



#WeBelongAfrica



African Commission on Human and Peoples' Rights Resolution 275:

Ten Years of Advancing LGBT+ Rights in Africa



#WeBelongAfrica brings together multiple initiatives that enable inclusive, just, affirming, safe, productive and fulfilling lives for all people in Africa, irrespective of sexual orientation, gender identity, gender expression or sex characteristics, and irrespective of HIV status or risk.

Proposed citation:

UNDP (2024). African Commission on Human and Peoples' Rights Resolution 275: Ten Years of Advancing LGBT+ Rights in Africa.

The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations, including UNDP, or UN Member States.

UNDP is the leading United Nations organization fighting to end the injustice of poverty, inequality, and climate change. Working with our broad network of experts and partners in 170 countries, we help nations to build integrated, lasting solutions for people and planet.

Learn more at undp.org or follow at @UNDP.

Copyright © UNDP 2024.

UNDP HIV and Health Group, Africa.

With the support of Sweden and the Kingdom of the Netherlands.



Sweden
Sverige



Kingdom of the Netherlands



#WeBelongAfrica



**African Commission on Human and Peoples' Rights Resolution 275:
Ten Years of Advancing LGBT+ Rights
in Africa**

Contents

Acknowledgements	5
Foreword	6
Executive Summary	7
<hr/>	
Introduction	10
Methodology	10
<hr/>	
Country obligations under Resolution 275	11
Key principles	11
<hr/>	
Angola	12
Country overview	12
Protective legal and policy environment	12
Effective investigation and prosecution of perpetrators	13
Access to justice	14
Civic space free of stigma, reprisals or criminal prosecution	14
Inclusion of LGBT+	15
Recommendations	15
<hr/>	
Côte d'Ivoire	17
Country overview	17
Protective legal and policy environment	17
Effective investigation and prosecution of perpetrators	18
Access to justice	18
Civic space free of stigma, reprisals or criminal prosecution	19
Inclusion of LGBT+	19
Recommendations	19
<hr/>	
Democratic Republic of Congo	21
Country overview	21
Protective legal and policy environment	21
Effective investigation and prosecution of perpetrators	22
Access to justice	22
Civic space free of stigma, reprisals or criminal prosecution	22

Inclusion of LGBT+	22
Recommendations	23
<hr/>	
Eswatini	25
Country overview	25
Protective legal and policy environment	25
Effective investigation and prosecution of perpetrators	26
Access to justice	26
Civic space free of stigma, reprisals or criminal prosecution	26
Inclusion of LGBT+	27
Recommendations	27
<hr/>	
Kenya	29
Country overview	29
Protective legal and policy environment	29
Effective investigation and prosecution of perpetrators	31
Access to justice	31
Civic space free of stigma, reprisals or criminal prosecution	32
Inclusion of LGBT+	32
Recommendations	32
<hr/>	
Mauritius	34
Country overview	34
Protective legal and policy environment	34
Effective investigation and prosecution of perpetrators	35
Access to justice	35
Civic space free of stigma, reprisals or criminal prosecution	36
Inclusion of LGBT+	36
Recommendations	36
<hr/>	
Mozambique	37
Country overview	37
Protective legal and policy environment	37
Effective investigation and prosecution of perpetrators	38
Access to justice	38
Civic space free of stigma, reprisals or criminal prosecution	39
Inclusion of LGBT+	39
Recommendations	39

Namibia	41
Country overview	41
Protective legal and policy environment	41
Effective investigation and prosecution of perpetrators	43
Access to justice	43
Civic space free of stigma, reprisals or criminal prosecution	43
Inclusion of LGBT+	43
Recommendations	44

Zambia	46
Country overview	46
Protective legal and policy environment	46
Effective investigation and prosecution of perpetrators	47
Access to justice	47
Civic space free of stigma, reprisals or criminal prosecution	48
Inclusion of LGBT+	48
Recommendations	48

Zimbabwe	49
Country overview	49
Protective legal and policy environment	49
Effective investigation and prosecution of perpetrators	50
Access to justice	50
Civic space free of stigma, reprisals or criminal prosecution	50
Inclusion of LGBT+	51
Recommendations	51

Acknowledgements

This report was developed by Priti Patel of UNDP, under the guidance of Jeffrey O'Malley of UNDP and Monica Tabengwa of UNDP. The report benefitted from the inputs of UNDP regional and country staff, regional and national civil society organizations, government partners and national human rights institutions partners.

Foreword

It is with great pride and a sense of cautious optimism that I introduce this pivotal report on the progress made in implementing [Resolution 275](#) of the African Commission on Human and Peoples' Rights across 10 countries in Africa.

A decade ago, when we adopted Resolution 275, we took a bold step towards affirming the inherent dignity and rights of all Africans, regardless of their sexual orientation or gender identity. This resolution was not just a document; it was a promise – a promise to protect, to include, and to respect every individual within our diverse African family.

Today, as I reflect on the journey we've undertaken since 2014, I am heartened by the strides made in the countries covered in this report as well as many others. The repeal of discriminatory laws, the enactment of protective legislation, and the gradual opening of civic spaces for LGBT+ voices are testament to the power of our collective commitment to human rights.

Yet, as this report clearly illustrates, our work is far from complete. The path towards full equality and inclusion is long and often challenging. We continue to witness discrimination, violence and exclusion faced by our LGBT+ brothers and sisters across the continent. These persistent issues remind us that the promise of Resolution 275 requires our ongoing dedication and effort.

What gives me hope is the resilience and courage of African LGBT+ communities and their allies. Their unwavering advocacy, even in the face of adversity, continues to push our societies towards greater understanding and acceptance. The increased engagement between governments and LGBT+ organizations, as highlighted in this report, is a positive sign that dialogue and cooperation are possible and fruitful.

To my colleagues in governments across Africa, the recommendations provided here offer practical steps towards fulfilling the vision of Resolution 275. By implementing these suggestions, we can build societies that truly embody the African values of ubuntu – of our shared humanity.

To civil society organizations, your role remains crucial. Your voices, your data, and your tireless efforts continue to be the driving force behind positive change.

And to every LGBT+ African reading this: know that your lives, your loves, and your aspirations are valid and valuable. The African Commission recognized this a decade ago, and this report reaffirms it today. Your resilience inspires us all to work harder for a continent where everyone can live freely and dignity.

As we look to the future, let's work together – governments, civil society and citizens – to build an Africa where the human rights of all are respected, protected and fulfilled.



Advocate Pansy Tlakula

Former Chairperson and Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People's Rights

Executive Summary

In 2014, the African Commission on Human and Peoples' Rights adopted Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (Resolution 275), affirming the rights of lesbian, gay, bisexual and transgender (LGBT+) Africans and urging countries to address violence and discrimination based on sexual orientation and gender identity. The obligations outlined in Resolution 275 align with the United Nations Development Program's (UNDP) long-standing efforts to promote accountability and inclusive governance, working with African governments to address the needs of all their citizens, including LGBT+ Africans who are often marginalized and vulnerable. Central to these efforts is the principle of "leaving no one behind," a commitment enshrined in both the Agenda 2030 for Sustainable Development and Agenda 2063—Africa's blueprint for inclusive and sustainable development—which guide UNDP's work in fostering equitable and inclusive governance for all to accelerate progress on the Sustainable Development Goals.

This report assesses the progress made in 10 countries in Africa—Angola, Côte d'Ivoire, Democratic Republic of Congo, Eswatini, Kenya, Mauritius, Mozambique, Namibia, Zambia and Zimbabwe—over the past decade in meeting the obligations outlined in Resolution 275.

Following a summary of the obligations outlined in Resolution 275, this report provides a snapshot of the progress made in each of the 10 countries in the past decade. Each country snapshot begins with an overview of the nation's context and then examines advancements in meeting Resolution 275's obligations. The particular areas covered include progress on the following:

1. Ensuring a protective legal and policy environment
2. Effective investigation and prosecution of perpetrators
3. Provision of access to justice for LGBT+ people
4. Fostering of civic spaces free of stigma, reprisals or criminal prosecution
5. Ensuring the inclusion of LGBT+ in society and within decision-making spaces

Each snapshot concludes with recommendations for meeting Resolution 275 obligations in the coming decade.

The country snapshots are based on an extensive desk review of primary and secondary sources, including legal decisions, laws, policies and reports from government, civil society and other non-governmental bodies. This research was supplemented by interviews with relevant stakeholders, including representatives from government and civil society. All information in this report was updated as of 1 September 2024. Events since that date are not captured in this report.

Key findings from the report

1. There has been significant progress in ensuring an enabling legal and policy environment.

At least four countries in this review repealed laws criminalizing an aspect of consensual sex between adults of the same sex. In Angola, Côte d'Ivoire and Mozambique, the legislature repealed existing laws; while in Mauritius, the Supreme Court struck down the law criminalizing same-sex sexual relations. In Namibia, the High Court struck down laws criminalizing same-sex sexual relations, though the decision is currently on appeal to the Supreme Court.

At least eight countries enacted laws or issued judicial decisions protective of the LGBT+ community. For instance, Angola amended its Penal Code to include the prohibition of discrimination on the basis of sexual orientation and include sexual orientation as an aggravating factor when determining sentencing for specific crimes.

Almost half of the countries in the review amended domestic or family violence laws such that they include violence experienced by same-sex partners. Though in many of the countries, LGBT+ civil society organizations report the domestic violence laws are often not effectively implemented. Despite this, the existence of a broad domestic or family violence law is a significant step towards protecting LGBT+ people from domestic and family violence.

2. There have been numerous incremental gains that are significant and should not be underestimated.

In addition to the progress made in securing an enabling legal and policy environment, there have been numerous incremental gains made in the last 10 years that are significant to ending discrimination and violence against LGBT+ people. At least half of the countries in this review accepted LGBT+-specific recommendations issued as part of the Universal Periodic Review process. This is notable as it signals a country's willingness to implement the recommendations. There are a growing number of allies in government and decision-making positions, who in many cases are championing LGBT+ issues and the inclusion of LGBT+ organizations in decision-making processes. For instance, in Namibia, civil society organizations worked with the government to include sexual orientation and gender identity issues in the life skills curriculum for Grade 11. Throughout most countries, there is a stronger, more diverse, and more visible LGBT+ civil society with some countries holding the first gay pride marches and others moving out of the health advocacy space to focus on discrimination and violence LGBT+ face in other sectors, including education and employment.

3. There has been mixed progress on increasing access to justice and ensuring the effective investigation and prosecution of perpetrators.

Many countries in this review have taken steps in the past 10 years to increase access to justice for marginalized populations, including providing legal aid services, opening legal aid offices outside of the main cities, streamlining court processes and training lawyers and judges. However, there was minimal information on how these positive steps impacted LGBT+ people's access to justice.

A handful of countries have sought to train police to enable them to better investigate and prosecute perpetrators of crimes against LGBT+ individuals. For instance, in Mozambique, the government has included sexual orientation and gender identity in its training manual for police ensuring a systematic training of law enforcement on LGBT+-related issues.

In many of the countries in this review, LGBT+ organizations are playing a critical role in increasing access to justice for LGBT+ individuals and ensuring the investigation of crimes against LGBT+ individuals. They report providing support to LGBT+ members to access and obtain justice through training paralegals and lawyers to specifically work with the LGBT+

community, supporting members with reporting human rights violations to the police and in finding legal assistance, and training local police to support LGBT+ victims of violence and discrimination, among others.

4. There has been limited progress in ensuring civic space is free from stigma, reprisals and criminal prosecution.

Civic space around the world is shrinking and there was evidence of that being the case in many of the countries in this review. However, in at least two countries, LGBT+ organizations were able to register making it easier for them to operate. In Kenya, the National Gay and Lesbian Human Rights Commission was able to register after a Supreme Court decision finding that the denial of its registration violated the rights to free assembly and association. In Angola, two different LGBT+ organizations were registered in the last 10 years. Overall, throughout a vast majority of the countries in this review, LGBT+ civil society has grown more empowered, diverse and visible in the last decade increasing its ability to work with government to enact positive change.

5. There remain significant gaps in ensuring that LGBT+ Africans are free of discrimination and violence across the continent.

Though this series focused on the positive developments in implementing Resolution 275 in 10 countries in Africa, it is clear that there remain significant gaps in ensuring full implementation of Resolution 275 across the 10 countries and the continent, including in the provision of access to justice and in ensuring an effective investigation and prosecution of perpetrators and a free civic space. Based on the findings in the 10-country review, recommendations which are aimed at addressing these gaps include the following:

1. Enact a comprehensive anti-discrimination law, which prohibits discrimination on the basis of sexual orientation and gender identity in the public and private sphere.
2. Amend existing criminal laws to make sexual orientation and gender identity and expression an aggravating circumstance in criminal cases. Take steps to ensure that perpetrators of hate crimes are effectively prosecuted and that victims receive adequate support.

3. Ensure steps taken to broadly increase access to justice take into account the specific needs of the LGBT+ community, including ensuring that government-provided legal aid services are accessible to LGBT+ individuals, with specific provisions to address their unique legal needs and challenges.
4. Integrate comprehensive training on LGBT+ issues in existing training modules for law enforcement, prosecutors, judiciary, healthcare workers, teachers and other public service professionals.
5. Launch nationwide campaigns to raise public awareness of human rights, including LGBT+ rights, to reduce stigma, and promote acceptance and equality of LGBT+ people.
6. Enact clear prohibitions on anti-LGBT+ speech from political leaders.
7. Ensure the inclusion of information on how the country is implementing Resolution 275 in country reports to the African Commission on Human and Peoples' Rights.
8. Remove barriers for registration and operations of civil society organizations working on LGBT+ issues.
9. Encourage the inclusion of LGBT+ issues in national policies and programmes, particularly those related to health, education, jobs and social protection, to ensure that the needs of the LGBT+ community are adequately addressed.
10. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.

Introduction

Ten years ago, the African Commission on Human and Peoples' Rights (African Commission) adopted the Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (Resolution 275) affirming the rights of lesbian, gay, bisexual and transgender (LGBT+) Africans and urging countries to address violence and discrimination based on sexual orientation and gender identity. Resolution 275 made clear that LGBT+ Africans have the same rights as all Africans.

The obligations outlined in Resolution 275 align with the United Nations Development Program's (UNDP's) long-standing efforts to promote accountability and inclusive governance, working with African governments to address the needs of all their citizens, including LGBT+ Africans who are often marginalized and vulnerable. Central to these efforts is the principle of "leaving no one behind," a commitment enshrined in both the Agenda 2030 for Sustainable Development and Agenda 2063—Africa's blueprint for inclusive and sustainable development—which guide UNDP's work in fostering equitable and inclusive governance for all to accelerate progress on the Sustainable Development Goals.

In the 10 years since the adoption of Resolution 275, the African Commission has incorporated references to Resolution 275 in its guidelines and general comments addressing discrimination based on sexual orientation and gender identity. It has invoked Resolution 275 or addressed issues related to sexual orientation and gender identity in its concluding observations, urging countries to safeguard LGBT+ rights, and has issued numerous official statements voicing concerns about the mistreatment of LGBT+ individuals in specific African countries. Further, it adopted Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa, known as Resolution 552, affirming the rights of intersex persons in Africa.

At the national level, the implementation of Resolution 275 has yielded mixed results. Some countries have made significant strides in protecting the rights of LGBT+ Africans and dismantling discriminatory laws and policies. However, others have pushed to reinforce existing punitive measures, policies and practices.

This report aims to evaluate the progress made by 10 countries in Africa—Angola, Democratic Republic of Congo, Côte d'Ivoire, Eswatini, Kenya, Mauritius,

Mozambique, Namibia, Zambia and Zimbabwe—since 2014 in fulfilling their obligations under Resolution 275. It particularly focuses on the positive developments over the last decade in the 10 countries. Following a summary of the obligations outlined in Resolution 275, this report provides a snapshot of the progress made in each of the 10 countries in the past decade. Each country snapshot begins with an overview of the nation's context and then examines advancements in meeting the country's obligations under Resolution 275. The particular areas covered include progress on the following:

1. Ensuring a protective legal and policy environment
2. Effective investigation and prosecution of perpetrators
3. Provision of access to justice for LGBT+ people
4. Fostering of civic spaces free of stigma, reprisals or criminal prosecution
5. Ensuring the inclusion of LGBT+ in society and within decision-making spaces

Each snapshot concludes with recommendations to ensure the full implementation of Resolution 275 in the coming decade.

Methodology

The country snapshots are based on an extensive desk review of primary and secondary sources, including legal decisions, laws, policies and reports from government, civil society and other non-governmental bodies. This research was supplemented by interviews with relevant stakeholders, including representatives from government and civil society. The information in this report was last updated 1 September 2024. Events since that date are not captured in this report.

Country obligations under Resolution 275

Resolution 275 expresses alarm at the violence, murder, extortion and blackmail, discrimination and other human rights violations people face because of their actual or imputed sexual orientation or gender identity as well as the human rights violations, including violence, human rights defenders and civil society organizations working on issues related to sexual orientation and gender identity face in Africa.

Resolution 275 affirms that violence and discrimination because of a person's real or imputed sexual orientation or gender identity or because of one's work on issues related to sexual orientation and gender identity violates articles 2, 3, 4 and 5 of the African Charter on Human and Peoples' Rights, which guarantee the rights to non-discrimination, equal protection of the law, life and be free from torture and other cruel, inhuman and degrading treatment, respectively.

To address these human rights violations, Resolution 275 urges countries to take the following actions:

1. Ensure human rights defenders and civil society organizations are working in an environment that is free of stigma, reprisals or criminal prosecution because of their work on sexual orientation and gender identity.
2. End all acts of violence and abuse by state or non-state actors. The Resolution recommends that countries do this by:
 - a. enacting and effectively implementing laws prohibiting and punishing violence targeting people on the basis of their real or imputed sexual orientation and gender identities;
 - b. properly investigating and effectively prosecuting perpetrators; and
 - c. establishing judicial procedures that effectively respond to the needs of victims.

