, combating Gender-Based Violence (GBV), found themselves targeted by people online. TBZ hosted an anti-GBV workshop in Mongu, western province, intending to address the urgent issue of GBV. However, the workshop was misconstrued in the media, leading to an unjustified and damaging backlash against the organization.

Reflecting on this incident, a member of TBZ explained, **“Our anti-GBV workshop was misrepresented in the media, and this misrepresentation triggered a backlash against our organization. The media and religious entities in Zambia have played a harmful role by perpetuating negative narratives and hate against LGBTI persons, leading to the normalization of hate and treatment of LGBTI persons that is not human rights compliant in Zambia.”**<sup>37</sup>

They also stated that within the LGBTI community itself, there’s been an increase in internal conflict. **“It’s disheartening to see the queer community turning on itself,” “incidents of extortion, revenge porn, and cyberbullying becoming more prevalent.”** Adding that this internal strife weakens the community’s collective ability to advocate effectively for their rights.

On 22 September 2022, a [ministerial statement](#) issued by the government reported that between 1 January and 20 September 2022, 18 cases of sodomy had been recorded. Among these cases, 15 arrests were made, and three were still under investigation. **Notably, one individual among those arrested had been convicted and sentenced to seven years of imprisonment with hard labour.** In the same month, the Government Spokesperson, MP Chushi Kasanda, issued a [issued a statement](#) on the situation of the LGBTI persons in Zambia, reiterating the government’s intention to prosecute anyone liable under colonial-era Sections 155, 156, and 158 of the Penal Code. A few days later, the Catholic Archbishop of Lusaka issued a [memo](#) titled: “A call to action against offensive LGBTIQ+ tendencies” in which he complained about events that “promote LGBTIQ+ tendencies”, in contradiction with the Zambian laws.

In March 2023, several members of a feminist organisation were arrested for showcasing a rainbow flag during a women’s rights march. A police spokesperson told reporters that the group failed to honour the regulations which permitted a protest for sexual and gender rights and not the “promotion” of homosexuality.” In the same month the Minister of Communication [warned](#) groups advocating for LGBTI rights, saying “... Zambia is a Christian Nation, and every citizen has a duty to uphold the Christian values of morality, decency, and human dignity.”

**In June 2023, a parliamentary statement revealed to Amnesty International by a partner organisation on the ground hinted at ‘stiffening’ already harsh provisions of the Penal Code.**<sup>38</sup>

Amidst this backdrop, Chief Justice Mumba Malila faced extensive criticism following his remarks in favour of respecting the human rights of gay people. On September 22, 2023, during a public lecture at the University of Zambia as part of the events commemorating the Silver Jubilee of the

Supreme Court, Justice Malila responded to a specific question about his views on the rights of gay people amidst the ongoing national debate. In his response, Chief Justice Malila firmly stated that [discrimination against gay persons is fundamentally wrong](#), and they should be entitled to all rights outlined in the Constitution. This statement underscored the principles of equality, dignity, and non-discrimination, core values in any just society. However, his stance triggered mixed reactions. News Diggers published a front-page story titled [“Respect Gay Rights- Chief Justice”](#), accompanied by an editorial [questioning the clarity](#) of Chief Justice Malila’s defense of gay rights. This coverage reflects the divisive nature of the issue within Zambia, in the days that ensued, [several statements](#) were made calling for Chief Justice Malila’s resignation due to his support for gay rights.

35 Interview with Amnesty International on 5 September 2023

36 Interview with Amnesty International on 5 September 2023

37 Interview with Amnesty International on 5 September 2023

38 Text Correspondence with Amnesty International on 24 June 2023



## ZIMBABWE

### Shrinking civic space further threatens LGBTI organising

In 2023 the climate for LGBTI persons in Zimbabwe has been marked by diminishing space for civil engagement. This narrowing of civic space has made it increasingly difficult for LGBTI persons to organize and advocate for their rights. The introduction of the [Criminal Law \(Codification and Reform\) Amendment Bill \(Patriotic Bill\)](#) a piece of legislation signed into law by President Emmerson Mnangagwa on 31 May 2023, has worsened the situation. This law, ostensibly designed to protect the sovereignty and national interests of Zimbabwe, has raised significant concerns, especially among LGBTI persons who have long faced discrimination and persecution.