Key principles

In implementing Resolution 275, countries are required to abide by three key principles: non-discrimination; due diligence; and do no harm.

Non-discrimination requires that countries take all the necessary steps to ensure the rights of all individuals irrespective of their race, color, nationality, citizenship, ethnicity, profession, political opinions, sex, sexual orientation, gender identity, gender expression or other relevant factors.

As Resolution 275 requires countries to take all necessary steps to prevent violence against people based on their real or imputed sexual orientation or gender identity by State and non-State actors, due diligence requires countries to prevent and investigate all acts of violence on the basis of a person's real or imputed sexual orientation or gender identity whether committed by State or non-State actors, prosecute and punish perpetrators, and provide remedies to victims in a timely and effective manner.

Finally, 'do no harm' requires countries to take legislative measures to protect and promote the human rights of LGBT+ people and all other necessary measures to guarantee the wellbeing and security of victims and witnesses of violence. Further, countries must take steps to minimize the negative impact that actions to combat violence and its consequences can have on victims, their families and witnesses.

Angola

Country overview

Angola, located in southern Africa, is a former Portuguese colony. Angola became independent in 1975.¹ It is a civil law country with the Constitution as the supreme law. The Constitution establishes the three branches of government: executive, legislative and judicial.² The executive is comprised of the President, the Prime Minister and ministers in the cabinet, among others. The legislative branch consists of the National Assembly. The judiciary applies and upholds the Constitution and laws.³

Angola joined the African Union in 1975.⁴ As of 2024, Angola has ratified the following regional human rights treaties:⁵

- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child
- African Youth Charter
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa
- Protocol on the Statute of the African Court of Justice and Human Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons
- Protocol of the Court of Justice of the African Union

It has signed, but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.⁶

Over the past decade, Angola has made notable progress in creating a more protective legal and policy environment for LGBT+ people, particularly with the adoption of a revised Penal Code in 2019 that decriminalizes same-sex relations between consenting adults and introduces protections against discrimination based on sexual orientation. The revised Penal Code also enforces stricter penalties for crimes motivated by such discrimination and promotes the prosecution of offenders. Additionally, Angola's National Human Rights Strategy, adopted in 2020, signals further commitment to human rights, including strengthening partnerships with civil society and increasing access to justice, although it does not specifically address LGBT+ issues. Despite these advances, challenges remain, including limited access to justice. Nonetheless, Angola's recent acceptance of recommendations related to sexual orientation and gender identity made as part of the Universal Periodic Review process highlights its commitment toward greater inclusion and protection for the LGBT+ community.

Protective legal and policy environment

Over the last 10 years, Angola has made significant progress in repealing punitive laws and enacting protective laws. Most notably, in January 2019, Angola approved a new Penal Code that removes the criminalization of same-sex sexual acts between consenting adults.⁷ The official version of the new Penal Code was finally published on 11 November 2020.⁸

In addition, the revised Penal Code criminalizes acts of discrimination based on sexual orientation with regard

1 Dunia P. Zongwe and Nélia Daniel Dias. Republic of Angola – Legal System and Research (Mar/Apr 2022). Available at <https://www.nyulawglobal.org/globalex/angola1.html>

2 Ibid.

3 Ibid.

4 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2.

5 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

6 Ibid.

7 Lei n. 38/20 - Aprova o Código Penal Angolano, Diário da República, I Série, No. 179 (2020).

8 Ibid.

to the provision of goods and services, obstruction of economic activities and access to public or private facilities and punishes incitement to discrimination on the grounds, among other, of sexual orientation.⁹ The new Penal Code also provides for higher sentencing for all crimes established in the Code committed due to discrimination based on sexual orientation.¹⁰ Furthermore, the Penal Code explicitly provides for harsher penalties when the following crimes are committed because of the victim's sexual orientation: crimes of threat,¹¹ "against the respect for the dead",¹² crimes of injury,¹³ and defamation.¹⁴

In addition to the prohibition of discrimination on the basis of sexual orientation in the Penal Code, Angola adopted a National Human Rights Strategy (NHRS) in 2020 to operationalize its human rights commitments.¹⁵ The NHRS commits to significant action on human rights, though it does not specifically address LGBT+.¹⁶ The NHRS does commit to strengthening partnership with civil society and specifically to holding seminars, workshops and debates to promote the rights of LGBT+ people, among other vulnerable groups.¹⁷

Finally, for the first time, in 2019, Angola accepted five recommendations related to sexual orientation and gender identity as part of the Universal Periodic Review (UPR) process.¹⁸ In the previous cycle in 2014, Angola did not accept any LGBT+-related recommendations.¹⁹ The five accepted recommendations focused on legal interventions to address discrimination on the basis of sexual orientation and gender identity and violence against LGBT+ people.²⁰

- Develop and implement a national plan to combat and prevent discrimination based on sexual orientation and gender identity;

- Investigate promptly, fully, independently and impartially all allegations of attacks, arbitrary arrests and detentions of individuals based on their sexual orientation or gender identity;
- Develop and implement a national plan to combat and prevent discrimination based on sexual orientation and gender identity;
- Take further steps to guarantee the rights of gay, lesbian, trans, bisexual and intersex people by thoroughly investigating all allegations of attacks against them and by developing and implementing a national action plan to combat and prevent violence and discrimination based on sexual orientation and gender identity; and
- Put in place institutional mechanisms that can effectively protect lesbian, gay, bisexual, transgender and intersex persons against all forms of violence, harassment and discrimination.

The decision to accept these recommendations highlights Angola's commitment to addressing discrimination and violence against LGBT+.

Effective investigation and prosecution of perpetrators

The new Penal Code provides a significant opportunity for ensuring the effective investigation and prosecution of perpetrators. Thus far, there has been no conviction of a violation on the basis of sexual orientation. However, as of June 2024, there are three cases of discrimination against LGBT+ people opened with the police.²¹ The incidents occurred in 2023 and 2024. In two of the cases, transwomen were physically and verbally assaulted on the street, in one case by a

9 Ibid. at arts 212 and 380

10 Ibid. at art 71(1)(c)

11 Ibid. at art 170

12 Ibid. at art 223

13 Ibid. at art 213

14 Ibid. at art 214

15 Presidential Decree No. 100/20 of 14 April 2020. Available at <https://lex.ao/docs/presidente-da-republica/2020/decreto-presidencial-no-100-20-de-14-de-abril/> [hereinafter NHRS]

16 Ibid.

17 Ibid. at 9(3)(e)

18 Human Rights Council. UPR of Angola Thematic Recommendations (3rd Cycle—34th session). Available at <https://www.ohchr.org/en/hr-bodies/upr/ao-index> [hereinafter Angola UPR 34th Session]

19 Human Rights Council. UPR of Angola Thematic Recommendations (2nd Cycle—28th session). Available at <https://www.ohchr.org/en/hr-bodies/upr/ao-index>

20 Angola UPR 34th Session, above n 18

21 Republic of Angola. Charter Implementation Report African Human Rights and Peoples' (2016-2023), Additional Protocol on Women's Rights in Africa (2016-2023) and Kampala Convention (Initial) Joint Report, 2016-2023 (Oct 2023). Available at <https://achpr.au.int/en/state-reports/republic-angola-7th-periodic-report-2016-2023>

police officer and in another by private individuals.²² The third case involves a gay man who was subjected to serious death threats by another individual. This case was sent to the Attorney General's Office in June 2024 and is currently awaiting a court date.²³

Access to justice

The government has sought to increase access to justice in the past 10 years.²⁴ For instance, in 2016, the government enacted the Dispute Mediation and Conciliation Act,²⁵ which sets out the rules and procedures governing the exercise of the dispute settlement methods with the hopes that it will increase access to justice.²⁶ Further, in June 2014, the government established the National Directorate for Extrajudicial Dispute Settlement also with a view to improving access to justice.²⁷ The National Directorate provides support to the Extrajudicial Dispute Settlement Centre and is staffed by lawyers who provide legal information and advice and uphold the principle of non-discrimination. According to the government, in the first quarter of 2019, 261 people contacted the service and 120 cases were referred for mediation.²⁸ However, there is no information on whether any of these cases dealt with human rights violations based on an individual's real or imputed sexual orientation or gender identity. Recently, some steps have been taken to build the capacity of judges in Angola to address issues affecting the LGBT+ community.

There is significant potential in increasing access to justice for LGBT+ in Angola as the government has committed to increasing access to justice in the NHRS.²⁹ Though there is no specific mention of the LGBT+ community, the NHRS commits to increasing

the capacity of and resources to stakeholders involved in access to justice, providing for alternative dispute mechanisms, providing for legal aid and ensuring training for vulnerable groups on access to justice mechanisms.³⁰ Further, the NHRS specifically commits to establishing differentiated mechanisms and procedures to assist groups that require special protection, which would include LGBT+.³¹

Despite these efforts, in 2019, a number of human rights bodies expressed concern about "(1) the limited availability of courts and out-of-court dispute settlement centres, in particular in rural areas; (2) the lack of independence of the judiciary and the insufficient number of trained judges, prosecutors and lawyers, which may prevent many citizens from accessing justice; and (3) the lack of capacity-building programmes for actors involved in traditional conflict resolution mechanisms and the limited oversight over their functions, which heightens the risk of such institutions perpetuating discriminatory gender stereotypes" indicating that access to justice may still be a barrier to redress.³²

Civic space free of stigma, reprisals or criminal prosecution

Though civil society organizations report that the current registration process for organizations can be complicated, in June 2018, Associação Íris Angola (Iris) became the first civil society organization that advocates for LGBT+ rights to be legally registered by the Angolan government.³³ Iris had been operating since 2013, and received approval for registration from the Ministry of Justice and Human Rights in 2016. However, they were only issued an official certificate

22 Joint Submission of Angolan LGBTIQ+ Groups, Movements and Associations. Intermediate Report of the Universal Periodic Review on 34th Cycle of the UPR of the Republic of Angola (May 2022). Available at <https://www.ohchr.org/sites/default/files/2022-06/Angola-Mid-term-review-2022.pdf> [hereinafter Angola Joint Submission]

23 Ibid.

24 Republic of Angola. National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 (23 August 2019). Available at <https://documents.un.org/doc/undoc/gen/g19/252/51/pdf/g1925251.pdf?token=FPDXMynwdtQZtWAEV&fe=true> [hereinafter Angola National Report]

25 No. 12/16 of 12 August 2016

26 Angola National Report, above n 24

27 Ibid.

28 Ibid.

29 NHRS, above n 15, at 2.1

30 Ibid. at 7.7.1.

31 Ibid.

32 Committee on the Elimination of Discrimination Against Women. Concluding Observations on the Seventh Periodic Report of Angola (14 March 2019), para 14; United Nations Human Rights Committee. Concluding Observations on the Second Periodic Report of Angola (8 May 2019), para 37.

33 Mihalí Ntsabo. Angola Registers its First LGBT+ Affirming Civil Rights Group. *Mamba Online* (21 June 2018). Available at <https://www.mambaonline.com/2018/06/21/angola-registers-its-first-lgbt-affirming-civil-rights-group/>; Dércio Tsandzana and Lisa G (translator). In Long-Awaited Victory, Angola's Only LGBT Association Receives Legal Recognition. *Global Voices* (27 June 2018). Available at <https://globalvoices.org/2018/06/27/in-long-awaited-victory-angolas-only-lgbt-association-receives-legal-recognition/>

of registration in June 2018.³⁴ In addition in 2021, a second LGBT+-focused civil society organization, Arquivo de Identidade Angolano, successfully obtained its registration.

Civil society organizations have expressed concerns regarding the Law on the Status of Non-Governmental Organizations Bill (the Bill) approved by the National Assembly on May 25, 2023. The Bill has been criticized by a number of civil society organizations, including the American Bar Association, who argue that though the Bill ostensibly seeks to address terrorist financing and money-laundering, because it is overly broad, it will indiscriminately restrict non-governmental organizations' access to funding and resources, and their freedom of operations and trade.

³⁵

Inclusion of LGBT+

Angola has made some progress in ensuring inclusion for LGBT+ in the past 10 years. For instance, the NHRS commits the government to including and partnering closely with civil society in its implementation.³⁶ In light of that, LGBT+ organizations have been included by the Ministry of Social Action, Family and Promotion of Women in technical meetings on issues that affect the LGBT+ community, such as efforts to include violence indicators that capture violence suffered by trans women, lesbians and bisexuals. In addition, key Ministries, such as the Ministry of Health and Ministry of Justice and Human Rights have engaged with LGBT+ organizations to promote comprehensive health and inclusive care for key populations, including LGBT+.

However, civil society organizations report concerns that there remain numerous spaces where LGBT+ are not included. For instance, LGBT+ groups report not being adequately included in the discussion and implementation of the NHRS and in campaigns against discrimination and stigma by the Ministry of the Interior, which oversees the national police.³⁷

Recommendations

1. Develop clear prosecutorial and judicial guidelines on how to apply new legal provisions that criminalize discrimination, including discrimination based on sexual orientation. Provide training for judges, prosecutors, and

law enforcement officers on these guidelines to ensure uniform application and understanding.

2. Work closely with the LGBT+ civil society organizations to fully implement the recommendations accepted in the 2019 UPR, specifically:
 - a. Develop and implement a national plan to combat and prevent discrimination based on sexual orientation and gender identity;
 - b. Investigate promptly, fully, independently and impartially all allegations of attacks, arbitrary arrests and detentions of individuals based on their sexual orientation or gender identity;
 - c. Develop and implement a national plan to combat and prevent discrimination based on sexual orientation and gender identity;
 - d. Take further steps to guarantee the rights of gay, lesbian, trans, bisexual and intersex people by thoroughly investigating all allegations of attacks against them and by developing and implementing a national action plan to combat and prevent violence and discrimination based on sexual orientation and gender identity; and
 - e. Put in place institutional mechanisms that can effectively protect lesbian, gay, bisexual, transgender and intersex persons against all forms of violence, harassment and discrimination.
3. Conduct regular assessments of the implementation of the NHRS, including its impact on the LGBT+ community. Include specific metrics and targets related to the protection LGBT+ individuals.
4. Enact comprehensive legislation providing full and effective protection against discrimination on the basis of gender identity in all spheres; include the prohibition of discrimination on the basis of sexual orientation and gender identity in relevant, existing laws.
5. Take concrete steps to increase access to justice for LGBT+ people in Angola, including

³⁴ Ibid.

³⁵ American Bar Association Center for Human Rights. Analysis of 'Law on the Status of NGOs' Bill: Angola (July 2023). Available at https://www.americanbar.org/groups/human_rights/reports/angola-ngo-bill-analysis/

³⁶ NHRS, above n 15 at 9(3)(e)

³⁷ Angola Joint Submission above n 22

through expanding the provision of legal aid to LGBT+ people, increasing the capacity and resources to stakeholders involved in access to justice and ensuring training for LGBT+ on access to justice mechanisms as required under the NHRS.

6. Simplify and streamline the registration process for civil society organizations, making it less dependent on government discretion to ensure that organizations advocating for human rights, including LGBT+ rights, can operate freely.
7. Ensure the inclusion of LGBT+ groups in technical working groups and task forces on issues affecting the community.
8. Adopt a comprehensive law, in consultation with LGBT+ organizations, to prevent, combat and punish all forms of violence against individuals based on their real or imputed sexual orientation and gender identity both in the public and private spheres.
9. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.

Côte d'Ivoire

Country overview

Côte d'Ivoire, located in western Africa, is a former French colony.³⁸ Côte d'Ivoire became independent in 1960.³⁹ It is a civil law country with the Constitution as the supreme law. The Constitution establishes the three branches of government: executive, legislative and judicial.⁴⁰ The executive is comprised of the President, Vice-President, Prime Ministers and Ministers, among others. The legislature consists of the National Assembly and Senate. They are responsible for enacting laws. The judiciary applies and upholds the Constitution and laws.⁴¹

Côte d'Ivoire joined the African Union in 1963.⁴² As of 2024, Côte d'Ivoire has ratified the following regional human rights treaties:⁴³

- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child
- African Youth Charter
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

It has signed, but not ratified the Protocol of the Court of Justice of the African Union and the Protocol on the Statute of the African Court of Justice and Human Rights.⁴⁴

Over the past 10 years, Côte d'Ivoire has made progress in ensuring a protective legal and policy environment. Most notably, Côte d'Ivoire repealed article 360 of the Penal Code criminalizing same-sex sexual relations. There has been a noticeable increase in the understanding of LGBT+ issues among policymakers, fostering a more receptive climate for reform. Côte d'Ivoire has also taken steps to broadly increase access to justice, ensure the effective investigation and prosecution of perpetrators and address gender-based violence; though it is unclear whether many of those actions have had a meaningful impact on the LGBT+ community. Finally, there has been increased solidarity amongst civil society organizations on LGBT+ issues and greater visibility of the LGBT+ community in the past decade.

Protective legal and policy environment

Côte d'Ivoire has made some progress in ensuring a protective legal and policy environment over the past 10 years. Most notably, up until 2019, article 360 of the Penal Code criminalized “public indecency consisting of indecent or unnatural acts with an individual of the same sex.”⁴⁵ In 2019 in an update to the Penal Code, the explicit mention of same-sex relationships was removed.⁴⁶ Prior to the 2019 change, LGBT+ individuals were being convicted under article 360. For instance, in 2016, two men were sentenced to 18 months in jail after they were charged under article 360.⁴⁷ Further, in January 2024, the Minister of Tourism and Leisure affirmed that any place offering accommodation which prohibited two people of the same sex occupying the same room would face sanctions.⁴⁸

38 Armel Olivier Yapi and Yao Mamoudou Ouattara. The Legal System in Côte d'Ivoire. *GlobaLex* (Sept/Oct 2022). Available at https://www.nyulawglobal.org/globalex/Cote_dIvoire1.html#the-executive-power

39 Ibid.

40 Ibid.

41 Ibid.

42 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2

43 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

44 Ibid.

45 Penal Code. Loi n°2019 574 (26 June 2019). Available at <https://loidici.biz/2019/08/17/le-code-penal-2019/non-classe/15754/naty/>

46 Journal Officiel de la République de Côte d'Ivoire (10 July 2019). Available at [https://database.ilga.org/api/downloader/download/1/CI%20-%20LEG%20-%20Penal%20Code%20\(2019\)%20-%20OR-OFF\(fr\).pdf](https://database.ilga.org/api/downloader/download/1/CI%20-%20LEG%20-%20Penal%20Code%20(2019)%20-%20OR-OFF(fr).pdf) [hereinafter Côte d'Ivoire Penal Code]

47 Robbie Corey-Boulet. Ivory Coast Officials Refuse to Explain Why Two Gay Men Were Jailed. *Guardian* (26 Jan 2017). Available at <https://www.theguardian.com/world/2017/jan/26/ivory-coast-officials-refuse-explain-gay-men-jailed-same-sex-relationships>

48 Ministry of Tourism. Information Note No 01/MINTOUR/DRAN (1 Jan 2024).

Côte d'Ivoire has taken steps to address sexual and gender-based violence in the past 10 years. In 2016, a national committee to combat sexual violence was created under Decree No. 2016-373.⁴⁹ Further, the government has created and operationalized the National Programme to Combat Gender-Based Violence (*Programme national de lutte contre la violence à base de genre*), integrated gender units in police stations and gendarmerie brigades, and trained officers on gender-based violence.⁵⁰ It is unclear whether these programmes address sexual violence affecting the LGBT+ community.

Despite this progress, a number of laws still remain in the Penal Code that can negatively impact LGBT+. Article 416 criminalizes “public contempt of modesty” consisting of any act committed in a public place or space open to the public, offending good morals or the moral feeling of people who are involuntary witnesses and likely to disturb public order. Article 357 prohibits the dissemination of information “contrary to good morals”. Further, the age of consent differs for same-sex sexual acts compared to sexual acts between differing sexes under sections 413 and 414 of the Penal Code.⁵¹ Finally, civil society organizations report LGBT+ people continue to face stigma, discrimination and violence.⁵²

Effective investigation and prosecution of perpetrators

There has been some progress in ensuring the effective investigation and prosecution of perpetrators in the past 10 years. Police stations are undergoing improvements in caring for LGBT+ people through the training of gender focal points, aimed at providing better support and understanding within law

enforcement to protect the rights of LGBT+ people.⁵³ In addition, an online reporting platform for cases of violence and other human rights abuses against key populations, including LGBT+, was established to increase reporting.⁵⁴ Trainee police officers are taught a human rights module at the National Police Academy, and seminars and training sessions are also offered to police officers.⁵⁵ However, it is unclear whether the module, seminars and training sessions include specific information on issues affecting the LGBT+ community.⁵⁶

Despite these steps, civil society organizations continue to raise concerns about the arbitrary arrest and detention of people solely on the basis of their real or perceived sexual orientation or gender identity and a lack of investigation, highlighting law enforcement's failure to investigate the looting and ransacking of the offices of an LGBT+ civil society organization in 2014.⁵⁷ Civil society organizations also report that the LGBT+ community continues to be reluctant to lodge complaints of human rights violations with the police for fear that they will be subjected to arbitrary arrests.⁵⁸

Access to justice

The Constitution under article 6 guarantees the right to free and equal access to justice for all people. In 2016, Decree No. 2016-781 sought to increase access to legal aid services by setting up local offices in each court of first instance.⁵⁹ However, it is unclear whether LGBT+ people have been able to access these expanded services.

Civil society organizations have increased LGBT+ people's access to justice in the past 10 years.⁶⁰ Civil

49 Committee on the Elimination of Discrimination Against Women. Concluding Observations on the Fourth Periodic Report of Côte d'Ivoire (30 July 2019). Available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsoVqDbaslinb8XgzpEhiv%2Fg08nJgkmBvONEocAv3toifvxXz4gNEREqIYoX63kt9lvOwaUmNQTVGnlzW2TFvYzhvrp7R6hgqregSEUSH9gc>

50 Ibid.

51 Côte d'Ivoire Penal Code, above n 46.

52 Human Rights Council. Summary of Stakeholders' Submissions on Côte d'Ivoire (19 Feb 2019). Available at <https://documents.un.org/doc/undoc/gen/g19/043/89/pdf/g1904389.pdf?token=wPCL6wO4pOoTKVuYfJ&fe=true> [hereinafter Côte d'Ivoire Stakeholders' Submissions]

53 Committee Against Torture. Initial Report Submitted by Côte d'Ivoire Under Article 19 of the Convention Pursuant to the Simplified Reporting Procedure (4 Mar 2024). Available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsgacFbo%2BB7LLxsF9zyDCZXF5ujlOMpksz3xExJ1KywAUZvKTynLFtzCnjinYmYTPZOIE9DMAWxQPzOMvcicq95IRPnaEKY09boiEsARRxcBXg> [hereinafter Côte d'Ivoire Committee Against Torture]

54 UNDP. Inclusive Governance Initiative: Côte d'Ivoire Baseline Report (2022). Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-07/igi-cote-d-ivoire-baseline-report.pdf> [hereinafter IGI: Côte d'Ivoire Baseline Report]

55 Côte d'Ivoire Committee Against Torture, above n 53

56 Ibid.

57 Côte d'Ivoire Stakeholders' Submissions, above n 52

58 Ibid.

59 Côte d'Ivoire Committee Against Torture, above n 53

60 Global Fund (Global Fund to Fight AIDS, Tuberculosis and Malaria). Mid-term Assessment Global Fund Breaking Down Barriers Initiative: Côte d'Ivoire (Dec 2020). Available at https://www.theglobalfund.org/media/11686/crg_2020-midtermassessmentcotedivoire_report

society organizations provide holistic support to LGBT+ individuals, supporting their access to health, psycho-social and legal services. Further, civil society organizations have established a pool of friendly lawyers to whom they can refer LGBT+ individuals needing legal assistance.⁶¹

Civic space free of stigma, reprisals or criminal prosecution

Civil society organizations report that organizations working on LGBT+ issues face difficulties in registering, noting that they are only able to register if their mission is related to health or to key or vulnerable populations.⁶²

In June 2024, Côte d'Ivoire's National Assembly and the Senate adopted a bill amending the Penal Code to punish with imprisonment any person who "appeals to the public with the aim of disapproving of the authority and provoking solidarity with one or more convicts."⁶³ Previously the Penal Code was limited to provoking solidarity with convicts of a limited set of crimes, such as murder, pillage, burning or destroying buildings, theft, or crimes against human rights.⁶⁴ The expansion to all crimes may place LGBT+ organizations at risk of contravening the new law.

Inclusion of LGBT+

There are indications that sensitivity towards LGBT+ issues among decision makers has grown in the last 10 years. Some decision makers are showing genuine interest, actively participating in debates and workshops addressing LGBT+ concerns. Furthermore, civil society organizations and other partners have raised awareness among staff from key ministries, including the Ministry of Health, the Ministry of the Interior and Security and the Ministry of Women, Family and Children, and some members of the judiciary.

There is also an increased solidarity among LGBT+ civil society organizations and allies, leading to increased visibility and better organization within the community. Collaboration between LGBT+ civil society organizations and allies has been pivotal, with more LGBT+ associations established in recent years. This greater collaboration and capacity have resulted in the collection of valuable data highlighting the experiences of LGBT+ people. Collecting these data

is a critical step in ensuring effective policy to address the needs of the LGBT+ community.

Recommendations

1. Amend articles 357 and 416 of the Penal Code to remove any language that can be used to criminalize or discriminate against LGBT+ individuals. Ensure that these laws do not disproportionately target LGBT+ people under the guise of public morality or good morals.
2. Harmonize the age of consent for same-sex and different-sex sexual acts to eliminate any discriminatory provisions under the Penal Code.
3. Enact comprehensive anti-discrimination legislation that prohibits discrimination on the basis of real or imputed sexual orientation and/or gender identity in the public and private sphere, including in access to education, employment, healthcare and other public services. Ensure all current laws and policies prohibiting discrimination include sexual orientation and gender identity as prohibited grounds.
4. Amend existing criminal laws to make sexual orientation and gender identity and expression an aggravating circumstance in criminal cases. Take steps to ensure that perpetrators of hate crimes are effectively prosecuted and that victims receive adequate support.
5. Integrate comprehensive training on LGBT+ rights and issues into the human rights module at the National Police Academy, and ensure that all seminars and training sessions for police officers include these topics.
6. Integrate comprehensive training on LGBT+ issues in existing training modules for healthcare workers, teachers and other public service professionals. Develop new training modules addressing LGBT+ rights as needed.
7. Ensure that government-provided legal aid services are accessible to LGBT+ individuals, with specific provisions to address their unique legal needs and challenges.

[en.pdf](#)

61 Ibid.; IGI: Côte d'Ivoire Baseline Report, above n 54

62 Côte d'Ivoire Stakeholders' Submissions, above n 52

63 Louis Gilbert. Ivory Coast: Parliament Adopts Controversial Bill Amending Penal Code. *Library of Congress* (21 June 2024). Available at <https://www.loc.gov/item/global-legal-monitor/2024-06-20/ivory-coast-parliament-adopts-controversial-bill-amending-penal-code/>

64 Ibid.

8. Remove barriers for registration and operations of civil society organizations working on LGBT+ issues.
9. Launch nationwide campaigns to raise public awareness of human rights, including LGBT+ rights, to reduce stigma and promote acceptance and equality of LGBT+ people.
10. Encourage the inclusion of LGBT+ issues in national policies and programmes, particularly those related to health, education, jobs and social protection, to ensure that the needs of the LGBT+ community are adequately addressed.
11. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.

Democratic Republic of Congo

Country overview

The Democratic Republic of Congo (DRC), located in central Africa, is a former Belgian colony.⁶⁵ It gained its independence in 1960.⁶⁶ DRC is a civil law country and its legal system is primarily based on Belgian law. The Constitution establishes the three branches of government: executive, legislative and judicial branches.⁶⁷ The executive is comprised of the President, Prime Minister and Ministers, among others. The legislature consists of the National Assembly and Senate. They are responsible for enacting laws. The judiciary applies and upholds the Constitution and laws.⁶⁸

The DRC joined the African Union in 1963.⁶⁹ As of 2024, DRC has ratified the following regional human rights treaties:⁷⁰

- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

It has signed, but not ratified the Protocol of the Court of Justice of the African Union, the Protocol on the Statute of the African Court of Justice and Human Rights and the African Youth Charter.⁷¹

Over the past 10 years, there has been progress in ensuring the inclusion of LGBT+ people. The health sector has taken notable steps by including men who have sex with men and transgender individuals in national health strategies, which is helping to improve access to essential services. There has also been a positive shift within the government, with some officials and key state actors advocating for LGBT+ rights. This has led to greater visibility and support for the community. Civil society organizations have expanded their provision of legal services, health services and civic and legal education, empowering LGBT+ individuals to access justice and support.

Protective legal and policy environment

Same-sex sexual relations were never criminalized in the DRC. However, civil society organizations report that LGBT+ people and those perceived to be LGBT+ are penalized under article 176 of the Penal Code, which criminalizes acts against public decency.⁷² In April 2024, a Member of Parliament introduced a bill to amend the Penal Code to criminalize consensual same-sex sexual acts.⁷³ The bill was presented as a measure to suppress homosexuality in defense of "cultural sovereignty", combat "neocolonialism",

65 Dunia P. Zongwe, François Butedi and Phebe Mavungu Clément. Overview of the Legal System of the Democratic Republic of the Congo (DRC) and Research. GlobalLex (July/Aug 2020). Available at https://www.nyulawglobal.org/globalex/democratic_republic_congo1.html

66 Ibid.

67 Ibid.

68 Ibid.

69 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2

70 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

71 Ibid.

72 Mouvement Pour la Promotion du Respect et Egalité des Droits et Santé (MOPREDS) Jeunialissime Oasis Club Kinshasa Rainbow Sunrise Mapambazuko Mouvement Pour les Libertés Individuelles (MOLI) Synergía - Initiatives for Human Rights. Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC) (Oct 2017). Available at https://ccprcentre.org/files/documents/INT_CCPR_CSS_COD_29078_E-2.pdf [hereinafter MOPREDS]; United Nations Human Rights Committee. Concluding Observations on the Fourth Periodic Report of the Democratic Republic of the Congo (30 Nov 2017). Available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsvdnckCHIZNza%2FmH1Yi6215z7g1JO29Ep%2FEIfCpt%2Fefk1jvSw4WKPlwJn%2BI4amXjTq86suelklIHwtMhfofDiDWkDobuOtTvU7PBREq8w%2Fxo>

73 Moïse Manoel-Floris. En RDC, un député entend punir l'homosexualité de 5 à 15 ans de « servitude. *Stop Homophobie* (4 April 2024). Available at <https://www.stophomophobie.com/en-rdc-un-depute-entend-punir-lhomosexualite-de-5-a-15-ans-de-servitude/>

and safeguard national interests.⁷⁴ However, as of September 2024, this law has not yet been enacted.

Effective investigation and prosecution of perpetrators

Over the last 10 years, the DRC has acknowledged and sought to address the high levels of sexual violence in the country through establishing, in the National Police, units specializing in child protection and prevention of sexual violence, appointing the Personal Representative of the Head of State on Sexual Violence and Child Recruitment, strengthening the “Break the Silence” campaign in 2015 to prevent sexual violence and establishing an emergency hotline offering referrals to medical or legal services for victims of sexual violence and any other persons in the country.⁷⁵ However, the impact of these steps on addressing sexual violence faced by the LGBT+ people is unclear.

LGBT+ organizations report that LGBT+ people continue to be reluctant to report crimes to the police.⁷⁶ They further report that even in cases where LGBT+ individuals do report human rights violations to the police, they fail to investigate the complaint due in part to the individual's sexual orientation and gender identity.⁷⁷

Access to justice

There has been some progress in increasing access to justice for LGBT+ and other vulnerable populations in the past 10 years due in part to increased capacity of civil society to provide free legal services usually within the context of health and HIV.⁷⁸ Between 2018-2021, civil society organizations supported at least 3,500 sexual violence survivors to access legal support and there were at least 37 legal clinics across the country dedicated to the care of survivors of sexual violence, including LGBT+.⁷⁹

Civic space free of stigma, reprisals or criminal prosecution

There have been some signs of progress on providing legal recognition to LGBT+ civil society organizations. The Ministry of Justice has begun to take initial steps to facilitate the legal recognition of LGBT+ civil society organizations. In addition, civil society organizations have built relationships with notaries relying on their expertise in drafting articles of association for nascent LGBT+ organizations to ensure legal recognition. LGBT+ organizations still though need to ensure their objectives are focused on health and HIV rather than explicitly on LGBT+ issues. Despite the barriers, the capacity and diversity of LGBT+ civil society has grown significantly in the last 10 years.

Organizations working on LGBT+ issues and leaders of LGBT+ organizations report they are still harassed by police and private individuals.⁸⁰ Speech in support of or seemingly in support of LGBT+ can result in backlash. For instance, in June 2023, following an incident where a mining company provided, at a major event, gift bags that were interpreted as having the LGBT+ rainbow on them, the High Council for Audiovisual and Communication, which oversees media content in the DRC, stated that “homosexuality and lesbianism, along with their associated practices” are “degrading” and “unconstitutional” and, in keeping with its duty to protect minors and “good morals”, demanded that all media outlets in the DRC refrain from any involvement in “shameful” campaigns to promote homosexuality.⁸¹ It also recalled that media outlets “involved in these campaigns” could face legal consequences under Congolese law.⁸²

Inclusion of LGBT+

The DRC has made significant progress in ensuring the inclusion of LGBT+. Most notably, the health sector has been at the forefront of integrating the needs of men who have sex with men (MSM) and transgender people

74 Ibid.

75 United Nations Human Rights Committee. Reply from the Democratic Republic of Congo to the List of Issues (6 Oct 2017). Available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=COD&Lang=EN.

76 MOPREDS, above n 72

77 Ibid.

78 The Global Fund. Democratic Republic of the Congo: Mid-term Assessment Global Fund Breaking Down Barriers Initiative (April 2021). Available at https://www.theglobalfund.org/media/11707/crg_2021-midtermassessmentdrc_report_en.pdf [hereinafter Global Fund DRC Report]

79 Ibid; UNAIDS. Coalition Working to End Gender-Based Sexual Violence in Democratic Republic of the Congo (9 March 2021). Available at https://www.unaids.org/en/resources/presscentre/featurestories/2021/march/20210309_end-gender-based-sexual-violence-democratic-republic-congo

80 MOPREDS, above n 72

81 High Council for Audiovisual and Communication. Communiqué Officiel 004/CSAC/RAP/OK/06/23 (19 June 2023). Available at [https://database.ilga.org/api/downloader/download/1/CD%20-%20EXE%20-%20Communique%20Officiel%20004-CSAC-RAP-OK-06-23%20\(2023\)%20-%20OR-OFF\(fr\).pdf](https://database.ilga.org/api/downloader/download/1/CD%20-%20EXE%20-%20Communique%20Officiel%20004-CSAC-RAP-OK-06-23%20(2023)%20-%20OR-OFF(fr).pdf)

82 Ibid.

within the health sector. The National Multisectoral Strategic Plan to Combat AIDS, 2021–2023 includes MSM and transgender people as a vulnerable group requiring access to health and other basic social services.⁸³ Similarly, the fifth pillar of the Strategic Plan of the National Programme to Combat HIV/AIDS and Sexually Transmitted Infections, which concerns human rights and gender, takes LGBT+ people into account in its programmes.⁸⁴ The National Tuberculosis Control Programme also takes MSM and transgender people into account in ensuring access to health services.⁸⁵ The inclusion of MSM and transgender people in these documents has helped bring the issues these communities face to the forefront enabling them to be effectively addressed and resulting in an increase in the use of health services by MSM and transgender people.⁸⁶

Even outside of the health sector, there has been significant progress. In the past 10 years, there has been an increase in official support from government officials across various levels, including high-level judges and key government ministers. A growing group of advocates and allies within government institutions is working to more effectively coordinate efforts to address the multifaceted concerns of the LGBT+ community. LGBT+ civil society organizations are working with the government to implement recommendations from the UPR process and have submitted an alternative report as part of the UPR process in 2024.⁸⁷ Also, some parliamentarians have been actively engaged in drafting laws aimed at combating sexual and gender-based violence which include provisions to protect sexual and gender minorities.⁸⁸

The legal community is also gradually becoming more inclusive and attuned to the needs of the LGBT+ community. Some magistrates, and judges have come forward to voice solidarity with the LGBT+ community. There is a growing acceptance of LGBT+-related cases before the courts which may reflect a shift in legal attitudes and there is a growing number of media outlets who are more supportive of LGBT+ issues.