The passage of the “Patriotic Bill” compounds existing challenges related to civil rights and personal freedoms of LGBTI persons. Zimbabwe has a history of discrimination against LGBTI persons, including laws criminalizing same-sex sexual activity. [The Criminal Law \(Codification and Reform\) Act](#) targets certain acts against gay men through the crime of “sodomy.” **Article 73 defines sodomy as consensual anal sexual intercourse between two males or any conduct involving physical contact other than anal sexual intercourse that a reasonable person would consider to be an indecent act.** Any person found guilty of sodomy is liable to a fine or imprisonment for a period not exceeding one year or both.

The recently enacted now Patriotic Act represents a severe attack on fundamental rights, including freedom of expression, peaceful assembly, and association. Individuals found guilty of “wilfully damaging the sovereignty and national interest of Zimbabwe” now face harsh penalties, **including the death penalty.** The vague language used within the legislation raises concerns about its potential misuse, posing a significant risk to the rights of Human Rights Defenders, including those who work for LGBTI organizations. The “Patriotic Bill” has provoked strong reactions both within [Zimbabwe](#) and [internationally](#). This legislation has been condemned by [rights activists](#), [opposition groups](#), and [human rights organizations](#), who view it as a severe infringement on fundamental freedoms and rights.

Adding to the civic space [constraints](#) is the proposed [“Private Voluntary Organisations \(PVO\) Amendment Bill”](#) (PVO Bill). The PVO bill’s provisions would grant the Office of the Registrar significant authority to register, monitor, and intervene in the activities of PVOs, potentially

infringing on their autonomy. Partner organisation Gays and Lesbian of Zimbabwe (GALZ) says LGBTI organisations may be disproportionately affected. This is because historically, LGBTI organizations in the country have operated as associations rather than registered NGOs. This strategic choice allowed them to navigate some of the challenges associated with formal registration. However, the PVO Bill introduces a new compliance mechanism, requiring these associations to dissolve and re-register under the new law. Additionally, organizations addressing LGBTI issues through trusts would also need to undergo a similar dissolution and re-establishment process.

This potential requirement poses a series of challenges and uncertainties for LGBTI activists and organizations. They are unsure about the specific registration processes and requirements that would be imposed under the PVO Bill. **“The fear is that these new registration processes may mirror the difficulties experienced by other organizations in the region, where they have faced challenges related to perceptions of ‘immoral purposes’, since consensual same-sex relations are still criminalized. We don’t know what to expect.”** The PVO Bill also includes a provision stating that PVOs must be sensitive generally to the cultural values and norms of the community in the area where they will be primarily operating. LGBTI organisations are thus worried that such a provision could be used to deny registration, as some communities may highlight that organizations representing LGBTIs are not sensitive to cultural values and norms.

When questioned about the consultation process on the bill GALZ says that while there were consultations, these were tokenistic, marked by violence and intimidation to deter full participation. They continued stating that **“the governments tactics involve deploying large violent groups at consultation sites to create a climate of fear, undermining genuine dialogue”** a tactic also alleged to have been used by government around 2023 [elections](#). Furthermore, despite the majority

of people expressing opposition to the enactment of the PVO Bill, these views were not considered in the legislative process as the PVO Bill was ultimately passed by both the Senate and the National Assembly, disregarding the sentiments of the majority.

It’s noteworthy to add that the president [refused](#) to assent to the bill and returned it to parliament, and it is not clear when parliament will reintroduce the PVO Bill.