Recommendations

1. Enact comprehensive anti-discrimination legislation that prohibits discrimination on the basis of real or imputed sexual orientation and/

or gender identity in the public and private sphere, including in access to education, employment, healthcare and other public services. Ensure all current laws and policies prohibiting discrimination include sexual orientation and gender identity as prohibited grounds.

2. Repeal Article 176 of the Penal Code. Modify or repeal Article 175 of the Penal Code to the extent it is used to limit the activities of LGBT+ organizations and restrict LGBT+-supportive speech.
3. Amend existing criminal laws to make sexual orientation and gender identity and expression an aggravating circumstance in criminal cases. Take steps to ensure that perpetrators of hate crimes are effectively prosecuted and that victims receive adequate support.
4. Work closely with LGBT+ civil society organizations to provide mandatory training on LGBT+ rights and non-discrimination to police officers, judges, and prosecutors to ensure respectful and fair treatment of LGBT+ individuals.
5. Create specialized units within the police force to handle crimes against LGBT+ individuals, ensuring their safety and effective investigation of hate crimes and discrimination cases.
6. Ensure that government-provided legal aid services are accessible to LGBT+ individuals, with specific provisions to address their unique legal needs and challenges.
7. Remove barriers for registration and operations of civil society organizations working on LGBT+ issues.
8. Continue to integrate LGBT+ issues into national policies, beyond the health sector, to ensure equitable access to services and support.
9. Ensure proper investigation and diligent prosecution of perpetrators of acts of violence and discrimination against LGBT+ people,

83 UNDP. Inclusive Governance Initiative: Democratic Republic of the Congo Baseline Report (2022). Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-07/UNDP-CD-%20igi-drc-baseline-report.pdf> [hereinafter IGI: DRC Baseline Report]

84 Ibid.

85 Ibid.

86 Global Fund DRC Report, above n 78

87 Human Rights Council. Summary of Stakeholder Submissions on the Democratic Republic of Congo (August 30, 2024). Available at <https://documents.un.org/doc/undoc/gen/g24/157/53/pdf/g2415753.pdf>

88 Global Fund DRC Report, above n 78

including when committed by State agents, and establish judicial procedures that are responsive to the needs of the victims.

10. Launch nationwide campaigns to raise public awareness of human rights, including LGBT+ rights, to reduce stigma and promote acceptance and equality of LGBT+ people.
11. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.

Eswatini

Country overview

Located in southern Africa, Eswatini was under British rule until it became independent in 1968.⁸⁹ Its legal system is a mix of common law and customary law.⁹⁰ Eswatini is a hereditary kingship where the Constitution grants the King executive, legislative and judicial powers.⁹¹ The government is comprised of the Prime Minister and Cabinet, judiciary and Parliament. The King appoints the Cabinet, some legislators, the judges and the Civil Service Commission.⁹² The bicameral Parliament, or Libandla, consists of the Senate and the House of Assembly.⁹³

Eswatini joined the African Union in 1968.⁹⁴ As of 2024, Eswatini has ratified the following regional human rights treaties:⁹⁵

- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child
- African Youth Charter

It has signed, but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and the Protocol of the Court of Justice of the African Union.⁹⁶

Eswatini has made limited progress in recognizing and protecting the rights of LGBT+ individuals. Same-sex sexual conduct continues to be criminalized. Despite this, the country held its first Pride parade and Miss Trans pageant, indicating some acceptance of

sexual and gender diversity. The Sexual Offences and Domestic Violence Act defines domestic relationship broadly meaning same-sex partners may be protected against domestic violence. Much of the progress on LGBT+ issues is within the health sphere and under the broader rubric of key populations. Grassroots activists have increased their visibility and ability to advocate for change. There have also been initial, promising steps taken to increase access to justice, which may result in increased access for LGBT+ people.

Protective legal and policy environment

There has been some progress on enacting a protective legal and policy environment over the last 10 years. In 2018, the government enacted the Sexual Offences and Domestic Violence (SODV) Act.⁹⁷ The SODV Act includes people who "live or have lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other...they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or they share or recently shared the same residence" in the definition of a domestic relationship, meaning that same-sex partners could avail themselves of the law.⁹⁸ Furthermore, the SODV Act does not criminalize same-sex activities between consenting adults.

In addition, in 2016 and in 2021, the government accepted recommendations explicitly addressing sexual orientation and gender identity as part of the UPR process. The accepted recommendations from 2016 – "[e]nsure and guarantee non-discriminatory access to health services, education, justice and employment for all persons, irrespective of their actual or perceived sexual orientation or gender identity

89 Sibusiso Magnificent Nhlabatsi. The Law and Legal Research in Eswatini (January/February 2023). Available at <https://nyulawglobal.org/globalex/Swaziland1.html>

90 Ibid.

91 Ibid.

92 Ibid.

93 Ibid.

94 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2

95 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

96 Ibid.

97 Act No. 15 of 2018

98 Ibid. at s 77(2)

and [p]rohibit discrimination on the basis of sexual orientation and gender identity, particularly concerning the enjoyment of the right to health"⁹⁹—and the recommendation from 2021—“[t]ake the necessary steps to combat discrimination and violence against women and children, and on the basis of sexual orientation and gender identity”— are significant steps forward as it indicates the government’s commitment to implementing the recommendations.¹⁰⁰

Despite this progress, same-sex sexual activity between adult males continues to be prohibited under the common law, which criminalizes acts of sodomy.¹⁰¹ LGBT+ persons report facing discrimination and stigma due to their sexual orientation and gender identity, particularly when seeking employment and healthcare services in hospitals and clinics.¹⁰²

Effective investigation and prosecution of perpetrators

There has been some progress in ensuring the effective investigation and prosecution of discrimination or violence against LGBT+ people. The Police Act,¹⁰³ enacted in 2018, seeks to ensure that human rights principles are observed by police officers by teaching police recruits and officers a module on human rights and ensuring police officers attend periodic lectures on human rights from the Directorate of Legal Affairs.¹⁰⁴ It is unclear whether this human rights training includes the human rights of LGBT+ people.

In addition, civil society organizations with the support of the Ministry of Health have been working to sensitize law enforcement on issues of violence affecting key populations, including LGBT+. This has

included trainings and developing with the police a training manual, which is currently under review.¹⁰⁵ However, civil society organizations report that LGBT+ people remain reluctant to report violence or discrimination to the police for fear they will be subjected to violence or discrimination by law enforcement.¹⁰⁶

Access to justice

There has been some progress in increasing access to justice for marginalized populations since 2014. The government promulgated a National Legal Aid Policy 2022-2027.¹⁰⁷ The goal of the National Legal Aid Policy is to establish a coordinated national legal aid system for promoting access to justice, by providing affordable, accessible and accountable legal aid services to indigent and vulnerable people.¹⁰⁸ It has resulted in August 2023 of the opening of the first-ever legal aid office in Eswatini.¹⁰⁹ Furthermore, the Legal Aid and Legal Practitioners Bill, currently under consideration, provides for legal aid for vulnerable populations, though LGBT+ people are not explicitly listed as a vulnerable group in the Bill.¹¹⁰ This is promising progress. However, it remains unclear whether those providing legal aid will be trained on issues affecting LGBT+ community.

Civic space free of stigma, reprisals or criminal prosecution

In the past 10 years, LGBT+ civil society has become more vocal and better coordinated. However, LGBT+ organizations still face hurdles in registering. In 2019, Eswatini Sexual and Gender Minorities (ESGM), an LGBT+ organization, applied to the High Court

99 United Nations Human Rights Council. UPR of Swaziland Thematic Recommendations (2nd Cycle-33rd session). Available at <https://www.ohchr.org/en/hr-bodies/upr/sz-index>

100 United Nations Human Rights Council. UPR of Swaziland Thematic Recommendations (3rd Cycle-49th session). Available at <https://www.ohchr.org/en/hr-bodies/upr/sz-index>

101 *Melusi Simelane & 5 Others v Minister for Commerce and Industry & 2 Others* (1897/2019) [2020]SZHC 66 (29th April, 2022)

102 *Ibid.*

103 No. 22 of 2018

104 Kingdom of Eswatini. Combined 1st, 2nd, 2rd, 4th, 5th, 6th, 7th, 8th, and 9th Periodic Report on the African Charter on Human and Peoples Rights and Initial Report to the Protocol to the African Charter on the Rights of Women in Africa (5 May 2022), para 377. Available at <https://achpr.au.int/en/state-reports/kingdom-eswatini-combined-1st-9th-periodic-report-2001-2020> [hereinafter Eswatini ACHPR State Report]

105 *Ibid.*

106 Out and Proud LGBTI Equality and Rights in Southern Africa. LGBTIQ+ Risk and Vulnerability Survey (2021). Available at https://www.cospe.org/wp-content/uploads/2021/01/Risk_Vulnerability-Analysis_OP_final.pdf.

107 The Ministry of Justice and Constitutional Affairs. National Legal Aid Policy 2022-2027 (2023). Available at https://www.undp.org/sites/g/files/zskgke326/files/2023-08/legal_aid_policy_.pdf

108 *Ibid.*

109 UNDP. Legal Aid Opens Doors for the First Time in Eswatini (30 August 2023). Available at <https://www.undp.org/eswatini/news/legal-aid-opens-doors-first-time-eswatini>

110 Parliament of the Kingdom of Eswatini. The Legal Aid and Legal Practitioners Bill (24 July 2024). Available at <https://www.parliament.gov.sz/media/news/readmore.php?indzaba=The%20Legal%20Aid%20and%20Legal%20Practitioners%20Bill%20&nini=2024-07-24&yiphi=82>

to compel the Registrar of Companies to make a decision on its application to register as a civil society organization as required under the law in Eswatini.¹¹¹ Prior to the case being heard, the Registrar denied ESGM's application for registration claiming that "discrimination on the basis of sexual orientation and sex is not protected by our Constitution, or in any of the country's domestic laws". The High Court in a 2-1 decision dismissed ESGM's application and upheld the Registrar's decision to deny registration to ESGM. However, the Court did note that "LGBTs have the rights conferred by section 14 of the Constitution. They have a right to life, liberty, privacy or dignity. They have a right not to be discriminated against or be subjected to inhumane and degrading treatment. They have a right to associate. They have a right to form a company. They have a right to freedom of expression. These rights are inherent in them not by reason of their sexual preferences as LGBTs but as human beings."¹¹²

ESGM appealed the High Court's decision to the Supreme Court. The Supreme Court overturned the High Court's decision finding that the Registrar did not properly follow the procedure for considering ESGM's application and ordered the Registrar to consider ESGM's application anew. In 2023, the Registrar once again denied ESGM's request for registration after reconsidering its application.¹¹³ ESGM is in the process of appealing this decision.

Civil society organizations report that this case has in some instances made it more difficult for LGBT+ civil society to gain access to decision makers; while others report trouble with law enforcement for similar reasons.¹¹⁴

Inclusion of LGBT+

In the past 10 years, LGBT+ have been able to publicly celebrate their community. For instance, in 2018/2019, the LGBT+ community held a gay pride march which was attended by hundreds of supporters to highlight the importance of respecting diversity and calling for equality and protection of LGBT+ person.¹¹⁵ A coalition of civil society organizations held the Miss Trans pageant in 2023 celebrating diverse gender identities without incident.

In addition, barriers to LGBT+ accessing health services have been reduced in the last decade. Civil

society has worked closely with the Ministry of Health to develop training manuals on key populations, including LGBT+, for healthcare workers. Civil society also report that there is more familial acceptance of LGBT+ family members, which in turn helps with greater acceptance within the community.

Recommendations

1. Repeal laws that criminalize same-sex sexual activity, specifically targeting the common law provisions against sodomy.
2. Enact comprehensive anti-discrimination legislation that prohibits discrimination on the basis of real or imputed sexual orientation and/or gender identity in the public and private sphere, including in access to education, employment, healthcare and other public services. Ensure all current laws and policies prohibiting discrimination includes sexual orientation and gender identity as prohibited grounds.
3. Work closely with the LGBT+ community and LGBT+ civil society organizations to fully implement the recommendations accepted in the 2016 and 2021 UPR, specifically:
 - a. Ensure and guarantee non-discriminatory access to health services, education, justice and employment for all persons, irrespective of their actual or perceived sexual orientation or gender identity
 - b. Prohibit discrimination on the basis of sexual orientation and gender identity, particularly concerning the enjoyment of the right to health
 - c. Take the necessary steps to combat discrimination and violence against women and children and on the basis of sexual orientation and gender identity
4. Amend existing criminal laws to make sexual orientation and gender identity and expression an aggravating circumstance in criminal cases. Take steps to ensure that perpetrators of hate crimes are effectively prosecuted and that victims receive adequate support.

¹¹¹ Melusi Simelane & 5 Others v Minister for Commerce and Industry & 2 Others, above n 101

¹¹² Ibid. at para 82

¹¹³ Christopher Wiggins. LGBTQ+ Groups Denied Registration Even After Supreme Court Decision in Eswatini. *The Advocate* (15 October 2023). Available at <https://news.yahoo.com/lgbtq-groups-denied-registration-even-103004026.html>

¹¹⁴ Ibid.

¹¹⁵ Eswatini ACHPR State Report, above n 104

5. Work closely with LGBT+ civil society organizations to provide mandatory training on LGBT+ rights and non-discrimination to police officers, judges, prosecutors and healthcare workers to ensure respectful and fair treatment of LGBT+ individuals.
6. Remove barriers for registration and operations of civil society organizations working on LGBT+ issues.
7. Ensure that the newly established legal aid services are accessible to LGBT+ individuals and that providers are trained on LGBT+ issues.
8. Ensure proper investigation and diligent prosecution of perpetrators of acts of violence and discrimination against LGBT+ people, including when committed by State agents, and establish judicial procedures that are responsive to the needs of the victims.
9. Launch nationwide campaigns to raise public awareness of human rights, including LGBT+ rights, to reduce stigma and promote acceptance and equality of LGBT+ people.
10. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.
11. Continue to integrate LGBT+ issues into national policies to ensure equitable access to services and support.

Kenya

Country overview

Kenya, located in eastern Africa, is a former British colony.¹¹⁶ It became independent in 1963.¹¹⁷ Its legal system includes common and customary law.¹¹⁸ The Constitution is the supreme law of the land. Kenya is a multiparty democracy comprised of executive, legislative and judicial branches. The President heads the Executive, which also consists of the Vice-President, Cabinet Secretaries and the Principal Secretaries, among others. They implement all the laws made by Parliament. The Parliament consists of the National Assembly and the Senate. They are responsible for enacting laws. The judiciary interprets and upholds the Constitution and laws.¹¹⁹

Kenya joined the African Union in 1963.¹²⁰ As of 2024, Kenya has ratified the following regional human rights treaties:

- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa¹²¹
- African Charter on the Rights and Welfare of the Child
- African Youth Charter
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

- Protocol on the Rights of Older Persons

It has signed, but not ratified the Protocol of the Court of Justice of the African Union and the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights.¹²²

Kenya has made some progress in advancing LGBT+ rights since 2014, including the legal recognition of intersex persons, landmark court rulings affirming the rights of LGBT+ individuals, and acceptance of LGBT-specific recommendations during the UPR process. The government has also taken steps to reduce stigma in healthcare settings and to sensitize law enforcement and judicial officers on LGBT+ issues. However, consensual same-sex relationships continue to be criminalized and proposed punitive legislation against LGBT+ people remain concerning.

Protective legal and policy environment

Kenya has made some progress since 2014 towards ensuring laws and policies are in place to protect LGBT+ people from violence and discrimination. Much of this progress has been through the courts. In 2014, the High Court in *Baby 'A' (suing through the Mother E A) and Another v Attorney General and Others*, ordered the government to register and issue a birth certificate for Baby A, who was intersex.¹²³ The Court further directed the government to collect data on intersex persons and develop guidelines for medical examinations and corrective surgery in accordance with internationally acceptable guidelines.¹²⁴ As a result of this decision, in August 2019, Kenya became the first country in Africa to collect data on intersex persons in its national census.¹²⁵ Further, in 2019, Kenya enacted the Registration of Persons (Amendment) Bill,

116 Tom Ojienda, Brian Ojienda and Gregory Otieno. Researching Kenyan Law (Mar/Apr 2020). Available at <https://nyulawglobal.org/globalex/Kenya1.html>

117 Ibid.

118 Ibid.

119 Ibid.

120 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2

121 Kenya placed a reservation to article 10(3) regarding reduction of military spending in favor of social development and the promotion of women and article 14 (2) (c) regarding abortion. See: https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLES_RIGHTS_ON_THE_RIGHTS_OF_WOMEN_IN_AFRICA.pdf

122 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

123 Petition 266 of 2013, [2014] eKLR. Available at <https://kenyalaw.org/caselaw/cases/view/104234/>

124 Ibid.

125 Nita Bhalla. Kenyan Census Results a 'Big Win' for Intersex People. *Reuters* (5 Nov 2019). Available at <https://www.reuters.com/article/world/kenyan-census-results-a-big-win-for-intersex-people-idUSKBN1XE1U8/>

which provides for the legal recognition of intersex persons.¹²⁶ According to the government, all laws, policies and programmes are being reviewed by the Intersex Persons Implementation Coordination Committee to ensure the recognition, care, treatment and protection of intersex persons is in line with the decision in the *Baby 'A'* case.¹²⁷ In 2022, Parliament enacted the Children Act which protects intersex children from unnecessary harmful genital surgeries, among other measures to ensure the rights of intersex children.¹²⁸ Kenya's National Reproductive Health Policy 2022-2032 defines intersex persons and in its objectives, expressly outlines the right of persons born intersex to attain the highest standards of reproductive health.¹²⁹ Finally, Parliament is considering the Intersex Persons Bill, which "seeks to provide for the recognition, protection and safeguarding of intersex persons' human rights".¹³⁰ If passed, it would be a significant step in ensuring the rights of intersex people in Kenya.

Since 2014, the courts in Kenya have further strengthened the legal and policy framework to address discrimination and violence against LGBT+ people. In 2014, Audrey Mbugua Ithibu sued the Kenya National Examination Council (KNEC) for declining to change her name and gender mark on her school certificate making it difficult for her to obtain employment.¹³¹ Relying on the fact that there is no legal requirement to include a gender mark on school certificates and invoking the right to dignity guaranteed under the Kenyan Constitution, the High Court ordered KNEC to change Ithibu's name and remove the gender mark from her school certificate.¹³² In 2016, the Court of Appeal in *COI and Another v Chief Magistrate Ukunda Law Courts and Others* found that forced anal exams of individuals arrested on suspicion of being gay violated the rights to dignity and privacy guaranteed under the Constitution.¹³³

Further, in January 2020, Kenya accepted three LGBT+-specific recommendations issued as part of the UPR process:

- Develop and adopt appropriate legislative and administrative measures to combat discrimination against women as well as discrimination and violence against lesbian, gay, bisexual, transgender and intersex people
- Continue collecting and analyzing disaggregated data on women with the aim of combating discrimination based on religion, ethnic background, age, health, disability or sexual orientation
- Take additional measures to eliminate discrimination and harassment in the workplace, including on the basis of sex and sexual orientation and gender identity¹³⁴

The acceptance of these recommendations by the government signals its commitment to their implementation.

Kenya has also taken some steps outside of the court process to protect LGBT+ people from violence since 2014. In 2015, the Parliament enacted the Protection Against Domestic Violence Act, which protects same-sex partners from violence as its definition of a domestic relationship includes individuals living in the same house or an individual who has a "close personal relationship with the other person".¹³⁵ However, it is unclear whether the Protection Against Domestic Violence Act has been applied to same-sex relationships.

In limited cases, the government has acknowledged that stigma against LGBT+ people limits their access to healthcare services and has sought to sensitize health care workers to reduce stigmatizing attitudes in healthcare settings; develop and disseminate population-specific and user-friendly information; and promote of the acceptance of all persons as part of the community for increased service uptake.¹³⁶ The government has further sought to sensitize judges, prosecutors, the police, prison officers and law and

126 Kenya Gazette Supplement. Senate Bills (26 July 2019). Available at <http://www.parliament.go.ke/sites/default/files/2019-09/THE%20REGISTRATION%20OF%20PERSONS%20AMENDMENT%20BILL,%202019.pdf>

127 Committee on Economic, Social and Cultural Rights. Sixth Periodic Report Submitted by Kenya Under Articles 16 and 17 of the Covenant (14 November 2022). Available at <https://www.ohchr.org/en/countries/kenya>

128 Act 29 of 2022, s 21. See also ss 6(3), 26(3), 64(3), 95(2)(b), 144(l) and 144(z)

129 Ministry of Health. National Reproductive Health Policy 2022-2032 (July 2022). Available at http://guidelines.health.go.ke:8000/media/The_National_Reproductive_Health_Policy_2022_-_2032.pdf

130 Intersex Persons Bill, 2023. Available at https://www.knchr.org/Portals/0/INTERSEX%20PERSONS%20BILL-%202023-%20PICC_1.pdf

131 Judicial Review 147 of 2013, [2014] eKLR. Available at <https://kenyalaw.org/caselaw/cases/view/101979/>

132 Ibid.

133 Civil Appeal No. 56 of 2016 (2016). Available at <https://nglhrc.com/wp-content/uploads/2022/08/COIJudgment.pdf>

134 Human Rights Council. UPR of Kenya Thematic Recommendations (3rd Cycle - 35th Session). Available at <https://www.ohchr.org/en/hr-bodies/upr/ke-index>

135 Ch. 151, s 4

136 United Nations Human Rights Committee. Fourth Periodic Report Submitted by Kenya Under Article 40 of the Covenant (26 April 2019). Available at <https://www.ohchr.org/en/countries/kenya>

policy makers on how to handle matters concerning LGBT+ individuals.¹³⁷

Despite these positive steps, Kenya continues to criminalize consensual, same-sex relationships between adults under sections 162, 163 and 165 of the Penal Code. Section 162 criminalizes anyone having “carnal knowledge of any person against the order of nature”. Section 163 criminalizes attempted acts “against the order of nature”. Section 165 criminalizes any male person engaged in “gross indecency”.

Court challenges arguing that sections 162, 163 and 165 violated the Constitution were unsuccessful. In *EG & 7 others v Attorney General; DKM & 9 others*,¹³⁸ the petitioners argued that sections 162(a), 162(c) and 165 of the Penal Code should be struck down as they violated the rights to dignity and privacy guaranteed under the Constitution. In support, the petitioners argued that sections 162(a), (c) and 165 contravened Resolution 275 among other laws and treaties. In May 2019, the High Court rejected this argument finding that the limitations on the rights to dignity and privacy were justified. The Court noted that same-sex sexual relations are contrary to culture and the society’s morals.¹³⁹ The judgment has been appealed.

Most recently, there has been an increase in pursuing highly punitive legislation on LGBT+ issues beyond the punitive laws that already exist. In February 2023, MP George Peter Kaluma introduced the Family Protection Bill. The Bill aims to amend the definition of “family” contained in Article 45(2) of the Constitution and Section 162 of the Penal Code. If passed, the bill would impose harsher penalties for consensual same-sex sexual acts and criminalize owners of premises, where same-sex sexual activities occur. Further, civil society report increasing violence against LGBT+ people limiting their ability to engage in public life and development.

Effective investigation and prosecution of perpetrators

The government has noted that despite “[s]exual relations between same sex persons [being] expressly prohibited by the national law and...unacceptable to the Kenyan culture and values” LGBT+ can file complaints about infringement of rights to the Independent Policing Oversight Authority (IPOA), the Kenya National Commission on Human Rights and the National Police Service.¹⁴⁰ In addition, Kenya has made significant efforts to address gender-based violence, including establishing Gender-Based Violence Recovery Centres in the largest public hospitals in Nairobi (Kenyatta National Hospital), Mombasa, Nakuru, Kisumu and Eldoret; providing post-exposure prophylaxis and emergency contraception to victims of sexual violence who report to health facilities; establishing the gender-based violence hotline and referral mechanism; developing a National Policy on Prevention and Response to Gender-Based Violence; and producing a training manual on sexual and gender-based violence for prosecutors to provide stakeholders’ guidance on how to implement the Sexual Offences Act.¹⁴¹ It is unclear if these efforts have resulted in greater redress for LGBT+ victims. Further, the current police and prisons training curriculum has content on human rights, but it is unclear whether it addresses the specific human rights issues affecting LGBT+ people.¹⁴²

In addition to these efforts, LGBT+ civil society organizations, in specific regions, work with LGBT+ members to successfully report human rights violations to local law enforcement with whom the organizations have built relationships.¹⁴³

Access to justice

Kenya has made progress in increasing access to justice; though it is unclear whether that has had an impact on LGBT+ people’s access to justice. In 2016, Parliament enacted the Legal Aid Act,¹⁴⁴ which established a National Legal Aid Scheme,

137 Ibid.

138 Eric Gitari & Others v. Attorney General Kenya, Consolidated Petitions No. 150 of 2016 and No. 234 of 2016. Available at http://kenyalaw.org/caselaw/cases/view/173946/#_ftnref206

139 United Nations Human Rights Committee. Replies of Kenya to the List of Issues in Relation to its Fourth Periodic Report (2021). Available at <https://www.ohchr.org/en/countries/kenya>

140 Committee on Economic, Social and Cultural Rights. Sixth Periodic Report Submitted by Kenya Under Articles 16 and 17 of the Covenant (14 November 2022). Available at <https://www.ohchr.org/en/countries/kenya>

141 Ibid.

142 Committee Against Torture. Third Periodic Report Submitted by Kenya Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure (26 December 2018). Available at <https://www.ohchr.org/en/countries/kenya>

143 Interview with civil society representatives

144 No 2 of 2016

run by the National Legal Aid Board.¹⁴⁵ The Board provides formal legal representation, legal advice and awareness, provision of legal information and law-related education and psychosocial support.¹⁴⁶ It also establishes the Legal Aid Fund, to finance legal aid activities.¹⁴⁷ In 2017-2018, the government allocated USD 1 million to the Legal Aid Fund.¹⁴⁸ Despite this, the Committee Against Torture expressed concerns that victims still face difficulties in obtaining free legal assistance, and for those in detention, many do not receive timely access to a lawyer or an independent medical examination at the outset of detention.¹⁴⁹ In addition to these steps by government, LGBT+ civil society organizations have established legal aid clinics and trained paralegals to specifically address the needs of LGBT+ individuals.¹⁵⁰

Civic space free of stigma, reprisals or criminal prosecution

In February 2023, after 10 years of litigation, the Supreme Court found that the denial of registration to an LGBT+ civil society organization, National Gay and Lesbian Human Rights Commission (NGLHRC), violated the right to freedom of association and assembly and ordered to government to register NGLHRC.¹⁵¹ In reaching its decision, the Supreme Court held that the right to be free from discrimination in the Constitution, included sexual orientation as a prohibited ground.¹⁵² This decision was a significant step forward in ensuring the free operations of LGBT+ civil society organizations in Kenya.

Despite this progress, civil society organizations report increasing restrictions in the civic space. In March 2023, the Kenyan Parliament voted to pass a motion during the thirteenth Parliamentary session to “ban the speech, publication and distribution of information promoting same-sex relationships”.¹⁵³ Furthermore, the Kenya Film Classification Board continues to regularly censor international films with LGBT+ content under

the Board’s 2012 Classification Guidelines, which can ban films that promote or glamorize a homosexual lifestyle.¹⁵⁴ For instance, in 2021, “I Am Samuel”, an LGBT+ Kenyan documentary, was banned for allegedly “promoting same-sex marriages”.¹⁵⁵ In a statement, the Board claimed that the documentary was in their view “a clear and deliberate attempt by the producer to promote same-sex marriage as an acceptable way of life”.¹⁵⁶

Inclusion of LGBT+

Over the past decade, LGBT+ civil society organizations have expanded their capacity and diversity. They have also forged crucial alliances with a wide range of stakeholders, including other civil society groups, government bodies and health sector institutions. The increased visibility of LGBT+ organizations has been accompanied by increased capacity in documenting human rights violations, allowing them to more effectively advocate for the protection and rights of the LGBT+ community. Further, they have developed strong partnerships within the health sector, particularly with the Ministry of Health. These relationships have been instrumental in breaking down barriers and improving access to essential health services for LGBT+ individuals.

Recommendations

1. Amend all relevant laws, including sections 162, 163 and 165 of the Penal Code, to decriminalize consensual sexual relations between adults of the same sex.
2. Enact comprehensive anti-discrimination legislation that prohibits discrimination on the basis of real or imputed sexual orientation and/or gender identity in the public and private sphere, including in access to education, employment, healthcare and other public

145 Committee Against Torture. Third Periodic Report, above n 142

146 Ibid.

147 Ibid.

148 Ibid.

149 Committee Against Torture. Concluding Observations on the Third Periodic Report of Kenya (30 May 2022), para. 29. Available at <https://www.ohchr.org/en/countries/kenya>

150 Interview with civil society representatives

151 NGOs Co-ordination Board v EG & 4 Others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR). Available at <http://kenyalaw.org/caselaw/cases/view/252450>

152 Ibid. at para. 79.

153 Sam Kisika. Kenyan MPs Approve Resolution to Ban Public Discussions of LGBTQ Issues. *Washington Blade* (24 March 2023). Available at <https://www.washingtonblade.com/2023/03/24/kenyan-mps-approve-resolution-to-ban-public-discussions-of-lgbtq-issues/>

154 Kenya Film Classification Board. Classification Guidelines 2012. Available at [https://database.ilga.org/api/downloader/download/1/KE%20-%20EXE%20-%20KFCB%20Classification%20Guidelines%20\(2012\)%20-%20OR-OFF\(en\).pdf](https://database.ilga.org/api/downloader/download/1/KE%20-%20EXE%20-%20KFCB%20Classification%20Guidelines%20(2012)%20-%20OR-OFF(en).pdf)

155 Kenya Film Classification Board. KFCB Bans Gay-Themed Film Dubbed: I Am Samuel (23 September 2021). Available at <https://kfcbo.go.ke/kfcbo-bans-gay-themed-film-dubbed-i-am-samuel/#comments>

156 Ibid.

services. Ensure all current laws and policies prohibiting discrimination include sexual orientation and gender identity as prohibited grounds.

3. Amend existing criminal laws to make sexual orientation and gender identity and expression an aggravating circumstance in criminal cases. Take steps to ensure that perpetrators of hate crimes are effectively prosecuted and that victims receive adequate support.
4. Take concrete steps, such as comprehensive, national awareness-raising campaigns and sensitization activities, to address stigma and discriminatory attitudes and promote sensitivity and respect for LGBT+.
5. Develop and implement training programmes for Parliamentary committee members, police, prosecutors, state counsels in the Department of Justice and Legislative Drafting Department, judges and prison officers on LGBT+ issues. Ensure that these programmes address stigma, discrimination and the specific needs of LGBT+ individuals in custody.
6. Expand sensitization programmes for healthcare workers to reduce stigmatizing attitudes towards LGBT+ individuals.
7. Continue to integrate LGBT+ issues into national policies to ensure equitable access to services and support.
8. Increase funding and resources for the National Legal Aid Service and the Kenya National Commission on Human Rights to ensure timely access to legal representation for LGBT+ individuals. Establish specialized legal aid units to address the unique challenges faced by LGBT+ persons in accessing justice.
9. Review and amend the Kenya Film Classification Board's guidelines to allow the screening and distribution of films with LGBT+ content. Ensure that any laws or policies related to freedom of expression do not disproportionately target or censor LGBT+ content.
10. Create specialized units within the police force to handle crimes against LGBT+ individuals, ensuring their safety and effective investigation of hate crimes and discrimination cases.
11. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and

gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.

Mauritius

Country overview

Mauritius was a French and then British colony before becoming independent in 1968.¹⁵⁷ The Constitution is the supreme law of Mauritius and provides for the protection of human rights and fundamental freedoms of individuals. The Constitution establishes the executive, legislative and judicial branches. The President serves as both head of state and commander-in-chief.¹⁵⁸ The President appoints the Prime Minister and Deputy Prime Minister, who comprise the executive along with Ministers, Cabinet and the Attorney General, among others.¹⁵⁹ The Parliament consists of the President and the National Assembly and is responsible for enacting laws.¹⁶⁰ The judiciary interprets and upholds the Constitution and laws.¹⁶¹

Mauritius joined the African Union in 1968.¹⁶² As of 2024, Mauritius has ratified the following regional human rights treaties:

- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa¹⁶³
- African Charter on the Rights and Welfare of the Child
- African Youth Charter
- Protocol of the Court of Justice of the African Union
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

It has signed, but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.¹⁶⁴

Since 2014, Mauritius has made notable strides in enhancing the legal and policy framework to support and protect LGBT+ individuals from violence and discrimination. Most notably, the Supreme Court struck down section 250(1) of the Criminal Code criminalizing sodomy finding that it violated the right to be free from discrimination. In addition, the government amended the Protection Against Domestic Violence Act which now applies to persons living under the same roof; the Workers' Rights Act, which prohibits discrimination on the basis of sexual orientation and gender in employment; and the Civil Status Act, which allows for the registration of the sex of newborns with congenital conditions as "undetermined" in order to provide for intersex children, all of which provide LGBT+ people with greater protection. Finally, LGBT+ civil society organizations continue to actively engage with national and international decision makers to promote inclusion and human rights for the LGBT+ community.