In terms of the legal landscape for LGBTI persons, LGBTI activists confirm that Zimbabwe’s criminalization of same-sex activity has created a hostile environment for LGBTI people. While this criminalization was not consistently enforced in the past, GALZ reports to Amnesty International that there have been recent reports which suggest a growing number of arrests for activities related to LGBTI identities (under ‘sodomy’ laws). These arrests, allegedly often carried out by corrupt police officers seeking bribes, contribute to a climate of fear and unpredictability. Freedom from harassment depends heavily on one’s socioeconomic status; those with the financial means to pay bribes may avoid charges, while others may not be so fortunate. GALZ recounts such a case when they said, **“there was a person arrested for sodomy recently, they were not able to access help in time and did not have money to pay the bribe, now the docket is already out...we are following the case”**.

They further stated that **“Homophobia is rampant in Zimbabwe, law enforcement officials may not fully understand or correctly apply the law in cases involving LGBTI persons, leading to arbitrary and disproportionate penalties. The judiciary’s lack of experience in handling such cases and the influence of moral and religious values contribute to this problem, there is a need to train our judges.”**

Activists also connect the surge in homophobic sentiment to the growing influence of Pentecostal

churches, which have experienced a significant proliferation in recent years and often propagate anti-LGBTI rhetoric. They believe that this religious shift has intensified the perpetuation of discriminatory attitudes, presenting additional challenges for Zimbabwe’s LGBTI community.

In 2019 the High Court of Bulawayo delivered a judgment that was a step toward advancing the rights of transgender persons in Zimbabwe when it lambasted the conduct of police against transgender persons. The decision was a response to an application by Ricky Nathanson’s (a transgender woman) unlawful arrest, detention and malicious prosecution. This decision was [described](#) as an affirmation and recognition of human rights, freedoms and dignity of all citizens as intended by the Constitution of Zimbabwe. Despite this ground-breaking Court decision, transgender persons continue to face a number of challenges in Zimbabwe that limit their ability to enjoy and access human rights and freedoms. **There is no legal framework for access to gender affirming healthcare, there are no avenues to change gender markers on official documents, so transgender people struggle to align their legal and gender identities which has daily implications for their ability to enjoy human rights.**

Amidst the persistent challenges, a significant and positive shift is unfolding regarding the rights of persons with intersex variations in Zimbabwe. The government is demonstrating growing acceptance and actively engaging with a recommendation presented by Iceland during the 2022 Universal Periodic Review (UPR) process. Iceland’s recommendation specifically addressed the protection of minors with intersex variations from non-consensual surgeries and violations of their bodily integrity. In response, the Zimbabwe government has stated that it is currently in the process of reviewing this recommendation and has committed to providing a response within a reasonable timeframe. This recognition of intersexuality as a natural occurring variation that is a part of human diversity, signifies a good

starting point towards fostering inclusivity and respecting the rights of people with intersex variations in Zimbabwe.

However, partners tell Amnesty International that there still exists a concerning disparity in the understanding of concepts relating to sexual orientation, gender identity, expression and sex characteristics within Zimbabwe. So, while there is an emerging acknowledgment of intersexuality as a biological characteristic, there remains a problematic pathologization of some identities and perception that gender identity and sexual orientation are matters of choice or behaviour. GALZ says this misperception fosters discrimination and hinders the understanding of the experiences faced by LGBTI persons in the country.

When asked about their right to protest they said, in the volatile environment, protesting and demonstrating are severely restricted in Zimbabwe. Protests are met with harsh consequences, further limiting LGBTI persons’ ability to voice their grievances effectively. **“In Zimbabwe if you protest you die, just try to protest and you will rue the day you were born.”**

The situation in Zimbabwe for LGBTI persons is marked by uncertainty, fear, and repression. The “Patriotic Act” and broader human rights challenges create an environment in which LGBTI persons find it increasingly challenging to assert their rights and advocate for equality. This complex landscape underscores the need for continued international attention and support to safeguard the rights and dignity of all individuals in Zimbabwe, including those of LGBTI persons.