Protective legal and policy environment

Mauritius has significantly strengthened its legal and policy environment to support and protect LGBT+ people from violence and discrimination since 2014. In October 2023, the Supreme Court struck down section 250(1) of the Criminal Code which criminalized sodomy.¹⁶⁵ The petitioners challenged section 250 arguing that it violated the rights to be free from inhuman and degrading treatment and discrimination, liberty, privacy, free expression, assembly and association, all guaranteed under the Constitution. The Supreme Court declared the law unconstitutional to the extent that it criminalizes consensual sexual

157 Rajendra Parsad Gunputh. The Mauritian Legal System and Research (May/June 2022). Available at <https://www.nyulawglobal.org/globalex/mauritius.html>

158 The Constitution of the Republic of Mauritius (May 2018). Available at <https://mauritiusassembly.govmu.org/mauritiusassembly/index.php/the-constitution/>

159 Ibid. at ss 58-75.

160 Ibid. at ss 45-57.

161 Ibid. at ss 76-84.

162 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2

163 Mauritius has made several reservations to this treaty. Details are available at https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLES_RIGHTS_ON_THE_RIGHTS_OF_WOMEN_IN_AFRICA.pdf

164 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

165 Ah Seek v State of Mauritius. Record No. 119259 (4 Oct 2023). Available at <https://www.humandignitytrust.org/wp-content/uploads/2023/10/Judgment-AH-SEEK-.pdf>

acts between adult males in private on the basis that it violates the right to be free from discrimination. Notably, the Court found that the prohibition of discrimination on the basis of sex included sexual orientation. In its reasoning, the Court acknowledged that “[s]ection 250 was not introduced into Mauritius to reflect any Mauritian values but was inherited as part of our colonial history from Britain. Its enactment was not the expression of domestic democratic will but was imposed on Mauritius and other colonies by British rule.”¹⁶⁶

The government has also strengthened existing laws which protect LGBT+ people from violence and discrimination. For instance, in 2016, Mauritius amended the Protection Against Domestic Violence Act (PDVA) to include individuals living under the same roof, which would include same-sex partners living under the same roof.¹⁶⁷ In 2019, the government enacted the Workers' Rights Act, which prohibits discrimination on the basis of sexual orientation and gender in employment.¹⁶⁸ In 2021, an amendment to the Civil Status Act allowed for the parents to register their newborn's sex as undetermined.¹⁶⁹ In 2020, the government developed the National Strategy and Action Plan for the Elimination of Gender-Based Violence. Though the LGBT+ community is not specifically referenced in the strategy, the strategy is framed such that it could include the LGBT+ community.¹⁷⁰

Despite this progress, civil society organizations report that LGBT+ people continue experience violence and discrimination from State and non-State actors.¹⁷¹ Civil society organizations have further expressed concerns that though the PDVA protects against violence by another person living under the same roof, family protection officers at the Ministry of Gender Equality and Family Welfare are not fully apprised of this and

can fail to effectively implement the law reflecting a need for additional training.¹⁷²

Effective investigation and prosecution of perpetrators

There has been some progress in ensuring the effective investigation and prosecution of perpetrators since 2014. The government enacted the Independent Police Complaints Commission Act,¹⁷³ which strengthens the role of the National Human Rights Commission, among other bodies, by establishing an Independent Police Complaints Division.¹⁷⁴ However, it is unclear what impact this has had on LGBT+ people's ability to obtain redress for human rights violations.

According to civil society organizations, LGBT+ persons generally did not file complaints with police due to fears of ostracism or, in some cases, reprisal from family members.¹⁷⁵ In 2019, the Special Rapporteur on the situation of human rights defenders, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women, its causes and consequences in a letter to the government expressed their concern at reports of the police's failure to intervene to stop the assault of two members of the Collectif Arc-en-Ciel, an LGBT+ civil society organization by private citizens.¹⁷⁶

Access to justice

Under the Legal Aid and Legal Assistance Act, everyone, subject to specific conditions, is entitled to free legal aid.¹⁷⁷ However, there is little information available on LGBT+ people's access to justice over the past 10 years.

166 Ibid.

167 Act 6 of 1997, s 3A

168 Act 20 of 2019, s 5

169 Act 23 of 1981

170 Committee Against Torture. Fifth Periodic Report Submitted by Mauritius Under Article 19 of the Convention Pursuant to the Simplified Reporting Procedure (4 April 2022). Available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsvkhKJISs2OVG0imJplC0z%2F%2Bceoh%2Fw2vma6RrtB863tWLV08APBlubi4PI2a4dUpI0GO6iF0QzwaGXIsSvOQy3R8las7TkLymwEvMcW6Q2G7>

171 Young Queer Alliance. Shadow Report for 'List of Issues' for the Pre-Sessional Working Group of the Committee of the Elimination of all Forms of Discrimination Against Women (2017). Available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MUS&Lang=EN.

172 Human Rights Council. Summary of Stakeholders' Submissions on Mauritius (8 Nov 2023). Available at <https://www.ohchr.org/en/hr-bodies/upr/mu-index>

173 Act No. 14 of 2016

174 CEDAW Committee. Concluding Observations on the Eighth Periodic Report of Mauritius (Oct/Nov 2018). Available at <https://www.ohchr.org/en/countries/mauritius>

175 Mandates of the Special Rapporteur on the situation of human rights defenders; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women, its causes and consequences (3 May 2019)

176 Ibid.

177 Act 57 of 1973

Civic space free of stigma, reprisals or criminal prosecution

There is little information available on the progress made in ensuring the civic space was free of stigma, reprisals or criminal prosecution over the past 10 years.

Inclusion of LGBT+

LGBT+ civil society organizations continue to engage with national and international decision makers to ensure the inclusion and human rights of the LGBT+ community. For instance, in 2023, LGBT+ civil society organizations submitted alternate reports as part of the UPR process.¹⁷⁸

Recommendations

1. Amend existing criminal laws to make sexual orientation and gender identity and expression an aggravating circumstance in criminal cases. Take steps to ensure that perpetrators of hate crimes are effectively prosecuted and that victims receive adequate support.
2. Revise the National Strategy and Action Plan to explicitly mention and address the specific needs and vulnerabilities of the LGBT+ community.
3. Provide mandatory training for police and other law enforcement personnel on LGBT+ rights and the implementation of existing protective laws, focusing on respectful and non-discriminatory treatment and the importance of protecting LGBT+ individuals from violence and abuse.
4. Create specialized units within the police force and judiciary to handle cases involving LGBT+ individuals, ensuring that these cases are treated with sensitivity and urgency.
5. Provide access to shelter and assistance for LGBT+ persons who are victims of violence.
6. Launch nationwide campaigns to raise public awareness of human rights, including LGBT+ rights, to reduce stigma and promote acceptance and equality of LGBT+ people.
7. Ensure that government-provided legal aid services are accessible to LGBT+ individuals, with specific provisions to address their unique legal needs and challenges.
8. Ensure that all reports of violence and discrimination, including hate speech, against LGBT+ individuals are thoroughly investigated and that perpetrators are held accountable. This includes improving the effectiveness of the Independent Police Complaints Commission and other relevant bodies.
9. Encourage the inclusion of LGBT+ issues in national policies and programmes, particularly those related to health, education, jobs and social protection, to ensure that the needs of the LGBT+ community are adequately addressed.
10. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.

¹⁷⁸ Human Rights Council, above n 172

Mozambique

Country overview

Mozambique, a former Portuguese colony, became independent in 1975.¹⁷⁹ The legal system is based on civil and customary law with the Constitution as the supreme law of Mozambique. Mozambique is a multiparty democracy with three branches of government: the executive, legislative and judiciary.¹⁸⁰ The executive includes the President, the Prime Minister and ministers in the cabinet, among others. The legislature, responsible for enacting laws, is comprised of the Assembly of the Republic. The judiciary administers justice.¹⁸¹

Mozambique joined the African Union in 1975.¹⁸² As of 2024, Mozambique has ratified the following regional human rights treaties:¹⁸³

- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child
- African Youth Charter
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa
- Protocol on the Statute of the African Court of Justice and Human Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons

It has signed, but not ratified the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights and the Protocol on the Statute of the African Court of Justice and Human Rights.¹⁸⁴

Mozambique has made notable progress in strengthening the rights of LGBT+ people over the past decade. Most notably, Mozambique repealed laws criminalizing consensual, same-sex sexual relations. It also implemented inclusive policies, such as the Fifth National Action Plan to Combat HIV/AIDS (2021-2025) which denounces discrimination based on gender identity and sexual orientation. The Ministry of the Interior working with civil society has revised police training to incorporate LGBT+ issues, and the government has shown openness to addressing LGBT+ issues. Finally, despite challenges, LGBT+ civil society organizations have significantly increased their advocacy efforts and strengthened coordination over the past decade.

Protective legal and policy environment

In the past 10 years, Mozambique has repealed punitive and discriminatory laws and policies. Most notably, in July 2014, the Parliament repealed articles 70 and 71 of the Penal Code which criminalized same-sex sexual relations.¹⁸⁵ The revised Penal Code came into force in June 2015.¹⁸⁶

Mozambique has also made progress in ensuring existing laws and policies protect LGBT+ people. The Fifth National Action Plan to Combat HIV/AIDS (2021-2025) denounced discrimination based on gender identity and sexual orientation for the first time. The

179 Orquídea Massarongo-Jona and Isaura Ernesto Muhosse. Republic of Mozambique – Legal System and Research (Nov/Dec 2022). Available at <https://www.nyulawglobal.org/globalex/Mozambique1.html>.

180 Ibid.

181 Ibid.

182 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2

183 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

184 Ibid.

185 Law No. 35 (2014)

186 Mozambique: New Penal Code Removes Colonial Era Dispositions Against Homosexuality. *Library of Congress* (6 July 2015). Available at <https://www.loc.gov/item/global-legal-monitor/2015-07-06/mozambique-new-penal-code-removes-colonial-era-dispositions-against-homosexuality/>

Implementation Strategy for the Youth Policy, which is expected to be approved in 2024, calls for equal opportunities for all young people, regardless of sexual orientation. In December 2014, Mozambique amended the domestic violence law to be gender neutral.¹⁸⁷ The previous law¹⁸⁸ had only prohibited acts of domestic violence committed against women by men or persons with family ties to the victim. In addition, article 245 of the Penal Code, protects everyone from violence committed by spouses, ex-spouses, de facto partners, cohabiting partners, partners, ex-partners, girlfriends, boyfriends, ex-girlfriends, ex-boyfriends and family members again protecting LGBT+ people from family violence. Despite these legal protections, some members of the LGBT+ community have reported that law enforcement continues to work on the mistaken belief that the law applied to heterosexual couples only.¹⁸⁹

There has also been progress in the promotion and protection of the human rights of LGBT+ people. The government is also developing an electronic system to collect data on gender-based violence that will enable victims to self-identify.¹⁹⁰ Furthermore, the Ministry of Health finalized its guidelines for the care of key populations, which provides guidance to healthcare professionals on providing healthcare for key populations, including MSM and transwomen, with the hope that this will reduce the discrimination and stigma LGBT+ people face in accessing healthcare services.¹⁹¹

Finally, there have been amendments to existing laws that do not directly protect or include the LGBT+ community, but are broad enough to potentially protect LGBT+ people. For instance, in November 2018, the Parliament approved a revision of the law on the national education system with a view to aligning and harmonizing it with the international and regional commitments of Mozambique, including the 2030 Agenda for Sustainable Development.¹⁹² The revision is aimed at guaranteeing equitable and inclusive

education for all, promoting respect for human rights and cultivating a spirit of tolerance, solidarity and respect for the others and their differences.¹⁹³ It does not explicitly include sexual orientation and gender identity, but is broad enough to include issues affecting LGBT+ youth.¹⁹⁴ Despite this progress, civil society organizations report LGBT+ people face discrimination in public medical facilities and schools.¹⁹⁵

Effective investigation and prosecution of perpetrators

There is limited information on the extent of progress on ensuring the effective investigation and prosecution of perpetrators. However, in the past decade, the Ministry of the Interior revised the handbook and training package for police officers and, in consultation with civil society organizations, incorporated elements related to sexual orientation and gender identity.¹⁹⁶ This addition may reduce barriers for LGBT+ people in obtaining redress for human rights violations.

Access to justice

Mozambique provides legal aid through the Instituto de Assistência e Patrocínio Jurídico under the Ministry of Justice.¹⁹⁷ In addition, the Ordem dos Advogados de Moçambique requires members to provide free legal representation as part of their bar membership.¹⁹⁸ The Centre for Legal and Judicial Training has mainstreamed human rights and gender in the initial training and continuous learning courses given to legal professionals. However, according to the Independent Expert the training courses do not incorporate elements related to violence and discrimination based on sexual orientation or gender identity.¹⁹⁹ Further, the number of training courses delivered by the Centre has fallen due to budget cut as of 2019.²⁰⁰

187 Law No. 35/2014

188 No. 29/2009

189 Human Rights Council. Visit to Mozambique: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (17 May 2019). [hereinafter Independent Expert report]

190 Ibid. at para 31

191 Input from civil society representatives

192 Independent Expert report, above n 189

193 Ibid.

194 Ibid.

195 Ibid.

196 Ibid.

197 Republic of Mozambique. African Commission on Human and Peoples' Rights Report from the Government of the Republic of Mozambique Pursuant to Article 62 of the ACHPR (Consolidated Report 2015 to 2021) (Dec 2022). Available at <https://achpr.au.int/en/state-reports/mozambique-consolidated-periodic-reports-2015-2021>

198 Ibid.

199 Independent Expert report, above n 189

200 Ibid.

Civic space free of stigma, reprisals or criminal prosecution

There has been some progress in registering LGBT+ organizations in Mozambique, though challenges remain. In 2017, in response to a 2013 request from the Ombudsman, the Constitutional Council declared article 1 of Law No. 8/91, which permits government to deny registration to an organization whose objectives “offend public morals”, unconstitutional. In its decision, the Constitutional Council found that article 1 unconstitutionally limits the right to association guaranteed by the Constitution and is contrary to the principles of equality and non-discrimination.²⁰¹ Despite this positive decision, the Mozambican Association for the Defense of Sexual Minorities, an LGBT+ civil society organization still has yet to be registered.²⁰²

Inclusion of LGBT+

The government invited the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity for a country visit “to identify opportunities and challenges surrounding social inclusion in a country firmly committed to the furtherance of the goal of leaving no one behind, within the framework of the 2030 Agenda for Sustainable Development; to assess the impact of the 2015 same-sex decriminalization process on social perceptions and State action; and to draw from the experiences of Mozambique, a country with an extraordinary history of confluence of traditions and plurality of legal orders.”²⁰³ During his visit he was able to meet with a broad range of government officials and civil society. Most notably, he met with “representatives of the executive, legislative and judicial branches, local authorities, the National Human Rights Commission and with the Ombudsman.”²⁰⁴ He expressed his thanks for their openness, respect and candor for their discussions and “the commitment of the State to thoughtful attention to these matters in the future.”²⁰⁵ Though these are not direct changes to laws and policies, the invitation to the Independent Expert signals an openness to addressing LGBT+ issues by key stakeholders.

In addition, stakeholders have reported that since 2022, there has been a notable increase in the participation of Members of Parliament in LGBT+ events, indicating a possible decrease in prejudice against LGBT+ people amongst key decision makers.

Finally, despite the challenges to registration, advocacy efforts of LGBT+ civil society has significantly increased over the last 10 years as the capacity of existing LGBT+ organizations has grown. In addition, there has been a greater number of new LGBT+ organizations learning from more established LGBT+ and other civil society groups. Further, LGBT+ civil society has made significant strides in strengthening relationships and coordination amongst themselves and with other civil society organizations.

Recommendations

1. Enact comprehensive anti-discrimination legislation that prohibits discrimination on the basis of real or imputed sexual orientation and/or gender identity in the public and private sphere, including in access to education, employment, healthcare and other public services. Ensure all current laws and policies prohibiting discrimination include sexual orientation and gender identity as prohibited grounds. Consider including sexual orientation and gender identity as a prohibited ground for discrimination in article 35 of the Constitution.
2. Amend existing criminal laws to make sexual orientation and gender identity and expression an aggravating circumstance in criminal cases. Take steps to ensure that perpetrators of hate crimes are effectively prosecuted and that victims receive adequate support.
3. Provide comprehensive training for police officers, judges and other law enforcement personnel on LGBT+ issues, including the proper handling of complaints involving LGBT+ individuals. Specifically train law enforcement and judicial staff to ensure that the law on domestic violence is properly implemented and effectively protects same-sex partners.
4. In collaboration with civil society actors, design and implement an education campaign about sexual orientation and gender identity with a view to dispelling myths and misconceptions, combating gender-based stereotypes, sharing knowledge to break the cycle of discrimination and exclusion, promoting positive social change.
5. Ensure that healthcare professionals are trained on LGBT+ issues, with a specific focus on sexual

201 Ibid.

202 Ibid.

203 Independent Expert report, above n 189, para 1.

204 Ibid. at para 2.

205 Ibid.

and reproductive health rights, mental health support and HIV prevention and treatment. Remove barriers to health services for LGBT+ people, including those related to stigma, discrimination and financial constraints.

6. Develop and implement school policies that address bullying, harassment and discrimination against LGBT+ students. Establish confidential reporting mechanisms and support systems within schools to protect LGBT+ youth.
7. Ensure that government-provided legal aid services are accessible to LGBT+ individuals, with specific provisions to address their unique legal needs and challenges.
8. Institutionalize and scale up training for State officials, including police and penitentiary staff, judicial staff, health professionals and teachers, on human rights, sexual orientation and gender identity. Incorporate mandatory training on sexual orientation and gender identity in the curriculum of the Centre for Legal and Judicial Training.
9. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.
10. Simplify the registration process for LGBT+ organizations and ensure that the legal framework does not contain provisions that can be used to deny their registration. Repeal or amend any restrictive provisions that hinder the operation of LGBT+ and other civil society organizations.

Namibia

Country overview

Namibia, located in southwestern Africa, is a former German colony later administered by South Africa. Namibia became independent in 1990.²⁰⁶ Its legal system includes civil, common and customary law traditions.²⁰⁷ The Constitution establishes Namibia as a multiparty democracy comprised of executive, legislative and judicial branches.²⁰⁸ The President serves as both head of state and government. The Parliament consists of the National Assembly and the National Council, responsible for enacting laws and representing regional interests, respectively. The judiciary interprets and upholds the Constitution and laws.²⁰⁹

Namibia joined the African Union in 1990.²¹⁰ As of 2024, Namibia has ratified the following regional human rights treaties:²¹¹

- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa²¹²
- African Charter on the Rights and Welfare of the Child
- African Youth Charter
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa

It has signed, but not ratified the Protocol to the African Charter on Human and Peoples' Rights on

the Establishment of an African Court on Human and Peoples' Rights and the Protocol of the Court of Justice of the African Union.

Namibia has made some progress in recognizing and protecting the rights of LGBT+ individuals. The country held its first Pride parade in 2014, indicating a growing acceptance of sexual and gender diversity. LGBT+ civil society has grown considerably and has built strong relationships with allies and decision makers. Sexual and gender diversity has been integrated into comprehensive sexuality education and Namibia recognized LGBT+ individuals as a vulnerable group in the National Human Rights Action Plan (2015-2019). Finally, the High Court's decriminalization of sodomy, though under appeal, marks significant progress toward greater legal protection for LGBT+ individuals. Despite this progress, progress towards full equality and acceptance remains uneven.