# INTERNATIONAL HUMAN RIGHTS FRAMEWORK

[Thirty-one](#) African countries, and sixty-one globally, have laws that criminalize consensual same-sex sexual activity despite their clear inconsistency with established international human rights law and standards. For instance, the [Universal Declaration of Human Rights](#) (UDHR) enshrines the right to privacy and personal autonomy in Article 12, and the [International Covenant on Civil and Political Rights](#) (ICCPR) explicitly protects individuals from discrimination and upholds their rights to freedom of expression and peaceful assembly, as stipulated in Articles 2, 19, and 21. In the views of a landmark communication, the United Nations Human Rights Committee, the body that oversees the implementation of the ICCPR, emphasised in [Toonen v Australia](#) that states have an obligation to protect all individuals against discrimination based on their sexual orientation. Since the adoption of the Committee's view, in Toonen, many human rights actors and human rights instruments including at the United Nations and African Commission have built upon this foundational understanding that the rights of LGBTI persons are human rights.

Similarly, the [African Charter on Human and Peoples' Rights](#) underscores the importance of equality and non-discrimination in Articles 2 and 3. Article 2 states that "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth *or other status*."

While the African Charter does not explicitly mention sexual orientation or gender identity as a protected ground, the principle of non-discrimination is broad and inclusive. It can be interpreted to encompass protection against discrimination based on one's sexual orientation or gender identity because of use of its guarantee of rights to 'every human being.' The African Commission on Human and Peoples' Rights (the Commission), the main body responsible for interpreting and monitoring the African Charter has expressed the view that sexual orientation is included in the non-discrimination provision's language and highlighted, through [Resolution 275](#), that the non-discrimination provisions of the African Charter also apply to LGBTI persons. However, the criminalization and other forms of discrimination of LGBTI individuals effectively infringes upon these rights and undermines the principles these treaties aim to uphold.

Societal stigmatization against LGBTI persons perpetuates discrimination, directly undermining the spirit of international treaties. The UDHR, with its emphasis on human dignity and non-discrimination in Articles 1 and 2, aligns with the African Charter's principles that every individual is entitled to respect and dignity, regardless of their sexual orientation or gender identity. However, deep-rooted biases within societies often result in the violation of these principles, causing LGBTI individuals to experience isolation, mental health issues, and restricted access to essential services.

Acts of violence and advocacy of hatred constituting incitement for violence or discrimination targeted at LGBTI individuals not only breach their right to security of the persons but also contravene the principles of justice and equality that international treaties advocate for. The ICCPR, in Article 6, guarantees the right to life, liberty, and security of person, while Article 7 prohibits torture, cruel, inhuman, or degrading treatment or punishment. The African Charter's Article 5 emphasizes the right to dignity, while Article 7 guarantees the right to a fair trial. However, the persistence of violence against LGBTI individuals in many African countries often goes unpunished, resulting in a climate of impunity that contradicts these rights.

Furthermore, the absence of legal recognition and protection for same-sex relationships in many African countries reinforces inequality and directly contravenes the ICCPR's stance on the right to recognition before the law (Article 16) and the African Charter's mandate for states to adopt measures to protect the rights therein (Article 1).

In addition to legal and social barriers, LGBTI individuals in Africa often face inequalities in accessing healthcare. Discrimination by healthcare providers, lack of culturally sensitive services, and societal prejudice can deter individuals from seeking medical care. This directly infringes upon their right to the highest attainable standard of health, as outlined in the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR) (Article 12). [General Comment 14](#) explicitly states that discrimination based on sexual orientation and gender identity is impermissible, underscoring the urgent need to guarantee equal access to healthcare for all individuals, irrespective of their sexual orientation or gender identity.

Despite these challenges, there are some encouraging instances of progress. [Some African nations](#) have taken steps to repeal any laws that criminalised various aspects of LGBTI persons, for instance in October 2023 [Mauritius](#) decriminalized private, same-sex, consensual sexual activity, and some countries have begun to engage in discussions around decriminalization and anti-discrimination measures. International human rights principles, such as

the [Yogyakarta Principles](#), which interpret and apply existing human rights law to the situations of sexual orientation and gender identity, have gained traction in advocacy efforts.

Further, in 2016 the United Nations Human Rights Council appointed the Independent Expert on Sexual Orientation and Gender Identity. The Human Rights Council has explained that the Independent Expert was appointed to address the persisting acts of violence and discrimination against individuals based on their sexual orientation and gender identity despite the recognition and entrenchment that all human beings are born free and equal in dignity and rights.

Additionally, the passage of [Resolution 552](#) concerning the Rights of persons with intersex variations in Africa on 7 March 2023, is undoubtedly a significant and commendable step towards addressing human rights abuses faced by persons with intersex variations on the continent. This resolution, which aligns with the African Commission's mandate as outlined in Article 45 of the African Charter, brings to light the multitude of challenges that people with intersex variations in Africa endure, including unnecessary surgeries on minors to conform to conventional norms, insufficient legal recognition, problematic birth registration procedures, discrimination within the legal system, and issues such as infanticide, child abandonment, and discrimination across various aspects of life. Unfortunately, the resolution contains references to terms such as 'chromosomal abnormality' and 'intersexuality inherent handicap,' which can be stigmatizing and problematic. Such terminology can contribute to the misunderstanding and discrimination against persons with intersex variations. Despite these language concerns, the passing of Resolution 552 represents a crucial effort to put an end to violence and discrimination against individuals based on their sex characteristics. This resolution not only recognizes the challenges persons with intersex variations face but also calls for necessary measures and legal reforms to protect their rights and dignity. It demonstrates a growing awareness and commitment to addressing these issues within the African context, which is a positive development for the protection of intersex rights and human rights in general.

Regrettably, these progressive steps have been marred by the Commission's decision to reject the observer status of the Coalition of African Lesbians (CAL) in 2015. The Commission also rejected the observer status of Alternative Côte d'Ivoire, Human Rights First Rwanda, and Synergía – Initiatives for Human Rights in 2015. The rejection of these organizations' observer status on similar grounds, where 'sexual orientation is not an expressly recognized right or freedom under the African Charter' and is considered 'contrary to the virtues of African values,' [limits](#) the ability of African LGBTI organisations to effectively organize and engage with regional bodies.

# KEY RECOMMENDATIONS

## TO GOVERNMENTS

### 1. Open Call and Repeal Laws:

- Publicly acknowledge and protect the human rights of all individuals without discrimination.
- Repeal or refrain from efforts to criminalize same-sex conduct as it violates international/regional human rights standards.
- Promptly repeal or amend existing laws that criminalize LGBTI individuals, aligning them with international human rights standards.
- Review and amend public order legislation that effectively criminalizes status based on sexual orientation or gender identity.

### 2. Justice and Accountability:

- Release all individuals detained or convicted for consensual same-sex conduct.
- Ensure prompt and impartial investigations of human rights violations based on sexual orientation or gender identity.
- Take measures to prohibit and eliminate discriminatory treatment at every stage of the administration of justice.
- Establish and implement accountability procedures to provide effective remedy for LGBTI people facing discrimination or mistreatment.

### 3. Safety and Non-Discrimination :

- Ensure individuals, including LGBTI Human Rights Defenders (HRDs), can exercise their rights to freedom of expression, association, and peaceful assembly without discrimination, preventing harassment, intimidation, or arbitrary closures. Additionally, facilitate an inclusive environment by removing barriers that may hinder the registration of LGBTI organizations, promoting their ability to operate freely and contribute to a diverse civil society.
- Enact comprehensive anti-discrimination laws to safeguard individuals against prejudice based on sexual orientation and gender identity, ensuring protection in areas such as employment, education, and access to goods and services. This should extend to critical health services like gender-affirming care, while simultaneously working towards terminating non-consensual surgeries on children with intersex variations.
- Implement comprehensive legislation that explicitly protects individuals against discrimination based on gender identity, ensuring the recognition and facilitation of the right to change gender markers.
- Enact comprehensive legislation that explicitly addresses bias-motivated crimes based on sexual orientation and gender identity, while also introducing laws that explicitly prohibit the advocacy of hatred based on these grounds, constituting incitement to discrimination, hostility, or violence.
- Implement inclusive training programs for health professionals, law enforcement, and media/education professionals, ensuring respectful treatment of LGBTI individuals and promoting awareness of their human rights.
- Implement educational programs promoting tolerance, diversity, and respect for LGBTI rights in schools and society, by introducing modules about diversity and the human rights of LGBTI individuals into education curricula.
- Undertake broader public policy measures to tackle the root cause of homophobia and transphobia, including promoting education on diversity and pluralism and publicly condemn homophobic and transphobic incitement to discrimination, hostility, or violence.