Protective legal and policy environment

Namibia has made some progress since 2014 in removing laws that criminalize consensual, same-sex conduct between adult males in private. Most notably, in 2024, the High Court decriminalized sodomy and unnatural offences.²¹³ In its ruling, the High Court stated, "we are not persuaded that in a democratic society such as ours, with a Constitution which promises the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family and the pursuit of individual happiness, it is reasonably justifiable to make an activity criminal just because a segment, maybe a majority, of the citizenry consider it to be unacceptable."²¹⁴

206 Dunia P. Zongwe. Researching Namibian Law and the Namibian Legal System (Nov/Dec 2020). Available at <https://www.nyulawglobal.org/globalex/Namibia1.html>

207 Ibid.

208 Republic of Namibia. Namibian Constitution (21 Mar 1990). Available at <https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf>

209 Ibid.

210 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2

211 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

212 Namibia has lodged a reservation to article 6 (d) of the Protocol, "until legislation regarding the recording and registration of customary marriages is enacted". See: https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLES_RIGHTS_ON_THE_RIGHTS_OF_WOMEN_IN_AFRICA.pdf

213 Dausab v Minister of Justice and Others, Case No: HC-MD-CIV-MOT-GEN-2022/00279 (June 2024). Available at <https://namiblii.org/akn/na/judgment/nahc/2024/331/eng@2024-06-21#:~:text=Held%20further%20that%3A%20the%20differentiation,declare%20the%20impugned%20laws%20invalid>

214 Ibid.

The High Court decision comes after the Law Reform and Development Commission (LRDC) in 2019 recommended that the common law criminal offence of sodomy be repealed as it violates constitutional rights, including the right to be free from discrimination. The LRDC further noted that it puts at risk the health of male prisoners as the Department of Corrections refuses to provide condoms in prison due to the criminal offence of sodomy.²¹⁵

In addition to the High Court decision decriminalizing sodomy and unnatural offences, the Supreme Court in May 2023 recognized same-sex marriages performed abroad between Namibian citizens and foreign spouses for immigration purposes.²¹⁶ It held that failure to recognize same-sex marriage for immigration purposes infringed on the rights to dignity and equality and that prejudice and stereotyping do not justify discrimination against same-sex couples.²¹⁷

There has been significant progress in including LGBT+ in policies. In 2018, sexual and gender diversity was included in the Inclusive Education Policy and the Grade 11 life skills curriculum taught in schools throughout Namibia.²¹⁸ The 2017-2021 National Strategic Framework on HIV identifies MSM as a target population identifying as a programme objective “[t]o target MSM with high impact HIV testing; prevention, treatment and care interventions necessary to achieve the fast track targets i.e. 90-90-90 among the MSM by reaching them with combination prevention services by 2022.” This is a significant step forward given that the 2010-2016 National Strategic Framework for HIV and AIDS Response in Namibia mentioned MSM, but noted that there was little knowledge about MSM and even size estimates of the MSM population had yet to be conducted. The National Human Rights Action Plan 2015-2019 identifies LGBT+ as a “vulnerable group” and highlights the need to protect members of vulnerable groups against discrimination.²¹⁹

Finally, the government in 2021 accepted at least five recommendations specifically on sexual orientation and gender identity made as part of the UPR process indicating the government’s plan to implement the

recommendations.²²⁰ The accepted recommendations are as follows:

- Adopt the necessary measures to accelerate the current review of laws and policies in order to rectify provisions that discriminate against lesbian, gay, bisexual, transgender and intersex persons and older persons, including those with disabilities
- Adopt effective measures to combat de facto racial discrimination and discrimination against indigenous peoples, persons with disabilities, HIV-positive persons and lesbian, gay, bisexual and transgender persons
- Implement further measures targeting equality before the law for members of the lesbian, gay, bisexual, transgender and intersex community
- Take concrete action to ensure access to health services for LGBT+ persons, especially transgender persons, and to combat all forms of discrimination against LGBT+ persons in relation to employment opportunities and treatment by the police forces
- Strengthen measures to combat violence against women and girls and establish clear and efficient mechanisms to combat the different forms of discrimination faced by people with disabilities, indigenous peoples and members of the lesbian, gay, bisexual, transgender and intersex community

Despite this progress, gaps remain. The High Court decision striking down the criminalization of sodomy is being appealed by the government. The Combating of Domestic Violence Act²²¹ provides for protection orders in domestic relationships, but under article 3(1)(b) does not include domestic violence between same-sex partners. Therefore, the Protection Orders system made available as a form of police and state protection to applicants facing domestic violence are not available to those in same-sex relationships.²²²

215 Law Reform and Development Commission. Report on the Abolishment of the Common Law Offences of Sodomy and Unnatural Sexual Offences (November 2020). Available at <https://namiblii.org/akn/na/doc/law-reform-report/2020-11-01/report-on-the-abolishment-of-the-common-law-offences-of-sodomy-and-unnatural-sexual-offences/eng@2020-11-01/source.pdf> [hereinafter LRDC report]

216 Digashu and Another v GRN and Others; Seiler-Lilles and Another v GRN and Others [2023] NASC 14 (16 May 2023)

217 Ibid.

218 NIED, Ministry of Education, Arts and Culture. Life Skills Syllabus, Grades 10-11 (2018). Available at https://www.nied.edu.na/assets/documents/02Syllabuses/05SeniorSecondary/LifeSkills/NSSCO_Life_Skills_Syllabus.pdf

219 Human Rights Council. Report of the Working Group on the Universal Periodic Review Namibia, Addendum (14 Sept 2021). Available at <https://www.ohchr.org/en/hr-bodies/upr/na-index>

220 Human Rights Council. UPR of Namibia: Thematic List of Recommendations (3rd cycle--38th session). Available at <https://www.ohchr.org/en/hr-bodies/upr/na-index>

221 Act 4 of 2003

222 Ibid.

The 1992 Labour Act²²³ had protected against discrimination on the basis of sexual orientation, but that specific protection was repealed in 2007, with the enactment of the Labour Act²²⁴ and has not since been reinstated.

Further, gains made in protecting the rights of LGBT+ has often resulted in significant backlash. For instance, the 2023 Supreme Court decision resulted in a rise in homophobia and violence against LGBT+ people in Namibia. In July 2023, lawmakers from the ruling party submitted two private member bills that would prohibit same-sex marriages. The Definition of Spouse Bill invokes Articles 81 and 45 of the Namibian Constitution to define the definition of “spouse” as “a person, being one half of a legal union between a man and a woman of the opposite sex of that person”. The second bill, the Marriage Amendment Bill would also define the term “spouse” to only include those of the “opposite sex” in addition to introducing a clause that would prohibit same-sex marriages and refuse to recognize foreign same-sex marriages as valid. Any person found to solemnize such marriages, or “witness, promote or propagate” same-sex marriages would also be guilty of committing an offence, being liable, upon conviction, to a fine or to imprisonment.²²⁵ Both bills reportedly passed the National Assembly and National Council and are now with the President.²²⁶

Effective investigation and prosecution of perpetrators

There is minimal information on progress in the effective investigation and prosecution of perpetrators over the past 10 years. Since 2023, there have been at least six cases where individuals who identify as LGBT+ have been murdered by non-State actors.²²⁷ The police have investigated and charged individuals in at least five cases since 2023.²²⁸ However, LGBT+ civil society organizations have expressed concern that the cases have not been treated as hate crimes but rather as individual acts of violence.

Access to justice

There is minimal information on the progress made in increasing access to justice in the past 10 years. In 2016, the United Nations Human Rights Committee, tasked with monitoring compliance with the International Covenant on Civil and Political Rights, raised concerns at the barriers to accessing justice recommending that Namibia “should increase funding granted to its legal aid scheme, lower the barriers to accessing it, and ensure that it is, at minimum, available where the interests of justice so require”.²²⁹ Some scholars have also recommended specific steps to address these barriers, including expanding the eligibility for who qualifies for legal aid and the scope of cases that would be covered by legal aid, raising awareness amongst the public on how to access justice and engaging law students to provide legal services under professional supervision.²³⁰ However, it is unclear what steps have been taken to implement this recommendation since 2016.

Civic space free of stigma, reprisals or criminal prosecution

The Office of the President’s National Planning Commission’s (NPC) developed a Government of Namibia – Civil Society Organization Partnership and Engagement Policy, 2024-2027, which outlines how the government and civil society can work together. In 2024, the NPC sought inputs and contributions from stakeholders, including civil society organizations on the draft policy and held a national validation workshop.²³¹ The development of this policy is a positive step to ensuring a free civil society.

Inclusion of LGBT+

LGBT+ civil society has made notable strides in the past 10 years. They have regularly advocated in law and policy reform processes providing submissions and input to help tailor laws, policies and

223 Act 6 of 1992

224 Act 11 of 2007

225 Marriage Amendment Bill (2023)

226 Eino Vatileni and Envaalde Matheus. Mbumba Still Consulting on Ekandjo’s Anti-Gay Bills. *The Namibian* (7 May 2024). Available at <https://www.namibian.com.na/mbumba-still-consulting-on-ekandjos-anti-gay-bills/>

227 Puyeipawa Nakashole and Shelleygan Petersen. Hate Kills. *The Namibian* (5 May 2024). Available at <https://www.namibian.com.na/hate-kills/>

228 Ibid.

229 United Nations Human Rights Committee. Concluding Observations on the Second Report of Namibia (22 April 2016). Available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqKb7yhsh7Ph3KVs8zxwYZKnao5FA8MpfDWy%2FQGPY29QoZxc1OtOmGEp%2BDSIHNgSdJrvjLL6S1zO99wgtffaBMjydHo9u27GY2%2FQgxb3%2FXOfU8yQm7I>

230 DP Zongwe. Nobody Can Really Afford Legal Services: The Price of Justice in Namibia. [2021] PER 52. Available at <https://www.saflii.org/za/journals/PER/2021/52.html>

231 National Planning Commission. Call for Inputs to the Draft GRN – CSO Partnership and Engagement Policy (28 May 2024). Available at <https://www.npc.gov.na/call-for-inputs-to-the-draft-grn-cso-partnership-and-engagement-policy-september-2024-september-2027/>

recommendations to include and address the needs of LGBT+ people. For instance, LGBT+ civil society organizations made submissions to the LRDC when it considered the repeal of the laws criminalizing sodomy and unnatural offences.²³² LGBT+ civil society organizations, for the first time, advocated before the United Nations Committee on Economic, Social and Cultural Rights and other United Nations human rights processes.²³³ LGBT+ civil society in recent years has managed to build relationships with key stakeholders, including members of key ministries and religious leaders.

More key stakeholders are publicly advocating for the repeal of punitive laws and the inclusion of LGBT+ in protective laws. In 2016, John Walters, the then Ombudsman of Namibia, said while referring to anti-sodomy legislation that “I think the old sodomy law has served its purpose. How many prosecutions have there been? I believe none over the past 20 years. If we don't prosecute people, why do we have the [A] ct?”²³⁴ In 2023, the Ombudsman, Advocate Basilius Dyakugha, in his official submission to the United Nations Human Rights Committee raised concerns at the lack of protection for individuals in same-sex partnerships under the Combating of Domestic Violence Act and the government's lack of progress on implementing the recommendation of the LRDC to repeal the laws criminalizing sodomy and unnatural offences.²³⁵ Some members of Parliament have engaged in forums addressing the needs of the LGBT+ community underscoring a growing awareness of and commitment to LGBT+ issues at the legislative level.

There has also been greater inclusion of the LGBT+ community in data collection processes. In 2014, the Integrated Biological Behavioural Surveillance Surveys study in part sought to collect information on MSM, including an estimation of the size of the population and HIV prevalence. These data were relied on by the 2017-2021 National Strategic Framework on HIV to craft MSM-related programme objectives. More recently, the National Statistics Agency has indicated an openness to include LGBT+-related metrics in data collection for future data gathering endeavors.²³⁶

Recommendations

1. Prioritize the parliamentary repeal of laws criminalizing consensual same-sex conduct.
2. Enact comprehensive anti-discrimination legislation that explicitly prohibits discrimination on the basis of sexual orientation and gender identity and expression, including in employment, healthcare, education and housing and prohibits hate speech targeted at LGBT+ individuals.
3. Amend the Combating Domestic Violence Act and the Labour Act to ensure equal protection under the law for LGBT+ individuals.
4. Work closely with the LGBT+ community and LGBT+ civil society organizations to fully implement the recommendations accepted in the 2021 UPR, specifically:
 - a. Adopt the necessary measures to accelerate the current review of laws and policies in order to rectify provisions that discriminate against lesbian, gay, bisexual, transgender and intersex persons and older persons, including those with disabilities
 - b. Adopt effective measures to combat de facto racial discrimination and discrimination against indigenous peoples, persons with disabilities, HIV-positive persons and lesbian, gay, bisexual and transgender persons
 - c. Implement further measures targeting equality before the law for members of the lesbian, gay, bisexual, transgender and intersex community
 - d. Take concrete action to ensure access to health services for lesbian, gay, bisexual, transgender and intersex persons, especially transgender persons and to combat all forms of discrimination against lesbian, gay, bisexual, transgender and intersex persons in relation to employment opportunities and treatment by the police forces
 - e. Strengthen measures to combat violence against women and girls and establish clear and efficient mechanisms to combat the different forms of discrimination faced by people with disabilities, indigenous peoples

232 LRDC, above n 215

233 United Nations Human Rights Treaty Bodies. Namibia. Available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=NAM&Lang=EN

234 Roberto Igal. Namibia's Ombudsman Calls for Same-Sex Marriage Amidst UN Report Furore (August 23, 2016). Available at <https://www.mambaonline.com/2016/08/23/namibias-ombudsman-calls-sex-marriage-amidst-un-report-furore/>

235 Office of the Ombudsman. Namibia: Submission to the Human Rights Committee (16 Jan 2023)

236 Interview with civil society representatives

and members of the lesbian, gay, bisexual, transgender and intersex community

5. Amend existing criminal laws to make sexual orientation and gender identity and expression an aggravating circumstance in criminal cases. Take steps to ensure that perpetrators of hate crimes are effectively prosecuted and that victims receive adequate support.
6. Provide specialized training for law enforcement officers, prosecutors, judicial officers on issues related to LGBT+ rights, including hate crime investigation and prosecution.
7. Establish dedicated units within law enforcement agencies to handle cases of violence and discrimination against LGBT+ individuals, ensuring thorough investigation and prosecution of perpetrators.
8. Reduce barriers to accessing justice for marginalized populations, including LGBT+ individuals, by expanding legal aid services and streamlining court processes.
9. Continue to integrate LGBT+ issues into national policies to ensure equitable access to services and support.
10. Launch nationwide campaigns to raise public awareness of human rights, including LGBT+ rights, to reduce stigma and promote acceptance and equality of LGBT+ people.
11. Implement safe data practices by developing and promoting guidelines for safe data collection practices that protect the identities of LGBT+ individuals while gathering essential information on their experiences and needs.

Zambia

Country overview

Zambia, a former British colony, became independent in 1964.²³⁷ Its legal system includes common and customary law. Zambia is a multiparty democracy comprised of executive, legislative and judicial branches.²³⁸ The President serves as both head of state and government. The Parliament, responsible for enacting laws, consists of the National Assembly. The judiciary interprets and upholds the Constitution and laws.²³⁹

Zambia joined the African Union in 1964.²⁴⁰ As of 2024, Zambia has ratified the following regional human rights treaties:²⁴¹

- African Charter on Human and Peoples' Rights²⁴²
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights
- African Youth Charter

It has signed, but not ratified the Protocol of the Court of Justice of the African Union, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa and the Protocol on the Statute of the African Court of Justice and Human Rights.

Despite the legal challenges faced by the LGBT+ community in Zambia, there has been some progress in recent years. Notably, intersex rights have seen advancements, with the development of protocols that protect intersex children from forced surgeries. Additionally, the growing visibility of LGBT+ activists, such as their participation in international human rights forums, highlights the important role LGBT+ civil society plays in strengthening the rights of LGBT+. These steps demonstrate a commitment to raising awareness and advocating for the rights of the LGBT+ community, paving the way for more inclusive dialogue in the future.

Protective legal and policy environment

There has been some progress in the past 10 years in ensuring the rights of intersex people. In 2017, the High Court ordered the Registrar General of Births and Deaths to change the applicant's birth records from female to male after medical tests proved the applicant was in fact male.²⁴³ In 2022, the Zambia Medical Association, the National AIDS Council and the Human Rights Commission developed a protocol for the medical management of intersex persons, which in part seeks to address human rights violations intersex children face in healthcare.²⁴⁴ This protocol was adopted by Zambia and is a significant step in mitigating the violence intersex children face in healthcare.

In addition, in 2015, the High Court upheld the Magistrates' Court's acquittal of Paul Kasonkomona, who was arrested outside of Muvi Television immediately after he had appeared on a television programme to discuss the human rights of LGBT+ people.²⁴⁵ His house was searched, and he was arrested for idle and disorderly conduct in violation

237 Alfred S. Magagula. The Law and Legal Research in Zambia (Sept 2014). Available at <https://www.nyulawglobal.org/globalex/Zambia1.html>.