## FOR THE INTERNATIONAL COMMUNITY

### 1. Diplomatic Efforts:

Engage diplomatically to ensure the repeal of discriminatory laws against LGBTI individuals, emphasizing the violation of international human rights norms.

### 2. Advocacy and Support:

Support local LGBTI organizations through unrestricted funding and resources to strengthen their advocacy efforts.

### 3. Raise Awareness:

Promote public awareness campaigns globally to highlight injustices faced by LGBTI individuals. Engage influential figures to speak out against human rights violations.

## FOR CIVIL SOCIETY AND LGBTI ORGANIZATIONS

### 1. Collaboration:

Foster partnerships with international and regional human rights organizations and legal experts to strengthen advocacy and litigation efforts.

### 2. Capacity Building:

Develop organizational capacity to document human rights abuses, provide legal aid, and support victims of discrimination and violence.

### 3. Raise Awareness:

Continue raising public awareness about the struggles and discrimination faced by LGBTI individuals through social media, mainstream media, and grassroots campaigns.

### 4. Legal Challenges:

Pursue legal challenges on domestic and regional levels to challenge discriminatory laws. Document and publicize violations.



## FOR DOMESTIC AND INTERNATIONAL LEGAL BODIES

### 1. Legal Challenges:

Offer legal support to LGBTI activists for filing legal challenges against discriminatory laws and policies.

### 2. Monitoring and Reporting:

Continuously monitor and report human rights abuses against LGBTI individuals, providing accurate information for international bodies and advocacy efforts.

### 3. Capacity Building:

Support the development of legal and judicial capacity to handle cases related to LGBTI rights and discrimination.

## FOR RELIGIOUS AND COMMUNITY LEADERS

### 1. Interfaith Dialogue:

Engage in ongoing interfaith dialogue to promote tolerance, diversity, and inclusion. Encourage understanding of LGBTI rights among religious communities.

### 2. Speak Out Against Hate:

Publicly denounce hate speech and violence against LGBTI individuals. Be vocal in supporting human rights for all.

### 3. Provide Safe Spaces:

Promote the creation of safe spaces within religious and community settings where LGBTI individuals can find acceptance and support.

## FOR THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

### 1. Fulfill Mandate:

Fulfill the mandate to protect the rights of all Africans, including LGBTI persons.

### 2. Interpret Charter Inclusively:

Explicitly interpret the African Charter on Human and Peoples' Rights to include sexual orientation and gender identity as protected grounds and prohibited forms of discrimination.

### 3. Call for Repeal:

Call on African states to repeal laws criminalizing consensual same-sex conduct and all discriminatory laws adversely affecting LGBTI persons.

### 4. Grant Observer Status:

Grant Observer Status to LGBTI organizations seeking it with the African Commission on Human and Peoples' Rights.

## FOR LOCAL HUMAN RIGHTS NGOS

### 1. Promote Human Rights:

Promote human rights for all people, including LGBTI individuals.

### 2. Collaboration for Legislative Change:

Work with LGBTI rights organizations for legislative change promoting tolerance and non-discrimination.

### 3. Information and Education Campaigns:

Lead public information and education campaigns combating negative stereotypes of LGBTI people and promoting and protecting universal human rights.

### 4. Monitoring and Resistance:

Monitor incidents of violence and discrimination towards LGBTI people. Resist efforts to intimidate and marginalise.

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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