238 Ibid.

239 Ibid.

240 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2

241 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

242 Zambia has lodged reservations to the African Charter on Human and Peoples' Rights. For more information: <https://achpr.au.int/en/node/649>

243 Lusaka High Court Judge Allows a Lusaka Woman to Change her Gender. Lusaka Times (11 Nov 2017). Available at <https://www.lusakatimes.com/2017/11/11/lusaka-high-court-judge-allows-lusaka-woman-change-gender/>

244 United Nations Development Programme. We Are All Human Beings (21 June 2021). Available at <https://www.undp.org/zambia/stories/we-are-all-human-beings>; Medical Management Protocol for Disorders of Sex Development - Intersex Persons in Zambia (2022)

245 The People v Paul Kasonkomona. [2015] HPA/53/2014. Available at <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2015/08/Kasonkomona-High-Court-judgment1.pdf>

of section 178(g) of the Penal Code.²⁴⁶ The High Court found that the State had failed to prove their case beyond reasonable doubt and that they failed to meet the elements of the charge.²⁴⁷

A few leaders have spoken in support of LGBT+ rights. For instance, in September 2023, Chief Justice Mumba Malila noted that while the law prohibited same-sex sexual conduct, it also provided equal freedoms and rights to all persons, including those who were LGBT+. A number of human rights lawyers in Zambia defended Malila's remarks.²⁴⁸

Despite this progress, same-sex relationships are still criminalized under sections 155, 156 and 158 of the Penal Code.²⁴⁹ Article 155 of the Penal Code, establishes that any person who "has carnal knowledge of any person against the order of nature" or "permits a male person to have carnal knowledge of him or her against the order of nature" commits a felony and is liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life.²⁵⁰ Individuals continue to be prosecuted under these laws and in some cases subjected to anal examinations.²⁵¹ In its submission to the United Nations Human Rights Committee, tasked with monitoring country compliance with the International Covenant on Civil and Political Rights, Zambia stated that it "considers same-sex relationships as violating its values, morals and beliefs as enshrined in the Constitution. Therefore, the State party has no intention of repealing provisions on the laws that pertain to the criminalization of consensual same-sex relationships."²⁵²

Effective investigation and prosecution of perpetrators

The government reported to the United Nations Human Rights Committee that it had "not received any complaint of discrimination, stigmatization, harassment and violence, including those that were arrested by the Police, on the basis of sexual orientation or gender identity".²⁵³ However, the United Nations Human Rights Committee expressed concern at the "[a]llegations of increased harassment and violence, perpetrated with impunity, including while in police custody, against lesbian, gay, bisexual, transgender and intersex individuals" and recommended that the government "make genuine efforts to eradicate all forms of discrimination, harassment and violence on the basis of sexual orientation and gender identity and provide access to justice and remedies for victims" indicating that LGBT+ people continue to face discrimination and violence due to their real or imputed sexual orientation and/or gender identity.²⁵⁴

Access to justice

Zambia has taken steps in the past 10 years to increase access to justice, including increasing the number of lawyers and paralegals trained, introducing paralegal desks in correctional facilities and police stations, increasing the number of advocates at the Ministry of Justice and promulgating the National Legal Aid Policy.²⁵⁵ However, it is unclear whether these steps have had any impact on LGBT+ people's access to justice. In addition to the steps taken by government, LGBT+ organizations report providing

246 Ibid.

247 Ibid.

248 Nakaonga Furor. Chief Justice's Defence of Gay Rights Splits Public Opinions. *Diggers* (26 Sept 2023). Available at <https://diggers.news/local/2023/09/26/chief-justices-defence-of-gay-rights-splits-public-opinions/>

249 Penal Code Act, Chapter 87 of the Laws of Zambia. Available at <https://www.parliament.gov.zm/sites/default/files/documents/acts/Penal%20Code%20Act.pdf>

250 Ibid.

251 Ministerial Statement on Lesbian, Gay, Bisexual and Transgender in Zambia. Available at https://www.parliament.gov.zm/sites/default/files/images/publication_docs/Ministerial%20Statement%20by%20Hon.%20Mwiimbu%20on%20LGBT.pdf; Colin Stewart. *Zambian Judge Sentences Men to 15 Years for Gay Sex. Erasing 76 Crimes* (28 Nov 2019). Available at <https://76crimes.com/2019/11/28/zambian-judge-sentences-men-to-15-years-for-gay-sex/>.

252 United Nations Human Rights Committee. Replies of Zambia to the List of Issues in Relation to its Fourth Periodic Report (14 Dec 2022), para 22. Available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=ZMB&Lang=EN.

253 Ibid. at para 24

254 United Nations Human Rights Committee. Concluding Observations on the Fourth Periodic Report of Zambia (11 Apr 2023), para 15(b) and 16(b). Available at <https://documents.un.org/doc/undoc/gen/g23/060/85/pdf/g2306085.pdf>

255 Government of the Republic of Zambia. Combined First, Second, Third, Fourth, Fifth, Sixth and Seventh Periodic Report Under the African Charter on Human and Peoples' Rights (2005-2019) and Initial Report Under the Protocol to the African Charter on the Rights of Women in Africa to the African Commission on Human and Peoples' Rights. Available at <https://achpr.au.int/en/state-reports/zambia-combined-1st-7th-periodic-report-2005-2019>

LGBT+ members support to access justice and obtain redress.²⁵⁶

Civic space free of stigma, reprisals or criminal prosecution

In a positive step, in 2022, the Penal Code (Amendment) Act repealed the crime of defaming the President, which had been used to clamp down on the freedom of expression.²⁵⁷ However, civil society organizations have expressed concern that a 2020 amendment to the Non-Governmental Organizations Act makes it harder for civil society organizations to register and operate.²⁵⁸

Inclusion of LGBT+

There has been some progress in the rising visibility of LGBT+ activists in public advocacy. For instance, in July 2023, TransBantu Zambia was the only LGBT+ organization from Zambia to make an oral statement via video before the United Nations Human Rights Council in Geneva, Switzerland on their human rights concerns; it further submitted an alternate report as part of the UPR process. In addition, for the first time, LGBT+ organizations submitted alternate reports to United Nations treaty bodies, including the Committee on the Rights of the Child and the Committee on the Rights of People with Disabilities in the past decade.

Recommendations

1. Repeal sections 155, 156 and 158 of the Penal Code that criminalize consensual same-sex relationships.
2. Enact comprehensive anti-discrimination legislation that explicitly prohibits discrimination on the basis of sexual orientation and gender identity and expression, including in employment, healthcare, education and housing and prohibits hate speech targeted at LGBT+ individuals.
3. Implement mandatory training programmes for law enforcement, judiciary and healthcare providers on LGBT+ rights and issues. This training should focus on non-discrimination, respect and the ethical treatment of all individuals.
4. Empower and support the National Human Rights Commission to investigate and address human rights violations against LGBT+ individuals. Ensure that it has adequate resources and independence to perform its functions effectively.
5. Launch a nationwide, public awareness campaigns to educate the general population about the rights and dignity of LGBT+ individuals. Utilize media, schools, traditional and religious leaders and community organizations to combat stereotypes and promote acceptance.
6. Ensure that LGBT+ individuals have access to legal aid and support services. Establish dedicated hotlines and support centers where they can seek help and report abuses safely.
7. Protect and promote the work of civil society organizations advocating for LGBT+ rights. Remove restrictive regulations and provide them with the necessary space and resources to operate freely.
8. Encourage the inclusion of LGBT+ issues in national policies and programmes, particularly those related to health, education, jobs and social protection, to ensure that the needs of the LGBT+ community are adequately addressed.
9. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.

256 TransBantu and Southern Africa Litigation Centre. Key Issues Related to Sexual Orientation, Gender Identity and Expression Identified by a Community Consultation in Zambia (Dec 2021). Available at https://www.southernafricalitigationcentre.org/wp-content/uploads/2022/04/Zambia_Booklet_eBookin.pdf.

257 No 25 of 2022

258 Act No. 16 of 2009; Human Rights Council. Summary of Stakeholders' Submissions on Zambia (21 Nov 2022), para 46. Available at <https://www.ohchr.org/en/hr-bodies/upr/zm-index>

Zimbabwe

Country overview

Zimbabwe, located in southern Africa, is a former British colony. It became independent in 1980.²⁵⁹ Its legal system includes common and customary law traditions.²⁶⁰ Zimbabwe is a multiparty democracy comprised of executive, legislative and judicial branches. The President serves as both head of state and government. The Parliament consists of the National Assembly and the Senate, responsible for enacting laws. The judiciary interprets and upholds the Constitution and laws.²⁶¹

Zimbabwe joined the African Union in 1980.²⁶² As of 2024, Zimbabwe has ratified the following regional human rights treaties:²⁶³

- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child
- African Youth Charter

It has signed, but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and the Protocol of the Court of Justice of the African Union.²⁶⁴

Zimbabwe has shown some promising steps towards inclusivity and protection of the LGBT+ community. Notably, the government accepted two LGBT+-specific recommendations from the UPR process, committing to strengthen efforts against violence based on sexual orientation and gender identity and to protect intersex minors from non-consensual surgeries. LGBT+

activists and civil society organizations have made significant strides in advocating for the protection of the LGBT+ community and push for greater inclusion. Furthermore, LGBT+ individuals have successfully used court challenges to assert their rights, with landmark cases resulting in favorable judgments that recognize transgender rights and prohibit employment discrimination based on sexual orientation.

Protective legal and policy environment

There has been some progress in ensuring a protective legal and policy environment since 2014. For the first time in 2022, Zimbabwe accepted two LGBT+-specific recommendations from the UPR process: "Strengthen efforts to address violence against women, children and against all persons on the basis of their sexual orientation and gender identity" and "[p]rotect intersex minors from non-consensual surgeries and violation of bodily integrity".²⁶⁵ Accepting these recommendations is notable as the government is signaling its commitment to implementing the recommendations before the next UPR process in 2027.

Further, the courts have upheld the rights of LGBT+ people in at least two cases. In 2015, Raymond Sibanda successfully appealed against being fired from the civil service for "allegedly engaging in homosexual activities." Labour Court President Justice Evangelista Kabasa reportedly held that Sibanda's dismissal was invalid as "no one should be dismissed from work on the basis of their sexual orientation."²⁶⁶ In 2019, Nathanson, a transgender woman who had been arrested and detained on charges of "criminal nuisance" for wearing female clothes and using the women's toilet, challenged in the High Court her treatment by the police. The Court found that she had been subject to unlawful arrest and malicious prosecution resulting in emotional distress and

259 Jimcall Pfumorodze and Emma Chitsove. The Law in Zimbabwe (July/Aug 2021). Available at <https://www.nyulawglobal.org/globalex/Zimbabwe1.html>

260 Ibid.

261 Constitution of Zimbabwe 2023

262 African Union. Member States. Available at https://au.int/en/member_states/countryprofiles2

263 For list of ratifications see OAU/AU Treaties, Conventions, Protocols & Charters. Available at <https://au.int/en/treaties/1164>

264 Ibid.

265 Human Rights Council. UPR of Zimbabwe: Thematic List of Recommendations (3rd cycle--40th session). Available at <https://www.ohchr.org/en/hr-bodies/upr/zw-index>

266 Taurai Shava. Court Rules in Favour of Dismissed Zimbabwe Worker Linked to Gay Party. *Voice of America* (27 Oct 2015). Available at <https://www.voazimbabwe.com/a/zimbabwe-sexual-orientation-sex-marriage-unconstitutional/3024732.html>

awarded Nathanson damages. The Court noted that: "Transgender citizens are part of the Zimbabwean society. Their rights ought to be recognized like those of other citizens."²⁶⁷

Despite this progress, article 73(1) of the Criminal Law (Codification and Reform) Act²⁶⁸ still criminalizes anal intercourse between males as well as "any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act".²⁶⁹ For these two types of conduct, the Act imposes a penalty of imprisonment for up to a year and/or a fine. Regular prosecutions of LGBT+ people continue to be carried out.²⁷⁰

There has also been some concerning anti-LGBT+ speech from leaders. For instance, in February 2024, the government issued a statement against the organizations that offered scholarships to LGBT+ people, stating that: "The Government of Zimbabwe strongly and firmly rejects and denounces as unlawful, un-Christian, anti-Zimbabwean and un-African insidious attempts by foreign interests to entice, lure and recruit Zimbabwe's less privileged but able students into Lesbian, Gay, Bisexual and Transgender activities and malpractices through offers of educational scholarships."²⁷¹

Effective investigation and prosecution of perpetrators

In the past 10 years, LGBT+ civil society organizations have made progress in increasing support to LGBT+ people to report cases of violence, harassment and abuse to law enforcement and in some of those cases, perpetrators have been charged with aggravated indecent assault.²⁷²

Access to justice

The government has attempted to take steps to increase access to justice in the past 10 years. Additional magistrates' courts have been opened, the Supreme Court holds hearings outside of Harare to facilitate access to those living outside of the main city and High Courts in additional provinces in the country have opened.²⁷³ Further, the government in attempting to increase access to legal services has decentralized the provision of legal aid to eight out of the country's 10 provinces.²⁷⁴ The government also has sought to include paralegal staff from the Zimbabwe Women Lawyers Association, Women in Law Southern Africa and Justice for Children Trust at legal aid offices to assist litigants with the basic legal processes.²⁷⁵ However, it is unclear whether these actions have increased access to justice specifically for the LGBT+ community.

LGBT+ civil society organizations have also increased their support to LGBT+ people in accessing justice by providing legal assistance to individuals facing discrimination or violence based on their sexual orientation or gender identity.²⁷⁶

Civic space free of stigma, reprisals or criminal prosecution

Civil society organizations have expressed concern that the Private Voluntary Organisations Amendment Bill, which was gazetted in March 2024, would restrict operations of civil society organizations. LGBT+ organizations do continue to face intimidation and harassment from the general public as well. Most recently in June 2024, the offices of Gays and Lesbians of Zimbabwe were subject to anti-LGBT+ chants by members of the general public who also vandalized their offices, carried anti-LGBT+ placards

267 Ricky Nathanson v Farai Mteliso, the Officer in Charge Bulawayo Central Police Station, Commissioner of Police and the Minister of Home Affairs. [2019] ZWBHC 135, para 131.

268 Act No. 23 (2004)

269 Ibid. at 73(1)

270 See e.g. Two Men Arrested for Kissing in a Bar. NewszdeZimbabwe (8 April 2024). Available at <https://www.newsdezimbabwe.co.uk/2024/04/two-men-arrested-for-kissing-in-bar.html>.

271 Clemence Manyukwe. Zimbabwe's Government Bans Scholarships for LGBTIQ+ Students (22 Feb 2024). Available at <https://www.universityworldnews.com/post.php?story=20240221110700717#:~:text=Zimbabwe's%20government%20bans%20scholarships%20for%20LGBTIQ%2B%20students,-Clemence%20Manyukwe%2022&text=%E2%80%9CSociety%20and%20some%20of%20our,has%20protected%20us%20from%20discrimination>

272 Ibid.

273 Human Rights Council. National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 Zimbabwe (9 Nov 2021), para. 38. Available at <https://www.ohchr.org/en/hr-bodies/upr/zw-index>

274 Ibid. at para. 39

275 United Nations Human Rights Committee. Second Periodic Report Submitted by Zimbabwe Under Article 40 of the Covenant (8 Feb 2024). Available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsjCBetDvPWGRrh%2Bi7GglwBnAuWD9hBcq%2BZL4y9qKWvGH15duGKNXsM08apCPQfjnUk1G%2FsoqzxKvuFYlune3qj2qFA%2FpJWepIsAydOhl35ZG>

276 Interview with civil society representatives

and painted anti-LGBT+ statements on the walls of the office.²⁷⁷

Inclusion of LGBT+

Civil society organizations working on LGBT+ issues have made significant strides and continue to vocally advocate for LGBT+ issues. In July 2022, Trans and Intersex Rising Zimbabwe, an LGBT+ youth-led organization made its first submission as part of the UPR process and made a statement at the Human Rights Council in Geneva, Switzerland, welcoming Zimbabwe's acceptance of two UPR recommendations related to LGBT+ issues. Additionally, two LGBT+ civil society organizations raised concerns to the United Nations Committee on Economic, Social and Cultural Rights and a coalition of LGBT+ civil society organizations raised their human rights concerns to the United Nations Human Rights Committee.²⁷⁸

Recommendations

1. Repeal Article 73(1) of the Criminal Law (Codification and Reform) Act, which criminalizes consensual anal intercourse between males and indecent acts.
2. Introduce and enact legislation specifically protecting LGBT+ individuals from discrimination in employment, education, healthcare and other public services. Ensure all current laws and policies prohibiting discrimination include sexual orientation and gender identity as prohibited grounds.
3. Amend existing criminal laws to make sexual orientation and gender identity and expression an aggravating circumstance in criminal cases. Take steps to ensure that perpetrators of hate crimes are effectively prosecuted and that victims receive adequate support.
4. Work closely with the LGBT+ community and LGBT+ civil society organizations to fully implement the UPR recommendations accepted in 2022:
 - a. Strengthen efforts to address violence against women, children and against all persons on the basis of their sexual orientation and gender identity
 - b. Protect intersex minors from non-consensual surgeries and violation of bodily integrity
5. Publicly condemn hate speech by governmental officials. Take effective steps to ensure government officials refrain from engaging in hate speech.
6. Conduct nationwide sensitization and regular training programmes for police, judiciary, prosecutors and healthcare workers to eliminate existing stigma and discrimination against the LGBT+ community.
7. Establish a dedicated unit sensitized to the needs of LGBT+ people within law enforcement agencies to handle crimes against LGBT+ individuals.
8. Enhance the accessibility of legal aid services specifically tailored to assist LGBT+ individuals. This could involve expanding the geographical reach of legal aid services and providing specialized training for legal aid providers on LGBT+ issues.
9. Amend or repeal the Private Voluntary Organizations Amendment Bill to ensure that civil society organizations can operate freely and independently, without undue interference or restrictive measures.
10. Launch nationwide campaigns to raise public awareness of human rights, including LGBT+ rights, to reduce stigma and promote acceptance and equality of LGBT+ people.
11. Encourage the inclusion of LGBT+ issues in national policies and programmes, particularly those related to health, education, jobs and social protection, to ensure that the needs of the LGBT+ community are adequately addressed.
12. Together with the LGBT+ community, design methods and protocols for the collection and use of data related to sexual orientation and gender identity with a view to making visible and understanding the nature and extent of discrimination and violence faced by LGBT+ people in order to inform public policies. Ensure that data collection methods are sensitive to the privacy and safety of LGBT+ individuals.

277 Brent Shamu. GALZ Condemns Attack by Homophobes. NewsDay (12 June 2024). Available at <https://www.newsday.co.zw/local-news/article/200028156/galz-condemns-attack-by-homophobes>

278 See Civil Society Submissions: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=ZWE&Lang=EN



UNDP HIV and Health Group, Africa